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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revisions of Delegations of Authority

AGENCY: Department of Agriculture.
ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and the Assistant Secretary for Administration to reflect the addition of certain functions relating to Federal Information Processing Standards (FIPS).

EFFECTIVE DATE: May 2, 1989.

FOR FURTHER INFORMATION CONTACT: Glenn P. Haney, Director, Office of Information Resources Management, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3152.

SUPPLEMENTARY INFORMATION: Section 111(d) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(d)) authorizes the Secretary of Commerce to approve standards for Federal computer systems (Federal Information Processing Standards (FIPS)) and to determine the extent to which such standards should be compulsory and binding. Section 111(d)(3) of the Act authorizes the Secretary of Commerce to delegate authority to heads of agencies to waive FIPS under certain conditions. The Secretary of Commerce has delegated such waiver authority to the Secretary of Agriculture (54 FR 4322, January 30, 1989).

The delegations of authority of the Secretary of Agriculture are amended to reflect the addition of this authority to grant waivers to FIPS. Such authority is redelegated to the Assistant Secretary for Administration, who is the Department of Agriculture Senior Information Resources Management Official. The Director, Office of Information Resources Management will support the Assistant Secretary by reviewing and making recommendations on proposed waivers.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Pub. L. 97–354, the Regulatory Flexibility Act, and therefore is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATION OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, except as otherwise stated.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.25 is amended by adding paragraph (f)(1)(vii) to read as follows:

§ 2.25 Delegation of authority to the Assistant Secretary for Administration.

* * * * *

(f) Related to Information Resources Management * * *

(1) * * *

(vii) Reviewing, granting, and notifying Congress of waivers to Federal Information Processing Standards pursuant to the authority delegated under section 111(d)(3) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(d)(3)).

* * * * *

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.81 is amended by adding paragraph (a)(20) to read as follows:

§ 2.81 Director, Office of Information Resources Management.

(a) Delegations. * * *

(20) Review and make recommendations to the Assistant Secretary for Administration on proposed waivers to Federal Information Processing Standards (FIPS) pursuant to seciton 111(d)(3) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(d)(3)).

For Subpart C:

Dated: April 19, 1989.

Clayton Yeutter,
Secretary of Agriculture.

For Subpart J:

Dated: April 14, 1989.

John J. Franke, Jr.,
Assistant Secretary for Administration.

[FR Doc. 89–10466 Filed 5–1–89; 8:45 am]
BILLING CODE 3410–01–M

Food and Nutrition Service

7 CFR Part 278

[Amendment No. 311]

Food Stamp Program; Civil Money Penalties in Lieu of Permanent Disqualification for Trafficking

AGENCY: Food and Nutrition Service, USDA.
ACTION: Interim rule.

SUMMARY: Section 344 of Pub. L. 100–435, the Hunger Prevention Act of 1988, amended section 12(b)(3) of the Food Stamp Act effective July 1, 1989, to provide the Secretary of Agriculture with the discretion to impose a civil money penalty (CMP) of up to $20,000 in lieu of permanent disqualification of a firm for trafficking. This discretionary authority may be utilized if the Secretary determines that there is substantial evidence that such a firm had an effective policy and program in

effect to prevent violations. Pub. L. 100–619 (102 Stat. 3198), signed on November 5, 1988, amended section 701 of the Hunger Prevention Act to make the amendment to section 12(b)(3) of the Food Stamp Act effective October 1, 1988. This rule implements section 344 of Pub. L. 100–435 by establishing criteria for eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking as well as standards that shall be utilized by the Department to make a determination regarding the effectiveness of the firm's compliance policy and program. In addition, this regulation sets forth the formula that shall be used to establish the amount of the civil money penalty assessed against eligible firms requesting such penalty in lieu of a permanent disqualification.

EFFECTIVE DATES: This action is effective October 1, 1988. Comments on the interim rule should be received by July 3, 1989.

ADDRESS: Comments should be submitted to Dwight Moritz, Chief, Coupon and Retailer Branch, Food Stamp Program, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) in Room 706, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Dwight Moritz, Coupon and Retailer Branch, Benefit Redemption Division, Food and Nutrition Service, Alexandria, Virginia 22302, (703) 756–3418.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The Department has reviewed this rule under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The rule will affect the economy by less than $100 million a year. The rule will not raise costs or prices for consumers, industries, government agencies or geographic regions. There will be no 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. Therefore, the Department has classified the rule as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice to 7 CFR Part 3015 Subpart V (Cite 48 FR 29115 June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

The proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354). The Administrator of the Food and Nutrition Service has certified that this action does not have a significant economic impact on a substantial number of small entities. This action would have almost no impact on the vast majority of authorized firms, most of whom follow the rules carefully.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Public Participation and Effective Date

This action is being published without prior notice of proposed rulemaking or an opportunity for public comment prior to publication. Pub. L. 100–619 mandates that the amendment made in section 12(b)(3) of the Food Stamp Act by Pub. L. 100–435 be made effective October 1, 1988. Since the intent of the provision is to make relief available to individual firms as of October 1, 1988, it is critical that implementing regulations be promulgated as soon as possible. Thus, in accordance with 5 U.S.C. 553(d), good cause is found for publication of this rulemaking less than 30 days prior to the effective date of this rule. In addition, since prior notice and public comment procedures cannot be completed prior to the statutory implementation date, and because delays in implementation of this option could adversely affect individual firms that have been notified of the FNS determination to permanently disqualify them and are appealing such determinations, it has been determined pursuant to 5 U.S.C. 553(b), that public comment on this action prior to implementation is impracticable and contrary to the public interest. However, since the Department believes that public comment may provide useful input for the development of the final rule, comments will be accepted for 60 days. All comments received by that date are assured of being considered in the publication of the final rule.

Background

Section 344 of Pub. L. 100–435, the Hunger Prevention Act of 1988, amends section 12(b)(3) of the Food Stamp Act to provide the Secretary of Agriculture with the discretion to impose a civil money penalty of up to $20,000 in lieu of a permanent disqualification for retailers found to have trafficked in food coupons. This discretionary authority may be utilized if the Secretary determines that there is substantial evidence that such firms had an effective policy and program in effect to prevent violations. Pub. L. 100–619, signed on November 5, 1988, amended section 701 of the Hunger Prevention Act to make this civil money penalty provision effective October 1, 1988. This rule implements section 344 of Pub. L. 100–435 by establishing criteria for eligibility for firms seeking a civil money penalty in lieu of permanent disqualification for trafficking and establishes standards that will be used by the Department to make a determination regarding the effectiveness of a firm's compliance policy and program.

Current program regulations at 7 CFR Part 278 reflect the prior statutory requirement to impose a permanent retailer disqualification from program participation upon the first occasion of the purchase or trafficking of food coupons or ATP cards. In accordance with Departmental interpretation of prior legislation, no discretionary authority existed to allow a less severe sanction for any trafficking case regardless of (1) the amount of coupons or ATP cards or other benefit instruments exchanged for cash, or (2) management initiatives undertaken by the firm which were designed to preclude such program violations by firm personnel. Legislative report language pertinent to this amendment (House Report 100–828 at pages 27–28) provides affirmation of the belief of Congress that trafficking in food coupons is a serious offense that warrants permanent disqualification from Food Stamp Program (FSP) participation. However, in reexamination the requirement for permanent disqualification for trafficking, Congress expressed concern about the fairness of permanent disqualification in two circumstances. First, when small amounts of coupons are involved, the permanent disqualification penalty appears to be disproportionate to the offense. Second, trafficking (the purchase of food program benefit instruments for cash) is an offense that a firm employee can

commit independently for personal profit, without any benefit accruing to the firm. Therefore, Congress amended the Food Stamp Act to provide the Secretary with the discretion to assess a civil money penalty in lieu of permanent disqualification if substantial evidence exists that the firm had established and implemented an effective compliance policy and program to prevent violations. This amendment provides the Secretary with the discretion to develop criteria/standards against which a firm's actions to prevent such violations may be measured.

The discretion to impose a civil money penalty in lieu of a permanent disqualification of the firm allows the Department to review a firm's compliance efforts, as well as to ensure that the monetary penalty imposed on a firm relates more closely to the seriousness of the trafficking violations committed by the firm.

Penalties

Together, the statute and current program regulations require that a firm found to be selling ineligible items for food stamps be sanctioned by being disqualified for no less than 6 months nor more than 5 years (depending on whether minor or major ineligibles were sold and if the pattern of violations indicated it was the store's practice to violate). The sanction is doubled if it is a firm's second offense (therefore making the potential disqualification period 1 year to 10 years). The statute also requires that, in cases where a firm's disqualification would cause hardship to local recipients, the firm may be assessed a hardship CMP for a maximum of $10,000 per violative transaction which occurred during the course of an investigation.

In the majority of trafficking cases, investigations begin with the sale of ineligible items. By the time the case has been escalated to the conduct of trafficking transactions, a case record sufficient to disqualify such a retailer for the sale of ineligible items has been established. For example, a case dealing with minor ineligibles, which would include a minimum of three transactions, would lead potentially to a maximum disqualification of up to 1 year or a hardship CMP of up to $30,000. A case involving the sale of major ineligibles and in which store practice to violate is indicated, would normally include a minimum of four transactions and may potentially lead to a disqualification of 3- to 5-years or a hardship CMP of up to $40,000. In some cases, a hardship CMP may be less than the statutory limit because the formula for arriving at a hardship CMP takes into consideration the firm's average monthly redemptions. The actual amount of the CMP is either the result of applying the formula or $10,000 per violative transaction, whichever is less. The fact remains, however, that a hardship CMP has the potential to be greater than a CMP for trafficking.

Past practices provide that in the case of trafficking, the firm is sanctioned for trafficking only (not the other violations regarding the sale of ineligible items) since the statute previously required permanent disqualification for this offense. Thus, the fact that ineligibles may have also been sold became moot. However, this rule requires that such a firm shall be required to serve the appropriate period of disqualification for other violations committed by the firm such as the sale of ineligible items, in addition to payment of the CMP for trafficking. The Department believes that this is necessary to rectify the potential inequities that may result from maintaining current sanctioning practices in light of this amendment to the statute.

Criteria and Documentation

In order for the Department to determine whether or not it is appropriate to assess a civil money penalty in lieu of a permanent disqualification for trafficking, the statute requires that substantial evidence exists that such a firm had established and implemented an effective policy and program to prevent violations of the Food Stamp Program. These interim regulations set out the procedures, criteria and documentation that shall be met by firms being considered for permanent disqualification for trafficking and wish to be assessed a civil money penalty in lieu of such a disqualification.

However, the statute requires that, in order for a firm to qualify for a civil money penalty in lieu of a permanent disqualification for trafficking, the Secretary must determine that there is substantial evidence that the firm had an effective policy and program in effect to prevent violations. None of the information necessary to document the existence and operation of such policies and programs to prevent violations is readily available to FNS through the normal system of records that are maintained by the agency. Therefore, it is necessary to place the burden of providing evidence of the existence of such a policy and program on the firm itself if it wishes to prove its eligibility for a CMP in lieu of permanent disqualification of trafficking.

Section 278.6(i) of these regulations requires that, at a minimum, a firm that wishes to be assessed such a civil money penalty demonstrate with substantial evidence that it meets each of the four criteria listed below.

Criterion 1. The firm shall have developed an effective compliance policy as specified in § 278.6(i)(1).

In order for FNS to determine whether a firm has established an effective policy to prevent Food Stamp Program violations, § 278.6(i)(1) specifies that the firm shall, at a minimum, provide FNS with written and dated statements of policy which embody the firm's commitment to ensure that the Food Stamp Program is operated in conformance with program regulations with regard to the proper acceptance and handling of food coupons. Regardless of whether employees routinely handle food coupon transactions, the compliance policy as specified in Criterion 2, shall have existed and been in effect and provided to all employees, prior to the occurrence of the violations cited against the firm. Bonafide written statements of policy as described above shall be deemed as the conclusive evidence required by the statute to show that the firm has developed such a policy.

This interim rule also provides guidance to firms on the development of what the Department would view as an acceptable compliance policy and also sets forth types of documentation the Department would expect the firm to submit in order for FNS to evaluate the effectiveness, and the successful implementation, of such a policy.

Criterion 2. The firm shall establish that both the compliance policy and program were in operation at the store prior to and during the time of the occurrence of violations cited in the charge letter sent to the firm.

House Report 100–828 at page 27 states that "The permanent disqualification of retail food stores upon the first trafficking offense-without any evaluation of preventive measures taken or complicity in the trafficking-seems excessively harsh." As previously discussed, therefore, Pub. L. 100–435 provides the Secretary with the discretion to impose a civil money penalty in lieu of permanent disqualification for trafficking, if it is determined that there is substantial evidence that the store had an effective policy and program to prevent violations of the Food Stamp Act. The intent of the legislation is to provide firms that have taken management initiatives designed to ensure Food Stamp Program compliance with some relief from permanent disqualification if the firm has anticipated and attempted to

minimize noncompliance through the institution of compliance policy and training on the proper handling of Food Stamp Program transactions. This rule requires, therefore that, in order to be eligible for civil money penalty consideration, the firm's compliance policy and program shall have been in effect prior to and at the time of the occurrence of the violations cited in the case against the firm. That is, no compliance policy developed and/or implemented as a corrective action subsequent to the trafficking violations that have lead to the action to permanently disqualify the firm shall be considered as having met the requirements of this part.

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in § 278.6(i)(2).

The Department firmly believes that a comprehensive, aggressive, active, and ongoing training program is essential to the establishment and maintenance of an effective compliance program.

Section 278.6(i)(2) provides developmental and implementation guidance for the type of training program the Department would consider as effective. The regulation also sets forth the types of documentation the Department would view as acceptable evidence of the implementation and maintenance of such a training program. This interim rule also sets forth examples of the training components the Department believes are necessary for a firm to ensure that an effective training program is implemented.

This rule specifies that training shall be provided to all employees of the firm, regardless of whether or not all employees routinely handle food coupon transactions. The Department recognizes that the opportunity for trafficking and improper handling of coupons does not exist exclusively for managers or cashiers because even employees who do not normally handle coupons have increased access to them by virtue of their employment. Therefore, in order to provide the proper safeguards, it is required that all employees of the firm be trained in proper food stamp procedures. However, training plans may be designed to accomodate the functions of the individual employees in the operation of the store.

Criterion 4. Neither firm ownership nor management wre aware of, approved, benefitted from, or were in any way involved in the conduct or approval of trafficking violations.

Firm management acts on behalf of, and is directly responsible to, the ownership of the firm. This would include employees acting regularly or temporarily in the absence of the owner or manager. It is the Department's belief that no policy or program to prevent Food Stamp Program violations can in any way be construed to be effective if firm ownership or management is involved in any trafficking violation. Therefore, this rulemaking does not allow a civil money penalty in lieu of disqualification in those cases in which owners or managers committed the trafficking violation(s).

Trafficking is a serious program offense. The Department, therefore, believes that the criteria related to the qualification of a firm for a civil money penalty in lieu of permanent disqualification for trafficking should be met with strictest conformance by those firms wishing to qualify for this option.

Formula

It is critical that an equitable and reasonable method for computing the dollar amount of the civil money penalty be implemented. Therefore, the penalty formula for civil money penalties in lieu of permanent disqualification for trafficking, as described in § 278.6(j), is similar to the civil money penalty for hardship and transfer of ownership prescribed by section 12 of the Act and implemented in § 278.6(g) of program regulations. However, the formula includes some variations based upon the severity and the frequency of the trafficking violations committed by the firm.

As specified in the current civil money penalty formula for hardship and transfer of ownership included in § 278.6(f), when calculating the civil money penalty for trafficking, FNS will first determine the amount of the firm's average monthly redemptions (AMR) of food coupons for the 12-month period ending with the month immediately preceding the month that the firm was charged with the violations as specified in § 278.6(b). The AMR is then multiplied by 10 percent. This multiplier has traditionally been used to represent the profits attributable to the coupon and related cash business of food stamp customers that would be lost if the store were to be disqualified from FSP participation.

At this point, the trafficking civil money penalty formula diverges from the current hardship and transfer of ownership formula in that the trafficking formula includes variations based upon the frequency and severity of the trafficking violations committed by the firm. Section 12 of the Food Stamp Act, as amended, provides generally that any firm that violates the Act or the FSP regulations may be disqualified for a specified period of time or be subjected to a civil money penalty if such a disqualification would cause hardship to food stamp households. Section 12(b) specifies that such a disqualification should be for a reasonable period of time of (1) no less than six months nor more than five years upon the first occasion of disqualification and (2) no less than 12 months nor more than ten years upon the second occasion of disqualification. A permanent disqualification shall be made upon the third occasion of a firm's disqualification for program offenses. No civil money penalties may be assessed for a permanent disqualification except in cases of trafficking and then only upon the first or second offense.

Hardship and transfer of ownership civil money penalties are calculated based on the time period for which the firm would have been disqualified from the Program for the violations committed. Since there currently exists no equivalent timeframe for the assessment of a civil money penalty in cases of permanent disqualification when ownership of the firm has not changed, this rulemaking specifies that, when calculating a civil money penalty for trafficking, the maximum timeframes included in the current civil money penalty formula shall be used as the base. Thus, the trafficking civil money penalty formula provides that, upon the first occasion of a disqualification for trafficking, a 5-year (60-month) disqualification period shall be used in the calculation and a 10-year (120-month) disqualification period shall be used in the calculation for assessing a civil money penalty upon the second occasion of disqualification for trafficking. (As in the case of all other disqualifications, upon the third occasion of disqualification of the firm, a permanent disqualification will be made with no recourse to a civil money penalty for hardship or trafficking.)

Finally with regard to the severity of the trafficking violation, the formula put forth in this rulemaking provides that, if the face value of coupons, ATP cards or other benefit instruments involved in the largest single trafficking transaction had a face value of $99 or less (misdemeanor offense), the product obtained in the calculations above shall be multiplied by 1. If the face value of the benefit instruments involved in the largest single trafficking transaction was $100 or more (felony offense), the product obtained shall be doubled. The Department views the above approach to developing the formula as equitable and necessary since it considers the

frequency and seriousness of the trafficking offense, in a manner consistent with the Department's interpretation of Congress' concern that the penalty should be proportionate to the offense. (House Report 100–828, p. 27–28.)

Below are examples of the CMP calculation applied in the case of a firm with an AMR of $850.

- $850 x 10% x 60 (mos) x 1 = $5,100 CMP if first trafficking offense and amount trafficked is less than $100 in the largest single transaction;
- $850 x 10% x 60 (mos) x 2 = $10,200 CMP if first trafficking offense and amount trafficked is $100 or more in the largest single transaction;
- $850 x 10% x 120 (mos) x 1 = $10,200 CMP if second trafficking offense and amount trafficked is less than $100 in a single transaction;
- $850 x 10% x 120 (mos) x 2 = $20,400 CMP if second trafficking offense and amount trafficked is $100 or more in the largest single transaction.

While this formula will be used by FNS to calculate the civil money penalty, a statutory limitation of $20,000 exists which represents the maximum civil money penalty that may be assessed by the Department against any firm. Due to the seriousness of any trafficking violation, this interim rule requires that the firm provide full payment of the civil money penalty within 30 days of the date that the final determination is received by the firm regardless of any other penalty imposed on the firm by the Department for other violations as specified in § 278.6(i). If payment is not made within this timeframe, this regulation requires that permanent disqualification shall be implemented by FNS. This rule provides that, in such a case, no further appeals of the action would be made available to the firm.

The Department believes that requiring full payment within 30 days is commensurate with the seriousness of the violation on which the monetary penalty is based. As reaffirmed by Congress in House Report 100–828, trafficking in food stamps is a serious FSP offense. Although Congress has given the Secretary the discretion to establish a trafficking fine in lieu of permanent disqualification under limited circumstances, the Department believes it is consistent with the intent of Congress that payment of the monetary penalty should serve as a severe alternative to the even more severe penalty of permanent disqualification. To allow payment of the civil money penalty to be spread over a long period of time would undermine what the Department believes to be the intent of Congress; that is, payment of the civil money penalty should serve as a strong signal that trafficking in food stamps is viewed as a serious offense and should be commensurate with the severity of the violation.

Effective Date

Public Law 100–619, signed on November 5, 1988, provides that the amendment made to section 12(b)(3) of the Food Stamp Act by Pub. L. 100–435, the Hunger Prevention Act, be made effective October 1, 1988. The Department interprets this to mean that the intent of Congress was to expedite the availability of this relief and make this option available to firms as of October 1, 1988. In developing this rulemaking, the Department has sought to provide relief to the broadest population of retailers while taking into consideration the administrative feasibility of implementing such a provision. The option to receive a civil money penalty in lieu of a permanent disqualification for trafficking shall not be made available to any firm that had either forfeited or exhausted all opportunities for appeal of a permanent disqualification which took effect prior to October 1, 1988. However, this relief is available to any firm for which permanent disqualification for trafficking had not yet taken effect as of October 1, 1988, with one exception. Firms pending a judicial review decision as of October 1, 1988 that had not received a stay of the administrative action are also eligible for consideration for a civil money penalty in lieu of permanent disqualification since the opportunity for further review had not been concluded as of October 1, 1988 (despite the fact that disqualification action had been in effect) and final administrative action had not yet taken effect.

FNS will contact all firms awaiting either an FNS regional office determination or an administrative review decision and provide them with an opportunity to request consideration for a civil money penalty in lieu of the permanent disqualification for trafficking. Firms that are awaiting a judicial review decision may wish to request that the court remand the case to FNS if they wish to be considered for a civil money penalty in lieu of a permanent disqualification for trafficking. Firms that have received judicial review decision after October 1, 1988 must contact FNS if they wish to be considered for a CMP in lieu of permanent disqualification for trafficking.

Procedures

A new paragraph (b)(2) has been addded to § 278.6 to require that the charge letter issued by FNS advise firms being considered for permanent disqualification of the possible option of a civil money penalty in lieu of permanent disqualification. A firm that wishes to be considered for a trafficking civil money penalty is required to submit information and evidence to document that it is eligible and meets each of the four criteria for a trafficking civil money penalty in accordance with § 278.6(i).

It is incumbent upon the firm to ensure that all information and documentation pertinent to the request for a civil money penalty as specified in § 278.6(i) be filed timely with FNS. FNS will make a determination as to whether or not the firm meets the eligibility criteria for civil money penalty consideration and will advise the firm accordingly. This interim rule also specifies in § 278.6(b)(2)(iii) that if a firm fails to request consideration and submit the required documentation of its eligibility for a civil money penalty within the timeframe specified at § 278.6(b)(1), the firm shall forfeit its right for such consideration. As in any adverse action, a denial of a request for a civil money penalty in lieu of permanent disqualification for trafficking may be appealed. The procedures in this rulemaking have been designed in such a way that firms wishing to appeal both the permanent disqualification and the denial of a civil money penalty in lieu of the disqualification will have the opportunity to appeal both actions simultaneously, rather than be subjected to the delays and expense of two separate appeals.

List Subjects in 7 CFR Part 278

Administrative practice and proceure, Banks, Banking, Claims, Food stamps, Groceries-retail, Groceries, General line—wholesalers, Penalties.

PART 278—[AMENDED]

1. The authority citation for Part 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

2. In § 278.6:

(a) Paragraph (a) is amended by removing the words, "Except in case of a permanent disqualification," in the fifth sentence and by adding a sentence to the end of paragraph.

(b) The text of paragraph (b) is redesignated as paragraph (b)(1), a title

is added, and a new paragraph (b)(2) is added.

(c) The title of paragraph (f) is revised.

(d) Paragraph (f)(1) is amended by removing the word "only" in the first sentence and by revising the last sentence.

(e) Paragraph (f)(4) is amended by removing the words "be authorized to" the second time they appear in the last sentence.

(f) The titles of paragraphs (g) and (h) are revised.

(g) Paragraphs (i) and (j) are redesignated as (l) and (m), respectively, and new paragraphs (i), (j) and (k) are added.

The additions and revisions read as follows:

§ 278.6 Disqualification of retail food stores and wholesale food concerns, and the imposition of civil money penalties in lieu of disqualifications.

(a) * * * FNS may impose a civil money penalty of up to $20,000 in lieu of a permanent disqualification for trafficking in accordance with the provisions of § 278.6(i).

(b) *Charge letter*—(1) *General provisions.* * * *

(2) *Charge letter for trafficking.*

(i) The charge letter shall advise a firm being considered for permanent disqualification based on evidence of trafficking in food coupons, ATP cards or other benefit instruments that the firm must notify FNS if the firm desires FNS to consider the sanction of a civil money penalty in lieu of permanent disqualification.

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

* * * * *

(f) *Criteria for civil money penalties for hardship and transfer of ownership.*

(1) * * * A civil money penalty for hardship to food stamp households may not be imposed in lieu of a permanent disqualification.

* * * * *

(g) *Amount of civil money penalties for hardship and transfer of ownership.* * * *

(h) *Notifying the firm of civil money penalties for hardship and transfer of ownership.* * * *

(i) *Criteria for eligibility for a civil money penalty in lieu of permanent disqualification for trafficking.* FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking in food coupons, ATP cards or other Program benefit instruments if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program. Firms assessed a CMP under this paragraph shall be subject to the applicable penalties included in §§ 278.6(e) (2) through (6) for the sale of ineligible items. Only those firms for which a permanent disqualification for trafficking took effect on or after October 1, 1988, are eligible for a civil money penalty in lieu of permanent disqualification for trafficking, except that firms that have been disqualified but are awaiting a judicial review decision are eligible for a civil money penalty in lieu of a permanent disqualification. In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in § 278.6(i)(1); and

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred *prior* to the occurrence of violations cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in § 278.6(i)(2); and

Criterion 4. Neither firm ownership nor management were aware of, approved, benefitted from, or were in any way involved in the conduct or approval of trafficking violations.

(1) *Compliance policy standards.* As specified in Criterion 1 above, in determining whether a firm has established an effective policy to prevent violations, FNS shall consider written and dated statements of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with this Part 278 of current FSP regulations and current FSP policy on the proper acceptance and handling of food coupons. As required by Criterion 2, such policy statements shall be considered only if documentation is supplied which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation. In addition, in evaluating the effectiveness of the firm's policy and program to ensure FSP compliance and to prevent FSP violations, FNS may consider the following:

(i) Documentation reflecting the development and/or operation of a policy to terminate the employment of any firm employee found violating FSP regulations;

(ii) Documentation of the development and/or continued operation of firm policy and procedures resulting in appropriate corrective action following complaints of FSP violations or irregularities committed by firm personnel;

(iii) Documentation of the development and/or continued operation of procedures for internal review of firm employees' compliance with FSP regulations;

(iv) The nature and scope of the violations charged against the firm;

(v) Any record of previous firm violations under the same ownership or management; and

(vi) Any other information the firm may present to FNS for consideration.

(2) *Compliance training program standards.* As prescribed in Criterion 3 above, the firm shall have developed and implemented an effective training program for all managers and employees on the acceptance and handling of food coupons in accordance with this Part 278. A firm which seeks a civil money penalty in lieu of a permanent disqualification shall document its training activity by submitting to FNS its dated training curricula and records of dates training sessions were conducted; a record of dates of employment of firm personnel; and contemporaneous documentation of the participation of the violating employee(s) in initial and any follow-up training held prior to the violation(s). FNS shall consider a training program effective if it meets or is otherwise equivalent to the following standards:

(i) Training for all managers and employees shall be conducted within one month of the institution of the compliance policy under Criterion 1 above. Employees hired subsequent to the institution of the compliance policy shall be trained within one month of

employment. All employees shall be trained periodically thereafter;

(ii) Training shall be designed to establish a level of competence that assures compliance with Program requirements as included in this Part 278;

(iii) Written materials, which may include FNS publications available to all authorized firms, are used in the training program. Such materials shall clearly state that the exchange of food coupons, ATP cards or other benefit instruments for cash is prohibited and in violation of the Food Stamp Act and regulations.

(j) *Amount of civil money penalty in lieu of permanent disqualification for trafficking.* A civil money penalty assessed in accordance with § 278.6(i) shall not exceed $20,000. FNS shall determine the amount of the civil money penalty as follows:

(1) Determine the firm's average monthly redemptions for the 12-month period ending with the month immediately preceding the month during which the firm was charged with violations;

(2) Multiply the average monthly redemption figure by 10 percent;

(3) For the first trafficking offense by a firm, multiply the product obtained in § 278.6(j)(2) by 60 if the largest amount of food coupons, ATP cards, or other benefit instruments involved in a single trafficking transaction had a face value of $99 or less. If the face value of coupons, ATP cards or other benefit instruments involved in the largest single trafficking transaction was $100 or more, the amount of the product obtained in this paragraph shall be doubled;

(4) For a second trafficking offense by a firm, multiply the product obtained in § 278.6(j)(2) by 120 if the largest amount of food coupons, ATP cards, or other benefit instruments involved in a single trafficking transaction had a face value of $99 or less and the same firm has once before been sanctioned for trafficking in food coupons, ATP cards, or other benefit instruments. If the face value of food coupons, ATP cards, or other benefit instruments involved in the largest single trafficking transaction was $100 or more, the amount of the product obtained in this paragraph shall be doubled; and

(5) If a third trafficking offense is committed by the firm, the firm shall not be eligible for a civil money penalty in lieu of disqualification.

(k) *Payment of civil money penalty in lieu of a permanent disqualification for trafficking.* Payment of the full amount of the civil money penalty in lieu of permanent disqualification for trafficking shall be made within 30 days of the date the final determination was received by the firm. If payment is not made within the prescribed period, the right to the civil money penalty in lieu of a permanent disqualification is forfeited and disqualification shall become effective immediately.

G. Scott Dunn,

Acting Administrator, Food and Nutrition Service.

Date: April 26, 1989.

[FR Doc. 89-10504 Filed 5-1-89; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV-89-038]

Vidalia Onions Grown in Georgia; Authorization of Collection of Shipment Data

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule requires handlers to provide information to the Vidalia Onion Committee on weekly fresh market onion shipments. The information is needed by the committee primarily for the purpose of collecting assessments which will fund the marketing order program. In addition, the information would be used to compile statistical data for use in planning and evaluating market development activities and making recommendations for production research projects.

DATES: The interim final rule is effective May 2, 1989; comments which are received by June 1, 1989, will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be avaialble for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Tentative Marketing Agreement No. 955 and Interim Marketing Order No. 955 (7 CFR Part 955; 54 FR 10972) concerning Vidalia onions grown in Georgia. The tentative marketing agreement and interim 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 interim 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), (5 U.S.C. 601-612) the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule 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 acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 160 handlers and 260 producers of Vidalia onions in that portion of Georgia covered by the interim order. Small argicultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having 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 the Georgia Vidalia handlers and producers may be classified as small entities.

This rule requires handlers to provide the Vidalia Onion Committee with information regarding the volume of Vidalia onions received and shipped during each week of the shipping season, which runs from late April through June. It was unanimously recommended by the committee at its March 27 meeting.

This rule is being issued under § 955.60 of the interim marketing order (54 FR 10977) which authorizes the committee to collect from handlers information necessary to perform its duties. As provided in the interim order, the committee is authorized to incur such expenses as are found to be reasonable to administer the program. Funds to cover these expenses are

acquired by levying assessments upon handlers. For the 1989 Vidalia onion season, a budget of expenses of $150,000 has been approved, and handlers are required to pay assessments to the committee at a rate of $0.10 per 50-pound bag shipped to the fresh market.

Currently, there is no information available which can be used by the committee to ascertain the volume of Vidalia onions shipped by individual handlers. Therefore, the committee needs such information for the purpose of collecting assessments, which are necessary to finance the program. The committee believes the best method for obtaining the necessary information is to require handlers to report to the committee the volume of fresh market shipments at the end of each week during the harvesting and shipping season.

Additionally, the information derived from these reports would be used by the committee in planning and evaluating market development activities and recommending production research projects. The information will also be made available to the industry on a composite basis to avoid divulging individual handlers' operations. This should aid growers and handlers in planning their individual operations and making marketing decisions during the season. Since the information to be collected by the committee is currently compiled and maintained by handlers, the additional reporting burden will be minimal. It is estimated that it will take a handler five minutes to complete the report.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained in this interim final rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0160.

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

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** for the following reasons: (1) The harvesting and shipping season for Georgia Vidalia onions is expected to begin in late April, and to be of maximum benefit to the committee this rule should become effective as soon as possible; (2) this rule is needed by the committee for the purpose of collecting assessments, which will fund the marketing order program; (3) Vidalia onion handlers are aware of this action which was unanimously recommended by the committee at a public meeting held on March 27; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to the finalization of the rule.

List of Subjects in 7 CFR Part 955

Marketing agreements and orders, Vidalia onions (Georgia).

For the reasons set forth in the preamble, 7 CFR Part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Subpart—Rules and Regulations

1. The authority citation for 7 CFR Part 955 continues to read as follows:

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

2. Section 955.101 is added to read as follows:

Note: This section will be published in the Code of Federal Regulations.

§ 955.101 Report of shipments.

Each handler shall, at the end of each week's operation, report to the committee, on a form provided to such handler by the committee, the following information:

(a) Name of handler.

(b) Address of handler.

(c) Period covered.

(d) Total receipts of Vidalia onions.

(e) Total fresh market shipments of Vidalia onions.

Dated: April 27, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Divison.

[FR Doc. 89–10480 Filed 5–1–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100, 103, and 280

[INS Number 1128–89]

RIN 1115–AA73

National Fines Office

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule provides authority for the Director, National Fines Office (NFO) to issue notices and bills, and to make adjudicative decisions on finable offenses in order to support district directors by processing such cases centrally, in an automated system. Since fines are monetary penalties for statutory violations of the Immigration and Nationality Act ("Act") by transportation companies, this change is intended to expedite debt recovery for the government, and to provide prompt service to the transportation industry.

EFFECTIVE DATE: May 2, 1989.

FOR FURTHER INFORMATION CONTACT: Dwight S. Faulkner, Assistant Chief Inspector, Immigration and Naturalization Service, 425 "I" Street, NW., Room 7123, Washington, DC 20536, Telephone: (202) 633–3995.

SUPPLEMENTARY INFORMATION: Currently, the Immigration and Naturalization Service ("Service") imposes administrative fines by processing each case in the district office that has jurisdiction over the port of entry at which the violation occurred. In-district processing of applications for benefits under the Act holds a higher priority than the establishment of debt, and this combination of decentralized processing and lower priority has served to delay fine cases at many locations. In turn, delays have caused false or inaccurate recording of accounts receivable for the Service, and numerous complaints from the transportation industry. This is an internal processing change designated to eliminate these previous problems by handling fines in a single office with a dedicated staff. At the same time, by incorporating an automated system that generates required forms automatically and tracks fine cases Servicewide, this change will enhance the intended deterrent effect of imposing such penalties. The Director, National Fines Office (NFO), and the NFO staff are new positions dedicated to processing fine cases, and are funded by provisions of

Pub. L. 99–591, the Department of Justice Appropriations Act of 1987. This law established the Service's user fee account, from which withdrawals for debt collection improvements, including "the establishment and maintenance of a national collections office".

Compliance with 5 U.S.C. 533 as of notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency management.

In accordance with 5 U.S.C. 605(b) the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291, not does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects

8 CFR Part 100

Administrative practice and procedure, Organization and function (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Reporting and recordkeeping requirements.

8 CFR Part 280

Administrative practice and procedure, Fines.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 continues to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act: 8 U.S.C. 1103.

2. In § 100.2, a new paragraph (c)(3)(vii) is added to read as follows:

§ 100.2 Organization and functions.

* * * * *

(c) * * *

(3) * * *

(vii) National Fines Office.

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for Part 103 continues to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356, 3 CFR 1982 Comp., p. 166.

4. In § 103.1 new paragraphs (f)(3) and (u) are added to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(3) The Associate Commissioner for Examinations is delegated the authority to impose administration fines under provisions of the Act in any case which is transmitted to the National Fines Office by a district director. The Associate Commissioner for Examinations may redelegate such authority to any other officer or employee of the Service.

* * * * *

(u) *Director for the National Fines Office.* Under the direction of the Associate Commissioner for Examinations, the Director for the National Fines Office has program, administrative, and supervisory responsibility for all personnel assigned to the National Fines Office. In any case transmitted for handling to the National Fines Office, the Director for the National Fines Office is delegated the authority by the Associate Commissioner for Examinations to impose administrative fines under sections 231, 233, 237, 239, 243, 251, 252, 254, 255, 256, 271, 272, and 273 of the Act, including but not necessarily limited to causing a Notice of Intent to Fine, Form I–79, to be served, conducting personal interviews requested by any person upon whom a Notice of Intent to Fine is served, and entering orders or decisions.

PART 280—IMPOSITION AND COLLECTION OF FINES

5. The authority citation for Part 280 continues to read as follows:

Authority: 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 226, 227, 230; 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, 1330.

§§ 280.1, 280.4, 280.5, 280.12, 280.13 and 280.51 [Amended]

6. Sections 280.1, 280.4, 280.5, 280.12, 280.13 and 280.51(c) are amended by adding the term "or the Associate Commissioner for Examinations, or the Director for the National Fines Office" immediately after the term "district director".

§§ 280.11 and 280.15 [Amended]

7. Sections 280.11 and 280.15 are amended by adding the term "or the Associate Commissioner for Examination, or the Director for the National Fines Office" immediately after the term "district director of immigration and naturalization".

§ 280.51 [Amended]

8. Section 280.51(a) is amended by adding the term "or the Associate Commissioner for Examinations or the Director for the National Fines Office's" immediately after the term "district director's".

Dated: April 17, 1989.

Richard E. Norton,

Associate Commissioner, Examinations.

[FR Doc. 89–10482 Filed 5–1–89; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Policy Statement on Additional Applications of Leak-Before-Break Technology

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) has at this time decided not to undertake rulemaking which would extend the scope of application of Leak-Before-Break (LBB) technology to emergency core cooling systems (ECCS) or environmental qualification (EQ) of safety-related electrical and mechanical equipment. Industry is encouraged to develop justification which would allow serious consideration of extension of the scope of application of LBB technology in the future. Use of exemptions with respect to the application of LBB to EQ continues to be permitted in accordance with the modification of General Design Criterion 4.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: John A. O'Brien, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3894.

SUPPLEMENTARY INFORMATION:

Evaluation of Public Comment

On April 6, 1988 the NRC solicited public comment on the application of LBB to ECCS and EQ (53 FR 11311). Twenty-one effective comment letters were received. Twelve comment letters (from private citizens, citizens groups, regional coalitions and environmental groups) opposed the application of LBB to ECCS or EQ while eight comment letters (from utilities, a nuclear steam

supply system vendor, industry groups and a nuclear fuel vendor) supported such an application. One nuclear steam supply system vendor took a neutral position.

Among those opposing, repeated citation was made to the Surry pipe rupture in December 1986, the March 1988 General Accounting Office report, "Action Needed to Ensure that Utilities Monitor and Repair Pipe Damage," the purported unreliability of ultrasonic testing to detect piping flaws and public statements made in August 1983 by the then Director of the Office of Nuclear Reactor Regulation (NRR) pertaining to intergranular stress corrosion cracking in BWR piping. The NRC has determined that none of these citations discredit either the present or proposed expanded scope of LBB. This is explained as follows: LBB acceptance criteria cannot be satisfied in the feedwater suction line which ruptured at Surry. There is no reason to expect LBB behavior in this line. The cited GAO report treated erosion/corrosion of piping. The factors which control erosion/corrosion are sufficiently understood so that the NRC can determine with confidence which piping systems are susceptible to erosion/corrosion. NRC acceptance criteria do not permit piping subject to erosion/corrosion to qualify for LBB. Difficulties with ultrasonic testing are irrelevant to LBB. Leakage detection with high margins is used instead to detect throughwall cracks in high energy piping during service. The statements made in August 1983 to the Commissioners by the then Director of NRR were made at a time when LBB had not advanced to its present state, and moreover were directed to BWR piping. Unless special materials or measures are employed, LBB cannot be applied to BWR piping because of intergranular stress corrosion cracking.

The nuclear steam supply system vendor that took a neutral position with respect to the application of LBB to EQ and ECCS recognized that limited safety and operational benefits could result. However, this vendor concluded that for plants utilizing its design comparable benefits could be obtained employing another recent rule change (as described below), and that "economic benefit * * * does not appear to be major, and net safety benefits may not outweigh the detriments."

Among those supporting the expanded use of LBB to EQ and ECCS, many economic, operating, testing, maintenance and design benefits were cited. The NRC remains firm in using safety benefits as the prime measure in deciding whether to divert limited resources to the research and rulemaking efforts needed to apply LBB to EQ and ECCS. A few safety benefits were identified in public comment. These are discussed as follows. The test and design requirement for fast starting of emergency diesel generators is derived from the double-ended guillotine rupture of reactor coolant loop piping when analyzed in accordance with 10 CFR 50.46 and Appendix K. The test requirement degrades bearings, gears, the governor and power transmission such that the propsect of reliable service from the emergency diesel generators could be diminished if pipe ruptures actually occur. Using LBB to postulate smaller pipe ruptures would lengthen the starting time and assist in preserving the reliability of the emergency diesel generators for some (but not all) plants. A second safety benefit deals with radiation embrittlement of the reactor pressure vessel. The relatively low peaking limits for the fuel which results from the currently required analyses might be increased in some plants when smaller LOCAs replace the double-ended guillotine break requirement. With higher peaking limits the fuel configuration can be redesigned to yield less radial fluence leakage. This can mitigate concerns with vessel life extension and pressurized thermal shock of the vessel. An additional safety benefit can be achieved by equipment reliability improvements (other than for the emergency diesel generators) resulting from fewer plant scrams and challenges due to lower ECCS set points and less harsh equipment qualification environments. However, reliability improvement due to lower ECCS set points and less harsh equipment qualification environments may be offset by safety degradations associated with such actions, particularly with respect to severe accident performance. It is presently uncertain that overall safety would improve when less harsh EQ profiles are specified or ECCS set points are reduced.

In large part, the first two safety benefits cited above can be obtained at this time more expeditiously and efficiently under the recent ECCS rule (53 FR 35996, September 16, 1988) which permits best estimate methodology with quantified uncertainty for evaluating LOCAs. The models needed for implementing the ECCS rule have undergone substantial development; however, research must be initiated to develop replacement design basis pipe ruptures when LBB is invoked for ECCS. Moreover, whereas the ECCS rule already exists in final form, the rulemaking needed to expand LBB technology would consume at least two years and considerable NRC effort. Finally, while the ECCS rule can be applied directly to all light water reactors (except one with stainless steel fuel cladding), LBB can be applied only to qualifying reactors. The scope of qualifying reactors is unclear; especially in question are BWRs.

With respect to harsh environments inside the containment, unless LBB can be successfully applied to main steam lines, harsh environments will not substantially change. Significant requirements will remain unless most of the large diameter piping inside the containment satisfy LBB requirements. Additionally, other breaches in the fluid system boundary, such as failed manways or valve bonnets, must be examined to determine whether they control EQ profiles. Reductions in EQ profiles are more readily achieved outside the containment because temperature, pressure and humidity do not build-up due to venting and blow out panels in some cases. However, EQ profiles outside the containment attract lesser interest because the EQ profiles are usually less harsh and thus more easily satisfied.

A few commenters noted difficulties with cable insulation, seals and valve seats resulting from materials selected to resist harsh environments associated with the postulated double-ended guillotine pipe rupture. The NRC acknowledges these difficulties, but is not certain that reducing harsh environments would, on balance, increase safety. Additionally, it was suggested that the threat of pressurized thermal shock would be reduced by lower pumping set points for low pressure safety injection. The NRC does not accept this position because pressurized thermal shock is controlled by injection of cold water at relatively high pressure during a small break LOCA.

Policy Statement

Having considered all public comments received, the Commission has decided not to undertake any rulemaking to extend the applicability of LBB to ECCS or EQ at this time. In large part, any safety benefits associated with ECCS can presently be more readily obtained under the recent ECCS rule. The use of exemptions for applying LBB to environmental qualification was permitted in the revision to General Design Criterion 4 (52 FR 41288). This option continues to remain open.

Nonetheless, the Commission has decided to keep open an avenue for

future consideration of rulemaking which would permit the application of LBB to ECCS and EQ. The Commission encourages industry to develop quantitative information that could justify the diversion of resources to the rulemaking efforts. Primary attention should be given to establishing an appropriate substitute or replacement for the double-ended pipe rupture used in ECCS and EQ evaluations. The Commission will consider modifying its current ECCS and EQ regulations when adequate technical justification supports the feasibility and benefits of the proposed modifications. In the interim, the Commission recognizes that situations may arise where justification can be developed by the industry for alternative ECCS and EQ requirements. Such justifications, if accepted by the Commission pursuant to the existing exemption process, would allow a limited number of case-by-case modifications to ECCS and EQ requirements. This could support future amendments to applicable requirements addressing ECCS and EQ.

Dated at Rockville, Maryland this 26th day of April 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-10505 Filed 5-1-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 103 and 165

[Docket No. 82N-0319]

Nonalcoholic Beverages; Repeal of Soda Water Standard of Identity; Amendment of Bottled Water Quality Standard; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with the final rule that repealed the standard of identity for soda water and amended the standard of quality for bottled water to delete the reference to the soda water standard.

EFFECTIVE DATE: February 7, 1989, for all products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0122.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 6, 1989 (54 FR 398), FDA issued a final rule that repealed the standard of identity for soda water (21 CFR 165.175) and amended the standard of quality for bottled water (21 CFR 103.35) to delete the reference to the soda water standard. The standard of identity was repealed because some provisions of the standard are adequately dealt with by other regulations, while other provisions are no longer necessary. Any person who would be adversely affected by that regulation could have, at any time on or before February 6, 1989, filed written objection to the final regulation and requested a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received in response to the final regulation.

List of Subjects

21 CFR Part 103

Beverages, Bottled water, Food grades and standards.

21 CFR Part 165

Beverages, Food grades and standards.

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

PART 165—NONALCOHOLIC BEVERAGES

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Food Safety and Applied Nutrition (21 CFR 5.62), notice is given that no objections were received and that the final regulation repealing the standard of identity for soda water (21 CFR 165.175) and amending the standard of quality for bottled water (21 CFR 103.35), as promulgated in the **Federal Register** of January 6, 1989 (54 FR 398), became effective February 7, 1989.

Dated: April 24, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-10465 Filed 5-1-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; U.S.S. CHANCELLORSVILLE

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that U.S.S. CHANCELLORSVILLE (CG-62) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that U.S.S. CHANCELLORSVILLE (CG-62) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval cruiser. The Judge Advocate General of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and

contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim, Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
U.S.S. CHANCELLORSVILLE	CG-62	—	—	—	—	—	X	X	38

Dated: April 20, 1989.
Approved.

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 89-10452 Filed 5-1-89; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; U.S.S. NORMANDY

AGENCY: Department of the Navy, DOD.

ACTION: Final Rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that U.S.S. NORMANDY (CG-60) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that U.S.S. NORMANDY (CG-60) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval cruiser. The Judge Advocate General of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over alll other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(1)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
U.S.S. NORMANDY	CG-60	—	—	—	—	—	X	X	38

Dated: April 20, 1989.

Approved:

W.L. Schachte, Jr.,

Acting Judge Advocate General.

[FR Doc. 89–10453 Filed 5–1–89; 8:45 am]

BILLING CODE 3810–AE–M

Department of the Army

32 CFR Part 518

[Army Regulation 340–17]

Release of Information and Records From Army Files; Special Designation of Initial Denial Authority

AGENCY: Department of the Army, DOD.

ACTION: Final Rule.

SUMMARY: The Department of the Army is redesignating special initial Denial Authority for Army safety records. The Army Safety Center is no longer under the operational command and control of the Deputy Chief of Staff for Personnel. As part of the DoD Reauthorization Act command and control of Army safety is now located at Ft. Rucker Alabama.

EFFECTIVE DATE: May 2, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Angela R. Petrarca, Policy and Strategy Directorate, Office of the Director of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army, Washington, DC 20310–0107.

SUPPLEMENTARY INFORMATION: This amendment designates special initial denial authority as follows: Commander, U.S. Army Safety Center, for Army safety records.

List of Subjects in 32 CFR Part 518

Information, Archives, Records, Privacy, Freedom of Information Act

Accordingly, 32 CFR Part 518 is amended

PART 518—[AMENDED]

1. The Authority citation for Part 518 continues to read as follows:

Authority: 5 U.S.C. 552

2. Section 518.15 is amended by adding paragraph (a)(4)(xix) to read as follows:

§ 518.15 Initial determinations.

* * * * *

(a) * * *

(4) * * *

(xix) The commander, U.S. Army safety center, is designated to act on requests for records relating to Army safety.

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John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 89–10460 Filed 5–1–89; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 89–015]

RIN 2115—AC84

Empire State Regatta, Albany, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of regulations.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.104, for the Empire State Regatta from 12:01 pm on Friday, June 9, 1989 through 7:00 pm on Sunday, June 11, 1989. The regulations in 33 CFR 100.103 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: These regulations will be implemented from 12:01 p.m. on June 9, 1989 through 7:00 p.m. on June 11, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT L. Brown, project officer, First Coast Guard District Boating Safety Division, and LT J.B. Gately, project attorney, First Coast Guard District Legal Division.

Supplementary Information

This notice provides the effective period for the permanent regulation governing the 1989 running of the Empire State Regatta in Albany, New York. The regulations, 33 CFR 100.104, will be in effect from 12:01 pm on June 9, 1989 through 7:00 pm on June 12, 1989. The Hudson River will be closed to all traffic between 6:00 am and 7:00 pm each day while rowing races take place. Vessels drawing less than six (6) feet will be allowed to pass through the regulated area each evening after 7:00 pm. The regulated area is that portion of the Hudson River between the Interstate Route 90 bridge and the Dunn Memorial bridge. Further public notification, including the full text of the regulations will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners.

Dated: April 6, 1989.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 89–10437 Filed 5–1–89; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–89–23]

RIN 2115–AC84

Special Local Regulations for Marine Events; Veteran's Appreciation Day Canoe and Raft Race(s); Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Veteran's Appreciation Day Canoe and Raft Race. The event will consist of a canoe and raft competition involving various military Veteran's Association members. The competition will be held in the Elizabeth River parallel to the Town Point Park and Otter Berth Areas of Waterside, Norfolk Harbor, Norfolk and Portsmouth, Virginia. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event. Marine Traffic will be allowed to transit the Elizabeth River Channel between races.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 12:00 Noon to 4:00 p.m., on May 28, 1989.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief,

Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Festevents, Ltd. submitted an application on January 19, 1989 to hold a canoe and raft competition involving various military Veteran's Association members. The competition will be held in the Elizabeth River parallel to the Town Point Park and Otter Berth Areas of Waterside, Norfolk Harbor, Norfolk and Portsmouth, Virginia, on May 28, 1989. Marine traffic will be allowed to transit the Elizabeth River Channel between races. Because this is the type of event contemplated by these regulations, and because the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.501 are being implemented.

Date: April 20, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR 89-10436 Filed 5-1-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-89-21]

RIN 2115-AC84

Special Local Regulations for Marine Events; the Start of the Race to Cock Island; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Race to Cock Island. The race will consist of approximately 200 sailboats divided into approximately nine classes, starting at ten minute intervals from the Waterside area of the Eastern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, Virginia on July 22, 1989. The sailboats will race to Hampton Roads and return. These special local regulations are needed to control vessel traffic within the area due to the confined nature of the waterway and the expected vessel congestion during the starting of the races. The effect will be to restrict general navigation in the regulated area for the safety of participants in the races.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 11:00 a.m. to 1:00 p.m., on July 22, 1989.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Ports Events, Inc., of Portsmouth, Virginia, submitted an application on February 22, 1989 to hold the Race to Cock Island. The race will consist of approximately 200 sailboats ranging from 22 to 60 feet. The sailboats will be divided into approximately nine classes, each consisting of 15 to 25 sailboats. Each class will start at ten minute intervals from the Waterside area of the Eastern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, Virginia on July 22, 1989, race to Hampton Roads and return. Because this is the type of event contemplated by these regulations, and because the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.501 are being implemented for the start of the races.

Dated: April 20, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-10434 Filed 5-1-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 86-10; FCC 89-106]

Access Charges

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules on the obligations of local exchange carriers (LECs) with respect to their provision of access to interexchange carriers (IXCs) for 800 service. The Commission determined that the LECs may implement the so-called "data base system" of 800 access provided that they retain, at least for now, the current "NXX" system of 800 access. The Commission also addressed other issues raised in this proceeding. This action was taken pursuant to a Notice of Proposed Rulemaking issued in 1987 (102 FCC 2d 1387 (1986), 51 FR 3808 (1986)), and a Supplemental Notice of Proposed Rulemaking seeking further information and comment (3 FCC Rcd 721 (1988), 53 FR 7214 (1988)).

DATES: *Effective:* June 1, 1989.

AT&T should file its 800 Directory Assistance tariff by June 5, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gary Phillips, Policy and Program Planning Division, Common Carrier Bureau (202) 632-4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (FCC 89-106) adopted March 30, 1989, and released April 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The term "800 service" describes an interexchange service in which subscribers agree in advance to pay for calls made to certain subscriber-designated numbers. The service is used primarily by businesses to provide potential customers and other persons a free and convenient means of contacting them. Subscribers may choose to offer 800 service on a nationwide basis, or they may limit their service to specific geographic areas.

2. Because the called party pays for an 800 call and selects the IXC that will carry the call, the LEC in whose area an 800 call originates cannot identify the IXC to which the call should be routed in the same manner as it identifies the IXC for non-800 calls—that is, based on the caller's choice of IXC, pre-subscribed or otherwise. Accordingly, local exchange access for 800 service must be handled differently from access for ordinary interexchange calls. Indeed, from 1967, when AT&T first introduced 800 service, until late 1986, LECs were

unable to provide access for 800 service to any IXC other than AT&T ("Other Common Carrier" or "OCC").

3. In late 1986, the BOCs and other LECs provided OCCs with 800 access for the first time through the so-called "NXX" screening methodology. Under this system, LECs identify the carrier to which 800 calls should be routed by reading the three digits that immediately follow the 800 prefix of the dialed number (the "NXX" digits).

4. Because the NXX screening methodology identifies the 800 carrier by the NXX digits, the system requires that particular NXXs be assigned to particular carriers. Consequently, under the NXX system, 800 subscribers cannot change carriers without changing their 800 number. In addition, subscribers that seek a particular 800 number must obtain their 800 service from the carrier to which the NXX digits in that number have been assigned. If the carrier does not offer 800 service in the subscriber's area, the subscriber will be unable to use the number it wants. Moreover, to preserve for as long as possible the pool of available NXXs, the administrator of the NXX assignment process, Bell Communications Research ("Bellcore"), will not assign a new NXX to a carrier until the carrier has used 70% of the capacity on each of its existing NXXs. Thus, a subscriber may not use an 800 number beginning with an unassigned NXX unless the subscriber can find a carrier that is eligible for a new NXX and that agrees to request the NXX associated with that number.

5. The BOCs, along with some Independent Telephone Companies ("ITCs"), are currently developing common channel signaling networks based on the CCS7 protocol. These LECs propose to link their CCS7 networks with data bases containing 800 service information so that they may replace the NXX access system with a so-called "data base system" of 800 access. Under this data base system, information on the 800 carrier associated with each 800 number in service would be loaded into various regional data bases around the country. LECs would then access these data bases through their CCS7 networks for routing instructions for each 800 call. The data bases would provide these instructions based on a ten-digit screening of the 800 number (the "800" prefix, plus the seven-digit number), as opposed to the six-digit screening on which the NXX system is based.

6. Because the data base plan would permit ten-digit screening of the 800 number, it would allow number portability. This means that 800 service subscribers would be able to change carriers without changing their 800 number. In addition, subscribers would be able to select any 800 number not already assigned, without regard to NXX limitations, and to use this number with any carrier's 800 service, or use more than one carrier with the same number.

7. The LEC data base systems will also have other capabilities. For example, these systems could be used to: (1) Determine whether the call has originated in a subscribed service area; (2) translate the 800 number into a POTS number; (3) vary the POTS translation, in accordance with customer instructions, so as to direct the routing of calls to different subscriber locations based on time of day, place of origination of the call, and other factors; (4) direct the routing of calls to different carriers based on these same kinds of factors; (5) determine the least cost carrier and direct the LEC to route the call accordingly; and (6) generate statistical information on the nature of a subscriber's 800 traffic. The LECs generally propose to offer each of these services, except least cost routing, (hereinafter referred to as "optional" or "vertical" services) to 800 subscribers and/or carriers on an optional basis.

8. The record compiled in this proceeding revealed that the data base system would offer both advantages and disadvantages as compared with the NXX system. On the one hand, the record confirmed that the number portability made possible by the data base plan would allow 800 subscribers greater flexibility in choosing 800 numbers and carriers and also help promote competition in the 800 market. While no party attempted a precise quantification of these benefits in monetary terms, the vast majority of commenters agreed that these benefits are real and that number portability was a desirable component of a competitive 800 service market. On the other hand, the record demonstrated that until CCS7 capabilities are widely deployed, the data base system would significantly increase access time for 800 calls. A large number of parties expressed serious concerns about these increased access delays and the Commission found that the public interest would not be served by permitting LECs to discontinue existing 800 access services in such circumstances.

9. According to the Commission, the record established that it would be possible for LECs to offer data base and NXX access simultaneously without materially affecting the technical quality of either service. The Commission stated that the record also indicated that some IXCs might prefer data base access, even if AT&T chooses NXX access for all of its NXXs. Under the circumstances, the Commission found, at least for now, dual offerings would best serve the public interest. Accordingly, the Commission permitted the LECs to implement the proposed data base plan, with some modifications, but it required LECs that do so to continue offering NXX access. Pursuant to this NXX option, each carrier may choose either NXX or data base access for each of its currently assigned NXXs. In addition, as carriers are assigned new NXXs, carriers may dedicate these NXXs to either system. If and when the LECs' deployment of CCS7 is sufficient, so that the level of access delay associated with the data base system is substantially reduced, the Commission stated that it will, upon appropriate petition, permit LECs to discontinue NXX access. The Commission stated that its current expectation is that it will be able to grant such a petition when CCS7 is deployed to access tandems and, on a nationwide average basis, to end offices accounting for eighty percent of originating 800 traffic.

10. The Commission also concluded that LECs should be permitted to offer each of the proposed vertical features to IXCs as part of 800 access service, but not to IXC's 800 service customers. The Commission addressed each of the proposed services individually. Addressing call validation, the Commission observed that efficiency goals would be furthered if LECs were permitted to block unauthorized 800 calls before sending them to an IXC. The Commission also noted that no party opposed LEC provision of this service, and it, accordingly, permitted LECs to offer the service to IXCs.

11. With respect to POTS translation, the Commission found that while some IXCs might prefer to purchase POTS translation capability from the LECs, POTS translation does not represent a significant barrier to entry, even for small IXCs. At the same time, however, the Commission noted, the record revealed no compelling reason to preclude the LECs from offering POTS translation as an access service. While IXCs argued that they compete on the basis of which vertical features they can offer, the Commission found it highly unlikely that basic POTS translation represents a significant source of competition. Indeed, it stated, POTS translation capabilities are both invisible to the 800 subscriber and, from a practical standpoint, a virtual necessity for IXCs wishing to enter the 800 market. It concluded that permitting the LECs to provide this service to IXCs

may make it cost-effective for some IXCs to enter the 800 market that would not have done so otherwise, and it, therefore, found no reason to withhold this permission.

12. The Commission found that alternate POTS translation presented more difficult issues since: (1) The BOCs proposed to offer this feature, not only to IXCs, but to IXC customers, as well; (2) unlike basic POTS translation, alternate POTS translation is not a virtual prerequisite for participating in the 800 market, but rather the kind of service option that IXCs currently offer to obtain a competitive edge in this market; and (3) IXCs argue that the LECs' data base systems provide the LECs with at least a small advantage over IXCs in the offering of this and other optional services. After balancing the various considerations, the Commission concluded that LECs should be permitted to offer alternate POTS translation, but only to IXCs, not to interstate 800 service subscribers directly. The availability of this service from LECs, the Commission stated, should not only provide competitive alternatives to IXC offerings of this service, it should increase competition in the 800 market generally by enhancing the position of small IXCs. Moreover, the Commission found that the 1.5 additional seconds required for an IXC to query its own data base, in lieu of purchasing alternate POTS translation from a LEC, will not preclude IXCs from using their own data base systems if they have them, or provide IXCs that purchase alternate POTS from a LEC with a significant advantage over IXCs that use their own system to provide this service.

13. Nevertheless, the Commission did not permit LECs to sell alternate POTS translation service to 800 service subscribers directly. The Commission noted that in other contexts, it has generally limited LECs to selling switched access services and features to IXCs and other purchasers of interstate access and not to the customers of IXCs or of other service providers. It found that similar limitations should apply here. The provision of alternate POTS translation by a LEC to an IXC's subscriber, it stated, would potentially interfere with the relationship between the IXC and its customer. In addition, it found that permitting 800 subscribers to order alternate POTS service from a LEC could potentially compromise IXCs' ability to manage traffic flow over their own networks.

14. Finally, the Commission permitted the BOCs to provide multiple carrier routing capabilities with their data base systems—*i.e.*, it permitted the BOCs to route different calls to different carriers based on specified factors. However, the Commission prohibited the BOCs from offering this capability directly to 800 subscribers so as to ensure both that BOC optional services do not become a vehicle for the BOCs to place themselves between IXCs and IXC customers, and that IXCs can control their own networks. Subscribers that wish to take advantage of BOC multiple carrier routing capabilities, the Commission stated, will be free to design their own service and order it from whichever IXCs they choose. In addition, one or more IXCs will be free to design an 800 service for a prospective customer and order the necessary "piece-parts" of this service from other IXCs on behalf of the customer. Indeed, the Commission found, contrary to the BOCs' assertions, regional carriers will have every incentive to market multiple carrier routing to customers that seek nationwide 800 service.

15. Turning to cost issues, the Commission expressed its agreement with the majority of parties, who argued that CCS7 costs should be treated differently from costs associated specifically with 800 access service under the data base system. The Commission stated that CCS7 represents a new network infrastructure that will not only support a number of new interstate and state services, but will also increase the efficiency with which LECs provide existing services, basic and non-basic. As such, it stated, CCS7 represents a general network upgrade, the core costs of which should be borne by all network users. The Commission thus concluded that it will treat as costs of providing data base access service only those costs that are incurred specifically for the implementation and operation of the data base system, and it directed the LECs to establish rates for data base access based only on these specific costs. The costs of CCS7 components that will be used to support other services, it stated, should be apportioned in accordance with existing rules for other network services.

16. The Commission also agreed with parties that argued that existing accounting provisions suffice for the capital investment and expense associated with the data base systems and CCS7 networks. The Commission stated that its new Part 32 rules incorporating the USOA were designed with the expectation that they would accommodate the implementation of new services and the update of existing technology. Indeed, the Commission noted, it specifically rejected a "service costing" approach to accounting during its revision of these rules on the ground that it was neither feasible nor desirable to combine a financial accounting system with a cost accounting system because of their fundamentally different objectives. The Commission found nothing unique in CCS7 or data base system costs that warranted a deviation from these rules. Indeed, said the Commission, to the contrary, the new Part 32 rules were adopted after AT&T already had its common channel signaling system and associated data base systems in place. Therefore, the Commission found, the USOA will accommodate the implementation of CCS7 and data base systems without any special accounting changes or provisions.

17. Although the Commission did not specify in detail the appropriate accounting treatment for all data base system costs, it did address one particular accounting issue. Several LECs had asserted that assignment of data base system expenses incurred prior to system implementation to Account 1439 (Other deferred charges), as required by the Bureau and the *Supplemental Notice*, is inappropriate. The Commission agreed, noting that at the time it prescribed this treatment for data base system expenses it appeared that these expenses would be substantial in amount, but the record now indicated otherwise. The Commission stated that base system expenses should be booked as incurred in accordance with normal accounting procedures. In addition, the Commission directed LECs to report to the Bureau all data base system expenses previously accumulated in Account 1439, and delegated authority to the Bureau to determine the appropriate accounting treatment of these balances.

18. The Commission also found that insofar as existing Part 32 categories appropriately classify data base system and CCS7 costs, existing separations categories suffice for these costs. Noting the relatively modest revenue requirement for 800 data base access, the Commission found separations changes unnecessary, particularly in light of recent efforts to simplify the separations rules. The Commission also noted that the costs of AT&T's CCIS network and related data bases have been separated under existing separations procedures, and that no party presented any reason why CCS7 and data base costs require different separations treatment for the BOCs than for AT&T.

19. Finally, the Commission agreed that LECs should offer data base access through separate subelements for 10-digit screening and the various vertical features. The Commission noted that it recently adopted a Notice of Proposed Rulemaking to consider Part 69 rule changes that would permit LECs to establish subelements of existing Part 69 rate elements for new access services that will be offered on an unbundled basis. The Commission stated that while the principal focus of this rulemaking is on the BSEs that the BOCs will offer pursuant to the Commission's ONA requirements, the rules established therein may also create a framework for LECs to establish subelements for new access services, such as 800 data base access, that the Commission permits or requires to be offered on an unbundled basis. Therefore, the Commission did not adopt specific Part 69 rule changes governing 800 access service at this time. However, as discussed above, the Commission clarified that LECs must develop rates for 800 data base access based only on their data-base-specific costs. LECs that seek to implement their data base systems prior to completion of this rulemaking, it stated, should file petitions for waiver of our Part 69 rules to establish separate unbundled subelements, consistent with the principles stated herein, for basic data base access and each of the various vertical features.

20. With respect to administrative issues, the Commission noted that the industry has made considerable progress in resolving many of the service order/SMS issues arising from the LECs' use of their data base systems. The Commission pointed out that LECs now state (1) that they will not accept orders for interLATA 800 service from 800 subscribers directly, unless they are authorized to do so by the IXC that will carry the traffic; and (2) that they will provide IXCs with direct, on-line SMS access on the same terms on which such access will be made available to LECs. To the extent that contested issues remain, the Commission found, the best course at this time is to allow these inter-carrier discussions to continue. In the Commission's view, such a process has a better prospect of achieving an efficient result that serves the interests of all parties than would a solution imposed by regulation. The Commission noted that to the extent IXCs object to the administration of the data base plan, they may choose to retain NXX access, and it anticipated that this option will encourage LECs to accommodate IXC concerns about customer control and traffic management. Finally, the Commission noted that it remained open to petitions asking it to address administrative issues that are not resolved through industry discussions or that are not resolved in a way that serves the public interest.

21. The Commission also found that the BOCs and Bellcore have largely responded to IXC concerns about Bellcore's role in administering the SMS by agreeing to transfer administration of the SMS to an independent third party and retaining a consulting firm to select the new SMS administrator. The Commission noted that this firm has issued a Request for Proposals from interested and qualified parties, and that it appears that a new administrator will be chosen in the near future.

22. The Commission found unconvincing ALC's objections to the manner in which the BOCs are choosing an SMS administrator. It stated that there is no evidence that the consulting firm chosen by the BOCs cannot discharge its responsibilities impartially or that the new SMS administrator will in any way favor the BOCs or disadvantage other carriers. In the event that any party is aggrieved by the actions of the SMS administrator, the Commission stated, the Commission's complaint process is available to address such grievances. Similarly, the Commission was not persuaded of the need for new 800 number administration guidelines. It noted that the current guidelines were adopted after inter-industry discussions at the OBF, and that although certain parties may object to them, their objections relate principally to the forum in which these guidelines were adopted and to the incorporation of number administration functions in the SMS. Moreover, the Commission stated, Bellcore, in conjunction with the OBF, has adopted and implemented rules for the assignment of NXXs, which are even more valuable than individual 800 numbers, and no IXC claims that these rules favor the BOCs or have been administered by Bellcore impartially. Again, however, the Commission noted that if a party has reason to believe that the 800 number administration guidelines are unfair or not in the public interest, it may file a petition or complaint specifying its objection and the matter will be considered accordingly.

23. The Commission agreed with IXCs that argued that the BOCs should continue to allow IXCs to provide PIUs as the jurisdictional basis for assessing access charges for 800 calling. It stated that the BOCs did not show that the jurisdictional indicators they propose would provide more reliable data than PIUs. Indeed, said the Commission, it appeared that jurisdictional indicators would provide incorrect data in some situations, such as when an IXC is using dynamic routing for its 800 traffic. The Commission saw no reason to complicate matters for IXCs by requiring them to provide jurisdictional indicators in some situations and PIU data in others, as proposed by some BOCs. Although PIUs are a surrogate for actual routing data, the Commission stated, the BOCs have not demonstrated that PIUs are inaccurate or otherwise unsatisfactory.

24. The Commission did, however, require IXCs using the data base system to provide the BOCs with the POTS numbers of 800 subscribers that will use a BOC for its intraLATA 800 service, either by choice or because the subscriber requests service in a state that does not permit intraLATA competition. In these situations, the Commission found, the BOCs require this information in order to recognize their own 800 traffic, and there is no legitimate reason why IXCs should withhold it from them.

25. The Commission found that at least some of its concerns with regard to 800 Directory Assistance service have apparently been addressed through steps taken by AT&T in its provision of this service. The Commission noted AT&T's representation that it has opened its DA service to all 800 carriers and currently provides DA service for several IXCs, including MCI. The Commission also noted that only one IXC, Microtel, alleged that the arrangements offered by AT&T are unsatisfactory. Nevertheless, the Commission stated that it remains concerned about the incentives and market power inherent in a situation in which an 800 service carrier provides the only DA service for the industry.

26. Some parties urged the Commission to establish a competitive bidding process for 800 DA rights. The Commission found that while a competitive bidding process might ensure in the short-term that 800 DA is provided on the most favorable terms possible, it would not necessarily address the Commission's concerns about the potential for discrimination that is inherent when one carrier provides a monopoly service to its competitors. Other parties stated that the Commission should place 800 DA in the hands of a neutral third party. The Commission found that while it is conceivable that at some point in the future it may so conclude, the record did not support such action at this time. As

noted, the Commission stated, only one IXC found fault with the terms and conditions on which AT&T currently offers 800 DA. Moreover, since AT&T has 800 DA facilities in place and operational, as well as experience with providing this service, AT&T can presumably offer this service on a reasonably efficient basis. Indeed, the Commission found, the costs that another entity would incur in establishing and providing this service might well outweigh the benefits to be gained by placing DA in the hands of a neutral third party.

27. Therefore, the Commission concluded, at least for now, AT&T may continue providing 800 DA service under the number (800) 555-1212. However, because at the present time, this is, for all practical purposes, a monopoly service, the Commission required AT&T to tariff this offering. This means that AT&T must provide 800 DA on a nondiscriminatory basis and, to this end, the Commission required AT&T to include in its tariff a description of its procedures for handling, listing, displaying, and providing DA information to callers. The Commission required AT&T to file its 800 DA tariff within 45 days of the release of this order. Finally, the Commission encouraged parties to continue exploring 800 DA issues in industry fora and to develop alternative solutions that might be superior to existing arrangements.

28. The Commission also rejected the argument of The National Telephone Cooperative Association (NTCA) that the Regulatory Flexibility Act applies to the rule changes adopted herein. It noted that in *MTS and WATS Market Structure* (93 FCC 2d 241 (1983)), the Commission held that because of the nature of local exchange and access service, small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. The Commission stated that NTCA offered no new arguments or evidence to alter this conclusion, but emphasized that it was, nevertheless, committed to reducing the regulatory burdens imposed on these companies, whenever it can do so in a manner consistent with its other public interest responsibilities. The Commission stated that it, accordingly, considered the impact of this order on small LECs and concluded that small LECs would not be adversely affected because: (1) The order does not require them to participate in the data base plan; (2) small LECs that wish to participate in this system may do so without incurring substantial costs by routing 800 traffic to larger telephone companies; and (3) NTCA did not show that LECs that route 800 traffic to another carrier for screening will lose control of their relationship with their customers. Customer relationships should be unaffected by the manner in which LECs choose to perform 10-digit screening.

Ordering Clause

1. Accordingly, pursuant to the provisions of sections 4(i), 4(j), 201–205, 218, 220, 403, and 404 of the Communications Act, 47 U.S.C. 154(i), 154(j), 201–205, 218, 220, 403, and 404, the policies, rules, and requirements set forth herein *are adopted.*

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-10429 Filed 5-1-89; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 81130-8265]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NOAA issues this notice modifying restrictions on fishing in 1989 for widow rockfish and sablefish taken off the coasts of Washington, Oregon, and California, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and are necessary because biological stress to these stocks is expected to occur if landings are not restricted. These actions are intended to lower fishing rates, prevent biological stress, allow unavoidable incidental catches in other fisheries to be landed, and avoid or reduce the probability of a fishery closure before the end of the year. This action supersedes fishing restrictions imposed on January 1, 1989 for these species.

DATES: Effective Date, 0001 hours (Pacific Daylight Time), April 26, 1989, until modified, superseded, or rescinded. Comments will be accepted through May 17, 1989.

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

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney R. McInnis at 213–514–6199, or the Pacific Fishery Management Council at 503–221–6352.

SUPPLEMENTARY INFORMATION: This action supersedes fishing restrictions imposed January 1, 1989 (54 FR 299, January 5, 1989) for widow rockfish and sablefish taken off the coasts of Washington, Oregon, and California. This action is authorized under the regulations at 50 CFR Part 663, which implements the Pacific Coast Groundfish Fishery Management Plan (FMP).

The FMP and implementing regulations at 50 CFR 663.22(a) allow the Secretary to reduce fishing levels to prevent or reduce biological stress in any species or species complex, consistent with the objectives and priorities of the FMP. When landing rates have been projected to reach an acceptable biological catch (ABC) estimate or quota before the end of the year, trip limits have been recommended by the Pacific Fishery Management Council (Council) and imposed by the Secretary of Commerce (Secretary) to prevent or reduce biological stress while minimizing disruption of traditional fisheries. To achieve these objectives, the management measures have also been designed to extend the fishery as long as possible throughout the year, and to allow catches taken unavoidably while fishing for other species (incidental catches) to be landed to minimize the waste of fish that otherwise must be discarded once a quota is reached. By slowing the fishery and avoiding premature closure that must occur when a quota is reached, the discarding of incidental catches is minimized and the likelihood of biological stress from fishing above the OY is lessened.

At its November 1988 meeting, the Council endorsed the determination of its Groundfish Management Team (GMT) that if landings of widow rockfish and sablefish were unrestricted in 1989, the likelihood of biological stress on those stocks would be increased. Trip limits and quotas were imposed on January 1, 1989 (53 FR 299, January 5, 1989) which were intended to lower fishing rates, prevent biological stress, allow unavoidable incidental catches to be landed, and avoid or

reduce the probability of fishery closures before the end of the year.

At the April 1989 Council meeting, the GMT projected that the landing rates for widow rockfish and sablefish were too high and that the quotas would be reached well before the end of the year. In its deliberations on adjusting the current fishing restrictions, the Council considered advice from the GMT (state and Federal fishery and social scientists), Groundfish Advisory Subpanel (fishing industry and consumer representatives), the concerned public, and a Select Group created by the Council for the purpose of recommending methods of limiting landings with minimal disruption to the fishing industry. The Select Group included representatives from the fishing industry, the Council, the Scientific and Statistical Committee, and the GMT. The Council's recommendations and subsequent actions taken by the Secretary on those recommendations are presented below.

Widow Rockfish

The 1989 optimum yield (OY) quota for widow rockfish is 12,400 metric tons (mt). At the April 3–7, 1989, Council meeting, the GMT advised that coastwide landings through March 25, 1989, were 6,908 mt, an increase of about 36 percent from 1988. Based on observed and expected landing rates, the GMT projected that the OY would be reached by August 4, 1989, and that landings of widow rockfish must be reduced by 51 percent to spread the remainder of the OY over the rest of the year.

At the April Council meeting, various levels of reduction were considered. The Council concluded that immediate reduction to a 3,000 pound incidental trip limit at this time (as recommended by the Council at its November 1988 meeting) would put a disproportionate disadvantage on the midwater trawl fleet, which generally makes larger landings, and benefit the roller trawl fleet, which generally makes smaller and more frequent landings. Therefore, the Council recommended an intermediate level of reduction in the weekly trip limit, from 30,000 pounds to 10,000 pounds, with a biweekly option as is currently allowed for landings of yellowtail rockfish and the *Sebastes* complex of rockfish. The biweekly option accommodates vessels that are capable of longer and larger trips than allowed under the weekly limit. The Council reiterated its recommendation that if the 10,000 pound trip limit does not sufficiently slow the catch, the Secretary should impose a 3,000 pound trip limit (with no frequency restriction) on whatever date necessary to assure that the 12,400 mt OY will not be reached before the end of the year.

Secretarial Action: The Secretary concurs with the Council's recommendation and herein announces:

(1) *Weekly trip limit.* No more than 10,000 pounds (round weight) of widow rockfish may be taken and retained, possessed, or landed per vessel per fishing trip in a one-week period. Only one landing of widow rockfish above 3,000 pounds (round weight) may be made per vessel in that one-week period. "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(2) *Biweekly trip limit option.* If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050: OAR 635–04–033: CF&GCA 7652), no more than 20,000 pounds (round weight) of widow rockfish may be taken and retained, possessed, or landed per vessel per fishing trip in a two-week period. After notification is given, and while it remains in effect, only one landing of widow rockfish above 3,000 pounds (round weight) may be made per vessel in that two-week period. "Two-week period" means 14 consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. Notification procedures for biweekly landings of widow rockfish are the same as for yellowtail rockfish and the *Sebastes* complex of rockfish, and are repeated at the end of this **Federal Register** notice.

(3) There is no limit on the number of landings of widow rockfish under 3,000 pounds.

(4) Unless retention or landing of widow rockfish has been prohibited, a that has landed its weekly (or biweekly) limit may continue to fish on the next week's (or two weeks') limit so long as the fish are not landed (offloaded) until the next legal one week (or two week) period.

(5) The fishery management area for this species is the Exclusive Economic Zone (EEZ) off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles (nm) offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. However, all widow rockfish possessed 0–200 nm offshore of, or landed in, Washington, Oregon or California are presumed to have been taken and retained from 0–200 nm offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

Sablefish

Two major gear groups harvest sablefish off Washington, Oregon, and California. The nontrawl or fixed gear (predominantly pot and longline) fleet generally targets on sablefish with little bycatch. The trawl fleet catches sablefish jointly with other species in its multispecies operations. Sablefish sometimes is the predominant species in a single trawl haul, but the extent of targeting is not known.

The 1989 OY for sablefish is a range from 10,400 to 11,000 mt, and is higher than the ABC of 9,000 mt. The OY was intended to gradually reduce the biomass over a 5–7 year period to the level that is expected to produce the maximum sustainable yield (MSY) of 8,200 mt with minimal disruption to the industry. At the November 1988 Council meeting, the GMT stated that, if no restrictions were imposed in 1989, the harvest of sablefish could be at least as high as 24,500 mt, the highest landings on record, and more than 2.5 times the ABC. Landings of this magnitude would bring the biomass below the level that would produce MSY in one year and would greatly increase the likelihood of biological stress on the sablefish resource.

To prevent biological stress, effective January 1, 1989 (54 FR 299, January 5, 1989), the sablefish resource was allocated between the trawl and nontrawl fisheries, and trip limits were imposed in an attempt to stretch the trawl sablefish fishery throughout the year. These limits were intended to minimize the fishing mortality above OY, and prevent discards and waste of sablefish unavoidably caught in the multispecies trawl fishery after the sablefish quota is reached. Twenty-two metric tons first were subtracted from 10,400 mt (the low end of the OY range) to accommodate the expected harvest of sablefish by the Makah Indian tribe. The remainder was allocated 5,397 mt (52 percent) for the trawl fishery and 4,981 mt (48 percent) for the nontrawl fishery. A 600 mt buffer (the difference between the low and high ends of the OY range) also was established to provide for uncertainties in landings projections and bycatch needs, and to allow small fisheries to continue after the gear quotas are reached. Trip limits were recommended for both trawl and nontrawl fisheries to avoid reaching their respective quotas before the end of the year. The trip limit for trawl-caught sablefish was 1,000 pounds or 45 percent (by weight) of the deepwater complex,

whichever is greater. The deepwater complex consists of sablefish, Dover sole, thornyheads, and arrowtooth flounder. The Council also recommended extending the nontrawl season by imposing a trip limit of 100 pounds when the quota is almost reached. This will allow nontrawl vessels to land small amounts of sablefish caught incidentally while fishing for other species.

At the April 3–7, 1989 meeting of the Council, the GMT advised that 780 mt of sablefish had been landed by nontrawl gear through March 25, 1989. Based on observed and expected landing rates, the GMT projected that the nontrawl quota will be reached by June 27, 1989. For the most part, the nontrawl fishery has preferred early closure of its directed fishery rather than a prolonged season. Because it is a fairly selective target fishery, imposition of the 100 pound trip limit, or closure of the fishery, will not result in large amounts of sablefish being unavoidably caught and discarded while fishing for other species.

This is not the case for the multispecies trawl fishery. The GMT advised that 1,052 mt had been landed through March 25, 1989, and projected that the trawl quota would be reached on September 21, 1989. Even though landings of sablefish would be prohibited when the trawl quota is reached, about 2,000 mt of unavoidable catches of sablefish would continue to be taken in the multispecies trawl fishery. Although part of this 2,000 mt overage could be accommodated by the 600 mt buffer (the difference between the low and high ends of the OY range), about 1,400 mt would be harvested above the upper end of the OY range, discarded, and wasted. Therefore, prohibiting the retention of sablefish when the trawl quota is reached, or even reducing the sablefish trip limit without reducing the catch of the multispecies complex, is not likely to substantially reduce the fishing mortality of sablefish. It would only result in the continuing catch and discard of sablefish. The Council considered shortening the 5–7 year schedule for reaching MSY by increasing the OY, but it did not do so because the risk of overfishing would be increased. The subsequent abrupt reduction in fishing levels when the MSY level of 8,200 mt was reached would be extremely disruptive to the fishing industry. Consequently, the Council recommended the following adjustments to the management measures currently in effect: (1) Decrease the nontrawl quota by 400 mt; (2) increase the trawl quota by 1,000 mt (400 mt from the nontrawl quota and 600 mt from the buffer); (3) reduce fishing on the deepwater complex as a whole in hope of a 1,000 mt decrease in the catch of sablefish; and (4) restrict the proportion of sablefish in landings of the deepwater complex.

The Council's rationale for restricting the deepwater complex harvest relies on the best available scientific information, which indicates that sablefish are unavoidably caught while fishing for the complex. Thus, the Council was left with no realistic alternative to prevent the excessive harvest, discard, and waste of sablefish except to constrain the harvest of the complex itself. This is not unprecedented as, for example, landings of the *Sebastes* complex of rockfish have been reduced since 1983 to avoid overfishing yellowtail rockfish.

The Council recommended the following trawl trip limit on the deepwater complex. Only one landing above 4,000 pounds of the deepwater complex is allowed in a one-week period. That landing cannot exceed 30,000 pounds of the deepwater complex and cannot contain more than 25 percent sablefish. Biweekly and twice-weekly trip limit options are to be available, as for the *Sebastes* complex of rockfish, so that 60,000 pounds of the deepwater complex may be landed once every two weeks, or 15,000 pounds of the deepwater complex may be landed twice in one week, if the proper state authorities are notified according to state laws and regulations (repeated at the end of this notice). There is no limit on the number of landings of the deepwater complex less than 4,000 pounds. However, if less than 4,000 pounds of the deepwater complex is landed, the trip limit for sablefish is 1,000 pounds.

The Council also recommended that the poundage and frequency limits on the deep water complex be removed the last quarter of the year, but the trip limit for sablefish remain at 1,000 pounds or 25 percent of the deepwater complex, whichever is greater. Accordingly, if the trawl allocation or OY has not been reached or is not imminent, the trip limits on the deepwater complex will be removed on October 4, 1989, incorporating the fishing week which falls on the beginning of the fourth quarter. Because this specific trip limit has never before been used, it is not certain whether trawl landings will be sufficiently reduced to avoid reaching the trawl quota in 1989.

The trawl trip limit was derived primarily from the fish ticket data from Oregon and California for the second quarter of 1987 when no fishing restrictions were in effect (except for sablefish smaller than 22 inches). These data indicated that approximately 8 percent of the trawl trips containing the deepwater complex were greater than 30,000 pounds. Therefore the trawl trip limit will eliminate the very large trips greater than 30,000 pounds. The 25 percent limit on sablefish is the approximate coastwide average incidence of sablefish in a trip. Because the 25 percent limit is based on an average, some discards of sablefish are likely to occur. There is no limit on the number of landings less than 4,000 pounds of the deepwater complex so that boats that have little or no sablefish on board are not unduly restricted. The 1,000 pound limit for sablefish is intended to allow small catches to be landed without encouraging targeting.

Because the nontrawl quota is reduced by 400 mt, the nontrawl fishery will probably close earlier than late June if current landing rates continue. However, a trip limit of 100 pounds will be imposed on a date to be determined by the GMT when approximately 200 mt of the nontrawl allocation is remaining. This trip limit is intended to eliminate most target fishing and accommodate small fisheries that operate later in the year. The size limit for sablefish smaller than 22 inches will no longer apply when the 100 pound trip limit is imposed.

The GMT will monitor landings and recommend trip limit changes necessary to meet the trawl and nontrawl quotas. Additional fishing restrictions may be imposed if needed to avoid exceeding these quotas, minimize discards, and provide for equitable use of the resource.

If total landings reach 11,000 mt, the upper end of the OY range, all further landings of sablefish will be prohibited.

Accordingly, only the provisions announced in paragraphs 1, 3, 4 (a) and (b) at 53 FR 299 (January 5, 1989), and references to those paragraphs, are changed. The other provisions remain in effect, including the coastwide trip limits for sablefish smaller than 22 inches (so that under the 25 percent trawl trip limit, no more than 5,000 pounds may be sablefish smaller than 22 inches, and under the 1,000 pound trip limit, all sablefish may be smaller than 22 inches).

Secretarial Action: The Secretary concurs with the Council's recommendations and, pursuant to § 663.22(a)(3), herein adjusts the management measures at 50 CFR 663.27(b)(3) and at 53 FR 299 (January 5, 1989) as follows:

(1) 1989 Management Goal. The sablefish fishery will be managed to achieve the OY range of 10,400–11,000 mt in 1989. If 11,000 mt (the upper end of the OY range) is reached, further landings of sablefish will be prohibited until January 1, 1990.

(2) Makah Tribal Fishery. Twenty-two metric tons is set aside for the Makah Indian tribe. This amount is not a quota and landings by the Makah tribal fishery will not be prohibited unless 11,000 mt of sablefish have been landed.

(3) Gear Allocations. After 22 mt for the Makah Indian tribe is subtracted from 11,000 mt, the remaining 10,978 mt is allocated 6,397 mt for the trawl fishery and 4,581 mt for the nontrawl fishery.

(4) Trip and Size Limits.

(a) Trawl gear.

(i) *Weekly trip limit.* Except for the biweekly and twice-weekly trip limits provided in paragraphs (4)(a)(ii) and (iii), no more than 30,000 pounds of the deepwater complex (including no more than 1,000 pounds or 25 percent of sablefish, whichever is greater) may be taken and retained, possessed, or landed, per vessel per fishing trip in a one-week period. "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. Only one landing above 4,000 pounds of the deepwater complex may be made per vessel in that one-week period. There is no limit on the number of landings less than 4,000 pounds of the deepwater complex.

(A) "Deepwater complex" means sablefish (*Anoplopoma fimbria*), Dover sole (*Microstomus pacificus*), thornyheads (*Sebastolobus* spp.), and arrowtooth flounder (*Atheresthes stomias*).

(B) Percentages apply only to legal fish on board. Legal fish means groundfish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR Part 663, the Magnuson Act, any notice issued under Subpart B of Part 663, or any other regulation or permit promulgated under the Magnuson Act.

(ii) *Biweekly trip limit option.* If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050: OAR 635–04–033: CF&GCA 7652), no more than 60,000 pounds (round weight) of the deepwater complex (including no more than 25 percent or 1,000 pounds of sablefish, whichever is greater) may be taken and retained, possessed, or landed per vessel per fishing trip in a two-week period. After notification is given, and while it remains in effect, only one landing of the deepwater complex above 4,000 pounds (round weight) may be made per vessel in that two-week period. "Two-week period" means 14 consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. Notification procedures for biweekly landings of the deepwater complex are the same as for the *Sebastes* complex of rockfish, and are repeated at the end of this **Federal Register** notice.

(iii) *Twice-weekly trip limit option.* If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050: OAR 635–04–033: CF&GCA 7652), no more than 15,000 pounds (round weight) of the deepwater complex (including no more than 25 percent or 1,000 pounds of sablefish, whichever is greater) may be taken and retained, possessed, or landed per vessel per fishing trip. After notification is given, and while it remains in effect, only two landings of the deepwater complex above 4,000 pounds (round weight) may be made per vessel in that one-week period. "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. Notification procedures for twice-weekly landings of the deepwater complex are the same as for the *Sebastes* complex of rockfish, and are repeated at the end of this **Federal Register** notice.

Note: Twenty-five percent of the deepwater complex (including sablefish) is equivalent to 33.333 percent of all legal fish on board in the deepwater complex other than sablefish.

(iv) Of those sablefish taken with trawl gear under paragraphs (4)(a)(i), (ii), and (iii) above, no more than 5,000 pounds of sablefish smaller than 22 inches (total length) may be taken and retained, possessed, or landed per vessel per fishing trip.

(v) If the trawl quota or OY has not been reached or is not imminent, the overall poundage and trip frequency limits for the deepwater complex will be removed on October 4, 1989. As a result, the trip frequency limit for sablefish also will be removed, and weekly, biweekly, and twice-weekly trip limits will no longer apply. However, the trip limit on sablefish in paragraph 4(a)(1) (1,000 pounds or 25 percent of the deepwater complex, whichever is greater, per vessel per trip), and the size limit in paragraph 4(a)(iv) (which specifies that no more than 5,000 pounds of the sablefish taken under paragraph 4(a)(1) may be smaller than 22 inches) and all other provisions announced in this notice and pertaining to sablefish will remain in effect until modified, superseded, or rescinded.

(b) Nontrawl gear.

(i) A trip limit of 100 pounds will be imposed when approximately 200 mt of the nontrawl allocation is remaining. This trip limit will be announced in a separate **Federal Register** notice.

(ii) For sablefish smaller than 22 inches (total length) caught with nontrawl gear, no more than 1,500 pounds or three percent (by weight) of all legal sablefish on board, whichever is greater, may be taken and retained, possessed, or landed per vessel per fishing trip. For processed ("headed") sablefish, see paragraph (d).

(c) Total length is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length of the fish.

(d) For processed ("headed") sablefish,

(i) The minimum size limit is 15.5 inches measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact; and,

(ii) The product recovery ratio (PRR) established by the state where the fish is or will be landed is used to convert the processed weight to round weight for purposes of applying the trip limit.

Note: The Federal trip limit for processed ("headed") sablefish is based on the product recovery ratios (PRRs) used by Washington, Oregon, or California, as in the past. It should be noted that the state PRRs may differ and fishermen should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official PRR.

(e) No sablefish may be retained which is in such condition that its length has been extended or cannot be determined by the methods stated above.

(5) The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. However, all fish in the deepwater complex possessed 0–200 nm offshore of, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from 0–200 nm offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

(6) Pursuant to § 663.22(a)(3), the regulations at § 663.27(b)(3) are adjusted until further notice.

(7) Nontrawl (fixed) gear includes set nets (gill and trammel nets), traps or pots, longlines, commercial vertical hook-and-line gear, troll gear.

(8) Trawl gear includes bottom trawls, roller or bobbin trawls, pelagic trawls, and shrimp trawls.

(9) All weights and percentages of fish on board are based on round weights. If sablefish are processed, refer to paragraph (4)(d) for conversion to round weight.

Notifications for Biweekly and Twice-Weekly Trip Limit Options

Notifications for biweekly and twice-weekly trip limit options for the *Sebastes* complex of rockfish and yellowtail rockfish already are in effect, as required by state law. Notification procedures for widow rockfish (for the biweekly option) and sablefish (for biweekly and twice-weekly options), also required by state law, are identical. The notification procedures are repeated here.

Biweekly trip limit options. As required by state law, the fishery management agency of the state where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the biweekly limits before the first day of the first two-week period in which such landings are to occur. The notice is binding for subsequent consecutive two-week periods until revoked in writing, addressed to the appropriate state agency, prior to the two-week period in which the rescission is to occur.

Twice-weekly trip limit options. As required by state law, the fishery management agency of the state where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the twice-weekly limits before the first day of the first one-week period in which such landings are to occur. The notice is binding for subsequent consecutive one-week periods until revoked in writing, addressed to the appropriate state agency, prior to the one-week period in which the rescission is to occur.

Addresses. Notifications must be submitted to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 98365, telephone 503–867–4741; P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515; 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462; or to the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504, telephone 206–753–6623; or to the California Department of Fish and Game, Branch Office, 619 Second Street, Eureka, CA 95501, telephone 707–445–6499.

Inseason Adjustments

At subsequent meetings, the Council will review the best data available and recommend modifications to these management measures if appropriate. The Council intends to examine the progress of these fisheries during the year in order to avoid overfishing and to extend the fisheries as long as possible throughout the year.

Other Fisheries

Retention of widow rockfish and sablefish by foreign processing vessels is limited by incidental percentage limits established under 50 CFR 611.70.

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.28. If fishing for groundfish and pink shrimp, spot or ridgeback prawns in the same fishing trip, the groundfish regulations in this notice apply.

Classification

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

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The alternative and environmental impacts of this Notice of Fishing Restrictions are not significantly different than those considered in the EIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an Environmental Assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10 because the alternatives and their impacts have not changed significantly.

These actions are taken under the authority of 50 CFR 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations, and do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The biweekly and twice-weekly trip limit options are required by state law and do not represent an additional collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These notifications are voluntary, and benefit the fishermen by minimizing the impact on their normal fishing operations by providing the choice of making smaller, shorter trips or larger, longer trips than under the weekly trip limits. Notifications are submitted to the appropriate state fishery management agency, not to the Federal government. The notification procedures in this **Federal Register** notice for biweekly and twice-weekly trip limit options are the same as those already in effect for landings of the *Sebastes* complex and yellowtail rockfish.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to public interest. Section 663.23 also states that any notice issued under this section will not be effective until 30 days after publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date. If unrestricted, catches unquestionably will exceed the OYs for widow rockfish and sablefish in 1989, increasing the likelihood of biological stress on those stocks. Prompt action to limit these fishing rates is necessary to protect the widow rockfish and sablefish stocks and alleviate the necessity for fishery closures before the end of 1989. Fishing rates are higher than expected at the beginning of the year. Delay in implementation of these actions most likely would result in an even more accelerated rate of landings by fishermen anticipating more restrictive limits. If landings are substantially increased, the projections made by the GMT will not be valid and the management measures set forth in this notice will not adequately slow the fishery. As a result, additional, more restrictive measures would need to be imposed. Consequently, further delay of these actions is impracticable and contrary to the public interest, and these actions are taken in final form effective April 26, 1989.

The public has had opportunity to comment on these management

measures. The public participated in the Groundfish Select Group, GMT, Groundfish Advisory Subpanel, and Council meetings in March and April 1989 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register.**

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Foreign relations.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 26, 1989.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-10440 Filed 4-26-89; 5:04 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 83
Tuesday May 2, 1989

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

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV-89-029PR]

Raisins Produced From Grapes Grown in California; Change to the Administrative Rules and Regulations Regarding the Deletion of a 1 Percent Shrinkage Factor

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a change to the administrative rules and regulations of the California raisin marketing order. This action would eliminate a 1 percent shrinkage factor granted to handlers on reserve pool tonnage. This action would also eliminate the provision for any additional allowance for shrinkage in weight for raisins held beyond the crop year of acquisition. This change was recommended by the Raisin Administrative Committee (Committee), the agency responsible for local administration of the order, because a study indicates that stored raisins no longer tend to lose weight.

DATE: Comments must be received by June 1, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 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 acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual 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 California raisins may be classified as small entities.

This proposed rule invites comments on a change to the administrative rules and regulations of the raisin marketing order. This action was recommended by the Committee on August 12, 1988, by a 44 to 2 vote.

The marketing order authorizes, for the total annual California raisin crop, the establishment of final free and reserve percentages for volume regulation purposes. Raisins in the reserve percentage category must be held by handlers in a reserve pool on handlers' premises for the account of the Committee. The proposed change would eliminate a 1 percent shrinkage allowance for normal and natural shrinkage in weight that is applied to reserve pool tonnage held by handlers on the Saturday nearest to May 1 of each crop year. The shrinkage factor was originally designed to compensate for lost weight of stored raisins due to moisture loss. This proposed change would also eliminate any additional allowance for shrinkage in weight that might be granted by the Committee for raisins held beyond the end of the crop year of acquisition.

Raisins are usually stored outdoors on handlers' premises. Storage bins or sweatboxes are organized into rows and stacked into columns and then covered with plastic to protect them from the weather. The Committee weighs reserve pool raisins by taking an average weight of bins and multiplying that number by the number of bins in the stacks.

The order provides, pursuant to § 989.66(b)(1), that handlers are not to be held responsible for natural deterioration and shrinkage of raisins held in the reserve pool for the account of the Committee. Therefore, § 989.166(a) was put into effect on July 19, 1950 (15 FR 4580) under the authority provided in the order. Currently, § 989.166(a) provides that handlers are entitled to a shrinkage allowance so that they are granted a credit for normal and natural shrinkage in weight of 1 percent of the original natural condition weight of reserve pool raisins acquired by the handler during a crop year and held through May 1 of the same crop year. The Committee therefore deducts 1 percent of the natural condition weight of reserve pool raisins on handlers' premises which are still being held in storage on the Saturday nearest to May 1 to take into account shrinkage or loss of moisture during such storage. In practice, the handlers are thus responsible for returning 99 percent of the weight in raisins they receive into their reserve.

When the 1 percent shrinkage factor was first implemented in 1950, most of the industry used sweatboxes (approximately 175 pounds net weight) for storing raisins. The industry found at

that time that sweatbox-stored raisins tended to shrink and lose moisture during extended periods of storage. Since the implementation of the 1 percent shrinkage factor, however, the vast majority of the industry has adopted the use of bins (approximately 2,000 pounds net weight) rather than sweatboxes (approximately 175 pounds net weight). The Committee has indicated that approximately 95 percent of this year's crop was delivered in bins. Additionally, the Committee recently conducted a survey which indicated that reserve pool raisins stored in bins and sweatboxes actually gain rather than lose moisture through extended storage periods. To conduct this survey, the Committee randomly weighed raisin bins and sweatboxes from different handlers' processing plants which were being transferred to other handlers' premises.

Therefore, the Committee has recommended the deletion of the 1 percent shrinkage factor and the provision to grant any allowance for shrinkage for reserves held beyond the end of the crop year.

These changes would increase payments to equity holders (growers) in the reserve pool since the 1 percent shrinkage allowance would no longer be deducted from the natural condition weight of reserve pool raisins. Therefore, producers would be likely to receive larger payments because there would be more tonnage available in the reserve pool.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

Subpart—Administrative Rules and Regulations

2. Section 989.166 is amended by removing paragraph (a); redesignating paragraphs (b)(1) and (b)(2) as (a)(1) and (a)(2), respectively; redesignating paragraphs (c)(1), (c)(2) and (c)(3) as (b)(1), (b)(2) and (b)(3), respectively; redesignating paragraph (d) to (c); redesignating paragraph (e) to (d); and redesignating paragraph (f) to (e).

Dated: April 27, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–10481 Filed 5–1–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1131

[DA–89–018]

Milk in the Central Arizona Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend until further notice the provisions of the Central Arizona milk order that define an "Associated producer" and "Associated producer milk", and describe the relationship of associated producers and associated producer milk to the marketwide pool. The provisions proposed to be suspended allow payments from pool proceeds to be made to producers who are primarily associated with the Central Arizona marketing area if a pool plant operator refuses to accept their milk and such milk is marketed by the dairy farmers directly to nonpool plants for use in manufacturing.

The suspension was requested on behalf of United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the producers who supply milk to the Central Arizona market. UDA contends that the action is needed because the provisions are no longer serving their intended purpose and cannot be administered effectively.

DATE: Comments are due on or before June 1, 1989.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would affect no more than three dairy farmers and would not affect milk handlers.

This proposed rule has been reviewed under Executive 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Central Arizona marketing area is being considered for an indefinite period:

1. In § 1131.12, paragraph (b)(4).
2. § 1131.21.
3. § 1131.22.
4. § 1131.33.
5. In § 1131.42(d)(2)(vi), the words "pursuant to § 1131.22 or".
6. In § 1131.44, paragraph (a)(7)(vii).
7. In § 1131.60(d), the words "and (vii)".
8. In § 1131.61, paragraph (b) in its entirety, and paragraph (e)(2).
9. In § 1131.72, paragraph (b) in its entirety.
10. In § 1131.77, the last sentence: "Such adjustments shall apply in the same manner with respect to an associated producer."
11. In § 1131.85, paragraph (b).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 30th day after publication of this notice in the **Federal Register.**

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the dairy farmers who supply the Central Arizona market, has requested that all of the order language defining and pertaining to an "associated producer" and "associated producer milk" be suspended for an indefinite period. The provisions

proposed for suspension allow producers who are primarily associated with the Central Arizona marketing area to share in proceeds from the marketwide pool if a pool plant operator refuses to accept their milk and such milk is marketed directly by the dairy farmers to nonpool plans for manufacturing use.

UDA contends that the provisions were designed specifically to accommodate a single large producer located within the marketing area. However, that producer has never used the provisions to enhance the returns for his surplus milk, and is not expected to have any need to use them in the future. According to UDA, the producer does not even meet the order's requirements for using the provisions. The cooperative has agreed to receive a certain amount of the producer's surplus milk and pay him the order's blend price. Therefore, it is UDA's position that the "associated producer" provisions of the order have become unnecessary.

UDA also contends that although the provisions proposed to be suspended are being used by a California producer, they cannot be administered in the manner contemplated by the order. The cooperative states that the market administrator must rely on assumptions about a producer's milk production and deliveries to pool plants in order to determine whether a producer meets the basic requirement that at least 50 percent of the milk production from the producer's farm be delivered to pool plants as producer milk of a handler.

According to UDA, the provisions proposed to be suspended resulted in payments of over $100,000 in 1988 from the marketwide pool to the California producer. The cooperative characterized the payments as "unwarranted exploitation of the Order 131 pool and an unjustified charge against the Order 131 blend price to the financial detriment of its producers.'

List of Subjects in 7 CFR Part 1131

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1131 continues to read as follows:

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

Signed at Washington, DC, on: April 26, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89–10444 Filed 5–1–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1139

[DA–89–020]

Milk in the Great Basin Marketing Area; Proposed Revision of Cooperative Manufacturing Plant Shipping Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rule.

SUMMARY: This notice invites written comments on a proposal to relax the shipping standards for cooperative manufacturing plants regulated by the Great Basin Federal milk order. The proposed action would relax from 45 to 40 percent the percentage of its producer milk that a pool manufacturing plant owned and operated by a cooperative association and located in the marketing area must deliver to pool distributing plants during any current month or during the 12-month period ending with the current month in order to meet the order's pooling standards. The action was requested by a cooperative association representing a large proportion of the producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due no later than May 17, 1989.

ADDRESS: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington DC 20090–6456, (202) 447–7183.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action would provide greater assurance that handlers will not engage in uneconomic movement of the market's reserve milk supplies in qualifying such milk for pricing status under the order. The action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1139.7(e) of the order, the revision of certain provisions of the order regulating the handling of milk in the Great Basin marketing area is being considered.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. BOx 96456, Washington, DC 20090–6456, by the 15th day after publication of this notice in the Federal Register.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the shipping requirements set forth in § 1139.7(d). The revision would be effective beginning with the month of June 1989. The specific revision would reduce the shipping requirement percentages by 5 percentage points, from the present 45 percent to 40 percent.

Section 1139.7(e) of the Great Basin milk order allows the Director of the Dairy Division to increase or reduce the shipping percentage requirement by up to 10 percentage points to assure orderly marketing and efficient handling of milk in the marketing area.

Western Dairymen Cooperartive, Inc. (WDCI), a cooperative association which represents a majority of the producers supplying the Great Basin market, requested that the percentage of producer milk required to be shipped to pool distributing plants from a plant owned and operated by a cooperative association and located in the marketing area be reduced 5 percentage points.

The cooperative states that loss of sales and increasing production make necessary a reduction of the required level of shipments of producer milk by a cooperative-owned and -operated manufacturing plant to pool distributing plants from 45 percent of producer milk to 40 percent in order to maintain the pool status of its member producers who have long been associated with the marketing area.

Therefore, it may be appropriate to relax the aforementioned provisions of § 1139.7(d) to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1139 continues to read as follows:

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

Signed at Washington, DC, on: April 26, 1989.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 89–10445 Filed 5–1–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–ANM–3]

Proposed Alteration of VOR Federal Airway V–68; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V–68 from Montrose, CO, to Dove Creek, CO, due to the installation of the Cones very high frequency omni-directional radio range (VOR). This action will reduce controller workload by providing pilots with a better navigational aid.

DATES: Comments must be received on or before June 12, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 89–ANM–3, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

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:

Betty Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautic Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

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. 89–ANM–3." 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. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V–68 from Montrose, CO, to Dove Creek, CO, due to the installation of the Cones VOR. This action will reduce controller workload by providing pilots with a better navigational aid. In addition, the new Cones VOR will be an integral part of a new approach procedure for the Telluride, CO, Airport. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

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

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–68 [Amended]

By removing the words "INT Montrose 200° and Dove Creek, CO, 069° radials; Dove Creek;" and substituting the words "Cones, CO; Dove Creek, CO;"

Issued in Washington, DC, on April 21, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-10449 Filed 5-1-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ACE-25]

Proposed Alteration of Transition Area; Muscatine, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to alter the 700-foot transition area at Muscatine, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to Runway 23 at the Muscatine, Iowa, Municipal Airport utilizing Radio Navigation (RNAV) as an approach aid.

DATES: Comments must be received on or before June 8, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri. An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to alter the 700-foot transition area at Muscatine, Iowa. The Muscatine Airport Commission has requested that the VOR approaches to Runway 5 and 30 and the VOR/DME to Runway 12 be canceled. In order to continue to provide the Muscatine Municipal Airport with instrument approach capability, the FAA is developing a new instrument approach procedure utilizing the RNAV on Runway 23 to serve the subject airport. The establishment of this new instrument approach procedure, based on this approach aid, entails alteration of the transition area at Muscatine, Iowa, at and above 700 feet above ground level, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under instrument flight rules (IFR) from other aircraft operating under visual flight rules (VFR).

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, January 3, 1989.

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 71

Aviation safety, Transition areas.

The Proposed Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Muscatine, Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 8.5 mile radius of the Muscatine Municipal Airport (Latitude 41°22'00" N., Longitude 91°08'43" W.).

Issued in Kansas City, Missouri, on April 17, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89-10448 Filed 5-1-89; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 100

[CGD 05-89-13]

RIN 2115-AC84

Special Local Regulations for Marine Events; Barnegat Bay Classic; Barnegat Bay, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the special local regulations contained in 33 CFR 100.502 which govern the annual Barnegat Bay Classic powerboat race. The location, name, and effective period have not changed, but the Coast Guard is proposing to amend 33 CFR 100.502 by changing the size of the regulated area, and by reformatting the regulations to conform

to the other permanent special local regulations for areas within the Fifth Coast Guard District. The Coast Guard is proposing to remove the regulations in section 33 CFR 100.503, which essentially duplicate the regulations in section 33 CFR 100.502.

DATE: Comments must be received on or before June 16, 1989.

ADDRESSES: Comments should be mailed or hand carried to Commander (bb), FIfth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments will be available for inspection and copying at Room 209 of this address. Normal office hours are from 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses and identify this notice (CGD 05–89–13) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard Disrict, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

The annual Barnegat Bay Classic powerboat race is sponsored by the Barnegat Bay Powerboat Racing Association. The location, name, and effective period of the regulations have not been changed, but the Coast Guard is proposing to amend 33 CFR 100.502 by changing the regulated area, and by reformatting the regulations to conform to the other permanent special local regulations for areas within the Fifth Coast Guard District. Because the present regulated area is unnecessarily large, which makes it more difficult to regulate, the Coast Guard proposes to establish a smaller regulated area that will encompass the race course plus a 500 yard buffer zone around the course. This change will not only provide the Coast Guard Patrol Commander with a more easily controlled regulated area, it will permit waterborne traffic to transit the Intracoastal Waterway without needing permission from the Patrol Commander, and it will allow spectators to anchor closer to the race course while still remaining outside of the regulated area. If adopted, this proposal will apply to the Barnegat Bay Classic Powerboat Race scheduled from 10:00 a.m. to 4:30 p.m., August 26, 1989. In case of inclement weather causing the event to be postponed, the regulations in 33 CFR 100.502 would be effective from 10:00 a.m. to 4:30 p.m., August 27, 1989.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Marine traffic will not be inconvenienced because closure of the marked waterway is not anticipated. The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the 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.

Federalism Assessment

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

Environmental Impact

A Categorical Exclusion Determination statement was approved in 1987 for the Barnegat Bay Classis and is part of the Barnegat Bay Classic file.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.502 is revised to read as follows:

§ 100.502 Barnegat Bay Classic, Barnegat Bay, New Jersey.

(a) *Definitions*—(1) *Regulated Area.* The waters of Barnegat Bay bounded by a line connecting the following points:

Latitude	Longitude
39°49'16.0" N	74°08'43.0" W.
39°49'16.0" N	74°06'10.0" W.
39°53'15.0" N	74°06'10.0" W.
39°53'15.0" N	74°07'19.0" W.
39°50'59.0" N	74°07'19.0" W.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Group Cape May.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations but may not block a navigable channel.

(c) *Effective Period.* The Commander, Fifth Coast Guard District publishes a notice in the **Federal Register** and in the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates that this section is in effect.

§ 100.503 [Removed]

3. Section 100.503 is removed.

Dated: April 20, 1989.

A. D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89–10435 Filed 5–1–89; 8:45 am]

BILLING CODE 491–014–M

33 CFR Part 100

[CGD1 89-016]

RIN 2115-AC84

Ray Catena Mercedes Benz Offshore Grand Prix, Manasquan, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal that would establish permanent special local regulations for the Ray Catena Mercedes Benz Offshore Grand Prix. The event, sponsored each year by the New Jersey Offshore Powerboat Racing Association, is an Indy 500 type power boat race held on the coastal Atlantic waters between Spring Lake, NJ and Seaside Heights, NJ. The regulations will place restrictions on vessels operating in the Manasquan Inlet area during the effective period of regulation. Within the regulated area there will be a race course, a spectator area, and a transiting lane for those vessles wishing to exit Manasquan Inlet. The potential hazards to participants, spectators and transiting vessels are such that, each year, in the interest of safety of life on the navigable waters of the United States, the Coast Guard district commander has issued special local regulations governing the conduct of the regatta. By adopting permanent regulations, the Coast Guard will continue to provide the same level of public safety at reduced administrative cost. Public notice of the exact dates of the regatta will be published each year in a Federal Register Notice and in the Coast Guard Local Notice to Mariners.

DATES: Comments must be received on or before June 16, 1989.

ADDRESSES: Comments should be mailed to Commander (b), First Coast Guard District, Captain John Foster Williams Coast Guard Building, 408 Atlantic Avenue, Boston, MA 02210-2209. The comments and other material referenced in this notice will be available for inspection and copying in Room 428 at the same address. Normal office hours are between the hours of 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand delivered.

FOR FURTHER INFORMATION CONTACT: Captain Ronald L. Blake, (617) 223-8310.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1 89-016) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentation will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information

The drafters of this notice are Lt. L. Brown, project officer, First Coast Guard District Boating Safety Division, and Lt. J. B. Gately, project attorney, First Coast Guard District Legal Division.

Discussion of Regulations

The Ray Catena Mercedes Benz Offshore Grand Prix is a high speed Indy 500 type power boat race around a rectangular course. The race course is situated on the coastal waters of the Atlantic Ocean extending from Spring Lake, NJ to Seaside Heights, NJ. Sponsor provided patrol craft will mark the spectator area which will be established from Manasquan Inlet northward for one-half (1/2) mile. Vessels exiting Manasquan Inlet and wishing to transit the area will be directed to proceed north along the shore until clear of (north of) the regulated area. No vessels will be allowed to exit Manasquan Inlet in a southerly direction during the effective period of regulation. The regulated area will be patrolled by the U.S. Coast Guard, the Coast Guard Auxiliary, state and local law enforcement agencies, and the sponsor.

Federalism Assessment

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

Economic Assessment and Certification

These proposed regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under 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. The event will draw a number of spectators and participants into the area which will aid the local economy. The effective period of regulation is short and the only adverse impact to uninterested and commercial vessels is that southerly navigation upon exit from Manasquan Inlet will not be allowed. Those vessels will have to endure the minor inconvenience of a northward detour before heading south. Since the 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 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.107 is added to read as follows:

§ 100.107 Ray Catena Mercedes Benz Offshore Grand Prix, Manasquan, NJ.

(a) *Regulated Area.* The regulated area is the coastal Atlantic waters of New Jersey between the towns of Spring Lake and Seaside Heights. Specifically, the boundaries of the regulated are:

(1) Northerly: An east to west line at latitude 40-10-00 North.

(2) Southerly: An east to west line at latitude 39-55-00 North.

(3) Easterly: A line drawn parallel to, and one and one half (1½) miles seaward from, the New Jersey coast between the north and south boundaries of the regulated area.

(4) Westerly: The New Jersey shoreline between the north and south boundaries of the regulated area.

(b) *Special Local Regulations.* The following regulations will be in effect:

(1) The regulated area will be closed to all traffic except participants, patrol craft, and those vessels authorized by the sponsor. The Coast Guard patrol commander may, at his discretion, allow vessels to enter the regulated area between races. Transiting and spectating vessels are exempted from this requirement as follows:

(i) Transiting Vessels. Vessels exiting Manasquan Inlet may transit the regulated area in a northerly direction only; navigation in any other direction is prohibited. Coast Guard patrol vessels will be present to direct transiting vessels to proceed north within one quarter (¼) mile of the shore until clear of the regulated area in the vicinity of Spring Lake, NJ.

(ii) Spectating Vessels. The spectator fleet will be held behind (west of) a line running parallel to, and one quarter (¼) mile from, the coast between the tip of the Manasquan Inlet north jetty and a point approximately one half mile north of the jetty. The sponsor shall provide readily identifiable banners to mark the spectator area. Vessels will not be allowed to observe the race from any other area.

(2) No vessel shall proceed at a speed greater than six (6) knots while in Manasquan Inlet during the effective period of regulation.

(3) Should race participants find themselves within the spectator fleet at any time during the event, they shall immediately reduce speed, come "off plane," and not return to racing speed until clear of spectator vessels.

(4) All persons and vessels shall comply with the instructions of U.S. Coast Guard personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(5) Any violations of these regulations, by either the sponsor or participants, shall be sufficient grounds for the Coast Guard patrol commander to terminate the event.

(6) For any violations of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any persons in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel, if the owner is actually onboard.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(c) *Effective Dates.* These regulations are effective at 9:00 a.m. on July 11, 1989 and terminate at 3:00 p.m. on July 11, 1989 and will be in effect each year thereafter during the same time period on the second Tuesday of July or as published in a **Federal Register** Notice and the Coast Guard Local Notice to Mariners.

Dated: April 17, 1989.

R.I. Rybacki

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 90364-9064]

RIN 0651-AA37

Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) proposes to amend its regulations to establish a standardized format for descriptions of nucleotide and amino acid sequence data submitted as a part of patent applications, in conjunction with the required submission of this data in computer readable form. The standardized format is needed to permit proper examination and processing of such applications and to improve quality and efficiency of the examination process, promote conformity with usage of the scientific community, and improve dissemination of sequence data in electronic form. The proposed standard symbols and format for sequence data, and the submission of this data in computer readable form, would be required for most disclosures of nucleotide and amino acid sequence data in patent applications filed after the effective date of the rule change.

DATES: Comments must be submitted on or before July 12, 1989; a public hearing will be held on July 12, 1989 at 9:00 a.m. Requests to present oral testimony should be received on or before July 3, 1989.

ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Lois E. Boland; Special Program Examiner, Office of the Assistant Commissioner for Patents. The hearing will be held in Room 912, on the 9th floor of Crystal Park Building 2, located at 2121 Crystal Drive, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Room 923 of Crystal Park Building 2, located at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Lois E. Boland, Special Program Examiner, Office of the Assistant Commissioner for Patents, by telephone at (703) 557-8384 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Currently, problems exist in the presentation, examination and printing of nucleotide and amino acid sequence data because of the lack of uniformity in submission of sequence data to the PTO and the impracticality of properly searching and examining sequences submitted in paper form. For example, it is impractical for an examiner, searching a particularly lengthy sequence in a non-conforming format, to accurately key the query necessary to search the sequence in a computerized search. Further, the lack of standardized symbol use and standardized format results in a very difficult comparison, on the part of the examiner and the public, of what is claimed in a given patent application and what is disclosed in the prior art. Still further, the number of patent applications containing nucleotide and amino acid sequences is increasing every year. The major examination problems can be attributed to the volume of data and the use of inconsistent paper formats. The lack of consistency in symbols used and formatting requires examiners to attempt to convert the sequence data, as it appears in patent applications, into formats that are consistent with those appearing in the prior art in order to make proper evaluations of the patentability of the inventions claimed in the patent applications. Problems are also encountered in the printing of nucleotide and amino acid sequence data in patents because the data must be rekeyed under current patent printing procedures. This easily results in the printing of erroneous sequences. In summary, the diversity and complexity of nucleotide and amino acid sequence data result in searching and analysis difficulties both within the PTO and outside the PTO, decreased accuracy of search and reproduction and increased cost.

The PTO proposes to amend its regulations to establish a standardized format for descriptions of nucleotide and amino acid sequence data submitted as a part of patent applications, in conjunction with the required submission of the data in

computer readable form, which would result in the following advantages:

1. Cost savings in input of sequence data;
2. A practical and more accurate sequence search capability;
3. Improved interference detection;
4. More efficient examination;
5. Improved accuracy of printed sequences;
6. Creation of a PTO data base of most patent-disclosed sequence data;
7. Improved public data access and dissemination in electronic form;
8. Exchange of published sequence data, in electronic form, with the Japanese Patent Office (JPO) and the European Patent Office (EPO) in a Trilateral Sequence Exchange Project;
9. Conformity with the scientific community; and
10. The encouragement of private vendors to include sequences appearing in patents in their data bases.

With regard to interference detection, no distinction is made in the rules that follow between sequences that are claimed versus those that are disclosed but not claimed. Such a distinction may prove to be beneficial in the determination of interferences. However, problems may arise due to the amendment of an application whereby that which is claimed versus that which is disclosed but not claimed may vary until issuance. Comments are requested on the advantages and disadvantages of distinguishing between claimed and disclosed sequences, and, whether a distinction should be made.

In those areas of biotechnology in which nucleotide and/or amino acid sequence information is significant, many patent applicants are accustomed to or familiar with the submission of such sequence information to various sequence data bases, such as GenBank which is operated and maintained by the National Institutes of Health. In order to facilitate such submissions or merely for the purpose of researching and developing sequence information, many eventual patent applicants also generate or encode sequence information in computer readable form. In view of this, the format proposed herein is based on the GenBank data format and forms currently in use. Submission of sequence data using the current GenBank format and forms is generally acceptable, except where there are differences between the GenBank format and forms and the rules herein. In those instances where differences do arise, e.g., with regard to specific patent application and computer readable form information, the rules that follow control the format of the sequence submission. To facilitate compliance with the rules that follow, the PTO may make available to the public input programs that are modeled after the GenBank Author-In program and are further specifically tailored to the requirements herein and the PTO may also offer a course for applicants and/or their attorneys to aid in their compliance with these rules, if there is sufficient indication of need for such programs and/or courses.

The proposed standard symbols and format, as well as the submission of sequence data in computer readable form, would be required for all disclosures of nucleotide and amino acid sequence data in patent applications filed after the effective date of the rule change. It is currently envisioned that January 1, 1990 will be the effective date of the final rule change. It is also envisioned that, for the great majority of applications affected by this rule change, applicants will not be subjected to significant additional burdens, with regard to both time and/or costs, in order to comply with these proposed rules. However, if exceptional circumstances do arise and certain applicants experience specific hardships in attempting to comply with these rules, the PTO will consider appropriate non-fee petitions to waive the rules. The proposed rule change will not apply to reissue or reexamination applications filed after the effective date unless the application which matured into the patent sought to be reissued or reexamined was subject to these rules.

The proposed rules are part of an ongoing coordinated effort in the private sector and among the EPO, the JPO and the PTO to standardize the use of symbols and the format for sequence information, in order to permit the exchange and use of each other's data. The proposed rules define a set of symbols and procedures that will be both mandatory and the only way that an applicant will be permitted to describe information about a sequence that falls within the definitions used in the proposed rules. Thus, proposed § 1.821 defines a sequence for the purpose of these proposed rules, the requirements for specific symbols, formats, paper and computer readable copies of the sequence, and the deadlines for complying with the requirements. Proposed §§ 1.822 to 1.824 set forth detailed descriptions of the requirements that are proposed to be mandatory for the presentation of sequence data, and proposed § 1.825 sets forth procedures that would be available to an applicant in the event that amendments to the sequence information or replacement of the computer readable copy became necessary. There is nothing in these proposed rules that is intended to alter in any manner the prohibition against the introduction of new matter (35 U.S.C. 132 and 251), or the prohibition against the introduction of information that is not described in the application as originally filed (35 U.S.C. 112, first paragraph).

With general regard to the symbols and format to be used for nucleotide and/or amino acid sequence data set forth in proposed § 1.822 and the form and format for sequence submissions in computer readable form set forth in proposed § 1.824, the PTO intends to accommodate progress in the areas of both standardization and computerization as they relate to sequence data by subsequently amending the rules to take into account any such progress. This progress will probably be reflected in a liberalization of the proposed rules. For example, the computer readable form is currently being limited to diskettes and tapes, but it can readily be seen that progress in the technology for developing databases of the type the PTO has envisioned will likely permit a broadening of the permissible types of computer readable forms that may be submitted. The same can be said for the computer/operating-system configurations that are currently permitted. As the PTO becomes able to provide greater liberality in these areas, the PTO will do so by the publication of appropriate notices in the "Official Gazette." Further, the PTO will periodically update the final rules to reflect the "Official Gazette" notices published in the interim.

Discussion of Specific Rules

Section 1.821(a), if added as proposed, would present a definition for "nucleotide and/or amino acid sequences." This definition sets forth limits, in terms of numbers of amino acids and/or numbers of nucleotides, at or above which, compliance with the rules that follow is required. The limit of four or more amino acids has been established herein for consistency with limits in place for industry database collections whereas the limit of ten or more nucleotides, while lower than certain industry database limits, has been established to encompass those nucleotide sequences to which the smallest probe will bind in a stable manner. Specifically, the amino acid limit is consistent with the limits in place in industry database collections, such as the National Biomedical Research Foundation Protein Identification Resource (NBRF–PIR; Washington, DC) database and the

International Protein Information Database in Japan (JIPID; Tokyo). The limits for amino acids and nucleotides are also consistent with those established for sequence data exchange with the JPO and the EPO.

Sections 1.821(a)(1) and 1.821(a)(2), if added as proposed, would present further definitions for those nucleotide and amino acid sequences that are intended to be embraced by the rules that follow. Nucleotide sequences are further limited to those that can be represented by the symbols set forth in proposed § 1.822(b)(1). Amino acid sequences are further limited to those listed in proposed § 1.822(b)(2) and those L-amino acids that are commonly found in naturally occurring proteins. The limitation to L-amino acids is based upon the fact that there currently exists no widely accepted standard nomenclature for representing the scope of amino acids encompassed by non-L-amino acids, and, as such, the process of meaningfully encoding these other amino acids for computerized searching and printing is not currently feasible.

Section 1.821(b), if added as proposed, would require exclusive conformance, with regard to the manner in which the nucleotide and/or amino acid sequences are presented and described, with the rules that follow for all applications that include nucleotide and amino acid sequences that fall within the above definitions. This requirement is necessary to minimize any confusion that could result if more than one format for representing sequence data was employed in a given application. It is also expected that the preferred standard format will be more readily and widely accepted and adopted if its use is exclusive, as well as mandatory.

Section 1.821(c), if added as proposed, would require that applications, containing nucleotide and/or amino acid sequences that fall within the above definitions, contain, as a separate part of the disclosure on paper copy, a disclosure of the nucleotide and/or amino acid sequences, and associated information, using the format and symbols that are set forth in proposed §§ 1.822 and 1.823. This separate part of the disclosure on paper copy will be referred to as the "Sequence Listing" and requires that each sequence disclosed in the application appear separately in the "Sequence Listing," with each sequence further being assigned a sequence identification number, referred to as "SEQ ID NO." A plurality of sequences may, if feasible, be presented on a single page and this may be extended to the separate presentation of both nucleotide and amino acid sequences on the same page. The requirement for sequence identification numbers, at a minimum, requires that each sequence be assigned a different number for purposes of identification. However, where practical and for ease of reference, sequences should be presented in the separate part of the application in numerical order.

Section 1.821(d), if added as proposed, would require the use of the assigned sequence identifier in all instances where the description or claims of a patent application discuss sequences regardless of whether a given sequence is also embedded in the text of the description or claims of an application. This requirement is also intended to permit references, in both the description and claims, to sequences set forth in the "Sequence Listing" by the use of assigned sequence identifiers without repeating the sequence in the text of the description or claims.

Section 1.821(e), if added as proposed, would require the submission of a copy of the "Sequence Listing" in computer readable form. The computer readable form will be used by the PTO to establish a database for searching and printing nucleotide and amino acid sequences. This electronic database will also enable the PTO to exchange patented sequence data, in electronic form, with JPO and the EPO. It should be noted that the PTO's database will comply with the confidentiality requirement imposed by 35 U.S.C. 122. That is, the PTO will not exchange or make public any information on any sequence until the patent application containing that information matures into a patent.

The second sentence of proposed § 1.821(e) indicates that, as between the paper copy of the "Sequence Listing" and the computer readable copy thereof, the paper copy would serve as the official copy. However, the PTO would like to permit correction of the paper copy, at the least, during the pendency of a given application by reference to the computer readable copy thereof if both the paper and computer readable forms were submitted at the time of filing of the application. In this regard, the PTO will assume that the computer readable form has been incorporated by reference into the application, when the paper and computer readable forms were submitted at the time of filing of the application. The PTO will attempt to accommodate or address all correction issues but it must be kept in mind that the real burden rests with the applicant to ensure that discrepancies between the paper copy and the computer readable form are minimized and applicants should be aware that there will be instances where the applicant may have to suffer any consequences of discrepancies between the two. All corrections would be made by appropriate fee-paid petitions. The paper copy would also serve as the official copy for priority purposes. Comments specifically addressing this issue are encouraged, with the caveat that the PTO does not desire to be bound by a requirement to permanently preserve computer readable forms for support, priority or correction purposes. For example, the PTO will make corrections, where appropriate, by reference to the computer readable form as long as the computer readable form is still available to the PTO. However, once use to the PTO for processing has ended, i.e., once the PTO has entered the data contained on the computer readable form into the appropriate database, the PTO does not currently intend to further preserve the computer readable form, submitted by applicant.

Section 1.821(f), if added as proposed, would require that the paper and computer readable copies of the "Sequence Listing" be accompanied by a statement that the content of the paper and computer readable copies are the same, at the time when the computer readable form is submitted. This statement must be a verified statement if it is made by a person not registered to practice before the PTO. Such a statement may be made by the applicant.

Section 1.821(g), if added as proposed, would require compliance with the requirements of paragraphs (b) through (f), as discussed above, within two months from the date of filing under 35 U.S.C. 111 or within two months from the date of entering the national stage of an international application under 35 U.S.C. 371 or one month from the date of a notice requiring compliance, whichever is later, if the above noted requirements are not satisfied at the time of filing. Failure to comply will result in the abandonment of the application. Submissions in response to requirements under this paragraph must be accompanied by a statement that the submission includes no new matter. This statement must be a verified statement if made by a person not registered to practice before the PTO. Again, such a statement may be made by the applicant. Extensions of time in which to reply to a requirement under this paragraph are available pursuant to 37 CFR 1.136. When an action by the applicant is a bona fide attempt to comply with these rules, at the time of filing or later or in response to a notice

to comply, and it is apparent that compliance with some requirement has inadvertently been omitted, the opportunity to explain and supply the omission may be given before the question of abandonment is considered.

Section 1.821(h), if added as proposed, would require compliance with the requirements of paragraphs (b) through (f), as discussed above, within one month from the date of a notice requiring compliance in an international application filed in the United States Receiving Office under the Patent Cooperation Treaty (PCT), if the above noted requirements are not satisfied at the time of filing. A search report for those claims in the application that are directed to nucleotide and/or amino acid sequences will not be established by the PTO, as an international searching authority, where there is a failure to comply with the above requirements. Submissions in response to requirements under this paragraph must be accompanied by a statement that the submission does not go beyond the disclosure in the international application as filed. This statement must be a verified statement if made by a person not registered to practice before the PTO. Such a statement may be made by an applicant. Delays in meeting the time limit set forth in this rule may only be excused as provided in PCT Rule 82.

Section 1.822, if added as proposed, would set forth the format and symbols to be used for listing nucleotide and/or amino acid sequence data. The codes for representing the nucleotide and/or amino acid characters are set forth in the tables of paragraphs (b)(1) through (b)(4) of this section. For the purpose of setting forth the sequence in the "Sequence Listing," only those symbols in paragraph (b)(1) for "Base codes" and in paragraph (b)(2 for "Amino acids" are to be used, as further set forth in paragraphs (c) and (e) of this section. The "Modified base controlled vocabulary" in paragraph (b)(3) and the "Modified and unusual amino acids" in paragraph (b)(4) are not to be used in setting forth the sequences; but they may be used in the description and/or the "Sequence Listing" corresponding to, but not including, the sequence itself. For example, where an "N" occurs in a nucleotide sequence or where an "Xaa" occurs in an amino acid sequence, these variables may be described in the description and/or the "Sequence Listing" as being one of the listed modified bases or one of the listed modified or unusual amino acids, respectively.

In paragraph (b) of proposed § 1.822, the second sentence thereof would require that a fixed width font be used to present sequence data. This would be required to ensure that the desired sequence character spacing and numbering be maintained upon printing.

In paragraphs (b)(2) and (e) of proposed § 1.822, the use of three-letter codes for amino acids would be required. The use of the three-letter codes for amino acids is preferred over the one-letter codes from the perspective of facilitating the examiner's review of the application papers, including the "Sequence Listing," and the public's, as well as the examiner's, use of the printed patents.

Paragraphs (d) through (p) § 1.822 would set forth the format for presenting sequence data. These paragraphs set forth the manner in which the characters in sequences are to be grouped, spaced, presented and numbered. It should be noted that paragraph (d) of this section would require that amino acids corresponding to codons in the coding parts of a nucleotide sequence be listed above the corresponding codons. This would be required to eliminate potential ambiguities in those instances where both the coding and non-coding strands of a nucleotide sequence are presented. The enumeration procedure for amino acid sequences follows this rationale in paragraph (n) of this section. Sequences that are circular in configuration are intended to be encompassed by these rules and numbering procedures for them are provided in paragraph (n) of this section. Sequences that are circular in configuration are intended to be encompassed by these rules and number procedures for them are provided in paragraph (n) of this section. The numbering procedures set forth in paragraphs (l) through (n) of this section are not necessarily intended to be consistent with all currently employed numbering procedures. The objective here is to establish a reasonable numbering procedure that can readily be followed and adhered to in the future. As a whole, these formatting procedures also reflect those that have been agreed to for electronic data exchange with the JPO and the EPO.

Section 1.823, if added as proposed, would set forth the informational requirements for inclusion in the separate part of the disclosure on paper copy that would be submitted in accordance with proposed § 1.821(c). This section lists the items of information that are to be included in the "Sequence Listing," which constitutes the separate part of the disclosure on paper copy. The items of information are to be presented in the "Sequence Listing," immediately preceding the actual nucleotide and/or amino acid sequence, in the order in which those items are listed in this section. The heading for each item of information shall not include the parenthetical explanatory information included in this section.

In proposed § 1.823, the items of information are broken down into two categories. The first category is directed to "GENERAL INFORMATION" and includes information relating to the application being filed, the diskette/tape being submitted and publication information. It is likely that this information will be applicable for all sequences and, as such, will need to be set forth only once in a given "Sequence Listing." The second category is directed to "INFORMATION FOR SEQ ID NO:X" and includes information that, most likely, will be specific for each sequence disclosed. Where more than one sequence is disclosed this category will repeat and subsequent headings should be set forth as: "(3) INFORMATION FOR SEQ ID NO:2:," "(4) INFORMATION FOR SEQ ID NO:3:," etc. Throughout the above two categories, the items of information are further broken down into categories relating to whether their submission is mandatory (M), recommended (R) or optional (O). Certain items are also designated as those that may repeat (rep) in a given "Sequence Listing." The first category includes those items for which inclusion in the "Sequence Listing" is mandatory. These mandatory items of information relate to the patent application, the computer readable form, basic sequence data and the applicable priority or PCT data. The reference in paragraph (B)(1)(v)(C) of proposed § 1.823 to "F-terms" relates to the key-word indexing of patents that is being undertaken by the JPO in conjunction with their automation plans. The second category includes those items for which inclusion in the "Sequence Listing" is recommended, but not required. These recommended items of information provide further information relating to the sequence listed. These additional items of information are of interest to examiners and will create a more comprehensive database and, as a result, would serve to facilitate sequence searching. The third category includes items of information that are primarily for the purpose of providing more complete information upon dissemination, for which inclusion in the "Sequence Listing" is also optional.

A sample "Sequence Listing" is included as Appendix I, following this notice. As indicated in the sample "Sequence Listing," only information

that is applicable to a given sequence need be listed in the "Sequence Listing." The sample "Sequence Listing" also serves to illustrate that when the coding parts of a nucleotide sequence and their corresponding amino acids have been identified, if applicant desires to discuss those amino acids in the coding parts of the nucleotide as a separate sequence, those amino acids must also be set forth as a separate sequence. This will minimize ambiguities that may result in those instances where the amino acids corresponding to the coding parts of a nucleotide sequence constitute two separate amino acid sequences. Further, in those instances when applicant desires to discuss, as separate sequences, all three phases of the coding parts of a nucleotide sequence, six separate sequences should be set forth in the "Sequence Listing" to minimize confusion. These six sequences would include three nucleotide sequences separately showing the three phases of the coding parts of the sequence and three separate amino acid sequences corresponding to the coding parts of the three phases of the nucleotide sequence. A complete listing of abbreviated headings for all items of information is provided in Appendix II, also following this notice. For purposes of clarity, when a nucleotide sequence is being described, the appropriate responses for "(ii) KIND" are also set forth in Appendix II, but only those that are applicable should be included in a given "Sequence Listing." After the heading for each item in the "Sequence Listing," the appropriate information or a yes/no answer should be provided. Where SEQ ID NO: X appears, the appropriate sequence identification number should be provided.

In paragraph (b)(1)(i) of proposed § 1.823, the item of information relating to "APPLICANT" should be limited to a maximum of the first ten named applicants in the application.

In paragraph (b)(2)(vii) of proposed § 1.823, relating to "FEATURES" or the description of the points of biological significance in a given sequence, it is recommended, but not required, that the information that is provided by the applicant conform to the controlled vocabulary that is set forth in GenBank's "Feature Representation in Nucleotide Sequence Data Libraries," Release 57.0, as may be amended.

Section 1.824, if added as proposed, would set forth the form for sequence submissions in computer readable form. Currently, the computer readable form is being limited to diskettes or tapes. However, as noted above, it is contemplated that this may be broadened in the future in light of progress in the technology for developing and establishing databases of this type. The manner in which the sequence information is encoded on the computer readable form and the computer/operating-system configurations on which the computer readable form must be readable are also set forth. The proposed rule indicates that currently acceptable computer/operating-system configurations include IBM, Macintosh and UNIX. Again, it is possible that this may be broadened in the future to encompass other computer/operating-system configurations. If a given sequence and its associated information cannot practically or possibly fit on a single diskette or tape, as would be required in paragraph (d) of this section, an exception via a non-fee petition to waive this provision will normally be granted. As set forth in paragaph (g) of proposed § 1.824, the computer readable forms that are submitted in accordance with these rules will not be returned to the applicant. Paragraph (h) of proposed § 1.824 requires the labeling, with appropriate identifying information, of the computer readable forms that are submitted in accordance with these rules.

Section 1.825, if added as proposed, would set forth the procedures for amending the "Sequence Listing" and the computer readable copy thereof. The procedures that have been defined in this section involve the submission of either substitute sheets of the "Sequence Listing" or substitute copies of the computer readable form, in conjunction with statements that indicate support for the amendment in the application, as filed, and that the substitute sheets or copies include no new matter. The requirement for statements regarding the absence of new matter follows current practice relating to the submission of substitute specifications, as set forth in 37 CFR 1.125. Paragraph (c) of proposed § 1.825 explicitly addresses the situation where amendments to the "Sequence Listing" are made after a patent has been granted, e.g., by a certificate of correction, reissue or reexamination. Paragraph (d) of proposed § 1.825 addresses the possibility and presents a remedy for the situation where the computer readable form may be found by the PTO to be damaged or unreadable.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration that the proposed rule change will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354) due to the limited number of entities, both small and otherwise, that are involved in the relevant technology. Further, the costs associated with the proposed rule change would not have a significant impact on overall costs associated with filing patent applications because the proposed rule change adopts standards, procedures, and formats which are becoming industry and international norms.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The proposed rule contains a collection of information subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Collections of information relating to patent applications have previously been approved by the Office of Management and Budget under code 0651–0011. For the great majority of applications that will be filed having nucleotide and amino acid sequences falling within the limits defined herein, applicants will not have to expend any substantial extra time to comply with these rules over and above that previously approved for patent applications. For the most part and as noted above with regard to current practice in the industry, the required information will have already been keyed into a computer system. As such, compliance with these rules will involve only the additional submission of relevant application and computer readable form information and a minor,

one-time, revision of the format for presenting sequence data, after which, no additional expenditure of time for format compliance will be necessary. Any burden that may be attributed to the submission of relevant application and computer readable form information may, in fact, be more than offset by the fact that compliance with these rules will have the substantial benefit of reducing the overall time necessary to prepare applications because a given sequence will only have to be set forth once in an application and further references thereto will be made by means of a sequence identifier. Accordingly, compliance with these rules is estimated to take approximately fifteen additional minutes, including time for reviewing instructions, maintaining data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Organization, Patent and Trademark Office, Washington, DC 20231; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Paperwork Reduction Project 0651–XXXX.

Lists of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and record-keeping requirements, Small businesses.

For the reasons set out in the preamble and under the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office is proposed to amend Title 37 of the Code of Federal Regulations as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. New center heading and §§ 1.821 through 1.825 are proposed to be added to Subpart F to read as follows:

Application Disclosures Containing Nucleotide and/or Amino Acid Sequences

Sec.

1.821 Nucleotide and/or amino acid sequence disclosures in patent applications.
1.822 Symbols and format to be used for nucleotide and/or amino acid sequence data.
1.823 Requirements for nucleotide and/or amino acid sequences as part of the application papers.
1.824 Form and format for nucleotide and/or amino acid sequence submissions in computer readable form.
1.825 Amendments to or replacement of sequence listing and computer readable copy thereof.

Application Disclosures Containing Nucleotide and/or Amino Acid Sequences

§ 1.821 Nucleotide and/or amino acid sequence disclosures in patent applications.

(a) "Nucleotide and/or amino acid sequences" as used in §§ 1.821 through 1.825 is interpreted to mean a sequence of four or more amino acids or a sequence of ten or more nucleotides. Nucleotides and amino acids are further defined as follows:

(1) "Nucleotides" are intended to embrace only those nucleotides that can be represented using the symbols set forth in § 1.822(b)(1). Modifications, e.g., methylated bases, may be described in the description and/or the separate part of the disclosure on paper copy corresponding to, but not including, the nucleotide sequence.

(2) "Amino acids" are those L-amino acids commonly found in naturally occurring proteins and are listed in § 1.822(b)(2). Those amino acid sequences containing D-amino acids are not intended to be embraced by this definition. Any amino acid sequence that contains post-translationally modified amino acids may be described as the amino acid sequence that is intially translated using the symbols shown in § 1.822(b)(2) with the modified positions, e.g., hydroxylations or glycosylations, being described in the description and/or the separate part of the dislosure on paper copy corresponding to, but not including, the amino acid sequence. Only peptides or proteins containing normal peptide bonds are embraced by this definition.

(b) Patent applications which contain disclosures of nucleotide and/or amino acid sequences, in accordance with the above definition, shall, with regard to the manner in which the nucleotide and/or amino acid sequences are presented and described, conform exclusively to the requirements of §§ 1.821 through 1.825.

(c) Patent applications which contain disclosures of nucleotide and/or amino acid sequences must contain, as a separate part of the disclosure on paper copy, hereinafter referred to as the "Sequence Listing," a disclosure of the nucleotide and/or amino acid sequences and associated information using the symbols and format in accordance with the requirements of §§ 1.822 and 1.823. Each sequence disclosed must appear separately in the "Sequence Listing." Each sequence set forth in the "Sequence Listing" shall be assigned a separate identifier written as SEQ ID NO:1, SEQ ID NO:2, SEQ ID NO:3; etc.

(d) Where the description or claims of a patent application discuss a sequence listing that is set forth in the "Sequence Listing" in accordance with paragraph (c) of this section, reference must be made to the sequence by use of the assigned identifier, in the text of the description or claims, even if the sequence is also embedded in the text of the description or claims of the patent application.

(e) A copy of the "Sequence Listing" referred to in paragraph (c) of this section must also be submitted in computer readable form in accordance with the requirements of § 1.824. The computer readable form is a copy of the "Sequence Listing" and will not necessarily be retained as part of the patent application file.

(f) In addition to the paper copy required by paragraph (c) of this section and the computer readable form required by paragraph (e) of this section, a statement that the content of the paper and computer readable copies are the same must be submitted with the computer readable form. Such a statement must be a verified statement if made by a person not registered to practice before the Office.

(g) If the requirements of one or more of paragraphs (b) through (f) of this section are not satisfied at the time of filing under 35 U.S.C. 111 or at the time of entering the national stage under 35 U.S.C. 371, applicant has two months from the date of filing or one month from the date of a notice which will be sent requiring compliance with one or more of the above requirements, whichever is later, in which to comply, or the application will be considered to be abandoned. Any submission in response to a requirement under this paragraph must be accompanied by a statement that the submission includes no new matter. Such a statement must be a verified statement if made by a person not registered to practice before the Office.

(h) If the requirements of one or more of paragraphs (b) through (f) of this section are not satisfied at the time of filing, in the United States Receiving Office, an international application under the Patent Cooperation Treaty

(PCT) applicant has one month from the date of a notice which will be sent requiring compliance with one or more of the above requirements, or such further time as may be set by the Commissioner, in which to comply, or no international search report will be established by the United States Patent and Trademark Office as an International Searching Authority for those claims in the application that are directed to nucleotide and/or amino acid sequences. Any submission in response to a requirement under this paragraph must be accompanied by a statement that the submission does not go beyond the disclosure in the international application as filed. Such a statement must be a verified statement if made by a person not registered to practice before the Office. Any delay in meeting this time limit may only be excused as provided for in the PCT.

§ 1.822 Symbols and format to be used for nucleotide and/or amino acid sequence data.

(a) The symbols and format to be used for nucleotide and/or amino acid sequence data shall conform to the following requirements.

(b) The code for representing the nucleotide and/or amino acid sequence characters shall conform to the code set forth in the tables in paragraphs (b)(1) through (b)(4) of this section. A fixed width font shall be used to present sequence data. The modified base controlled vocabulary in paragraph (b)(3) of this section and the modified and unusual amino acids in paragraph (b)(4) of this section shall not be used in the nucleotide and/or amino acid sequences; but may be used in the description and/or the "Sequence Listing" corresponding to, but not including, the nucleotide and/or amino acid sequence.

(1) *Base codes:*

Symbol and Meaning

A—A; adenine
C—C; cytosine
G—G; guanine
T—T;thymine
U—U; uracil
M—A or C
R—A or G
W—A or T/U
S—C or G
Y—C or T/U
K—G or T/U
V—A or C or G; not T/U
H—A or C or T/U; not G
D—A or G or T/U; not C
B—C or G or T/U/ not A
N—(A or C or G or T/U) or (unknown or other

(2) *Amino acid three-letter abbreviations:*

Abbreviation and Amino acid name

Ala—Alanine
Arg—Arginine
Asn—Asparagine
Asp—Aspartic Acid (Aspartate)
Asx—Aspartic Acid or Asparagine
Cys—Cysteine
Glu—Glutamic Acid (Glutamate)
Gln—Glutamine
Gix—Glutamine or Glutamic Acid
Gly—Glycine
His—Histidine
Ile—Isoleucine
Leu—Leucine
Lys—Lysine
Met—Methionine
Phe—Phenylalanine
Pro—Proline
Ser—Serine
Thr—Threonine
Trp—Tryptophan
Tyr—Tyrosine
Val—Valine
Xaa—Unknown or other

(3) *Modified base controlled vocabulary:*

Abbreviation and Modified base description

ac4c—4-acetylcytidine
chm5u—5-(carboxyhydroxylmethyl)uridine
cm—2'-O-methylcytidine
cmnm5s2u—5-carboxymethylaminomethyl-2-thioridine
cmnm5u—5-carboxymethylaminomethyluridine
d—dihydrouridine
fm—2'-O-methylpseudouridine
gal q—beta,D-galactosylqueosine
gm—2'-O-methylguanosine
i—inosine
i6a—N6-isopentenyladenosine
m1a—1-methyladenosine
m1f—1-methylpseudouridine
m1g—1-methylguanosine
m1l—1-methylinosine
m22g—2,2-dimethylguanosine
m2a—2-methyladenosine
m2g—2-methylguanosine
m3c—3-methylcytidine
m5c—5-methylcytidine
m6a—N6-methyladenosine
m7g—7-methylguanosine
mam5u—5-methylaminomethyluridine
mam5s2u—5-methoxyaminomethyl-2-thiouridine
man q—beta,D-mannosylqueosine
mcm5s2u—5-methoxycarbonylmethyluridine
mo5u—5-methoxyuridine
ms2i6a—2-methylthio-N6-isopentenyladenosine
ms2t6a—N-((9-beta-D-ribofuranosyl-2-methylthiopurine-6-yl)carbamoyl)threonine
mt6a—N-((9-beta-D-ribofuranosylpurine-6-yl)N-methyl-carbamoyl)threonine
mv—uridine-5-oxyacetic acid methylester
o5u—uridine-5-oxyacetic acid (v)
osyw—wybutoxosine
p—pseudouridine
q—queosine
s2c—2-thiocytidine
s2t—5-methyl-2-thiouridine
s2u—2-thiouridine
s4u—4-thiouridine
t—5-methyluridine
t6a—N-((9-beta-D-ribofuranosylpurine-6-yl)carbamoyl)threonine
tm—2'-O-methyl-5-methyluridine
um—2'-O-methyluridine
yw—wybutosine
x—3-(3-amino-3-carboxypropyl)uridine, (acp3)u

(4) *Modified and unusual amino acids:*

Abbreviation and Modified and unusual amino acid

Aad—2-Aminoadipic acid
bAad—3-aminoadipic acid
bAla—beta-Alanine, beta-Aminopropionic acid
Abu—2-Aminobutyric acid
4Abu—4-Aminobutyric acid, piperidinic acid
Acp—6-Aminocaproic acid
Ahe—2-Aminoheptanoic acid
Aib—2-Aminoisobutyric acid
bAib—3-Aminoisobutyric acid
Apm—2-Aminopimelic acid
Dbu—2,4-Diaminobutyric acid
Des—Desmosine
Dpm—2,2'-Diaminopimelic acid
Dpr—2,3-Diaminopropionic acid
EtGly—N-Ethylglycine
EtAsn—N-Ethylasparagine
Hyl—Hydroxylysine
aHyl—allo-Hydroxylysine
3Hyp—3-Hydroxyproline
4Hyp—4-Hydroxyproline
Ide—Isodesmosine
alle—allo-Isoleucine
MeGly—N-Methylglycine, sarcosine
Melle—N-Methylisoleucine
MeLys—N-Methylvaline
Nva—Norvaline
Nle—Norleucine
Orn—Ornithine

(c) A nucleotide sequence shall be listed using the one-letter code for the nucleotide bases, as in paragraph (b)(1) of this section.

(d) The amino acids corresponding to the codons in the coding parts of a nucleotide sequence shall be typed immediately above the corresponding codons.

(e) The amino acids in a protein or peptide sequence shall be listed using the three-letter code with the first letter as an upper case character, as in paragraph (b)(2) of this section.

(f) The bases in a nucleotide sequence (including introns) shall be listed in groups of 10 bases except in the coding parts of a sequence.

(g) The bases in the coding parts of a nucleotide sequence shall be listed as triplets (codons).

(h) A protein or peptide sequence shall be listed with a maximum of 16 amino acids per line, with a space provided between each amino acid.

(i) A nucleotide sequence shall be listed with a maximum of 16 codons or 60 bases per line, with a space provided between each codon or group of 10 bases.

(j) A single standed nucleotide sequence shall be presented in the 5' to 3' direction, from left to right.

(k) A double stranded nucleotide sequence shall be presented with the anti-coding strand below the positive coding strand and with the positive coding strand numbered in the 5' to 3' direction from left to right.

(l) An amino acid sequence shall be presented in the amino to carboxy direction, from left to right, and the amino and carboxy groups shall not be presented in the sequence.

(m) The enumeration of nucleotide bases shall start at the first base of the sequence with number 1. The enumeration shall be continuous through the whole sequence in the direction 5' to 3'. The enumeration shall be marked in the right margin, next to the line containing the one-letter codes for the bases, and giving the number of the last base of that line.

(n) The enumeration of amino acids shall start at the first amino acid of the mature protein, with number 1. It shall be marked above the sequence every 5 amino acids. The pre-sequences and signal sequences, when present, shall have negative numbers, counting backwards starting with the amino acid next to number 1.

(o) For those nucleotide sequences that are circular in configuration, the enumeration method set forth in paragraph (m) of this section remains applicable with the exception that the designation of the first base of the nucleotide sequence may be made at the option of the applicant. The enumeration method for amino acid sequences that is set forth in paragraph (n) of this section remains applicable for amino acid sequences that are circular in configuration.

(p) A partial sequence shall be numbered as a separate sequence and a sequence with a gap or gaps shall be numbered as a plurality of separate sequences, with the number of separate sequences being equal in number to the number of continuous strings of sequence data.

§ 1.823 Requirements for nucleotide and/or amino acid sequences as part of the application papers.

(a) The "Sequence Listing," required by § 1.821(c), setting forth the nucleotide and/or amino acid sequences, and associated information in accordance with paragraph (b) of this section, must begin on a new page and be titled "Sequence Listing" and appear immediately prior to the claims.

(b) The "Sequence Listing" shall, except as otherwise indicated, include, in addition to and immediately preceding the actual nucleotide and/or amino acid sequence, the following items of information. The order and presention of the items of information in the "Sequence Listing" shall follow the order in which those items are listed herein with appropriately numbered headings, wherein the headings are designated by those terms in upper case characters, not including any parenthetical explanatory information. Those items of information that are applicable for all sequences shall only be set forth once in the "Sequence Listing." The submission of those items of information designated with an "M" is mandatory. The submission of those items of information designated with an "R" is recommended, but not required. The submission of those items of information designated with an "O" is optional. Those items designated with "rep" may have multiple responses and, as such, the item may be repeated in the "Sequence Listing."

(1) GENERAL INFORMATION (Application, diskette/tape and publication information):

(i) APPLICANT (maximum of first ten named applicants—M):

(ii) TITLE OF INVENTION (title of the invention, as elsewhere in application—M):

(iii) CORRESPONDENCE ADDRESS (M):

(A) STREET (correspondence street address, as elsewhere in application):

(B) CITY (correspondence city address, as elsewhere in application):

(C) STATE (correspondence state, as elsewhere in application):

(D) COUNTRY (correspondence country, as elsewhere in application):

(E) ZIP (correspondence zip or postal code, as elsewhere in application):

(iv) COMPUTER READABLE FORM (M):

(a) MEDIUM TYPE (type of diskette/tape submitted):

(B) COMPUTER (type of computer used with diskette/tape submitted):

(C) OPERATING SYSTEM (type of operating system used):

(D) SOFTWARE (type of software used to create computer readable form):

(v) CURRENT APPLICATION DATA (M):

(A) APPLICATION NUMBER (U.S. application number, including series code and serial number, if available):

(B) FILING DATE (U.S. application filing date, if available):

(C) CLASSIFICATION (PC/US classification of F-term designation, where F-terms have been developed, if assigned):

(vi) PRIOR APPLICATION DATA (prior domestic, foreign priority or international application data, if applicable—M/rep):

(A) DOCUMENT NUMBER (document numbers):

(B) COUNTRY (country or counties):

(C) FILING DATE (document filing date(s)):

(D) PUBLICATION DATE (document publication date(s)):

(vii) ATTORNEY/AGENT INFORMATION (O):

(A) NAME (attorney/agent name):

(B) REGISTRATION NUMBER (attorney/agent registration number):

(C) REFERENCE/DOCKET NUMBER (attorney/agent reference or docket number):

(viii) TELECOMMUNICATION INFORMATION (O):

(A) TELEPHONE (telephone number of applicant or attorney/agent):

(B) TELEFAX (telefax number of applicant or attorney/agent):

(C) TELEX (telex number of applicant or attorney/agent):

(ix) PUBLICATION STATUS (Have the data that are disclosed in SEQ ID NO:X been published?—O/rep):

(A) AUTHORS (authors of publication):

(B) TITLE (title of publication):

(C) JOURNAL (journal name in which data published):

(E) VOLUME (journal issue number in which data published):

(D) ISSUE (journal name in which data published):

(F) PAGES (journal page numbers in which data published):

(G) DATE (journal date in which data published including month/date/year or season):

(H) RELEVANT RESIDUES (Does SEQ ID NO:X correspond to published sequence?—rep):

(*1*) START (Position start—starting position in SEQ ID NO:X of corresponding data):
(*2*) END (Position end—ending position in SEQ ID NO:X of corresponding data):
(*3*) BASE PAIRS (Base pairs—is this corresponding data listed by the use of base pairs?):
(*4*) AMINO ACIDS (Amino acid residues—is this corresponding data listed by the use of amino acid residues?):
(2) INFORMATION FOR SEQ ID NO:X (rep):
(i) SEQUENCE CHARACTERISTICS (M):
(A) LENGTH (sequence length, expressed as number of base pairs or amino acid residues):
(B) TYPE (sequence type, i.e., whether nucleic acid or amino acid):
(C) STRANDEDNESS (if nucleic acid, number of strands, i.e., whether single stranded or double stranded):
(D) TOPOLOGY (whether sequence is circular or linear)
(ii) KIND—alternate formats
KIND (kind of nucleotide sequenced in SEQ ID NO:X (at least one of the following should be included in Sequence Listing—R)):
—Hypothetical RNA;
—Hypothetical DNA;
—Genomic DNA;
—Genomic RNA;
—cDNA to mRNA;
—cDNA to genomic RNA;
—Organelle DNA;
—Organelle RNA;
—Specific organella;
—tRNA;
—rRNA;
—snRNA;
—scRNA;
—Other nucleic acid, identify.
—or—
KIND (kind of septide or portein sequenced in SEQ ID NO:X–R:
(A) SEQUENCE ASSEMBLY METHOD (at least one of the following should be included in Sequence Listing):
—overlap of sequenced fragments;
—homology;
—other;
(B) FRAGMENT TYPE (at least one of the following should be included in Sequence Listing):
—N-terminal;
—C-terminal;
—internal fragment and
(C) HYPOTHETICAL:
(iii) ORIGINAL SOURCE (original source of molecule sequenced in SEQ ID NO:X—R):
(A) GENUS:
(B) ORGANISM/SPECIES:
(C) SUB-SPECIES:
(D) STRAIN:
(E) INDIVIDUAL ISOLATE (name/number of individual/isolate):
(F) DEVELOPMENTAL STAGE:
(*1*) GERM LINE:
(*2*) REARRANGED:
(G) HAPLOTYPE:
(H) TISSUE TYPE:
(I) CELL TYPE:
(iv) IMMEDIATE SOURCE (immediate experimental source of the sequence in SEQ ID NO:X—R):
(A) CELL LINE (name of cell line):
(B) LIBRARY (library—type, name):
(C) CLONE (clone(s)):
(v) POSITION IN GENOME (position of sequence in SEQ ID NO:X in genome—R):
(A) CHROMOSOME/SEGMENT (chromosome/segment—name/number):
(B) MAP POSITION:
(c) UNITS (units for map position, i.e., whether units are genome percent, nucleotide number or other/specify):
(vi) PROPERTIES OF SEQUENCE (properties of the sequence in SEQ ID NO:X—R):
(A) PHENOTYPE (associated phenotype(s)):
(B) ACTIVITY (biological/enzymatic activity—biological/enzymatic activity of its product):
(C) FUNCTIONAL CLASS (general functional classification of the gene or gene product):
(D) BINDING MACROMOLECULES (macromolecules to which the gene product can bind):
(E) SUBCELLULAR LOCATION (subcellular localization of the gene product):
(F) OTHER INFORMATION (other relevant information): (vii) FEATURES (description of points of biological significance in the sequence in SEQ ID NO:X–R/rep):
(A) LOCATION (number of first and last bases/amino acids in feature):
(B) IDENTIFICATION METHOD (method by which the feature was identified, i.e., by experiment, by similarity with known sequence or to an established consensus sequence, or by similarity to some other pattern):
(C) COMPLEMENT (indicate whether feature is located on the nucleic acid strand complementary to that in SEQ ID NO:X):
(viii) SEQUENCE DESCRIPTION: SEQ ID NO:X:

§ 1.824 Form and format for nucleotide and/or amino acid sequence submissions in computer readable form.

(a) The computer readable form shall contain a printable copy of the "Sequence Listing," as defined in §§ 1.821(c), 1.822 and 1.823, recorded as a single file on either a diskette or a magnetic tape. The computer readable form shall be encoded and formatted such that a printed copy of the "Sequence Listing" may be recreated using the print commands of the computer/operating-system configuration specified in paragraph (f) of this section.

(b) The file in paragraph (a) of this section shall be encoded in a subset of the American National Standard Code for Information Interchange (ASCII). This subset shall consist of all the printable ASCII characters including the ASCII space character plus line-termination, pagination and end-of-file characters associated with the computer/operating-system configurations specified in paragraph (f) of this section. No other characters shall be allowed.

(c) The computer readable form may be created by any means, such as word processors, nucleotide/amino acid sequence editors or other custom computer programs; however, it shall be readable by one of the computer/operating-system configurations specified in paragraph (f) of this section, and shall conform to the specifications in paragraphs (a) and (b) of this section.

(d) The entire printable copy of the "Sequence Listing" shall be contained within one file on a single diskette or magnetic tape. This provision may be waived by petition, without the payment of a fee, upon showing that it is not practical or possible to submit the entire printable copy of the "Sequence Listing" within one file on a single diskette or magnetic tape.

(e) The submitted diskette or tape shall be write-protected such as by covering or uncovering diskette holes, removing diskette write tabs or removing tape write rings.

(f) The submitted computer readable form shall be readable on one of the following computer/operating-system configurations:

(1) *Computer: IBM PC/XT/AT, IBM PS/2 or compatibles;*

Operating system: PC-DOS or MS-DOS (Versions 2.1 or above);
Line Terminator: ASCII Carriage Return plus ASCII Line Feed;
Pagination: ASCII Form Feed or Series of Line Terminators;
End-of-File: ASCII SUB (Ctrl-Z);
Media:
Diskette—5.25 inch, 360 Kb storage;
Diskette—5.25 inch, 1.2 Mb storage;
Diskette—3.50 inch, 720 Kb storage;
Diskette—3.50 inch, 1.44 Mb storage;
Magnetic tape—9 track, 3200/1600 bits per inch;
Print Command: PRINT filename.extension;

(2) *Computer: IBM PC/XT/AT, IBM PS/2 or compatibles;*

Operating system: Unix or Zenix System V;
Line Terminator: ASCII Carriage Return;
Pagination: ASCII Form Feed or Series of Line Terminators;
End-of-File: None;
Media:
Diskette—5.25 inch, 360 Kb storage;
Diskette—5.25 inch, 1.2 Mb storage;
Diskette—3.50 inch, 720 Kb storage;
Diskette—3.50 inch, 1.44 Mb storage;
Print Command: LPR filename;

(3) *Computer: Apple Macintosh;*
Operating System: Macintosh;
Macintosh File Type: text with line termination
Line Terminator: Pre-defined by text type file;
Pagination: Pre-defined by text type file;
End-of-file: Pre-defined by text type file;
Media:
Diskette—3.50 inch, 400 Kb storage;
Diskette—3.50 inch, 800 Kb storage and
Print Command: Use PRINT command from any Macintosh Application that processes text files, such as MacWrite or TeachText.

(g) Computer readable forms that are submitted to the Office will not be returned to the applicant.

(h) All computer readable forms shall have a label permanently affixed thereto on which has been hand printed or typed, a description of the format of the computer readable form as well as the name of the applicant, the title of the invention, the date on which the data were recorded on the computer readable form and the name and type of computer and operating system which generated the files on the computer readable form. If all of this information cannot be printed on a label affixed to the computer readable form, by reason of size or otherwise, the label shall include the name of the applicant and the title of the invention and a reference number, and the additional information may be provided on a container for the computer readable form with the name of the applicant, the title of the invention, the reference number and the additional information affixed to the container. If the computer readable form is submitted after the date of filing under 35 U.S.C. 111 or after the date of entry in the national phase under 35 U.S.C. 371, the labels mentioned herein must also include the date of the application and the application number, including series code and serial number.

§ 1.825 Amendments to or replacement of sequence listing and computer readable copy thereof.

(a) Any amendment to the paper copy of the "Sequence Listing" must be made by the submission of substitute sheets. Amendments must be accompanied by a statement that indicates support for the amendment in the application, as filed, and a statement that the substitute sheets include no new matter. Such a statement must be a verified statement if made by a person not registered to practice before the Office.

(b) Any amendment to the paper copy of the "Sequence Listing," in accordance with paragraph (a) of this section, must be accompanied by a substitute copy of the computer readable form, including all previously submitted data with the amendment incorporated therein, accompanied by a statement that the copy in computer readable form is the same as the substitute copy of the "Sequence Listing." Such a statement must be a verified statement if made by a person not registered to practice before the Office.

(c) Any appropriate amendments to the "Sequence Listing" in an application after the grant of a patent thereon must comply with the requirements of paragraphs (a) and (b) of this section.

(d) If upon receipt, the computer readable form is found to be damaged or unreadable, applicant must provide, within such time as set by the Commissioner, a substitute copy of the data in computer readable form accompanied by a statement that the substitute data is identical to that originally filed. Such a statement must be a verified statement if made by a person not registered to practice before the Office.

Date: March 7, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[Editorial Note: The Following Appendices will not appear in the Code of Federal Regulations]

Appendix I—Sample Sequence Listing

(1) GENERAL INFORMATION:
(i) APPLICANT: Joan Doe, John Doe
(ii) TITLE OF INVENTION: Isolation and Characterization of a Gene Encoding a Protease from *Paramecium* sp.
(iii) CORRESPONDENCE ADDRESS:
(A) STREET: 123 Main Street
(B) CITY: Smalltown
(C) STATE: Anystate
(D) COUNTRY: USA
(E) ZIP: 12345
(iv) COMPUTER READABLE FORM:
(A) MEDIUM TYPE: Diskette, 3.50 inch, 800 Kb storage
(B) COMPUTER: Apple Macintosh
(C) OPERATING SYSTEM: Macintosh 5.0
(D) SOFTWARE: MacWrite
(v) CURRENT APPLICATION DATA:
(A) APPLICATION NUMBER: 09/999,999
(B) FILING DATE: February 28, 1989
(C) CLASSIFICATION: US Class/sub—999/99
(vi) PRIOR APPLICATION DATA:
(A) DOCUMENT NUMBER: PCT/US88/999,999
(B) COUNTRY: RO/US
(C) FILING DATE: March 1, 1988
(vii) ATTORNEY/AGENT INFORMATION:
(A) NAME: J. Smith
(B) REGISTRATION NUMBER: 00001
(C) REFERENCE/DOCKET NUMBER: 01–0001
(viii) TELECOMMUNICATION INFORMATION:
(A) TELEPHONE: (909) 999–0001
(B) TELEFAX: (909) 999–0002
(ix) PUBLICATION STATUS: Data in SEQ ID NO:1 and SEQ ID NO:2 have been published.
(A) AUTHORS: Joan Doe, John Doe
(B) TITLE: Isolation and Characterization of a Gene Encoding a Protease from *Paramecium* sp.
(C) JOURNAL: Fictional Genes
(D) VOLUME: 1
(E) ISSUE: 1
(F) PAGES: pp 1–20
(G) DATE: March 2, 1988
(H) RELEVANT RESIDUES: SEQ ID NO:1 and SEQ ID NO:2 correspond entirely to published sequences.
(2) INFORMATION FOR SEQ ID NO:1:
(i) SEQUENCE CHARACTERISTICS:
(A) LENGTH: 957 base pairs
(B) TYPE: nucleic acid
(C) STRANDEDNESS: single
(D) TOPOLOGY: linear
(ii) KIND: nucleotide—genomic DNA
(iii) ORIGINAL SOURCE:
(A) GENUS: Paramecium
(B) ORGANISM/SPECIES: sp.
(E) INDIVIDUAL/ISOLATE: XYZ2
(I) CELL TYPE: unicellular organism
(iv) IMMEDIATE SOURCE:
(B) LIBRARY: genomic
(C) CLONE: Para-XYZ2/36
(vi) PROPERTIES:
(A) PHENOTYPE: expresses protease

BILLING CODE 3510-16-M

(8) SEQUENCE DESCRIPTION: SEQ ID NO:1:

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ATCGGGATAG TACTGGTCAA GACCGGTGGA CACCGGTTAA CCCCGGTTAA GTACCGGTTA   60

TAGGCCATTT CAGGCCAAAT GTGCCCAACT ACGCCAATTG TTTTGCCAAC GGCCAACGTT  120

ACGTTCGTAC GCACGTATGT ACCTAGGTAC TTACGGACGT GACTACGGAC ACTTCCGTAC  180

GTACGTACGT TTACGTACCC ATCCCAACGT AACCACAGTG TGGTCGCAGT GTCCCAGTGT  240

                                                      -30
                                        Met Thr Pro Pro Glu Arg Leu
ACACAGACTC CCAGACATTC TTCACAGACA CCCC ATG ACA CCA CCT GAA CGT CTC  295

      -25                   -20                 -15
Phe Leu Pro Arg Val Cys Gly Thr Thr Leu His Leu Leu Leu Leu Gly
TTC CTC CCA AGG GTG TGT GGC ACC ACC CTA CAC CTC CTC CTT CTG GGG    343

    -10                 -5
Leu Leu Leu Val Leu Leu Pro Gly Ala His
CTG CTG CTG GTT CTG CTG CCT GGG GCC CAT GTGAGGCAGC AGGAGAATGG      393

                                                          Gly
GGTGGCTCAG CCAAACCTTG AGCCCTAGAG CCCCCCTCAA CTCTGTTCTC CTAG GGG    453

 1              5                  10                  15
Leu Met His Leu Ala His Ser Asn Leu Lys Pro Ala Ala His Leu Ile
CTC ATG CAT CTT GCC CAC AGC AAC CTC AAA CCT GCT GCT CAC CTC ATT    501

GTAAACATCC ACCTGACCTC CCAGACATGT CCCCACCAGC TCTCCTCCTA CCCCTGCCTC  561

AGGAACCCAA GCATCCACCC CTCTCCCCCA ACTTCCCCCA CGCTAAAAAA AACAGAGGGA  621

GCCCACTCCT ATGCCTCCCC CTGCCATCCC CCAGGAACTC AGTTGTTCAG TGCCCACTTC  681

           20                  25                  30
Tyr Pro Ser Lys Gln Asn Ser Leu Leu Trp Arg Ala Asn Thr Asp Arg
TAC CCC AGC AAG CAG AAC TCA CTG CTC TGG AGA GCA AAC ACG GAC CGT    729

         35                  40                  45
Ala Phe Leu Gln Asp Gly Phe Ser Leu Ser Asn Asn Ser Leu Leu Val
GCC TTC CTC CAG GAT GGT TTC TCC TTG AGC AAC AAT TCT CTC CTG GTC    777

AAGAAAAAAT AATTGATTTC AAGACCTTCT CCCCATTCTG CCTCCATTCT GACCATTTCA  837

GGGGTCGTCA CCACCTCTCC TTTGGCCATT CCAACAGCTC AAGTCTTCCC TGATCAAGTC  897

ACCGGAGCTT TCAAAGAAGG AATTCTAGGC ATCCCAGGGG ACCCACACCT CCCTGAACCA  957
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BILLING CODE 3510-16-C

(3) INFORMATION FOR SEQ ID NO: 2:
(i) SEQUENCE CHARACTERISTICS:
(A) LENGTH: 82 amino acids
(B) TYPE: amino acid
(D) TOPOLOGY: Linear
(ii) KIND: peptide or protein
(A) SEQUENCE ASSEMBLY METHOD: other, deduction
(vii) FEATURES: signal sequence
(A) LOCATION: -34 to -1
(B) IDENTIFICATION METHOD: similarity to other signal sequences, hydrophobic

(8) SEQUENCE DESCRIPTION: SEQ ID NO:2:

```
                -30                 -25                 -20
Met Thr Pro Pro Glu Arg Leu Phe Leu Pro Arg Val Cys Gly Thr Thr

            -15                 -10                 -5
Leu His Leu Leu Leu Leu Gly Leu Leu Leu Val Leu Leu Pro Gly Ala

        1                   5                   10
His Gly Leu Met His Leu Ala His Ser Asn Leu Lys Pro Ala Ala His

15                  20                  25                  30
Leu Ile Tyr Pro Ser Lys Gln Asn Ser Leu Leu Trp Arg Ala Asn Thr

                35                  40                  45
Asp Arg Ala Phe Leu Gln Asp Gly Phe Ser Leu Ser Asn Asn Ser Leu

Leu Val
```

Appendix II—Headings for Information Items in § 1.823

(1) GENERAL INFORMATION:
(i) APPLICANT:
(ii)TITLE OF INVENTION:
(iii) CORRESPONDENCE ADDRESS:
(A) STREET:
(B) CITY:
(C) STATE:
(D) COUNTRY:
(E) ZIP:
(iv) COMPUTER READABLE FORM:
(A) MEDIUM TYPE:
(B) COMPUTER:
(C) OPERATING SYSTEM:
(D) SOFTWARE:
(v) CURRENT APPLICATION DATA:
(A) APPLICATION NUMBER:
(B) FILING DATE:
(C) CLASSIFICATION:
(vi) PRIOR APPLICATION DATA:
(A) DOCUMENT NUMBER:
(B) COUNTRY:
(C) FILING DATE:
(D) PUBLICATION DATE:
(vii) ATTORNEY/AGENT INFORMATION:
(A) NAME:
(B) REGISTRATION NUMBER:
(C) REFRENCE/DOCKET NUMBER:
(viii) TELECOMMUNICATION INFORMATION:
(A) TELEPHONE:
(B) TELEFAX:
(C) TELEX:
(ix) PUBLICATION STATUS:
(A) AUTHORS:
(B) TITLE:
(C) JOURNAL:
(D) VOLUME:
(E) ISSUE:
(F) PAGES:
(G) DATE:
(H) RELEVANT RESIDUES:
(1) START:
(2) END:
(3) BASE PAIRS:
(4) AMINO ACIDS:
(2) INFORMATION FOR SEQ ID NO: X:
(i) SEQUENCE CHARACTERISTICS:
(A) LENGTH:
(B) TYPE:
(C) STRANDEDNESS:
(D) TOPOLOGY:
(ii) KIND (if nucleotide—at least one of the following should be included:
—Hypothetical RNA;
—Hypothetical DNA;
—Genomic DNA;
—Genomic RNA;
—cDNA to mRNA;
—cDNA to genomic RNA
—Organelle DNA;
—Organelle RNA;
—Specific organelle;
—tRNA;
—rRNA;
—snRNA;
—scRNA;
—Other nucleic acid, identify):
—or—
(ii) KIND (if peptide or protein):
(A) SEQUENCE ASSEMBLY METHOD:
(B) FRAGMENT TYPE:
(C) HYPOTHETICAL:
(iii) ORIGINAL SOURCE:
(A) GENUS:
(B) ORGANISM/SPECIES:
(C) SUB-SPECIES:
(D) STRAIN:
(E) INDIVIDUAL ISOLATE:
(F) DEVELOPMENTAL STAGE:
(1) GERM LINE:
(2) REARRANGED:
(G) HAPLOTYPE:
(H) TISSUE TYPE:
(I) CELL TYPE:
(iv) IMMEDIATE SOURCE:
(A) CELL LINE:
(B) LIBRARY:
(C) CLONE:
(v) POSITION IN GENOME:
(A) CHROMOSOME/SEGMENT:
(B) MAP POSITION:
(C) UNITS:
(vi) PROPERTIES OF SEQUENCE:
(A) PHENOTYPE:
(B) ACTIVITY:
(C) FUNCTIONAL CLASS:
(D) BINDING MACROMOLECULES:
(E) SUBCELLULAR LOCATION:
(F) OTHER INFORMATION:
(vii) FEATURES:

(A) LOCATION:
(B) IDENTIFICATION METHOD:
(C) COMPLEMENT:
(viii) SEQUENCE DESCRIPTION: SEQ ID NO: X:

[FR Doc. 89-10391 Filed 5-1-89; 8:45 am]
BILLING CODE 3510-16-M

National Oceanic and Atmospheric Administration

50 CFR Part 611

Foreign Fishing; Northwestern Atlantic Hake

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

ACTION: Notice of extension of comment period.

SUMMARY: NOAA issues this notice to extend the period during which the public may comment on the proposed rule to amend fishery specifications for the Preliminary Fishery Management Plan for the Hake Fisheries of the Northwestern Atlantic (PMP). Copies of the proposed rule may be obtained from the address below.

DATE: Comments on the proposed rule should be submitted on or before May 15, 1989.

ADDRESS: All comments should be sent to Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Gloucester, Massachusetts 01930. Copies of the proposed rule are available upon request from the National Marine Fisheries Service, Northeast Regional, Management Division, Plan Administration Branch, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, 508-281-9272.

SUPPLEMENTARY INFORMATION: The proposed rule to amend fishery specifications for the PMP was published in the **Federal Register** on April 5, 1989 (54 FR 13704). The schedule for this submitted rule specified a comment period through May 1, 1989.

The proposed initial specifications for the 1989 fishing year were based on a reevaluation of new stock assessment information and a recommendation from the Mid-Atlantic and New England Fishery Management Councils that joint venture processing and the total allowable level of foreign fishing for hakes be zero in 1989. In view of the recent application by Mayflower International, Ltd, Gloucester, Massachusetts for a silver hake joint venture with the Soviet Union, and in further consideration of the interest shown in hake by other segments of the industry, effective April 26, 1989, the comment period is extended by this notice through May 15, 1989. Comments will be considered in determining the specifications for 1989.

Authority: 16 U.S.C. *et seq.* unless otherwise noted.

Dated: April 27, 1989.

Donald J. Leedy,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-10586 Filed 4-28-89; 1:41 pm]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 83
Tuesday, May 2, 1989

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

Agricultural Marketing Service

[TB-89-008]

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: June 9, 1989.

Time: 1:30 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture's Regional Training Laboratory, 333 Waller Avenue, Lexington, Kentucky 40504.

Purpose: To discuss the burley tobacco marketing situation, uniform packaging and other related problems.

The meeting is open to the public. However, public participation will be limited to written statements submitted before or after the meeting unless participants make other arrangements with the chairperson. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting.

Dated: April 26, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-10446 Filed 5-1-89; 8:45 am]

BILLING CODE 3410-02-M

[Docket No. FV-09-034]

Valencia Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Marketing Policy.

SUMMARY: This notice sets forth a summary of the 1989-90 marketing policy for Valencia oranges grown in California and Arizona. The marketing policy was submitted by the Valencia Orange Administrative Committee, which locally administers the marketing order covering California-Arizona Valencia oranges. The marketing policy contains information on the 1988-89 Valencia orange crop and market prospects for the 1989-90 marketing year.

DATE: Written suggestions, views, or pertinent information relative to the marketing of the 1988-89 California-Arizona Valencia orange crop will be considered if received by June 1, 1989.

ADDRESS: Interested persons are invited to submit written statements in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120. Growers and handlers of Valencia oranges may obtain a copy of the marketing policy directly from the Valencia Orange Administrative Committee. Copies of the marketing policy are also available from Mr. Belden.

SUPPLEMENTARY INFORMATION: Pursuant to § 908.50 of the marketing order covering Valencia oranges grown in Arizona and designated part of California, the Valencia Orange Administrative Committee, hereinafter referred to as the "Committee", is required to submit a marketing policy to the Secretary prior to recommending regulations for the ensuing season. The order, issued pursuant to the Agricultural Marketing Agreement Act of 1937 (the "Act", 7 U.S.C. 601-674), as amended, authorizes volume and size regulations applicable to fresh shipments of Valencia oranges to domestic markets which are defined by the order to include Canada. The marketing order does not authorize regulation of export shipments of Valencia oranges or Valencia oranges utilized in the production of processed orange products.

Section 908.50 of the marketing order states that prior to the recommendation for regulation for each prorate district, the Committee shall submit to the Secretary its marketing policy for the ensuing season. Such marketing policy shall contain the following information: (1) The available crop of oranges in the prorate district, including estimated quality and composition of sizes; (2) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (3) a schedule of estimated weekly shipments to be recommended to the Secretary during the ensuing season; (4) available supplies of competitive oranges in all producing areas of the United States; (5) level and trend of consumer income; (6) estimated supplies of competitive citrus commodities; and (7) any other pertinent factors bearing on the marketing of oranges. In formulating its marketing policy, the Committee should give due consideration to the onset and duration of prorate and size regulation. In the event that it becomes advisable to substantially modify such marketing policy, the Commitee shall submit to the Secretary a revised marketing policy setting forth the information as required in this paragraph.

The Committee adopted its marketing policy for the 1989-90 marketing year at its March 7, 1989, meeting. Various meetings to develop, discuss and review the Committee's marketing policy were held on March 10 in Yuma, Arizona; March 14, in Visalia, California; and March 21, in Ventura, California. Substantial numbers of industry representatives were present at these meetings. The marketing policy is intended to inform the Secretary and persons in the industry of the Committee's plans for recommending regulation of shipments during the marketing season and the basis therefor. The Committee evaluates prospective market conditions and recommends to the Secretary a schedule of the quantities of Valencia oranges that can be shipped each week to domestic outlets during the season without

disrupting markets. However, during the season each weekly recommendation may vary from the schedule depending on on prevailing market conditions. Under certain conditions, the Committee may recommend size regulations applicable to fresh domestic shipments.

In addition to providing the Secretary with information specified in the marketing order about crop and marketing conditions, the policy statement affords an opportunity for growers and handlers to gain a broad perspective of the industry as it relates to all prorate districts and provides a view of the anticipated economic environment in which the total crop will be marketed.

In its marketing policy, the Committee discussed a balance that has been achieved in recent years among the three outlets for Valencia oranges—domestic fresh, export fresh, and products. Traditionally, the fresh domestic outlet had been the most profitable, and the best quality fruit has gone to that market. Fruit of slightly lower grades and sizes went to the somewhat less profitable fresh export market, and the products market—mostly frozen, concentrated orange juice—was a low-value salvage outlet for the remainder.

In recent years, however, and especially during the 1987–88 and 1988–89 marketing years, this situation has changed. Asian markets for Valencia oranges has grown, especially the Japanese market. The Japanese market has now become the single biggest export customer for Valencia oranges, and it demands large, premium grade fruit which commands a high price. Also, the price for concentrate has increased due to a series of freezes in the Florida citrus belt, an outbreak of citrus canker in Florida, and uncertainty over supplies from Brazil.

This combination of developments has resulted in a better balance between the three outlets for Valencia oranges. During the 1988–89 marketing year, for instance, 39 percent of the total tree crop was sold in domestic fresh markets, 21 percent went to export fresh markets, and 39 percent to products. For the 1987–89 marketing year, those figures were 40 percent, 24 percent, and 34 percent, respectively. Volume regulations under the marketing order were not used during those two years (except for the week ending March 19, 1987).

The Committee indicated, however, that this balance may be difficult to achieve during the 1989–90 marketing year. This is due to a possible Japanese quarantine of Valencia oranges due to problems with the Fuller Rose Beetle and lower prices for Brazilian orange juice.

In its 1989–90 marketing policy, the Committee projected a range of production for the 1988–89 California-Arizona Valencia orange crop of 51,500 to 56,500 cars (1,000 cartons at 37½ pounds net weight each equals one car). This compares with a 1987–88 estimated total production of 57,800 cars and an estimated average total production for the past six year of 53,700 cars. The size of this year's crop has been difficult to estimate because of the uncertain effects of a February freeze.

The Committee estimates District 1, Central California, 1988–89 production to range from 22,000 to 24,000 cars, compared to 19,800 cars produced in 1987–88. In District 2, Southern California, the crop is expected to range from 27,500 to 29,500 cars, compared to 35,000 cars produced last year. In District 3, the Arizona-California desert valley, production is expected to be in a range of 2,000 to 3,000 cars, compared to 3,037 cars in 1987–88.

The Commiteee estimated that shipments to domestic fresh outlets, including Canada, during the 1989–90 marketing year will account for approximately 19,000 to 21,000 cars. Last year a total of 22,259 cars were shipped to fresh domestic markets. Fresh export shipments are expected to total approximately 11,500 to 12,500 cars compared to 11,968 cars last year. Processing usage is forecast at approximately 20,000 to 21,800 cars compared to 22,755 cars last year.

In terms of total crop utilization, the Committee expects 35 to 39 percent of the 1988–89 crop to be accounted for in domestic fresh markets compared with 39 percent in 1987–88; fresh exports are projected at 21 to 23 percent of total 1988–89 crop utilization compared with 21 percent in 1987–88; processed and other uses would account for the residual 37 to 39 percent compared with 39 percent of the 1987–88 crop.

The projected size composition of the total crop indicates an average orange size for the industry at the mid-point of the season of 125 oranges per carton, the same as last year's average. However, there are distinct differences between districts in both the average of sizes and in the size patterns of oranges grown in each district. With the exception of District 3, projected sizes in the districts are significantly different than last year. The average size for 1988–89 crop oranges produced in District 1 is projected to the 127 per carton, compared with an average of 99 per carton for 1987–88 crop oranges. For District 2, the average size for 1988–89 crop oranges is projected to be 125, compared to last year's average of 141. The average size for 1988–1989 crop oranges produced in District 3 is projected to be 110, the same as last year.

Limited shipments of Valencia oranges began in mid-February. Based on current projections, shipments are expected to finish in early November. The Committee has developed a schedule of estimated weekly shipments for the 1989–90 marketing year.

The Committee reports that Florida round orange production is expected to be 300,000 cars, consisting of 178,000 cars of the early and mid-season type oranges and 122,000 cars of Valencia oranges. Total Florida round orange production is expected to be 9 percent grater than last year. In Texas, orange production is continuing to improve following the freeze of 1983. Total Texas orange production for 1988–89 is expected to be 3,700 cars, a significant increase over the 2,860 cars produced during the previous crop year.

The 1987–88 season average fresh equivalent on-tree grower returns for California-Arizona Valencia oranges as reported by the National Agricultural Statistical Service were $4.94 per carton. This was about 80 percent of the equivalent season average parity of $6.21 per carton. The 1988–89 equivalent seasonal parity of projected to be $7.06 per carton. The 1988–89 returns are not expected to exceed the parity equivalent price.

In discussing the possible need for prorate regulation early in the season, the marketing policy indicated that neither calendar dates nor specific levels of shipments in past years can be definitive as to the recommended onset of regulation. Rather, volume regulations will be recommended to the Secretary when they are deemed necessary by the Committee to achieve conditions of orderly marketing.

Section 908.51(b) of the marketing order identifies factors which the Committee should consider in recommending prorate regulation and states that in making its recommendations, the Committee shall provide equity of marketing opportunity to handlers in all districts and shall give due consideration to the following factors: (1) Market prices for oranges, including market prices by grades and sizes: (2) supply of oranges on track at, and enroute to, the principal markets; (3) supply, maturity, and condition of oranges in the area of production, including the grade and size composition thereof; (4) market prices and supplies of citrus fruits from California, Arizona, and competitive producing areas, and

supplies of other competitive fruits; (5) trend and level in consumer incomes; and (6) other relevant factors.

In order to provide an opportunity for public input, the U.S. Department of Agriculture will accept written views and information pertinent to the marketing policy and the need for, or level of regulation for the 1989–90 marketing year. Comments are invited on the appropriate levels of fresh oranges which can be made available to the fresh domestic market and the intraseasonal dispersion of shipments. Interested persons are also invited to comment on the possible regulatory and informational impact of this marketing policy and seasonal volume regulations on small businesses. The notice provides a 30-day period for the receipt of comments.

Publication of this summary of the marketing policy is to provide information. This action does not create any legal obligations or rights, either substantive or procedural.

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

Dated: April 26, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–10408 Filed 4–28–89; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

[Docket No. 89–003N]

Exemption for Retail Stores; Adjustment of Dollar Limitations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the dollar limitations currently in effect on the annual sales of meat and poultry products that can be sold by retail stores, exempt from Federal inspection requirements, to consumers other than household consumers, such as hotels, restaurants and similar institutions, have been adjusted to conform with price changes for meat and poultry products as indicated by the Consumer Price Index. The dollar limitation for meat products increases from $31,600 to $32,400 for calendar year 1989 and the dollar limitation for poultry products increases from $28,100 to $30,100 for calendar year 1989.

EFFECTIVE DATE: May 2, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Stafko, Director, Policy Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–8168.

Background

Federal inspection of meat and poultry products prepared for sale or distribution in commerce or in States designated under section 301(c) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 661(c)) and section 5(c) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 454(c)) is required by law and administered by the Food Safety and Inspection Service (FSIS). However, section 301(c)(2) of the Federal Meat Inspection Act (21 U.S.C. 661(c)(2)) and section 5(c)(2) of the Poultry Products Inspection Act (21 U.S.C. 454(c)(2)) state that the general requirement of routine Federal inspection "* * * shall not apply to operations of types traditionally and usually conducted at retail stores * * * when conducted at any retail store * * * for sale in normal retail quantities * * * to consumers. * * *"

FSIS regulations (9 CFR 303.1(d) and 381.10(d)) define retail stores that qualify for exemption from routine Federal inspection under the FMIA or PPIA. Whether FSIS deems an establishment to be an exempt retail establishment depends, in part, upon the percentage and volume of its trade with consumers other than household consumers, such as hotels, restaurants and similar institutions. Accordingly, the Federal meat and poultry products inspection regulations state in terms of dollars the maximum amount of meat and poultry products which may be sold to nonhousehold consumers if the establishment is to remain an exempt retail establishment. During calendar year 1988, the maximum amount for meat products was $31,600; for poultry products, the amount was $28,100.

The Federal meat and poultry products inspection regulations (9 CFR 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*)) further provide that the dollar limitation on product sales by retail stores to consumers other than household consumers will be automatically adjusted during the first quarter of each calendar year whenever the Consumer Price Index, published by the Bureau of Labor Statistics (BLS), Department of Labor, indicates a change during the previous year in the price of the same volume of product exceeding $500, upward or downward. The regulations also require that notice of the adjusted dollar limitation be published in the Federal Register.

The BLS Consumer Price Index for 1988 indicates a price increase in meat products of 2.4 percent and a price increase in poultry products of 7.2. percent. As a percentage of the existing dollar limitation, a change in excess of $500 is indicated for both meat and poultry products. When rounded off to the nearest $100, the price increase for meat products amounts to $800 and the price increase for poultry products amounts to $2,000.

Accordingly, FSIS, in accordance with §§ 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*) of the regulations, has automatically raised the dollar limitation of permitted sales of meat products and raised the dollar limitation of permitted sales of poultry products to consumers other than household consumers by establishments operating as retail establishments exempt from Federal inspection requirements. Therefore, the dollar limitations for 1988 have increased from $31,600 to $32,400 for meat products and increased from $28,100 to $30,100 for poultry products.

Done at Washington, DC on: April 25, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89–10447 Filed 5–1–89; 8:45 am]

BILLING CODE 3410–DM–M

Forest Service

Lake Tahoe Basin Management Unit, Placer County, California; Intention to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement on its proposal to build, in cooperation with the State of California, an interpretive center on the site commonly known as the "Sixty-four Acre Tract" in the northwest corner of Lake Tahoe in Tahoe City, California.

Construction of the interpretive center would implement direction in the Land and Resource Management Plan for the Lake Tahoe Basin Management Unit.

The draft EIS will consider two construction alternatives on opposite sides of the state highway that bisects the tract. One of these is near the shoreline of Lake Tahoe, and will include a pier. A third alternative is not to develop an interpretive center.

Considerable scoping and analysis has revealed the principle issues in the proposed action: (1) Effects on nearby residential areas; (2) effects of possible increases in traffic on Highway 89.

Alternative locations for an interpretive center were considered by the Tahoe City Advisory Council at several public meetings in April, 1987, and at a meeting of local homeowners in July, 1987.

The Forest Supervisor will hold a public workshop in Tahoe City on June 6, 1989, at 4:00 p.m. in the Fairway Community Center in Tahoe City. Federal, State, and local agencies; and other individuals or organizations that may be interested or affected by the decision will be invited to participate.

The analysis is expected to take about three months. The draft environmental impact statement should be available for public review by July 30, 1989. The final environmental impact statement is schedule to be completed by September 30, 1989.

Written comments and suggestions concerning the analysis should be sent to the responsible official, Robert E. Harris, Forest Supervisor, Lake Tahoe Basin Management Unit, PO Box 731002, South Lake Tahoe, CA 95731, by June 20, 1989.

Questions about the proposed action and the environmental impact statement should be directed to Robert A. McDowell, Recreation Staff Officer, or Frank A. Magary, Forest Landscape Architect (916) 573–2600.

Robert E. Harris,

Forest Supervisor.

Date: April 24, 1989.

[FR Doc. 89–10458 Filed 4–1–89; 8:45 am]

BILLING CODE 3410–11–M

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Meeting

Notice is hereby given in accordance with section 522b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Wednesday, May 3, 1989.

The Commission was established pursuant to Pub. L. 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 4:15 p.m. at the Woonsocket High School, 777 Cass Avenue, Woonsocket, Rhode Island, for the following reasons:

1. Report of the Chairman.
2. Report of the Treasurer.
3. Commission status report on current legislative initiative.
4. Report of the Public Information and Education Subcommittee: public information programs.
5. Report of the Planning Subcommittee.
6. Presentation of MA Heritage Park Program's concept plan for a Visitor Center at the Voss Farm, Uxbridge, MA.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569, Telephone (508) 278–9400.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address below.

James Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 89–10430 Filed 5–1–89; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–401–056]

Viscose Rayon Staple Fiber From Sweden; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration; Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden. We preliminarily determine the net subsidy to be 15.30 percent *ad valorem* for the period January 1, 1987 through December 31, 1987. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: May 2, 1989.

FOR FURTHER INFORMATION CONTACT: Paul McGarr or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 168) the final results of its last administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden (44 FR 28319; May 15, 1979). On May 9, 1988, the petitioner, the U.S. Rayon Producers Committee, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation on June 29, 1988 (53 FR 24470). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS Item number(s).

Imports covered by this review are shipments of Swedish regular viscose rayon staple fiber and high-wet modulus ("modal") viscose rayon staple fiber. During the review period, such merchandise was classifiable under item numbers 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated. Such merchandise is currently classifiable under HTS item number 5504.10.0000.

The review covers the period January 1, 1987 through December 31, 1987 and three programs. The only known Swedish exporter of this merchandise to the United States is Svenska Rayon, AB.

Analysis of Programs

(1) Loans/Grants for Plant Erection

Under three agreements, the Swedish government provided Svenska with interest-free loans for the creation of a modal fiber plant. The agreements provided that the Swedish government would forgive the loans in equal amounts over ten years if Svenska maintained its modal fiber production capacity for ten years. If Svenska eliminated this production capacity prior to the end of the ten-year period, the agreements also provided that the remaining amount of the outstanding principal would fall due immediately.

The first agreement, Project 77, was concluded in 1975, and the Swedish

government disbursed the funds between 1975 and 1977. The second agreement, Project 81, was concluded in 1978 and the funds disbursed between 1978 and 1981. In 1979, the Swedish government provided a final interest-free loan to Svenska for pollution control improvements to the modal fiber plant.

Forgiveness of these loans began when the equipment purchased went into operation. Accordingly, the Swedish government forgave ten percent of the total disbursements to Svenska under Project 77 in each year from 1978 through 1985. Similarily, the Swedish government forgave ten percent of the total disbursements under Project 81 in each year from 1981 through 1985 and ten percent of the environmental loan in each year from 1980 through 1985. In 1986, after Svenska permanently discontinued all modal fiber production and closed the modal fiber plant designed and developed for production of such fiber, the Swedish government forgave Svenska's remaining indebtedness from the plant creation and pollution control improvements.

Since these loans were in fact grants, we have calculated the benefit streams using the declining balance methodology. We allocated the benefits from each grant over the 10-year average useful life of assets in the rayon fiber industry, according to the "Asset Guideline Classes" of the Internal Revenue Service, and used as discount rates the national average corporate bond rates in Sweden for the years in which each grant was received (obtained from the "Monthly Digest of Swedish Statistics", a Swedish government publication).

We allocated the benefits attributable to the review period over the value of Svenska's net sales during the review period. On this basis, we preliminarily determine the benefit from this program to be 10.73 percent *ad valorem.*

(2) Elderly Employment Compensation Program

The Swedish government provided a subsidy to certain companies within the textile and clothing industries through a special employment contribution for older workers. This program provided compensation to a company based upon the number of hours worked by employees over 50 years of age. A company participating in the program had to agree not to dismiss or release redundant employees of any age for any reason other than normal attrition. Payments were calculated on the basis of 28 Swedish kronor per hour for employees over age 50 who were involved in production. The payment could not exceed 15 percent of the company's total labor costs.

Svenska received its last payment under this program in July 1982. In January 1983, the Swedish government excluded the rayon fiber industry, including Svenska, from this program. Using the declining balance methodology referred to above, we calculated Svenska's benefit by allocating the 1982 payment over ten years, the average useful life of assets in the rayon fiber industry. We used Svenska's 1982 weighted cost of capital as the discount rate.

We allocated the benefit attributable to the review period over the value of Svenska's net sales during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.50 percent *ad valorem.*

(3) Grant for Manpower Reduction and Conditional Loan

The Swedish government concluded an agreement with Svenska in 1980 consisting of two parts: a grant for manpower reduction and a conditional loan to cover operating losses. The grant was intended to compensate the company for maintaining redundant employees longer than collective agreements and employment protection laws required, and for retraining employees to work elsewhere within the KF Industri group (the group of firms, including Svenska, owned directly or indirectly by Kooperativa Forbundet). The grant was paid through the National Labor Market Board in two installments, one in December 1980, and the other in July 1981. Svenska received no new manpower production grants during the period of review.

Using the declining balance methodology, we allocated each grant over ten years, the average useful life of assets in the rayon fiber industry. We used as a discount rate the national average corporate bond rate in Sweden for 1980, the year in which the agreement was reached.

We allocated the benefit attributable to the review period over the value of Svenska's net sales during the review period. On this basis, we preliminarily determine the benefit from this grant to be 0.58 percent *ad valorem.*

For the conditional loan part of the 1980 agreement, the terms (including the length) and conditions depended on the company's profit levels. The conditional loan was disbursed in three installments between 1980 and 1982. Under the original agreement, the Swedish government would forgive portions of the outstanding principal and interest of the loan if Svenska did not make a sufficient profit (as determined by a confidential formula concluded between the Swedish government and Svenska). If Svenska attained the requisite level of profit, it would have to repay a certain portion of the loan, including interest. Svenska did not make a sufficient profit in any year between 1983 and 1985, and the Swedish government forgave the yearly repayment of the loan in 1983, 1984 and 1985. In 1986, in conjunction with the forgiveness of the loans/grants for plant creation, the Swedish government forgave the total outstanding balance of this loan.

Because Svenska never made any payments on this loan, which was forgiven in its entirety over four years, we have treated each of the three loan installments as grants given in the year of receipt. As with the loans/grants for plant creation program, we have applied the declining balance methodology, allocating benefits from each grant over the 10-year average useful life of assets in the rayon fiber industry. We used as discount rates the national average corporate bond rates in Sweden for the years in which each grant was received.

We allocated the benefit attributable to the review period over the value of Svenska's net sales during the review period. On this basis, we preliminarily determine the benefit from the conditional loan to be 3.49 percent *ad valorem.*

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 15.30 percent *ad valorem* for the period January 1, 1987 through December 31, 1987.

The Department intends to instruct the Customs Service to assess countervailing duties of 15.30 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987.

Further, the Department intends to 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 15.30 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 the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10

days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the last workday preceding. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

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 § 355.22 of the Commerce Regulations published in the Federal Register on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Date: August 24, 1989.

Michael J. Coursey,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-10432 Filed 5-1-89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; California State University, Long Beach, et al.

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 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 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 88-255R. *Applicant:* California State University, Long Beach, Chemistry Department, 1250 Bellflower Boulevard, Long Beach, CA 90840. *Instrument:* Stopped-Flow Spectrofluorimeter, Model SF-51. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. Original notice of this application was published in the Federal Register of September 23, 1988.

Docket No.: 89-113. *Applicant:* University of Hawaii at Manoa, Hawaii Institute of Geophysics, 2525 Correa Road, HIG #114, Honolulu, HI 96822. *Instrument:* 250 Ton 6mm Cubic-Anvil Type High Pressure Press Apparatus, Model TRY-250. *Manufacturer:* Riken Kiki Co., Ltd., Japan. *Intended Use:* The instrument will be used for in situ x-ray diffraction studies under high-pressure and high-temperature conditions for determination of atomic crystal structure, molar volumes, equation of state (P-V-T), of Earth's mantle phases. In addition, the instrument will be used for educational purposes in the courses: Physics of the Earth's Interior, High-Pressure Mineralogy, Solid State Geophysics and Topics in High Pressure-Temperature Research. *Application Received by Commissioner of Customs:* March 21, 1989.

Docket No.: 89-115. *Applicant:* Washington University School of Medicine, Department of Biochemistry and Molecular Biophysics, 660 S. Euclid Avenue, Box 8094, St. Louis, MO 63110. *Instrument:* Stopped flow Spectrofluorimeter, Model SF-17MV/20MB. *Manufacturer:* Applied Photophysics, United Kindom. *Intended Use:* The instrument will be used to examine the changes in properties of proteins and enzymes upon mixing with various compounds to determine structure-function relationships in these proteins and the mechanism of catalysis of enzymes. *Application Received by Commissioner of Customs:* March 27, 1989.

Docket No.: 89-116. *Applicant:* Lovelace Biomedical and Environmental Research Institute, Builidng 9217, Area Y, P.O. Box 5890, Kirkland Air Force Base East, Albuquerque, NM 87115. *Instrument:* Electron Microscope, Model H-7000. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* The instrument will be used to perform morphometry at the ultrastructural level and to identify and characterize particles in biologic tissues. The basic areas of investigation will include: (1) The ultrastructure of normal biological tissues and their normal counterparts exposed to toxicants; (2) morphometry at the ultrastructural level; and (3) the identification and characterization of particles in tissues. *Application Received by Commissioner of Customs:* March 27, 1989.

Docket No.: 89-117. *Applicant:* Rensselaer Polytechnic Institute, 110 8th Street, Troy, NY 12180-3590. *Instrument:* Centrifuge for Geotechnical Applications, Model 665-1. *Manufacturer:* Acutronic France S.A., France. *Intended Use:* The instrument will be used for basic earthquake engineering research to study the mechanical behavior of large scale civil engineering structures which utilize soil as a principal structural element. Typical examples are earth dams, soils underlying building and bridge foundations, embankments and tunnels. The studies also relate to other nondynamic properties of the structures. In addition, the instrument will be used as an educational tool in graduate and undergraduate soil-related courses providing hands-on civil engineering education relating to design and construction of large structures including large soil structures. *Application Received by Commissioner of Customs:* March 28, 1989.

Docket No.: 89-118. *Applicant:* Utah State University, Purchasing Services, Logan, UT 84322-8300. *Instrument:* Rapid Kinetic Spectrometer Accessory with Pneumatic Drive Unit, Model RX-1000. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used in conjunction with an electron spin resonance spectrometer to study oxygen free radical formation as tumor promoters in chemical carcinogenesis studies. *Application Received by Commissioner of Customs:* March 29, 1989.

Docket No.: 89-119. *Applicant:* Baruch College, CUNY, 17 Lexington Avenue, New York, NY 10010. *Instrument:* Rapid Kinetics Accessory, Model SFA-11. *Manufacturer:* Hi-Tech Scientific Limited, United Kingdom. *Intended Use:* The instrument will be used in investigations conducted to further the understanding of the heme enzymes peroxidase and catalase by measuring axial ligand effects on the metal porphyrin catalysis of reaction 1. The work will study axial ligands with systematic variation in molecular structure, steric bulk, and hydrogen bonding capacity. In addition, the instrument will be used in the laboratory component of Physical Chemistry I which will cover thermodynamics, electrochemistry, chemical kinetics and transport properties. *Application Received by Commissioner of Customs:* March 30, 1989.

Docket No.: 89-120. *Applicant:* Texas A&M University, Department of Geology, College Station, TX 77843. *Instrument:* Electron Microprobe, SX-50. *Manufacturer:* Cameca Instruments Inc., France. *Intended Use:* The instrument will be used to provide data that is crucial when studying the formation of various rocks and minerals that occur in the Earth. This includes the investigation of ore deposits, migration of crustal fluids, and formation of the earth's crust. In addition, the instrument will be used in the course "Electron Microprobe Analysis: Principles and Geologic Applications" which will serve as an introduction to the principles of electron microprobe analysis, and through the lab portion of the course will

offer hands-on experience with the microprobe. *Application Received by Commissioner of Customs:* March 30, 1989.

Docket No.: 89–121. *Applicant:* Georgia Department of Human Resources, 47 Trinity Avenue SW., Room 42H, Atlanta, GA 30334. *Instrument:* Electron Microscope, Model CM10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for the search and indentification of human pathogenic viruses present in clinical medical specimens of human and/or animal origin, so that the identities of endemic and epidemic virus pathogens can be epidemiologically followed and possibly predicted. *Application Received by Commissioner of Customs:* March 30, 1989.

Docket No.: 89–122. *Applicant:* Carnegie Mellon University, Department of Metallurgical Engineering and Materials Science, Pittsburg, PA 15213–3890. *Instrument:* Electron Microscope, Model SEM–4000EX. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used for the following research objectives:

(1) Development of a comprehensive fundamental understanding of the processing-structure properties relation in composite materials having particulate or short fiber ceramic reinforced in metal and intermetallic matrices, and to a lesser extent, ceramic materials.

(2) Provide information about the atomic structure of permanent magnets and its influence on magnetic properties that cannot be obtained by other methods.

(3) Modification of magnetic properties of thin films through control of coherency strains, and increase of magnet resistance through adjustment of the Hall coefficients.

(4) Examination of the interactions of dislocation with coherent ordered delta particles and semicoherent T1 plate-shaped precipitates in an A1–2C–1Li alloy, in various stages of development.

In addition, the instrument will be used to teach the theory of high resolution imaging and the state-of-the-art techniques in using high-resolution electron microscopy and image interpretation, supported by computer image simulation. *Application Received by Commissioner of Customs:* March 30, 1989.

Docket No.: 89–123. *Applicant:* Kingsbrook Jewish Medical Center, 585 Schenectady Ave., Brooklyn, NY 11203. *Instrument:* Electron Microscope, Model H–600–3. *Manufacturer:* Hatachi Scientific Instruments, Japan. *Intended Use:* The instrument will be used in the courses Clinico-Pathology Conferences and Joint Surgical and Pathology Conferences for studying and understanding the pathogeneses of subcellular pathology related with various diseases, such as viral infections and special types of cancer (neuroendocrine tumors). *Application Received by Commissioner of Customs:* March 31, 1989.

Docket No.: 89–124. *Applicant:* Stanford University, Stanford, CA 94305. *Instrument:* Dilution Refrigerator System, Model 1000. *Manufacturer:* Oxford Instruments North America Inc., United Kingdom. *Intended Use:* The instrument will be used to cool the Stanford resonant-mass gravity wave detector to 4×10–2 kelvin. Experiments will include long-term searches for gravity wave emission and correlation of detected signals with other gravity wave detectors and neutrino detectors. *Application Received by Commissioner of Customs:* April 4, 1989.

Docket No.: 89–125. *Applicant:* Rutgers, The State University, Serin Physics Laboratory, P.O. Box 849, Piscataway, NJ 08855. *Instrument:* Ion Gun. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* The instrument will be used in experiments related to studies of adsorption/desorption of gases from surfaces to: (1) Clean the surfaces by sputtering; (2) study the composition of the surface by Ion Scattering Spectroscopy; and (3) study fundamental aspects of ion induced desorption by Auger neutralization at energies down to a few tens of eV. Experiments will be performed to observe the angular and energy distributions of desorbed ions to understand the mechanisms for desorption and electron transfer at surfaces. *Application Received by Commissioner of Customs:* April 5, 1989.

Docket No.: 89–126. *Applicant:* University of Puerto Rico, Mayaguez Campus, Department of Geology, Mayaguez, PR 00708. *Instrument:* Electron Microprobe, Model SX50. *Manufacturer:* Cameca Instruments Inc., France. *Intended Use:* The instrument will be used for studies of rocks, minerals, fossils, lunar samples, meteorites, and synthetic phases. The data obtained with the instrument forms the basis for studying the formation of the various rocks and minerals on the Earth and ored deposits and the composition of fossils. In addition the instrument will be used for educational purposes in a course entitled "Instrumentation Techniques" in which students will learn proper techniques for performing analyses on their individual specimens which they are investigating. *Application Received by Commissioner of Customs:* April 4, 1989.

Docket No.: 89–127. *Applicant:* Harlem Hospital Medical Center, 506 Lenox Avenue, New York, NY 10037. *Instrument:* Electron Microscope, Model EM 109T. *Manufacturer:* Carl Zeiss, West German. *Intended Use:* The instrument will be used for studies of tissues obtained from surgical biopsies and autopsies of patients for an in-depth study of diseases when regular microscopy fails to demonstrate, or is insufficient to detect tissue changes necessary to elucidate the disease process. In addition, the instrument will be used for training in electron microscopy to familiarize the residents with the ultrastructural investigations of various diseases including tumors, viruses and other microbes. *Application Received by Commissioner of Customs:* April 5, 1989.

Docket No.: 89–129. *Applicant:* Children's Medical Center, 5300 East Skelly Drive P.O. 35648, Tulsa, OK 74135. *Instrument:* Image Analysis Microscope System, Model IRS 011.*Manufacturer:* Image Recognition Systems, United Kingdom. *Intended Use:* The instrument will be used for studies of chromosomes from human cells during research relating to the identification of chromosome abnormalities in individuals with various genetic conditions including multiple birth defects. *Application Received by Commissioner of Customs:* April 7, 1989.

Docket No.: 89–130. *Applicant:* Johns Hopkins University, 600 N. Wolfe Street, Baltimore, MD 21205. *Instrument:* Electron Microscope, Model CM12T. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for the examination of biological tissues from a variety of species: brain, gastrointestinal tract, kidney, liver, lung and lymphoid tissues. A wide range of experiments will be conducted in an attempt to understand the mechanism of a variety of disease processes by coupling knowledge of the molecular mechanisms with precise localization at the ultrastructural level by the use of the instrument. *Application Received by Commissioner of Customs:* April 10, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–10431 Filed 5–1–89; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirment 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: DoD FAR Supplement, Part 214; DD Form 1630; and OMB Control Number 0704–0215.

Type of Request: Deletion.

Average Burden Hours/Minutes Per Response: .5 hour.

Frequency of Response: On occasion.

Number of Respondents: 1,200.

Annual Burden Hours: 600.

Annual Responses: 1,200.

Needs and Uses: This request concerns the deletion of information collection requirements related to use of sealed bid (formal advertising) contracting including DD Form 1630, Research and Development Capability Index, published in Supplement 4 which is considered to be duplicative of the information requesated by Standard Form 129 (SF–129).

Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 25, 1989

[FR Doc. 89–10441 Filed 5–1–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Chief of Naval Operations, Executive Panel 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 Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet May 23–24, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technical breakthroughs that vastly change warfighting capabilities. The entire agenda for the meeting will consist of discussions of key issues regarding the potential for technology surprises or breakthroughs by analysis of various technology enigmas. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. 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.

For further information concerning this meeting, contact Faye Buckman, Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: April 26, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–10455 Filed 5–1–89; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations, Executive Panel 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 Chief of Naval Operations (CNO) Executive Panel Advisory Committee Space Task Force will meet June 20–21, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in space. The entire agenda for the meeting will consist of discussions of key issues regarding space exploration in support of U.S. national security, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. 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.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: April 26, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–10456 Filed 5–1–89; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations, Executive Panel 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 Chief of Naval Operations (CNO) Executive Panel Advisory Committee Space Task Force will meet July 18–19, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in space. The entire agenda for the meeting will consist of discussions of key issues regarding space exploration in support of U.S. national security, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. 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.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: April 26, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison, Officer.

[FR Doc. 89-10457 Filed 5-1-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intention to Award Grant to Broad Research

AGENCY: U.S. Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15355 to Broad Research to design, build and test a prototype of an energy efficient ice cube making machine.

Scope: This Grant will aid in providing funding for Broad Research, as follows: (1) Build and test engineering prototypes of the inventor's ice cube making machine and (2) build and test a production prototype designed and produced by the firm.

The purpose of this project will be to design, build, and test an energy efficient ice cube making machine.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to Broad Research, a private corporation with high qualifications in this specialized field of technology. The inventor and owner of Broad Research has applied for a patent on the technology. Broad Research will subcontract this work to three companies who have substantial facilities and expertise in their respective specialities to test the safety, sanitation, and performance of the invention. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the Nation's energy consumption.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rose Mason, MA-453.2, 1000 Independence Avenue, SW. Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 89-10499 Filed 5-1-89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intention to Award Grant to the University of Oklahoma

AGENCY: U.S. Department of Energy, Bartlesville Project Office.

ACTION: Acceptance of an Unsolicited Application for Grant Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14 the Bartlesville Project Office through the Pittsburgh Energy Technology Center intends to award based on an unsolicited action submitted by the University of Oklahoma. The application is entitled "1989 International Conference on Microbial Enhancement of Oil Recovery" (MEOR).

Scope: This intended grant award is to assist the University of Oklahoma in conducting a five-(5) day international conference designed to thoroughly examine basic scientific developments and applications of microbes to oil fields. A complete review of the state-of-the-art of MEOR will be made, and the direction of research will be recommended with emphasis on engineering technology for field applications. The proceedings of this conference will be published.

The conference will serve the important functions of technology transfer, stimulation of industrial research, establishment of current state-of-the-art of MEOR, development of vital areas of research for implementations of MEOR, and the proceedings will serve as a text for teaching as well as a permanent reference on MEOR.

The total estimated DOE cost for this grant is $56,331.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. box 10940, MS 921-165, Pittsburgh, PA 15236, Attn: Martin Byrnes, Telephone: AC 412/892-4486.

Date: April 4, 1989.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 89-10500 Filed 5-1-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-09-NG]

Consolidated Fuel Co.; Application to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on February 7, 1989, of an application filed by Consolidated Fuel Company (Consolidated Fuel) for authorization to import on a firm basis up to 6,000 Mcf of Canadian natural gas per day from Direct Energy Marketing Limited (Direct Energy) to fuel a 28-megawatt combined-cycle electrical generating facility being constructed in East Georgia, Vermont. Consolidated Fuel seeks approval to import the volumes for a term of 15 years from the date of commercial operation of the cogeneration facility, which is estimated to be in July 1990. In addition, the applicant requests authority to import from Direct Energy or others up to 500 Mcf of gas per day on a spot basis to supply the cogeneration facility during peak usage periods.

The application is filed pursuant to section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. 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 June 1, 1989.

FOR FURTHER INFORMATION:

Tom Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Consolidated Fuel, a Delaware corporation with its principal place of business in Norwalk, Connecticut, proposes to import gas for resale to Arrowhead Cogeneration Company Limited Partnership (Arrowhead), the owner and operator of the new cogeneration facility. The area where the cogeneration facility will be located currently has access only to Canadian gas. The owners of Arrowhead's general partner, Arrowhead Cogeneration Corp., have an ownership interest in Consolidated Fuel.

On November 16, 1987, Arrowhead's cogeneration facility received certification from the Federal Energy Regulatory Commission as a qualifying

facility under the Public Utility Regulatory Policies Act of 1978 (PURPA). The cogeneration facility will provide electrical power to the UNITIL Power Corporation in Exeter, New Hampshire, and steam produced by the facility will be sold to a food processing plant owned by Wyeth Nutritional, Inc.

The natural gas purchased from Direct Energy, a Canadian producer-owned marketing company, would enter the U.S. at a point near Philipsburg, Quebec, through pipeline facilities of Vermont Gas Systems, Inc. (Vermont Gas), which would then deliver the gas to the cogeneration facility. The only additional facilities needed to transport the gas to Arrowhead's plant is a three-mile connecting pipeline to be constructed by Vermont Gas between its system and the plant. Consolidated Fuel states that Vermont gas will apply for the necessary regulatory approval from the Vermont Public Service Board to construct the delivery pipeline.

Under the terms of a November 22, 1988, sales agreement between Consolidated Fuel and Direct Energy, which provides for 6,000 Mcf per day of firm service for a term of 15 years, Consolidated Fuel is required to take and pay for a minimum annual quantity equal to 80 percent of the daily contract quantity. In addition, the agreement calls for Consolidated Fuel to use reasonable efforts to have delivered a minimum of 4,000 Mcf of gas per day. The contract also provides that Consolidated Fuel may buy on an interruptible basis volumes of gas above the 6,000 Mcf daily contract quantity, provided that Direct Energy has such gas available.

The gas would be sold to Consolidated Fuel at a price which includes actual transportation charges for the gas on Canadian pipelines, compressor fuel and take-or-pay cost sharing charges incurred by Direct Energy, and a commodity charge. Transportation of the gas in Canada would be provided by the pipeline systems of NOVA Corporation of Alberta, TransGas Limited, and TransCanada PipeLines Limited. The commodity charge would be indexed to the published New England Power Pool (NEPOOL) fossil energy costs. The commodity charge would be determined each month by multiplying $1.004 (U.S.) per Mcf by the ratio of the weighted NEPOOL average fossil fuel cost for the preceding month to that for the month of July 1988. In an April 11, 1989, letter, Consolidated Fuel indicated the NEPOOL index formula would result in a delivered commodity charge of $1.248 (U.S.) per MMBtu for February 1989.

Finally, the gas purchase agreement requires that Direct Energy maintain at all times a minimum of 10.8 Bcf of gas reserves to meet its supply obligation.

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). Other matters that may be considered in making a public interest determination include need for gas, security of the long-term supply and any relevant issues that are unique to cogeneration facilities. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the natural gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this requested long-term import is approved, the authorization may be conditioned to require that Consolidated Fuel file quarterly reports to facilitate the DOE's monitoring of its natural gas import and export program.

NEPA Compliance

Under section D of the DOE guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, actions that grant or deny import authorizations where no new gas transmission facilities are needed but where new ancillary facilities are to be constructed, such as a cogeneration facility, would normally require the preparation of an environmental assessment (EA), because they involve "minor new construction" (54 FR 12474, March 27, 1989). However, we believe that preparation of an EA to approve or disapprove Consolidated Fuel's application is unnecessary, and compliance with NEPA for the proposed action can be achieved by invoking two categorical exclusions in the DOE NEPA guidelines (52 FR 47622, December 15, 1987).

The environmental impacts of constructing and operating new cogeneration facilities have been addressed on numerous occasions by the Economic Regulatory Administration (ERA) in conjunction with processing exemption petitions under the Powerplant and Industrial Fuel Use Act (FUA) (10 U.S.C. 3801 *et seq.*, as amended) and as a result, such actions have been granted a categorical exclusion from further NEPA review (52 FR 47670, December 15, 1987). The cogeneration facilities to be constructed in connection with these import applications are identical to those facilities covered by the categorical exclusion for FUA actions. Therefore, it is an appropriate application of another categorical exclusion contained in the DOE guidelines for "actions that are substantially the same as other actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid" (52 FR 47668, December 15, 1987) to extend the FUA categorical exclusion for cogeneration facilities to the grant of an authorization to import natural gas under the NGA which results in the construction and operation of a cogeneration facility.

A categorical exclusion raises a rebuttable presumption that the Federal action will not significantly affect the quality of the human environment. Unless it appears during the proceedings on this import application that the grant or denial of authorization will significantly affect the quality of the human environment, the Office of Fuels Programs expects that no additional environmental review will be required.

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 applicant 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 action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, 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., June 1, 1989.

It is intended that a decisional record on the application will be developed 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. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. 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 Consolidated Fuel's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 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, April 21, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89–10501 Filed 5–1–89; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–63–NG]

Vector Energy (U.S.A.) Inc.; Order Granting Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Vector Energy (U.S.A.) Inc. (Vector) authorization to import natural gas from Canada. The order issued in ERA Docket No. 88–63–NG authorizes Vector to import up to 36,500 Mcf per day and a maximum of 13.14 Bcf per year beginning December 1, 1989, through November 30, 2009, for use in a new 162-megawatt cogeneration facility to be built by Altresco Inc. in Pittsfield, Massachusetts.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (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, April 21, 1989.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 89–10502 Filed 5–1–89; 8:45 am]

BILLING CODE 6450–01–M

Southwestern Power Administration

Tentative Sponsor Selection and Request for Additional Proposals; Proposed Norfolk Dam Unit Number 3; Extension of Time

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of an Extension of Time to June 23, 1989, is hereby given to allow interested parties to prepare comments and additional proposals relating to the "Notice of Tentative Sponsor Selection and Request for Additional Proposals; Proposed Norfolk Dam Unit Number 3" published in the **Federal Register** (54 FR 10419) dated March 13, 1989.

SUMMARY: Separate requests have been made by the Southwestern Power Resources Association, Tex-La Electric Cooperative of Texas, Inc., Northeast Texas Electric Cooperative, Inc., and East Texas Electric Cooperative, Inc. for an extension of time to prepare comments. The Kansas Electric Power Cooperative, Inc. has requested an extension of time to consider preparing a competing sponsorship application. These entities have requested an extension of time to June 23, 1989. The Southwestern Power Administration hereby extends the comment/proposal period to June 23, 1989.

DATES: Questions, comments, and/or proposals received prior to the close of business on June 23, 1989, will be considered in the final selection process.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed project financing, contact: Colonel Anthony V. Nida, District Engineer, Little Rock District, Corps of Engineers, P.O. Box 867, Little Rock, AR 72203.

For further information about the proposed marketing of power and energy from the project, contact: Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, OK 74101.

Issued at Tulsa, Oklahoma, on April 19, 1989.

Francis R. Gajan,

Acting Administrator, Southwestern Power Administration.

[FR Doc. 89–10503 Filed 5–1–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3564–6]

Announcement of a Public Hearing for the Proposed Determination to Prohibit the Use of Big River, Mishnock River, their Tributaries and Adjacent Wetlands as Disposal Sites; Kent County, RI

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of a public hearing.

SUMMARY: On February 1, 1989 EPA published in the **Federal Register** the "Proposed Determination to Prohibit the Use of Big River, Mishnock River, their Tributaries and Adjacent Wetlands as Disposal Sites; Kent County, Rhode Island." (Requests for a copy of that notice should be made to the person listed in the section below entitled Public Comment.) This public notice supplements EPA's Proposed Determination by announcing the date, time and location of the public hearing.

Section 404(c) of the Clean Water Act (Act) authorizes the Environmental Protection Agency (EPA) to prohibit or restrict the discharge of dredged or fill material at defined sites in the waters of the United States (including wetlands) whenever it determines, after notice and opportunity for hearing, that use of such sites for disposal would have an unacceptable adverse impact on various resources, including wildlife. EPA Region I proposes under section 404(c) of the Act to prohibit use of Big River, Mishnock River, their tributaries and adjacent wetlands in Kent County, Rhode Island, as disposal sites for dredged or fill material in connection with construction of Big River Reservoir, a 3400 acre water supply project. The Big River proposal would directly eliminate approximately 550 acres of

valuable wetlands and impact an additional 500 to 600 acres of wetland habitat. There have been proposals to construct the project either by the State alone or as a joint venture with the U.S. Army Corps of Engineers (Corps). EPA Region I believes that filling and inundating the wetlands and waters of the site may have an unacceptable adverse effect on wildlife habitat and fisheries. In accordance with EPA regulations at 40 CFR 231.4, the Regional Administrator has decided that a hearing on this proposed 404(c) determination would be in the public interest.

Hearing date and location: EPA will hold a public hearing on June 8, 1989 at 7 p.m. at Coventry High School, located on Reservoir Road in Coventry, Rhode Island, seeking comments on its Proposed Determination. See Solicitation of Comments, at the end of this public notice, and the February 1, 1989 Proposed Determination for further details.

Hearing procedures: The Regional Adminisrator of EPA, Region I will designate the official who will preside at the public hearing. Any person may appear at the hearing and submit oral and/or written statements or data and may be represented by counsel or other authorized representative. The Presiding Officer will establish reasonable limits on the nature and length of time for oral presentation. There will be no cross examination of any hearing participant, although the Presiding Officer may make appropriate inquiries of any such participant.

Public comment: Comments on or requests for additional copies of the February 1, 1989 Proposed Determination should be submitted to the EPA Region I's designated Record Clerk, Virginia Laszewski, U.S. EPA, JFK Federal Building, WWP–1900, Boston, MA 02203–2211 (617 565–4421).

EPA seeks comments concerning the issues enumerated in the Proposed Determination. A summary of these issues is repeated under the Solicitation of Comments at the end of this document. Written comments may be submitted prior to the hearing, and both oral and written comments may be presented at the hearing. All written statements and information offered in evidence at the hearing will constitute part of the hearing file which will become part of the administrative record. Copies of all comments, as well as the administrative record, will be available for public inspection during normal working hours (9:00 a.m. to 5:00 p.m.) at the EPA Region I office.

Supplementary information on the proposed determination: The February 1, 1989 public notice entitled "Proposed Determination to Prohibit the Use of Big River, Mishnock River, their Tributaries and Adjacent Wetlands as Disposal Sites; Kent County, Rhode Island" explained the 404(c) process, provided a description of the subject rivers and wetland sites, reviewed the proceedings to date on the subject action, discussed the basis for the proposed determination, and solicited comments.

The Regional Administrator proposes to recommend that the discharge of dredged or fill material into Big River, Mishnock River, and their tributaries and adjacent wetlands be prohibited for the purpose of constructing the proposed Big River reservoir and ancillary facilities. Based on current information, the Regional Administrator has reason to believe that the adverse impacts of the Big River reservoir would likely be unacceptable. Moreover, these impacts may be partly or entirely unnecessary or avoidable.

This proposed determination is based primarily on the adverse impacts to wildlife and fisheries. The project would cause or contribute to significant degradation of waters of the United States and violate the Section 404(b)(1) guidelines. It would directly destroy approximately 550 acres of wetlands and has the potential to degrade an additional 500–600 acres of wetlands through groundwater starvation and reduced downstream river flows. In addition to these impacts, EPA is concerned about the lack of basic information about future water supply needs and the absence of a rigorous analysis of water supply alternatives. In light of existing information, EPA believes that there are likely to be feasible and less environmentally damaging alternatives to building the Big River reservoir.

Solicitation of comments: EPA solicits comments on all issues discussed in this and the February 1, 1989 public notice. In particular, we request information on the likely adverse impacts to wildlife and other functional values of the rivers, streams, and wetlands at the Big River site and at Mishnock Swamp. We also seek information pertaining to flora, fauna and hydrology of the Big River site, Mishnock Swamp, and adjacent lands. All studies, knowledge of studies, or informal observations is of importance for this notice. Information on species or communities of regional and/or statewide importance would be especially useful.

While the significant loss of wildlife habitat serves as EPA's main basis for this proposed 404(c) determination, EPA Region I has additional concerns with the proposed project including water quality impacts, fisheries, alternatives, project need and mitigation. In particular, EPA solicits comments on the following aspects of the project:

(1) The potential for violations of State water quality standards to occur, especially in the Pawtuxet River, the Flat River Reservoir and Narragansett Bay;

(2) Information about fisheries at the Big River site, and the impacts to fisheries if the reservoir is built. Also the likelihood of maintaining cold water fisheries at the site if the Big River reservoir were built;

(3) The potential for wetland losses, and their associated values and functions, along the South Branch of the Pawtuxet and in Mishnock Lake, Swamp and River if the dam were built and operated as proposed;

(4) Information about recreational use of the area;

(5) The need for additional drinking water and the current data base for making projections of need and alternatives, as well as what new information must be gathered to make reasonably accurate projections on how much water can be saved or produced by other alternatives;

(6) Information on the availability of less environmentally damaging practicable alternatives to satisfy the basic project purpose—drinking water supply—taking into account cost, technology, and logistics;

(7) In the absence of the need for additional water supply, information about environmentally acceptable alternatives for the secondary purposes of flood control and recreation.

(8) Information on the potential for mitigation to replace the functions and values of the 500–1100 acres at risk at the Big River site.

As explained in the public notice for the Proposed Determination, the record will remain open for comments until July 31, 1989. All comments will be fully considered in reaching a decision to either withdraw the proposed determination or forward to EPA Headquarters a recommended determination to prohibit or restrict the use of Big River, its tributaries, and adjacent wetlands as a disposal site for construction of an impoundment and related structures.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Kern, EPA Water Quality Branch, JFK Federal Building, WWP–

1900, Boston, MA 02203–2211. (617) 565–4421.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 89–10473 Filed 5–1–89; 8:45 am]

BILLING CODE 6560–50–M

[OW–FRL–3565–3]

State Water Quality Standards; Annual Listing of EPA Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice contains a list of the States which have revised their water quality standards, dates of adoption by the State and dates of approval by EPA for the period of October 1987 through September 1988. This notice is published pursuant to a requirement of the Water Quality Standards Regulation (40 CFR 131.21).

FOR FURTHER INFORMATION CONTACT:

EPA Region 1—Eric Hall, WQS Coordinator, EPA Region 1, Water Division, JFK Federal Building, Boston, MA 02203, 617–565–3533

EPA Region 2—Rick Balla, WQS Coordinator, EPA Region 2, Water Division, 26 Federal Plaza, New York, NY 10278, 212–264–1559

EPA Region 3—Bob Koroncai, WQS Coordinator, EPA Region 3, Water Division, 841 Chestnut Street, Philadelphia, PA 19106, 215–597–0133

EPA Region 4—Phil Vorsatz, WQS Coordinator, EPA Region 4, Water Division, 345 Courtland Street, Atlanta, GA 30365, 404–347–2126

EPA Region 5—Jim Luey, WQS Coordinator, EPA Region 5 (TUD–8), Water Division, 230 Dearborn Street, Chicago, IL 60604, 312–886–0132

EPA Region 6—Bob Vickery, WQS Coordinator, EPA Region 6, 1445 Ross Avenue, Allied Bank Tower, Dallas, TX 75202–2733, 214–665–7145

EPA Region 7—Bob Steiert, WQS Coordinator, EPA Region 7, Compliance Branch, 726 Minnesota Avenue, Kansas City, KS 66101, 913–236–2817

EPA Region 8—Bill Wuerthele, WQS Coordinator, EPA Region 8 (AWM–SP), Water Division, 999 18th Street, Suite 500, Denver, CO 80202–2405, 303–293–1586

EPA Region 9—Phil Woods, WQS Coordinator, EPA Region 9 (W–3), Water Division, 215 Fremont Street, San Francisco, CA 94105, 415–974–0832

EPA Region 10—Fletcher Shives, WQS Coordinator, EPA Region 10 (WD–139), Water Division, 1200 Sixth Avenue, Seattle, WA 98101, 206–442–8293.

SUPPLEMENTARY INFORMATION: This Notice lists State water quality standards review/revisions, approved by EPA, for the period of October 1987 through September 1988. The most recent previous list of reviews and revisions of state water quality standards was published in the Federal Register on February 12, 1988 (53 FR 4209). Today's Notice identifies the State regulatory documentation containing the state water quality standards and dates of state adoption and EPA approval. Not included in this Notice are: (1) The text of the water quality standards, or (2) any conditions (including disapprovals) that might have been attached to the approvals.

The text of a State's standards and copies of the approval letters can be obtained from the State's pollution control agency or the appropriate EPA Regional Office (see above). Proprietary publications such as those of the Bureau of National Affairs also contain the text of State standards.

Date: April 21, 1989.

Rebecca Hanmer,

Acting Assistant Administrator for Water.

Alabama—EPA Region 4

Water quality standards for the State of Alabama are contained in "Alabama Department of Environmental Management, Water Division—Water Quality Program, Chapter 335–6–10, Water Quality Criteria, and Chapter 335–6–11, Water Use Classifications for Interstate and Intrastate Waters," as amended.

Revisions to use classifications for selected waterbodies.

Adopted or amended by the State: July 20, 1988

EPA action: approved on January 31, 1989

Alaska—EPA Region 10

Water quality standards for the State of Alaska are contained in "Alaska Administrative Code, Title 18, Environmental Conservation, Chapter 70, Water Quality Standards" as amended.

Amendments to the Water Quality Standards (18 AAC 70) related to mixing zones.

Adopted or amended by the State: September 15, 1988

EPA action: approved on November 7, 1988

Arkansas—EPA Region 6

State Water Quality Standards for the surface waters of the State of Arkansas are contained in "Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas, Department of Pollution Control and Ecology" as amended.

Triennial review of water quality standards with revisions including a change to ecoregion-based standards, changes in the narrative standard for toxic substances, change in the antidegradation policy, addition of numeric criteria for toxic substances, changes in use designations for certain segments based on use attainability analyses, and addition of standards for lakes.

Adopted or amended by the State: January 22, 1988

EPA action: approved on May 6, 1988

California—EPA Region 9

Water quality Standards enabling authority for the State of California are covered by the California Water Code, Division 7—Water Quality; enacted by California Statutes of 1969, Chapter 482, as amended. Water Quality Standards are included in various documents adopted by the State Water Resources Control Board and the nine Regional Boards.

Amendments of the Water Quality Control Plan for the South Lahontan Basin concerning Pine Creek, a Tributary to the Owens River—adopted by the State Water Resources Control Board in Resolution 87–70.

Adopted or amended by the State: July 16, 1987

EPA action: approved on October 23, 1987

Revisions to the Water Quality Control Plan for the Ocean Waters of California—adopted by the State Water Resources Control Board in Resolution 88–111.

Adopted or amended by the State: September 22, 1988

EPA action: approved on December 19, 1988

Revisions to the Water Quality Control Plan for the Central Coastal Basin—adopted by the State Water Resources Control Board by Resolution 87–36.

Adopted or amended by the State: April 16, 1987

EPA action: approved on June 27, 1988

Revisions to the Water Quality Control Plan for the San Diego Basin—adopted by the State Water Resources Control Board in Resolution 86–14.

Adopted or amended by the State: February 20, 1986

EPA action: approved on October 19, 1988

Revisions to the Central Valley Water Quality Control Plans—adopted by the Central Valley Regional Water Quality Control Board Resolution 88–026.

Adopted or amended by the State: January 29, 1988

EPA action: approved on July 18, 1988

Revisions to the Water Quality Control Plan, San Francisco Bay Basin—adopted by the State Water Resources Control Board Resolution 87–82.

Adopted or amended by the State: August 20, 1987

EPA action: approved on December 24, 1987

Adopted or amended by the State: September 17, 1987

EPA action: approved on December 24, 1987

Colorado—EPA Region 8

State water quality standards for the surface waters of Colorado are contained in: "Code of Colorado Regulations, Title 5—Department of Health, Chapter 1002—Water Quality Control Commission, Article 8—Water Quality Standards and Stream Classificaitons," as amended.

State water quality standards for the Arkansas River Basin in Colorado are contained in the document entitled: "Classifications and Numeric Standards for Arkansas River Basin 3.2.0 (5 CCR 1002–8)," as amended.

Revision provided for stream re-segmentation and adoption of a new total dissolved solids (TDS) standard for Horse Creek, Segment 3, of the Lower Arkansas Basin.

Adopted or amended by the State: January 22, 1988

EPA action: approved on June 1, 1988

State water quality standards for the South Platte River Basin, Laramie River Basin, Republican River Basin, and Smoky Hill River Basin in Colorado are contained in the document entitled: "Classifications and Numeric Standards for the South Platte River Basin, Laramie River Basin, Republican River Basin, and Smoky Hill River Basin 3.8.0 (5 CR 1002–8)," as amended.

Triennial review providing for revisions to standards for several segments throughout the South Platte Basin.

Adopted or amended by the State: May 2, 1988

EPA action: pending

Statewide water quality standards for Colorado are contained in a document entitled: "Basic Standards and Methodologies 3.1.0 (5 CCR 1002–8)," as amended.

Triennial review providing for amendments to the State antidegradation standard and development of an implementation procedure for the antidegradation policy.

Adopted or amended by the State: June 6, 1988

EPA action: partial disapproval September 27, 1988

State water quality standards for the Upper Colorado River Basin in Colorado are contained in the document entitled: "Classifications and Numeric Standards for the Upper Colorado River Basin 3.3.0 (5 CCR 1002–8)," as amended.

Revision provided for re-segmenting a portion of Segment 13 and removing a designated, but not existing, water supply use.

Adopted or amended by the State: July 6, 1988

EPA action: pending

Statewide water quality standards for Colorado are contained in the document entitled: "Basic Standards and Methodologies 3.1.0 (5 CCR 1002–8)," as amended.

Triennial review providing for miscellaneous changes to the basic statewide regulation, including changes to criteria for granting temporary modifications, new language on use attainability analyses, addition of criteria for metals based on hardness-dependent equations, addition of frequency and duration provisions, and change in the description of aquatic life uses.

Adopted or amended by the State: August 1, 1988

EPA action: pending

Florida—EPA Region 4

Water quality standards for the State of Florida are contained in "Title 17—Department of Environmental Regulation, Chapter 17–3—Water Quality Standards," as amended.

Triennial review including revision of general criteria for specific conductance; revisions of criteria for dissolved oxygen, oil and grease, phenolic compounds, and specific conductance for Navigation, Utility and Industrial use classification; and revisions to mixing zone criteria.

Adopted or amended by the State: April 26, 1987

EPA action: approved portions of the water quality standards on September 24, 1987. (Note: EPA disapproved: (1) The State's antidegradation policy; (2) the Navigation, Utility and Industrial use classificaiton for the Fenholloway River; and (3) the definition of chronic toxicity in water quality standards.)

Idaho—EPA Region 10

State water quality standards for the surface waters of Idaho are contained in: "Idaho Department of Health and Welfare, Rules and Regulations, Division of Environment, Title 1, Chapter 2, Water Quality Standards and Wastewater Treatment Requirements," as amended.

Revisions to Water Quality Standards and Wastewater Treatment Requirements for ammonia (IDAPA 16.01.2250).

Adopted or amended by the State: February 11, 1987

EPA action: approved on March 9, 1988

Missouri—EPA Region 7

Water quality standards for the State of Missouri contained in: "Rules of Department of Natural Resources, Division 20—Clean Water Commission: 1 CSR 20–7.031 Missouri Water Quality Standards" as amended.

Revisions include changes to the ammonia criteria, creation of a new class of outstanding State resource waters, and the addition of numeric toxics criteria for the protection of aquatic life and human health.

Adopted or amended by the State: November 1987

EPA action: approved on March 14, 1988

Adopted or amended by the State: December 12, 1987

EPA action: approved on March 14, 1988

Montana—EPA Region 8

State water quality standards and the antidegradation standard for the surface waters of the State of Montana are contained in the documents entitled: "Montana Water Quality Standards (ARM 16.20.601 et seq.)," and "Montana Nondegradation of Water Quality (ARM 16.20.701 et seq.)."

Triennial review providing for miscellaneous changes, including creation of a new use classification category, and adoption of EPA Gold Book values for toxicants.

Adopted or amended by the State in two separate actions: May 20, 1988 and September 23, 1988

EPA action: pending

North Carolina—EPA Region 4

Water quality standards for the State of North Carolina are contained in: "North Carolina Administrative Code, Title 15, Chapter 2, Subchapter 2B; section .0100—Procedures for Assignment of Water Quality Standards, and section .0200—Classifications and Water Quality Standards Applicable to Surface Waters of North Carolina," as amended.

Revisions to use classifications for selected waterbodies.

Adopted by the State: July 9, 1987
EPA action: approved on December 29, 1987

Revisions to use classifications for selected waterbodies.

Adopted by the State: February 12, 1987
EPA action: approved on February 9, 1988

Revisions to use classifications for selected waterbodies.

Adopted by the State: April 9, 1987
EPA action: approved on February 9, 1988

Revisions to use classifications for selected waterbodies.

Adopted by the State: May 14, 1987
EPA action: approved on February 9, 1988

Revisions to use classifications for selected waterbodies.

Adopted by the State: December 10, 1987
EPA action: approved on June 30, 1988

Revisions to use classifications for selected waterbodies.

Adopted by the State: January 28, 1988
EPA action: approved on June 30, 1988

Revisions to use classifications for selected waterbodies.

Adopted by the State: March 10, 1988
EPA action: approved on June 30, 1988

Variance to the instream color criteria for the Pigeon River.

Adopted by the State: July 13, 1988
EPA action: approved on August 11, 1988

Nebraska—EPA Region 7

State water quality standards for the surface waters of the State of Nebraska are contained in: "Nebraska Department of Environmental Control Regulations, Title 117—Nebraska Water Quality Standards for Surface Waters of the State," as amended.

Adopted or amended by the State: August 29, 1988
EPA action: pending

Nevada—EPA Region 9

Water quality standards for the State of Nevada are contained in: "Nevada Administrative Code, Chapter 445—Water Pollution Control," as amended.

Amendments to water quality standards for Las Vegas Wash and Lake Mead.

Adopted or amended by the State: September 10, 1987
EPA action: approved on September 30, 1988

New Jersey—EPA Region 2

State water quality standards for the surface waters of the State of New Jersey are contained in: "Surface Water Quality Standards N.J.A.C. 7:9–4. et. seq. as amended".

An amendment to temporarily suspend the Surface Water Quality Criteria for bacterial quality as they relate to the Mainstem Delaware River Zones 2, 3, 4 and tidal tributaries (from their mouth to a distance one-half mile upstream) entering this portion of the Mainstem Delaware River.

Adopted or amended by the State: July 13, 1987
EPA action: approved on February 29, 1988

New Mexico—EPA Region 6

Water quality standards for the State of New Mexico are contained in: "Water Quality Standards for Interstate and Intrastate Streams of New Mexico, New Mexico Water Quality Control Commission" as amended.

Triennial reiew revisions include change to the applicability statement for general standards, change in the narrative standards for toxic substances, classification of streams, change in primary contact use designations, and addition of numeric criteria for un-ionized ammonia and total residual chlorine.

Adopted or amended by the State: March 8, 1988
EPA action: approved on May 31, 1988

New York—EPA Region 2

Water quality standards for the State of New York are those contained in the "New York State Official Compilation of Codes, Rules and Regulations, Title 6, Chapter X—Division of Water Resources," as amended. "Water Quality standards—Surface Water and Groundwater Classifications and Standards" are contained in Parts 700–705. "Classes and Standards of Quality and Purity Assigned to Fresh Surface and Tidal Salt Waters" are contained in Parts 800–941.

Rules changes include upgrading a stretch of the Hudson River and 122 segments in the Housatonic River Basin.

Adopted or amended by the State: February 25, 1987
EPA action: approved on September 30, 1987

Ohio—EPA Region 5

State water quality standards for the surface waters of the State of Ohio are contained in the document entitled: "Ohio Administrative Code, Title 3745, OEPA, Chapter 1—Water Quality Standards" as amended.

Revisions of the standards governing stream use designations and water quality standard variances for selected streams in the Maumee River, Southeast Ohio Tributaries and the Muskingum River Basins.

Adopted or amended by the State: August 31, 1988
EPA action: approved on September 20, 1988

Oklahoma—EPA Region 6

Water quality standards for the State of Oklahoma are contained in: "Oklahoma Water Resources Board, Water Quality Division, Water Quality Standards" as amended.

Revisions include a total residual chlorine standard, certain site specific criteria, and beneficial use changes.

Adopted or amended by the State: February 10, 1987
EPA action: approved on December 14, 1987

Adopted or amended by the State: April 14, 1987
EPA action: approved on December 14, 1987

Adopted or amended by the State: July 14, 1987
EPA action: approved on December 14, 1987

Oregon—EPA Region 10

Water quality standards for the State of Oregon are contained in: "Oregon Administrative Rules, Chapter 340—Department of Environmental Quality, Division 41—State Water Quality Management Plan; Beneficial Uses, Policies, Standards and Treatment Criteria for Oregon" as amended.

Revision of Water Quality Standards and Rules concerning the Mixing Zone Policy, Toxic Substances Standards and Total Dissolved Solids.

Adopted or amended by the State: August 28, 1987
EPA action: approved on March 9, 1988

Pennsylvania—EPA Region 3

Water quality standards for the State of Pennsylvania are contained in: "Pennsylvania Code, Title 25—Environmental Resources, Chapter 93—Water Quality Standards" as amended.

Revisions to use designations for four stream segments.

Adopted or amended by the State: April 4, 1981
EPA action: approved on February 18, 1988

Revisions to use designations for four stream segments.

Adopted or amended by the State: September 3, 1983

EPA action: approved on February 18, 1988

Revision to use designation for one stream segment.

Adopted or amended by the State: September 10, 1983

EPA action: approved on February 18, 1988

Revision to use designations for six stream segments.

Adopted or amended by the State: May 4, 1985

EPA action: approved on February 18, 1988

Temporary (October 1, 1987 to April 30, 1988) suspension of the fecal coliform bacterial standard in tidal portions of the Delaware River.

Adopted or amended by the State: July 21, 1987

EPA action: approved on November 13, 1987

Revisons to use designations for five stream segments.

Adopted or amended by the State: September 5, 1987

EPA action: approved on February 18, 1988

Puerto Rico—EPA Region 2

Water quality standards for Puerto Rico are contained in: "Puerto Rico Water Quality Standards Regulation" as amended.

Amendments to Article 1, Definitions, and Article 5, Mixing zones, by Puerto Rico Environmental Quality Board resolution R-87-36-3.

Adopted or amended by the State: November 5, 1987

EPA action: approved on February 3, 1988

Texas—EPA Region 6

Water quality standards for the State of Texas are contained in: "Texas Administrative Code, Title 31 Natural Resources and Conservation, Chapter 307—Supplemental Surface Water Quality Standards and Chapter 333—Water Quality Management, sections 11-21, Surface Water Quality Standards" as amended.

Triennial review revisions include addition of numeric criteria to protect aquatic life, and incorporation of implementation procedures for antidegradation, toxic pollutants and variances.

Adopted or amended by the State: April 7, 1988

EPA action: approved on June 29, 1988

Utah—EPA Region 8

State water quality standards for the surface waters of the State of Utah are contained in the document entitled: "Part II of the Utah Wastewater Disposal Regulations, Standards of Quality for Waters of the State."

Triennial review providing for miscellaneous changes, including adoption of criteria for toxic pollutants, revisions to criteria for total residual chlorine and dissolved oxygen, revision to the mixing zone policy, designation of use classifications and amendments to the antidegradation standard.

Adopted or amended by the State: April 21, 1988; July 13, 1988 submittal to EPA incomplete.

EPA action: suspended pending completion of the Utah submittal

Virginia—EPA Region 3

Water quality standards for the State of Virginia are adopted pursuant to section 62.1-14.15(3) of the Code of Virginia (1950), as amended.

Revisions to eight chemical criteria.

Adopted or amended by the State: December 11, 1986

EPA action: approved on November 30, 1987

Triennial review of water quality standards.

Adopted or amended by the State: September 29, 1987

EPA action: approved in part April 21, 1988.

[FR Doc. 89-10472 Filed 5-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Metropolitan Federal Savings and Loan Association, Denville, NJ; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Metropolitan Federal Savings and Loan Assocaition, Denville, New Jersey on April 27, 1989.

Dated: April 27, 1989.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 89-10483 Filed 5-1-89; 8:45 am]

BILLING CODE 6720-01-M

Seabank Savings, FSB, Myrtle Beach, SC; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2)(1982), as amended, the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for SeaBank Savings, FSB, Myrtle Beach, South Carolina on April 27, 1989.

Dated: April 27, 1989.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 89-10484 Filed 5-1-89; 8:45 am]

BILLING CODE 6720-01-M

Southwest Savings and Loan Association; Los Angeles, CA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Southwest Savings and Loan Association, Los Angeles, California on April 27, 1989.

Dated: April 27, 1989.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 89-10485 Filed 5-1-89; 8:45 am]

BILLING CODE 6720-01-M

Westco Savings Bank, FSB; Wilmington, CA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2)(1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Westco Savings Bank, FSB, Wilmington, California, on April 27, 1989.

Dated: April 27, 1989.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 89-10486 Filed 5-1-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F-0111]

Rhone-Poulenc, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a food additive petition has been filed by Rhone-Poulenc, Inc., proposing that the food additive regulations be amended to provide for the safe use of alkyl (C_{14}–C_{30}) benzene as a component of adhesives for articles intended to contact food.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4140) has been filed by Rhone-Poulenc, Inc., 1669 Corporate Rd. West, Lakewood, NJ 08071, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of alkyl (C_{14}–C_{30}) benzene as a component of adhesives for articles intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 24, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety, and Applied Nutrition.

[FR Doc. 89–10461 Filed 5–1–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89F-0107]

United Catalysts, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that United Catalysts, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of bentonite, modified with benzyl (hydrogenated tallow alkyl) dimethyl ammonium chloride, as a rheological modifier in resinous and polymeric coatings complying with 21 CFR 175.300, for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4112) has been filed by United Catalysts, Inc., P.O. Box 32370, Louisville, KY 40232, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of bentonite, modified with benzyl (hydrogenated tallow alkyl) dimethyl ammonium chloride, as a rheological modifier in resinous and polymeric coatings for use in contact with food.

The potential environment impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 24, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–10462 Filed 5–1–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89N-0146]

Drug Export; M.V.C. 9+4 (Pedriatric)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that LyphoMed, Inc., has filed an application requesting approval for the export of the human drug M.V.C. 9+4 (Pedriatric) to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that LyphoMed, Inc., 2045 North Cornell Ave., Melrose Park, IL 60160, has filed an application requesting approval for the export of the drug M.V.C. 9+4 (Pedriatric) to Canada. This product is used to intravenously treat multiple vitamin deficiencies, extensive burns, fractures, severe infectious diseases, and comatose states, which may provoke a stress situation with profound alterations in the body's metabolic demands and consequent tissue depletion of nutrients. The application was received and filed in the Center for Drug Evaluation and Research on April 17, 1989, which shall be considered the filing date for the purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 12, 1989,

and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: April 21, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-10463 Filed 5-1-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0145]

Drug Export; Acetylcholine Chloride for Ophthalmic Solution, USP 20 Mg

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Steris Laboratories, Inc., has filed an application requesting approval for the export of the human drug Acetylcholine Chloride for Ophthalmic Solution, USP 20 mg to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)[(3)[B] of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AR 85043-4705, has filed an application requesting approval for the export of the drug Acetylcholine Chloride for Ophthalmic Solution, USP 20 mg, to Canada. This product is to be used to obtain complete miosis of the iris in seconds after delivery of the lens in cataract surgery, in penetrating keratoplasty, iridectomy and other anterior segment surgery where rapid, complete miosis may be required. The application was received and filed in the Center for Drug Evaluation and Research on April 11, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 12, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: April 21, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-10464 Filed 5-1-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Health Resources and Services Administration; Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending June 30, 1989

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending June 30, 1989, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 12⅜ percent. Using the regulatory formula (45 CFR 126.13(a) (2) and (3)) in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (8.87 percent), and rounding the result (12.37 percent) upward to the nearest ⅛ percent (12⅜ percent). However, the regulatory formula also provides that the annual rate of the variable interst rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending June 30, 1989, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 10 percent for the quarter ending September 30, 1988; 10¾ percent for the quarter ending December 31, 1988; and 11½ percent for the quarter ending March 31, 1939.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 12⅜ percent. Using the regulatory formula (42 CFR 60.13(a)(3)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (8.87 percent); adding 3.50 percent (12.37 percent); and rounding that figure to the next higher one-eighth of 1 percent (12⅜ percent).

3. For fixed rate loans executed during the period of April 1, 1989 through June 30, 1989, and for variable rate loans executed on or after October 22, 1985,

the interest rate is 11⅞ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)(2)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (8.87 percent); adding 3.0 percent (11.87 percent) and rounding that figure to the next higher one-eighth of 1 percent (11⅞ percent).

Dated: April 26, 1989.

John H. Kelso,

Acting Administrator.

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

[FR Doc. 89–10459 Filed 5–1–89; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of proposed contractual actions pending through June 1989.

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the **Federal Register** dated December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of water for irrigation or other uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of repayment and water service contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary of the Interior or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** dated February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during April, May, or June of 1989. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer, and other information pertaining to a specific contract proposal, may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P–SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(BCP) Boulder Canyon Project

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724, telephone (208) 334–1161.

1. Cascade Reservoir water users, Boise Project, Idaho: Repayment contracts for irrigation and M&I; 29,221 acre-feet of stored water in Cascade Reservoir.

2. Brewster Flat ID, Chief Joseph Dam Project, Washington: Amendatory repayment contract; land reclassification of approximately 360 acres to irrigable; repayment obligation to increase accordingly.

3. Individual irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon, and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

4. Rogue River Basin water users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum, terms up to 40 years.

5. Willamette Basin water users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum, terms up to 40 years.

6. IDs and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. Sixty Palisades Reservoir Spaceholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

8. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

9. Three IDs, Flathead Indian Irrigation Project: Repayment of costs associated with rehabilitation of irrigation facilities.

10. Baker Valley ID, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

11. Crooked River Project, Oregon: Irrigation repayment or water service contracts with several individuals and with North Unit ID for a total of up to 25,000 acre-feet of storage space in Prineville Reservoir.

12. Various Projects, Pacific Northwest Region: R&B contracts for replacement of needle valves at storage dams.

13. Palisades Water Users, Inc., Minidoka-Palisades Project, Idaho: Repayment contract for an additional 500 acre-feet of storage in Palisades Reservoir.

14. Willow Creek Project, Oregon: Repayment or water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

15. Roza ID, Yakima Project, Washington: Proposed supplementary deferment contract. Defer 1 year (2 installments) of construction payments because of cost incurred by the district to obtain additional water supplies in anticipation of drought.

16. Vale Oregon ID, Vale Project, Oregon: Supplementary deferment contract to defer the 1988 construction installment under authority of the Act of September 21, 1959. The district has experienced a significant reduction in water supply for the 1988 season.

17. Five Project Spaceholders, Minidoka-Palisades Project, Idaho-Wyoming: Contract amendments to provide for rental of water to other parties.

18. Bridgeport ID, Chief Joseph Project, Washington: Interim and long-term Warren Act contracts for the use of an irrigation outlet in Chief Joseph Dam.

19. Five Irrigation Districts, Arrowrock Division, Boise Project, Idaho: Repayment contracts for Safety-of-Dams repair to Deer Flat Dam.

Mid-Pacific Region

Bureau of Reclamation (Federal Office Building) 2800 Cottage Way, Sacramento, California 95825, telephone (916) 978–5030.

1. Tuolumne Regional Water District, CVP, California: Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

2. Calaveras County Water District, CVP, California: Water service contract; 2,000 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

3. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts for use of project facilities for terms up to 1 year; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

Note: Copies of the standard form of temporary water service contract for the various types of service are available, upon written request, from the Regional Director at the address shown above.

4. Friant Unit Contractors, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Friant-kern Canal whose contracts expire 1989–1995. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

5. San Luis Water District, CVP, California: Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contracts, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the Coordinated Operation Agreement.

8. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

9. County of Tulare, CVP, California: Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

10. Shasta Dam Area Public Utilities District, CVP, California: Renewal of M&I water supply contract. Less than 6,000 acre-feet.

11. U.S. Fish and Wildlife Service, CVP, California: Long-term contract for water supply for Federal refuge in Grasslands area of California.

12. City of Redding, CVP, California: Amendatory M&I water supply contract.

13. City of Dos Palos, CVP, California: Contract for the use of surplus capacity in the San Luis Canal. The contract will allow the exchange of water with Central California ID and transportation to a new point of delivery. The result will be a significant improvement in quality of water made available to the city's water users.

14. North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, Kern River Project, California: Amendatory contract to provide storage space for M&I water.

15. Contra Costa Water District, CVP, California: Amendatory water service contract to add an additional point of delivery to accommodate the district's proposed Los Vaqueros Project. Amendment will also conform contract to current water ratesetting policies.

16. San Juan Suburban Water District, CVP, California: Amend Contract No. 14–06–200–152A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99–546.

17. Centerville Community Services District, CVP, California: Water service contract for up to 1,560 acre-feet of M&I water annually.

18. Shasta County Water Agency, CVP, California: Amendatory water service contract to provide for reduction in annual entitlement.

19. Kern County Water Agency, CVP, California: Temporary agricultural water supplies of up to 100,000 acre-feet for 1 year.

20. California Department of Corrections, CVP, California: Water service for up to 1,000 acre-feet of water annually to serve the Sierra Conservation Center (a State prison) near Jamestown, California.

21. CVP, California: Amendatory contracts to include the provision of the Act of July 2, 1956 (70 Stat. 438) in existing water service contracts.

22. Beneficiaries of Link River Dam, Klamath Project, California/Oregon: Contract to provide for repayment of reimbursable costs associated with Safety of Dam expenditures.

Lower Colorado Region

Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, Nevada 89005, telephone (702) 293–8536.

1. Amendment to Contract No. 176r–696 between the Bureau of Reclamation and the Department of the Army to increase the maximum amount of water delivered to the Yuma Proving Grounds from 55 acre-feet to 975 acre-feet, pursuant to the recommendation of the Arizona Department of Water Resources.

2. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River, BCP, Arizona: Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community, CAP, Arizona: Water service contract for delivery of up to 173,100 acre-feet per year.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts for repayment of Federal expenditures for construction of distribution systems.

8. State of Arizona, BCP: Contract for a yet undetermined amount of Colorado River water for M&I use on State-owned land.

9. Contract with the State of Arizona, BCP: For a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

10. Contract with four individual holders of miscellaneous present perfected rights to Colorado River water totalling 4.5 acre-feet, pursuant to the January 9, 1979, Supplemental Decree of the United States Supreme Court in *Arizona* v. *California* (439 U.S. 419).

11. Contracts for delivery of surplus water from the Colorado River, when available, with Emilio Soto and Sons, for 1,636 acre-feet per year; Kennedy Livestock, for 480 acre-feet per year.

12. Imperial ID and/or the Coachella Valley Water District, BCP, California: Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal for an equivalent amount of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

13. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California for consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal.

14. Golden Shores Water Conservation District, BCP, Arizona: M&I water service for lands within the district and adjacent areas for delivery of up to 2,000 acre-feet of Colorado River water per year pursuant to the recommendation of the Arizona Department of Water Resources.

15. Hutchison Present Perfected Rights contract amendment to reflect the transfer of part of the right to Winterhaven, California, Supreme Court Decree in *Arizona* v. *California* and BCP.

16. Winterhaven Present Perfected Rights contract for a portion of Hutchison Present Perfected Rights transfer to Winterhaven, Supreme Court Decree in *Arizona* v. *California* and BCP.

17. County of San Bernardino, San Bernardino, California: Repayment contract for $28.6 million SRPA loan.

18. Wellton-Mohawk IDD and Gold Dome Mining Corporation (Corporation), Gila Project, Arizona: Contract for delivery of 6.14 acre-feet of water per year to the Corporation through Wellton-Mohawk Division facilities.

19. Ak-Chin Farms, Maricopa, Arizona: Contract for the O&M of on-reservation conveyance facilities associated with delivery of water to the southeast corner of the reservation; Ak-Chin Indian Community Water Rights Settlement Act.

20. Wellton-Mohawk IID, Gila Project, Arizona: Exchange agreement providing for a reduction in Wellton-Mohawk IDD's contractual right to consumptively use 22,000 acre-feet of Colorado River water per year, providing for discharge of the IDD's repayment obligation and exemption from the full-cost pricing and acreage limitation provisions of Federal Reclamation law; Salt River Prima-Maricopa Indian Community Water Rights Settlement Act of 1988.

21. Water delivery contracts with seven Phoenix area cities providing for the delivery of up to 27,000 acre-feet per year through the CAP; Salt River Prima-Maricopa Indian Community Water Rights Settlement Act of 1988.

22. Agreements with seven Phoenix area cities providing for the lease of the Salt River Pima-Maricopa Indian Community's CAP entitlement of 13,300 acre-feet per year to the cities; Salt River Prima-Maricopa Indian Community Water Rights Settlement Act of 1988.

23. Salt River Pima-Maricopa Indian Community, CAP, Arizona: Amendatory water delivery contract providing for extension of the contract term and authorizing the Community to lease its CAP water to the Phoenix area cities; Salt River Prima-Maricopa Indian Community Water Rights Settlement Act of 1988.

24. Salt River Pima-Maricopa Indian Community, Salt River Project, Arizona: Amendatory agreement to increase the Community's allotment to Bartlett Dam water from the Salt River Project; Salt River Prima-Maricopa Indian Community Water Rights Settlement Act of 1988.

25. Roosevelt Water Conservation District, Salt River Project, Arizona: Agreement assigning a portion of the District's CAP agricultural water to seven Phoenix area cities; Salt River Prima-Maricopa Indian Community Water Rights Settlement Act of 1988.

26. Roosevelt Water Conservation District, Salt River Project, Arizona: Agreement to extend the term of the District's water salvage contract; Salt River Prima-Maricopa Indian Water Rights Settlement Act of 1988.

Upper Colorado Region

Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, Utah 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

(b) The town of Lake City, Colorado: Blue Mesa Reservoir water service contract; 25 acre-feet per year to support present diversion rights for municipal use; contract term for 40 years from execution.

(c) Mt. Crested Butte Water and Sanitation District, Colorado: Blue Mesa Reservoir water service contract; 25 acre-feet per year to support present diversion rights for municipal use; contract term for 40 years from execution.

2. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract; 9,900 acre-feet per year for irrigation. Contract terms consistent with binding cost-sharing agreement, dated June 30, 1986.

3. San Juan Water Commission, Animas-La Plata Project, New Mexico: M&I repayment contract; 30,800 acre-feet per year. Contract terms consistent with binding cost-sharing agreement, dated June 30, 1986.

4. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 3,300 acre-feet in Phase Two. Contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement, in principle.

5. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-

feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; and 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

6. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract; 7,600 acre-feet per year for M&I use.

7. State of Colorado, Animas-La Plata Project, Colorado: Escrow Account Agreement.

8. Grand Valley Water Users Association, Orchard Mesa ID, Grand Valley Project, Colorado: Contract to continue O&M of Grand Valley powerplant.

9. Ute Mountain Ute Indian Tribe, Dolores Project, Colorado: Agreement for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

10. Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Amendatory repayment contract to reduce M&I water supply and corresponding repayment obligation.

11. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

12. Rio Grande Water Conservation District, Alamosa, Colorado: Contract for the district to be the vendor of the Closed Basin Division, San Luis Valley Project, surplus water if available.

13. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Amendatory contract to place operation, maintenance, and replacement costs on a variable basis commensurate with the availability of project water.

14. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Repayment contract for R&B of the A.V. Watkins Dike.

15. Ogden River Water Users Association, Ogden River Project, Utah: Repayment contract for R&B of portions of the Pineview Dam, Ogden Canyon Conduit, Ogden-Brigham Canal and South Ogden Highline Canal.

16. South Cache Water User's Association, Hyrum Project, Utah: Repayment contract for R&B of portion of Hyrum Dam, Hyrum/Mendon Canal, Hyrum Feeder Canal, Wellsville Canal, and other miscellaneous work.

17. State of Colorado, San Luis Valley Project, Colorado: Cost-sharing contract for Closed Basin Division.

18. Miscellaneous M&I and irrigation water users in New Mexico, San Juan-Chama Project, New Mexico-Colorado: Repayment contracts for remaining project water allocated in 1975 or before. Contract amounts vary from 60 to 5,165 acre-feet.

Great Plains Region

Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone (406) 657–6413.

1. Individual irrigators, M&I, and miscellaneous water users, Great Plains Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Nokota Company, Lake Sakakawea, P–SMBP, North Dakota: Industrial water service contract; up to 16,800 acre-feet of water annually; **Federal Register** notice published May 5, 1982, Vol. 47, page 19472.

3. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

4. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

5. Oahe Unit, P–SMBP, South Dakota: Cancellation of master contract and participating and security contracts in accordance with Pub. L. 97–293 with South Dakota Board of Water and Natural Resources and Spink County and West Brown ID.

6. Owl Creek ID, Owl Creek Unit, P–SMBP, Wyoming: Amendatory water service contract to reflect reduced water supply benefits being received from Anchor Reservoir.

7. Green Mountain Reservoir, Colorado-Big Thompson Project: Water service contracts; proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

8. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Water service contract; second proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

9. Fryingpan-Arkansas Project, Colorado: East Slope Storage system consisting of Pueblo Reservoir, Twin Lakes, and Turquoise Reservoir; Contract negotiations for temporary and long-term storage and exchange contracts.

10. Cedar Bluff ID No. 6, Cedar Bluff Unit, P–SMBP, Kansas: Repayment contract; Amend the Cedar Bluff ID's contract to relieve it of all contract obligations. The use of the District's portion of the reservoir storage capacity has been sold to the State of Kansas for fish, wildlife, recreation, and other purposes.

11. Northern Colorado Water Conservancy District and the Municipal Subdistrict, Colorado-Big Thompson Project, Colorado: Contract for storage and conveyance of water for the Windy Gap Project; Amendatory contract to make administrative and technical revisions to conform the contract terms and conditions to the Windy Gap Project as actually constructed and operated.

12. Department of Natural Resources and Conservation, SRPA, Montana: Grant and loan contract for rehabilitation of Middle Creek Dam to meet required safety criteria and to increase reservoir storage capacity by 1,917 acre-feet which will be utilized for irrigation and municipal purposes.

13. Garrison Diversion Unit, P–SMBP, North Dakota: Repayment contract; Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

14. Gray Goose ID, Gray Goose Unit, P–SMBP, South Dakota: Contract negotiations to integrate Gray Goose ID into the P–SMBP as authorized pursuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99–662).

15. Hilltop ID, Hilltop Unit, P–SMBP, South Dakota: Contract negotiations to integrate Hilltop ID into the P–SMBP as authorized pursuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99–662).

16. PacificCorp. formerly Pacific Power and Light Company, Glendo Unit, P–SMBP, Wyoming: Contract negotiations for renewal of water storage contract for 2,000 acre-feet of nonproject industrial water.

17. Corn Creek ID, Glendo Unit, P–SMBP, Wyoming: Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir.

18. City of Dickinson, North Dakota: Cancellation of contract No. 9–07–60–WR052 pursuant to the Act entitled, "Making Continuing Appropriations for the Fiscal Year Ending September 30, 1988, and for Other Purposes," Pub. L. 100–202. The contract will be replaced with a new contract for the repayment

of $1,625,000 over a period of 40 years at 7.21 percent and payment of operation, maintenance, and replacement costs.

19. Lavaca-Navidad River Authority, Palmetto Bend Project, Taxas: Amendatory contract to increase repayment ceiling to cover repairs to a drop structure.

20. Hildalgo County ID No. 1, Lower Rio Grande Valley, Texas: Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

21. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

22. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

23. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Amendatory contract for revised repayment schedule to reflect credit for project lands transferred to National Park Service under Pub. L. 94–235 for the Chickasaw National Recreation Area.

24. Highland-Hanover ID, Boysen Unit, P–SMBP, Wyoming: R&B loan repayment contract; $300,000.

25. Upper Bluff ID, Boysen Unit, P–SMBP, Wyoming: R&B loan repayment; $220,000.

26. Board of Water Commissioners of the City and County of Denver, the Colorado River Water Conservation District and the Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Operating agreement for substitution of water in the proposed Muddy Creek or Rock Creek Reservoir for Green Mountain Reservoir water.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within the time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comments.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Date: April 25, 1989.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc. 89–10493 Filed 5–1–89; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 22, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 17, 1989.

Carol D. Shull,

Chief of Registration, National Register.

FLORIDA

Palm Beach County

Lake Worth City Hall, Old, 414 Lake Ave., Lake Worth, 89000432

GEORGIA

Crawford County

Crawford County Jail, GR 42, Knoxville, 89000418

MARYLAND

Charles County

Port Tobacco, Chapel Rd. S of jct. with MD 6, Port Tobacco vicinity, 89000427

NEW HAMPSHIRE

Merrimack County

Beaver Meadow Brook Archeological Site (27MR3), Address Restricted, Concord vicinity, 89000434

OHIO

Cuyahoga County

Franklin Boulevard Historic District, Franklin Blvd. from W. 52nd to W. 38th Sts., Cleveland, 89000430

Ohio City Preservation District (Boundary Increase), Roughly Franklin Blvd. NW., W. 38th St., Bridge Ave. NW., & W. 44th St., & Stone, W. 25th, Bridge Ave. NW., & W. 28th, Cleveland, 89000435

Greene County

Main Street Historic District, Roughly E. and W. Main St. from Elm to Water Sts., Spring Valley, 89000431

Lucas County

Forsythe—Puhl House, 106 E. Harrison Ave., Maumee, 89000429

Miami County

Hobart Circle Historic District (Hobart Welded Steel Houses TR), 2—9 Hobart Cir. and 11 and 23 Hobart Dr., Troy, 89000419

Hobart, E.A., House (Hobart Welded Steel Houses TR), 172 S. Ridge, Troy, 89000420

Hobart, William, Vacation House (Hobart Welded Steel Houses TR), 905 Pole at Rd., Troy vicinity, 89000421

House at 1022 West Main Street (Hobart Welded Steel Houses TR), 1022 W. Main St., Troy, 89000424

House at 121 South Ridge (Hobart Welded Steel Houses TR), 121 S. Ridge, Troy, 89000425

House at 129 South Ridge (Hobart Welded Steel Houses TR), 129 S. Ridge, Troy, 89000423

House at 145 South Ridge (Hobart Welded Steel Houses TR), 145 S. Ridge, Troy, 89000426

House at 203 Penn Road (Hobart Welded Steel Houses TR), 203 Penn Rd., Troy, 89000422

PUERTO RICO

Dorado Municipality

Residencia Don Andres Hernandez, Calle Norte 196, Dorado, 89000428

VERMONT

Franklin County

Boright, Sheldon, House, 122 River St., Richford, 89000433

[FR Doc. 89–10433 Filed 5–1–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-433 (Preliminary)]

Certain Residential Door Locks From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-433 (Preliminary) under section 733(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of certain residential door locks, provided for in subheading 8301.40.60 of the Harmonized Tariff Schedule of the United States (previously reported under item 646.9210 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV). As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 8, 1989.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207, as amended by Commission interim rules published in 53 FR 33039 (August 29, 1988), 54 FR 5220 (February 2, 1989)), and Part 201, subparts A through E (19 CFR Part 201, as amended by Commission interim rules published in 54 FR 13672, 13677 (April 5, 1989)).

EFFECTIVE DATE: April 24, 1989.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202-252-1182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on April 24, 1989, by counsel on behalf of the Ad Hoc Committee of Door Lock Manufacturers.

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation beginning at 9:30 a.m. on May 15, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202-252-1182) not later than May 11, 1989, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before May 17, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary information will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than May 22, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: April 26, 1989.

[FR Doc. 89-10633 Filed 5-1-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31357]

The Atchison, Topeka and Santa Fe Railway Co.; Trackage Rights Exemptions; Baltimore and Ohio Chicago Terminal Railroad

Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT) has agreed to grant overhead trackage rights to The Atchison, Topeka and Santa Fe Railway Company between B&OCT Valuation Station 680+00, at McCook, IL, and B&OCT Valuation Station 650+00, at Argo, IL, a distance of approximately 3,000 feet in Cook County. The trackage rights became effective on or after April 19, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction. Pleadings must be filed with the Commission and served on: Michael W. Blaszak, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: April 24, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-10387 Filed 5-1-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

National Institute of Collections

[Solicitation Number: 89J02]

Evaluation Study; Planning of New Institutions (PONI) Program

The National Institute of Corrections is soliciting applications to conduct an evaluation of the impact and effectiveness of its Planning of New Institutions (PONI) program. The program is a multi-phased targeted technical assistance effort designed to assist local government in the planning, design, construction of new or renovated jail facilities.

One cooperative agreement for up to $60,000 will be awarded. Responses to this announcement are solicited from public, private, profit, and non-profit organizations with demonstrated experience in planning and program evaluation and the necessary expertise and resources to perform the tasks necessary to complete the project and produce, in camera ready form, the final products described below. Applications must be received by May 30, 1989.

Applications must be submitted in six (6) copies to the National Institute of Corrections, 320 First Street NW., Washington, DC 20534. At least one copy of the application must bear the original signature of the applicant. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

Applications must be prepared in accordance with the procedures included in the "NIC Guidelines Manual: Instructions for Applying for Federal Assistance" and must be submitted on OMB Standard Form 424, Federal Assistance. The applications should be concisely written, typed double spaced, and referenced to the project by the number and title given above.

Applications will be reviewed by a team of staff members. Among the criteria used to evaluate the applications are:

- Responsiveness to this specific request for applications
- Clearly defined and realistic objectives.
- Appropriateness of the proposed approaches for attainment of objectives.
- Creativity in the design and format of the evaluation instrument.
- Estimated total costs as related to levels of effort.

To obtain more information prior to preparing an application contact the NIC Jail Center, 1790 30th Street, Suite 440, Boulder, Colorado 80301 (303) 939-8866.

Contact person for more information: Michael O'Toole, Chief, NIC Jails Division, Boulder, CO (303) 939-8866.

Larry Solomon,

NIC Deputy Director.

[FR Doc. 89-10426 Filed 5-1-89; 8:45 am]

BILLING CODE 4410-36-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-89-53-C]

Consolidation Coal Co.; 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 75.1403-5(g) (belt conveyors) to its Ireland Mine (I.D. No. 46-01438) located in Marshall 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 a clear travelway at least 24 inches wide be provided on both sides of all belt conveyors.

2. Petitioner requests a modification of the standard as it relates to the area along the continuous haulage system at the tailroller where the cables are hung from the monorail system creating a tight clearance. When the unit is extended off the low-profile belt the cable compresses together at the tailroller causing obstructed clearance for approximately 50 to 60 feet.

3. The monorail system reduces the time spent manually handling cables, thus significantly reducing the risk of injury.

4. As an alternate method, petitioner proposes that—

(a) Reflective signs would be installed inby and outby the close clearance;

(b) A crossover would be installed outby the close clearance area. A crossover attached to the tramveyor would be located inby the clearance area;

(c) Miners would not work in the area of close clearance while the continuous haulage is being used; and

(d) Start and stop controls would be properly installed and maintained so the continuous haulage system can be stopped or started before requiring miners to work on it.

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 June 1, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 25, 1989.

[FR Doc. 89-10490 Filed 5-1-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-5-M]

Gold Bond Building Products; Petition for Modification of Application of Mandatory Safety Standard

Gold Bond Building Products, Medicine Lodge Plant, P.O. Box, Drawer B, Medicine Lodge, Kansas 67104 has filed a petition to modify the application of 30 CFR 56.14106 (falling object protection) to its Sun City Mine (I.D. No. 14-00308) located in Barber County, Kansas. 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 fork-lift trucks, front-end loaders, and bulldozers be provided with falling object protective structures if used in an area where falling objects could create a hazard to the equipment operator.

2. Due to the low back ceiling, in various places in the mine where the loader has to traverse, the use of protective structures would result in a diminution of safety.

3. Even without protective structures, whenever the front-end loader is taken out of the mine the operator has to duck down to the level of the steering wheel to exit through the portal.

4. No citations have ever been issued for bad roof conditions at the mine.

5. 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 June 1, 1989. Copies of the petition are available for inspection at that address.

Date: April 25, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-10491 Filed 5-1-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-39-C]

Leeco, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Leeco, Inc., 100 Coal Drive, London, Kentucky 40741-8799 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Mine No. 62 (I.D. No. 15-16412), its Mine No. 63 (I.D. No. 15-16413), and its Mine No. 65 (I.D. No. 15-16552) all located in Perry 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 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 proposes to use air in the belt entry to ventilate active working places.

3. In suppport of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (CO) detection system in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake aircourses. The monitoring devices would be capable of giving warning of a fire for a minimum of four hours after the source of power to the belt is removed; a visual alert signal would be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal would sound at 15 ppm above ambient air. The fire alarm signal would be activated at an attended surface location where there is two-way communication. When the carbon monoxide system gives a visual or audible signal, all persons except those persons needed to extinguish the fire, would be withdrawn from the affected area. The CO system would be capable of identifying any activated sensor, monitoring electrical continuity and detecting electrical malfunctions.

4. The CO system would be visually examined at least once during each coal producing shift and tested 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.

5. If the CO system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor would continue to operate and qualified persons would patrol and monitor the belt conveyor using hand-held Co detecting devices.

6. The details for the fire detection system would be included as part of the ventilation system, methane and dust control plan.

7. 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 June 1, 1989. Copies of the petition are available for inspection at that address.

Date: April 25, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-10492 Filed 5-1-89; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Boeing Model 767 and McDonnell Douglas; Type Certificate Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special purpose operation—civil reserve air fleet aeromedical evacuation; request for comments.

SUMMARY: The FAA has received a request to establish a new special purpose operation in the restricted category for type certification of a civil reserve air fleet aeromedical evacuation ship set (CRAF AESS) configuration. The CRAF AESS would provide the necessary equipment and facilities to reconfigure Boeing Model 767 series and McDonnell Douglas MD-80 aircraft to accomplish aeromedical evacuation missions in times of emergency. Since civil reserve air fleet aeromedical evacuation is not an approved special purpose operation, the FAA is requesting public comments before making its final determination that the new special purpose operation is in the public interest and safety would not be compromised.

DATE: Comments on this notice must be received on or before July 3, 1989.

ADDRESS: Comments may be mailed or delivered to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Policy and Procedures Branch, AIR-110, 800 Independence Avenue SW., Room 335, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle C. Davis, Aerospace Engineer, Policy and Procedures Branch, AIR-110, Telephone (202) 267-9583.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should be submitted in duplicate to the address specified above. All communications received on or before the closing date specified above will be considered by the Administrator before approving the new special purpose operation.

Background

On November 8, 1988, E-Systems, under contract to the United States Air Force, applied to the FAA for type certification of its civil reserve air fleet aeromedical evacuation ship set (CRAF AESS). The CRAF AESS would provide the necessary equipment and facilities to reconfigure Boeing Model 767 series and McDonnell Douglas MD–80 commercial aircraft to accomplish aeromedical evacuations in times of emergency.

The modified aircraft would be certified in the restricted category under the provisions of § 21.25(a)(1) and (b)(7) and operated as a restricted category aircraft when the kit is installed. These aircraft would have multiple airworthiness certificates in both the standard and restricted categories. When the kit is removed in accordance with the conversion instructions, the aircraft would be returned to the standard category.

The CRAF AESS kit would be used strictly for civil reserve air fleet aeromedical evacuation operations and periodic training exercises, which would be conducted approximately on a yearly basis in peace time. In time of emergency, the CRAF AESS kit would provide the necessary equipment and facilities to reconfigure the subject commercial aircraft to carry litter patients, ambulatory patients, medical crews, flight attendants, and the support and storage facilities necessary to accomplish aeromedical evacuation missions.

The CRAF AESS would consist of three primary subsystems. The patient transport subsystem (PTS) would be designed to provide patient handling during flight operations. The PTS would include a system of stanchions to support litter patients and straps for attaching equipment and seats for ambulatory patients and crew. Several configurations would be considered with 111 litters as the maximum litter configuration.

The medical oxygen subsystem would provide therapeutic oxygen distribution to litter patients and emergency oxygen to all occupants of the aircraft cabin. This system would include liquid oxygen dewars, heat exchangers, and filling and venting provisions designed for modular installation in the forward baggage compartment. The distribution system would be routed to service all possible litter patients. Refill outlets for low-pressure, portable emergency oxyben cylinders would also be provided. The existing aircraft emergency oxygen system would be retained as the required system for compliance with the certification basis.

The aeromedical operations subsystem would include equipment necessary for aeromedical operations during flight and would consist of electrical power distribution, electrical power conversion from 400 to 60 HZ and distribution of the 60 HZ electrical power. Existing facilities would be utilized for storage of medical equipment and supplies, storage and preparation of food as well as water supply and lavatory provisions. This subsystem would also include two nurse work stations.

Once the certification program for the CRAF AESS is completed, the United States Air Force intends to extend the current CRAF aeromedical evacuation program to several airlines to utilize their aircraft and flight crews for this special purpose operation. Personnel from the airlines would also be trained to install the kits within the 12-hour installation time requirements.

Related FAR

Section 21.25, Issue of type certificate: Restricted category aircraft.

Availability of Additional Copies of Notice

Any person may obtain a copy of this notice by contacting the person under **"FOR FURTHER INFORMATION CONTACT"**

Issued in Washington, DC on April 26, 1989.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89–10450 Filed 5–1–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 26, 1989.

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: 1545–0978.
Form Number: None.
Type of Review: Revision.
Title: General IRS Customer Satisfaction Questionnaire (Short Form).
Description: The data collected will be used to get an indication of whether the IRS is providing satisfactory service to its customers, the taxpayers. This information will be used by IRS managers to determine if current programs and service are meeting taxpayers' needs. The need for further evaluation of our service and programs will be indicated by this effort.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 250,000.
Estimated Burden Hours Per Response: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 12,500 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.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–10474 Filed 5–1–89; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 83
Tuesday, May 2, 1989

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, May 8, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: .

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: April 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–10608 Filed 4–28–89; 3:38 am]

BILLING CODE 6210–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m. May 15, 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Finance Center recordkeeping and agency liaison.
2. Benefits administration.
3. Investments.
4. Participant communications.
5. Department of Labor audit program.
6. Approval of the minutes of last meeting.
7. Thrift Savings Plan activities report by the Executive Director.
8. Approval of the update of the FY 1989—FY 1990 budget document.
9. Investment policy review.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Date: April 28, 1989.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 89–10607 Filed 4–28–89; 3:21 am]

BILLING CODE 6760–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 1, 8, 15, and 22, 1989.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 1

Tuesday, May 2

10:00 a.m.—Briefing on Severe Accident Research Plan (Public Meeting)
2:00 p.m.—Briefing on Results of Maintenance Team Inspections (Public Meeting)

Wednesday, May 3

2:00 p.m.—Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)
a. Reconsideration of Seabrook Decommissioning Funding Order CLI–88–10 (Tentative)

Friday, May 5

10:00 a.m.—Briefing on Status of Second Draft of NUREG–1150 (Public Meeting)

Week of May 8 (Tentative)

Wednesday, May 10

10:00 a.m.—NPOC Briefing on the State of the Nuclear Industry (Public Meeting)
2:00 p.m.—Briefing on Status of Operator Licensing Activities in the Area of Requalification Exams (Public Meeting)
3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 15 (Tentative)

Monday, May 15

2:00 p.m.—Briefing on Interim Report on Accident Study for Plutonium Air Transport Packages (Public Meeting)

Thursday, May 18

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, May 19

10:00 a.m.—Briefing on Final Rule and Regulatory Guide for Maintenance of Nuclear Power Plants (Public Meeting)

Week of May 22 (Tentative)

Thursday, May 25

3:30—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording) (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89–10599 Filed 4–28–89; 2:12 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 18195, April 27, 1989.

STATUS: Closed/open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, April 24, 1989.

CHANGES IN THE MEETING: Additional items.

The following additional items will be considered at a closed meeting on Tuesday, May 2, 1989, at 2:30 p.m.:

Formal orders of investigation.

The following additional item will be considered at an open meeting on Wednesday, May 3, 1989, at 10:00 a.m.:

Consideration of whether to propose for public comment rule 52 under the Public Utility Holding Company Act of 1935 ("Act") in connection with a rulemaking petition submitted by the twelve registered holding companies subject to the jurisdiction of the Act. The proposed rule would allow the routine issuance and sale of securities by public-utility subsidiary companies of registered holding companies to proceed without filing an application if certain conditions are met. For further information, please contact Robert F. McCulloch at (202) 272–7699.

Commissioner Cox, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Hirsch at (202) 272–2200.

Jonathan G. Katz,

Secretary.

April 27, 1989.

[FR Doc. 89–10570 Filed 4–28–89; 12:29 pm]

BILLING CODE 8010–09–M

Corrections

Federal Register
Vol. 54, No. 83
Tuesday, May 2, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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 AGRICULTURE

Packers and Stockyards Administration

9 CFR Part 201

RIN 0590-AA04

Poultry Regulations and Policy Statements

Correction

In rule document 89-9607 beginning on page 16353 in the issue of Monday, April 24, 1989, make the following corrections:

§ 201.82 [Corrected]

1. On page 16356, in the first column, in § 201.82(b), in the second line, "agreement" should read "arrangement".

§ 201.100 [Corrected]

2. On the same page, in the third column, in § 201.100(a)(2)(ii), in the first line, "or" should read "for".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Funding Priorities for Research Activities

Correction

In notice document 89-9805 beginning on page 17896 in the issue of Tuesday, April 25, 1989, make the following correction:

On page 17908, in the table, under "Deadline for transmittal of applications", the date should read "June 9, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

Correction

In notice document 89-5911 beginning on page 10776 in the issue of Wednesday, March 15, 1989, make the following correction:

On page 10778, in the second column, after the second line, and before the table, insert footnotes (*11*)and (*12*) to read as follows:

(*11*) To reissue an exemption authorizing transportation of lithium batteries containing parallel branches of series connected cells without diodes, by motor vehicles and cargo aircraft, previously issued as an emergency exemption.

(*12*) To reissue an exemption authorizing shipment of a rocket motor with the igniter installed by motor vehicle, previously issued as an emergency exemption.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

Correction

In notice document 89-9145 beginning on page 15586 in the issue of Tuesday, April 18, 1989, make the following correction:

On page 15588, before the table, insert footnotes (*12*), (*13*), and (*14*) to read as follows:

(*12*) To authorize the addition of a specifically designed trailer van configuration (Delta II Transporter) for a shipment of rocket motor, class B explosives.

(*13*) To authorize specifically designed polyethylene containers, used to transport certain Class B poisons, to have pump and other attachments connected unless the transportation distance exceeds 500 miles.

(*14*) To authorize the addition of DOT specification 112A400W tank cars for shipment of a corrosive material.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 35a

[T.D.8248]

Imposition of Backup Withholding Due to Notification of an Incorrect Taxpayer Identification Number and the Due Diligence Exception to the Imposition of a Penalty for a Missing or an Incorrect Taxpayer Identification Number

Correction

In rule document 89-8040 beginning on page 14341 in the issue of Tuesday, April 11, 1989, make the following correction:

§ 35a.3406-1 [Corrected]

On page 14345, in the 3rd column, in § 35a.3406-1(b)(5)(i)(B), in the 17th line, "section 34D6(a)(1)(B). 1n" should read "section 3406(a)(1)(B). In".

BILLING CODE 1505-01-D

federal register

Tuesday
May 2, 1989

Part II

Environmental Protection Agency

40 CFR Parts 122 et al.

National Pollutant Discharge Elimination System Sewage Sludge Permit Regulations; State Sludge Management Program Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, and 501

[OW-FRL-3500-7]

National Pollutant Discharge Elimination System Sewage Sludge Permit Regulations; State Sludge Management Program Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 4, 1986, the Environmental Protection Agency proposed rules at 51 FR 4458 that would have required States to develop sludge management programs. The February 4, 1986, proposed rule, commonly referred to as Part 501, provided requirements for approvable State sludge management programs, for their submission, and for their review and approval by EPA. The Part 501 regulatory program was designed to ensure the environmentally sound use and disposal of sewage sludge and assure that the federal standards for sludge use and disposal promulgated under section 405(d) of the Clean Water Act and other federal statutes would be met.

On March 9, 1988, EPA reproposed the Part 501 State sludge management program rules and also proposed revisions to the National Pollutant Discharge Elimination System (NPDES) permit requirements and procedures (Parts 122, 123, and 124) to integrate sludge permitting and State program requirements into the NPDES program (53 FR 7642). EPA took this action to implement significant changes in the sludge management provisions in Section 405 of the Clean Water Act made by the Water Quality Act of 1987. Today, EPA is issuing a final rule which establishes State sludge management program requirements and procedures for non-NPDES State programs (Part 501) and revises the NPDES permit requirements and procedures (Parts 122, 123, and 124) to incorporate sludge permitting and State program requirements.

DATES: The effective date of this regulation is June 1, 1989.

In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), these regulations shall be considered issued for purposes of judicial review at 1:00 p.m. eastern time on May 16, 1989.

In order to assist EPA to correct any typographical errors, incorrect cross references, and similar technical errors, comments of a technical and nonsubstantive nature on the final regulation may be submitted on or before July 3, 1989. The effective date of these regulations will not be delayed by consideration of such comments.

ADDRESS: Comments of a technical or nonsubstantive nature should be addressed to Debora Clovis, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The record for this rulemaking, including all public comments on the proposals, will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Debora Clovis at the above address (telephone: (202) 475-7052) or Martha Kirkpatrick, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9529.

SUPPLEMENTARY INFORMATION:

I. Background
II. February 4, 1986 Proposed Rule
III. Water Quality Act of 1987
  A. New Permit Program for Sludge Management
  B. Sludge Technical Standards (40 CFR Part 503)
  C. Interim Implementation Strategy
IV. March 9, 1988 Proposed Rule
V. Discussion of Today's Final Rule and Response to Comments
  A. General: Purpose and Scope
  1. State and Federal Sludge Management Program
  2. Organization of Discussion
  B. Relationship Between Today's Final Rule and the Sludge Technical Regulations (Part 503)
  1. Description of Part 503
  2. Timing
  3. Part 503 Issues Raised in Comments
  C. Relationship to Other Programs
  D. Regulated Universe
  1. Sewage Sludge
  2. POTWs and Other Treatment Works Treating Domestic Sewage
  3. Users and Disposers of Sewage Sludge
  E. EPA's Authority under Section 405(d)(4) of the CWA
  F. Permitting Requirements (Part 122)
  1. General
  2. Specific Revisions
  G. Permitting Procedures (Part 124)
  1. General
  2. Specific Revisions
  H. State Program Requirements: General
  1. Need for Regulations and EPA Approval of State Programs
  2. Required Scope of Approved State Programs
  3. Mandatory v. Optional Programs
  4. Partial Programs
  5. Mixed Programs
  6. Small Generators
  7. Indian Tribes
I. Part 501: Non-NPDES State Programs
  1. Purpose, Scope, and General Program Requirements
  2. Development and Submission of State Programs
  3. Program Description (Section 501.12)
  4. Attorney General's Statement (Section 501.13)
  5. Memorandum of Agreement (Section 501.14)
  6. Permitting Requirements and Procedures (Section 501.15)
  7. Compliance Evaluation Program (Section 501.16)
  8. Enforcement Authority (Section 501.17)
  9. Sharing of Information Between States and EPA (Sections 501.19 & 501.20)
  10. Program Reporting to EPA (Section 501.21)
  11. Program Approval, Revision, and Withdrawal (Sections 501.31-501.34)
  J. Part 123: NPDES State Sludge Management Programs
  1. General
  2. Specific Revisions
  K. Miscellaneous
VI. Executive Order 12291
VII. Paperwork Reduction Act
VIII. Regulatory Flexibility Act

I. Background

Implementation of the Clean Water Act (CWA) has resulted in greater levels of treatment of and pollutant removal from wastewater before discharge to surface waters, and the generation of large quantities of residual sewage sludge as a by-product of wastewater treatment. Proper management of ever-growing amounts of sewage sludge is becoming increasingly important as efforts to remove pollutants from wastewater have become more effective. In the United States, the quantity of municipal sewage sludge has almost doubled since the enactment of the Clean Water Act in 1972. Municipalities currently generate over 7.7 million dry metric tons of wastewater sludge per year, or approximately 64 pounds per person per year (dry weight basis). This volume is expected to double by the year 2000.

An important means of dealing with the pressing problem of disposing of vast quantities of sewage sludge is through beneficial use and recycling projects. Sewage sludge is a valuable resource. The nutrients and other properties commonly found in sludge make it useful as a fertilizer and a soil conditioner. Sludge has been used for its beneficial qualities on agricultural lands, in forests, for landscaping projects, and to reclaim strip-mined land. EPA seeks to encourage such practices. In addition to supporting a number of long-term research and demonstration projects and the development of detailed design guidance for various land application practices, EPA has supported and

promoted pretreatment and source-control programs to improve sludge quality and such technologies as composting and lime stabilization. The Agency has also supported the development of improved dewatering systems, chemical fixation, digestion, pyrolysis and other technologies to help improve energy recovery from thermal conversion systems, methane recovery from anaerobic stabilization systems, and the recovery of various potentially marketable by-products from sludge.

At the same time, sewage sludge may present an environmental concern because of contamination by harmful pollutants. Greater focus on surface water toxics control, as well as Resource Conservation and Recovery Act (RCRA) provisions such as the ban on land disposal of certain hazardous wastes (section 3004(d)) and the exclusion of discharges into municipal sewers from RCRA requirements (section 1004(27)), may result in increased volumes of toxic and hazardous pollutants that reach publicly owned treatment works (POTWs) and consequently may adversely affect sludge quality when these pollutants are removed from the wastewater.

Proper disposal of sewage sludge is important because contaminated or improperly handled sludge can result in pollutants in the sludge re-entering the environment, and possibly contaminating a number of different media through a variety of exposure pathways. Improper sludge management could lead to significant environmental degradation of land and air. Failure to dispose of sludge properly could also have serious effects on surface and ground water and wetlands, as well as human health. For example, sewage sludge disposed on land where there is minimal depth to ground water is of concern because contaminants in the sludge may leach out and reach a potential potable water source. Concern for air quality necessitates proper controls over sludge incineration. The interrelationship among these media requires a tightly coordinated, comprehensive approach that closes environmental loopholes, helps assure that solving problems in one media will not create problems for another, and encourages the beneficial reuse of sludge.

Prior to the enactment of the Water Quality Act of 1987, the federal authorities and regulations related to the use and disposal of sewage sludge were scattered among various statutes and programs and did not provide States and municipalities with comprehensive guidelines on which to base sludge management decisions. For example, section 405 of the Clean Water Act required the development of sludge standards by December 1978, but did not specify how the standards were to be implemented. Standards developed pursuant to section 405 have been promulgated for cadmium, PCBs, and pathogens only when sludge is land-applied (40 CFR Part 257). In addition, sludge is regulated under a number of other programs, such as new source performance standards and national emissions standards for hazardous air pollutants under the Clean Air Act, requirements for solid waste landfills under Subtitle D (and Subtitle C if the sludge is hazardous) of the Resource Conservation and Recovery Act, ocean dumping requirements under the Marine Protection, Research, and Sanctuaries Act (MPRSA), and PCB controls under the Toxic Substances Control Act. These regulations often use different methodologies and approaches to controlling sludge management practices.

Concerns about the potential environmental problems created by improper sewage sludge use and disposal and the lack of a comprehensive legislative framework governing sludge management led to the establishment of an intra-Agency Sludge Task Force by EPA in early 1982 to conduct a study and make recommendations for Agency actions in the sludge management area. The Sludge Task Force, with representatives from EPA's Offices of Water, Air, and Solid Waste, approached sludge management from a multi-media perspective. The Task Force developed the Agency's "Policy on Municipal Sludge Management" (49 FR 24358, June 12, 1984). The purpose of the policy was to establish a consistent approach to sludge management across all environmental media and all management practices and to establish the appropriate roles of the federal, State and local governments in sludge management.

The "Policy on Municipal Sludge Management" established several important principles which continue to guide the Agency's approach to sludge management. It states, in part:

> The U.S. Environmental Protection Agency (EPA) will actively promote those municipal sludge management practices that provide for the beneficial use of sludge while maintaining or improving environmental quality and protecting public health. To implement this policy, EPA will continue to issue regulations that protect public health and other environmental values. The Agency will use all available authorities to ensure that States establish and maintain programs to ensure that local governments utilize sludge management techniques that are consistent with Federal and State regulations and guidelines. Local communities will remain responsible for choosing among alternative programs, for planning, constructing and operating facilities to meet their needs, and for ensuring the continuing availability of adequate and acceptable disposal or use capacity. 49 FR 24358 (June 12, 1984).

II. February 4, 1986 Proposed Rule

On February 4, 1986, EPA proposed State Sewage Sludge Management Program Regulations (51 FR 4458). These proposed rules would have required States to develop sludge management programs to assure that the use and disposal of sewage sludge complies with existing as well as planned federal sludge use and disposal standards. These regulations were proposed pursuant to recommendations of the Agency's Sludge Task Force, which concluded that the best approach for sludge management would be to require each State to prepare a program to implement the sludge standards, which would then be reviewed for sufficiency by EPA. The regulations were proposed under the legal authorities of the Clean Water Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research, and Sanctuaries Act.

Under the proposal, States would submit to EPA for review and approval a description of their existing sludge management programs with plans and schedules for improving them as necessary to meet the added requirements of the proposal. The proposal set forth minimum requirements for approvable sludge management programs and provided the procedural requirements for submitting, approving, revising and withdrawing approval of such programs. EPA postponed finalizing the Part 501 rules pending the expected enactment of amendments to the Clean Water Act.

III. Water Quality Act of 1987

A. New Permit Program for Sludge Management

Section 406 of the Water Quality Act of 1987 (WQA), which amends section 405 of the Clean Water Act, sets forth for the first time a comprehensive program for reducing the environmental risks and maximizing the beneficial use of sludge. The basis of the program to protect public health and the environment from any adverse effects from sewage sludge is the development of technical regulations for sludge use and disposal, and the implementation of

these requirements through permits. The WQA requires promulgation of sludge standards establishing acceptable levels of toxic pollutants in sewage sludge and management practices in two stages, discussed more fully below.

After the technical standards have been promulgated, the amendments direct that any permit under section 402 of the Act (NPDES permits) issued to a POTW or any other treatment works treating domestic sewage shall include the sludge technical standards, unless such requirements have been included in a permit issued under subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, MPRSA, or the Clean Air Act, or under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of section 405. Section 405(f)(1). The amendments further provide that the Administrator may issue separate permits that implement the sludge requirements to treatment works which are not subject to section 402 of the Act (NPDES) or to any of the other listed permit programs or approved State programs. Section 405(f)(2). Such permits are referred to in this preamble discussion as "sludge-only" permits.

The 1987 amendments give new direction for the regulation of sludge management activities on several fronts. First, section 405 now clearly requires that NPDES permits contain conditions implementing the sludge technical standards to be promulgated by the Agency, unless those standards have been included in a permit issued under one of the listed Federal programs or under a State program approved for administering a section 405(f) sludge permitting program. Therefore, a State which seeks EPA approval to administer a sludge permitting program may choose to regulate sludge through its NPDES program or through another permitting program (e.g., solid waste programs), as long as the permit implements the sludge technical standards promulgated under section 405. Second, the amendments establish that the requirement to include conditions implementing the sludge technical standards in permits applies to any treatment works that treats domestic sewage. This expands the universe of treatment works that are required to obtain permits from earlier draft amendments, which would have limited the permitting requirement to publicly-owned treatment works (POTWs) and treatment works that treat primarily domestic sewage. In addition, the 1987 amendments authorize the Administrator to issue permits to treatment works solely to implement the sludge technical standards even if the treatment works are not otherwise required to obtain NPDES permits. Another important change brought about by the 1987 amendments concerns the responsibility of users and disposers for complying with the technical standards for sewage sludge. Prior to the Water Quality Act, section 405(e) only required *POTWs* to use or dispose of sewage sludge in accordance with the technical standards. In the 1987 amendments to section 405(e), Congress extended this requirement to any person. The reason for this change is explained in the legislative history:

> Section 405(e) is amended to expand the applicability of the 405(d) sludge use and disposal regulations to "any person" * * * The purpose of this * * * change is to impose the regulations on those that actually dispose of the sludge, which may not be the treatment works' owner or operator." U.S. Senate Committee on Environment and Public Works, Report No. 99–50, May 14, 1985.

Section 405(e), as amended, now prohibits any person from using or disposing of sludge from a POTW or other treatment works for any use for which regulations have been established except in accordance with such regulations. This means that any person, regardless of whether or not they are required to obtain a permit, who uses or disposes of sludge by one of the practices for which technical standards have been established is required to comply with such standards.

Note: Because section 405(f) requires treatment works treating domestic sewage to obtain permits that implement the technical standards, today's rule provides a definition of "treatment works treating domestic sewage." This definition specifically excludes septic tanks and portable toilets, which arguably could be considered treatment works, from its scope. EPA has excluded septic tanks and portable toilets from the permitting requirement because Congress indicated its intent that the section 405 technical standards apply only to septage treatment and processing, not generation. S. Rep. No. 99–50 on S. 1128 at 47 (1985). It follows that if the standards apply only to treatment, and not generation, it would serve no useful purpose to require permits for the 22 million homeowners with septic tanks or for portable toilets. However, because septic tank pumpings and portable toilet pumpings are within the definition of "sewage sludge," use or disposal of these substances is regulated under 40 CFR Part 503. Disposers of septic tank and portable toilet pumpings must comply with applicable requirements of that Part.

The 1987 amendments also strengthen the provisions for enforcing against violations of section 405 or of permits implementing regulations promulgated under section 405. Congress amended section 309(c) of the CWA to provide, for the first time, criminal penalties for negligent or knowing violations of section 405 or permits implementing the requirements of section 405. The Administrator's new authority to assess administrative penalties for violations of the CWA also covers violations of section 405 and implementing regulations and permits. Section 309(g).

In addition, section 308 of the CWA, which establishes the Administrator's authority to require monitoring, reporting, and recordkeeping, and to inspect and sample to determine compliance with the CWA, has been amended to specifically reference section 405. (*See* section 308(a)(4), as amended by section 406(d) of the WQA.) Other provisions amended by section 406(d) of the WQA include section 505(f) (citizen suits for violations of regulations under section 405(d)) and section 509(b)(1)(E) (judicial review of regulations promulgated under section 405).

B. Sludge Technical Standards (40 CFR Part 503)

The key elements of the sludge permit program established by the 1987 amendments are the technical regulations for sewage sludge use and disposal. The CWA of 1977 directed EPA to develop regulations containing guidelines for the utilization and disposal of sewage sludge. The regulations were to: identify uses for sewage sludge, including disposal; identify factors to be taken into account in the use or disposal of sewage sludge; and specify concentrations of pollutants which would interfere with sewage sludge use or disposal. The 1987 amendments imposed additional requirements: EPA is to identify toxic pollutants which may be present in sewage sludge in concentrations that may adversely affect public health or the environment, and establish numerical limits and management practices for those pollutants. CWA section 405(d)(2). Where promulgation of numerical limits is infeasible, the regulations may specify a design, equipment, management practice or operational standard. CWA section 405(d)(3). The numerical limits and management practices are to protect public health and the environment from any reasonably anticipated adverse effects of the pollutants. The Act provides for promulgation of the technical standards in two phases, with periodic review by EPA to determine if

additional pollutants need to be regulated.

C. Interim Implementation Strategy

The 1987 amendments also provided for immediate regulation of sewage sludge use and disposal. Section 405(d)(4) provides that:

> Prior to the promulgation of the regulation required by (section 405(d)(2)), the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

In response to this directive, EPA has developed a "Strategy for Interim Implementation of Sludge Requirements in Permits Issued to POTWs." Under the Interim Strategy, EPA and the States have begun to include sludge requirements in permits for POTWs as they are reissued. A few minimum conditions are to be included in all POTW permits. Site-specific limits are to be developed for "priority POTWs," on a case-by-case basis using best professional judgment. To assist with developing interim limits, EPA recently published a draft "Guidance for Writing Case-by-Case Permit Requirements for Municipal Sewage Sludge." Although the focus of the Interim Strategy is on POTWs, section 405(d)(4) gives EPA authority to take appropriate action to address other sludge use or disposal problems. Until promulgation of the final Part 503 technical standards, the Interim Strategy will be the mainstay of EPA's sludge management program.

IV. March 9, 1988 Proposed Rule

EPA originally proposed Part 501, State sludge management program regulations in February 1986, prior to the February 1987 amendments to the CWA. Because they were proposed before the 1987 CWA amendments, these proposed Part 501 regulations did not require that States have a permitting program to implement the sludge standards. As discussed above, this situation changed with the Water Quality Act of 1987, which specified that EPA promulgate sludge technical standards and implement them either through an NPDES permit, or through a permit issued under one of the Federal permit programs listed under amended section 405(f)(1), or through permits issued pursuant to an approved State sludge program. To implement this and other changes to section 405 of the Clean Water Act, on March 9, 1988 EPA reproposed the February 4, 1986 State sludge management program regulations and also proposed revisions to the National Pollutant Discharge Elimination System (NPDES) regulations to integrate sludge controls into the NPDES permit program (53 FR 7642).

The purpose of the March 9, 1988 proposal was to establish a national program for sludge use and disposal under the authority of the Water Quality Act of 1987. It addressed permit requirements and procedures and State program requirements, and contained four principal sections. First, revisions to 40 CFR Part 122 were proposed to address when and how sewage sludge use and disposal would be regulated through NPDES permits. Second, revisions to 40 CFR Part 123 were proposed to include requirements for States that wish to implement an approved sludge management program as part of an NPDES program. Third, revisions to 40 CFR Part 124 were proposed to add procedural requirements for EPA-issued permits with sludge conditions. Finally, a new Part 501 was proposed to establish the requirements and submission procedures for approving State sludge management programs that are not part of a State NPDES program.

V. Discussion of Today's Final Rule and Response to Comments

A. General: Purpose and Scope

1. State and Federal Sludge Management Program

Consistent with the directions set forth in the 1987 amendments to the CWA, today's final rule establishes the legal and programmatic framework for a national program for sludge use and disposal. Today's final rule establishes the requirements and procedures for addressing sludge management in permits issued by EPA or an approved State and State program requirements and approval procedures. While most of today's rule addresses the long-term permitting program to implement technical standards for sewage sludge use and disposal called for in section 405(f) of the CWA, it also codifies various aspects of EPA's authority to take interim measures prior to the promulgation of those standards to protect public health and the environment from the adverse effects that may occur from toxic pollutants in sewage sludge.

Two major considerations directed the development of today's final rule. First was the goal of developing a program which would encourage beneficial use while ensuring the safe use and disposal of sewage sludge. Sewage sludge should be viewed as a resource rather than as a disposal problem. To accommodate this goal, EPA has sought to develop permitting requirements and procedures that are compatible with beneficial reuse projects such as agricultural land application. Second, EPA sought to encourage States to assume responsibility for implementing the sludge permitting program. This goal is consistent with the general policy direction established in section 101(b) of the Clean Water Act and reiterated by the Agency's Sludge Task Force. Many States have effective sludge management programs and today's final rule attempts to minimize disruption to these programs, while ensuring minimum consistency. Unlike the 1986 proposal, however, EPA will not rely exclusively on States for implementation of the Federal technical sludge standards. Where States do not have an approved program under Section 405, EPA will be responsible for implementing the technical standards.

In developing the final rule, EPA carefully considered public comments received on both the February 1986 and March 1988 proposals. In total, EPA received 114 comments from 87 commenters. More than half (50) of all commenters were State agencies. EPA also received comments from 24 POTWs and municipalities, six industries and trade associations, three commercial sludge handlers, three environmental groups, and one commenter whose interest in the rulemaking was not identified. EPA's response to comments will be included as part of the discussion of the final rule.

2. Organization of Discussion

The discussion of the final rule is organized to address three principal aspects of the new sewage sludge program: (1) Scope of the national program, (2) permitting requirements, and (3) State programs. The first topic covers issues that define who and what is regulated under the sludge program, and EPA's authority under section 405 of the Clean Water Act. The second topic covers requirements and procedures for regulating sludge use and disposal through permits. This consists mainly of a section-by-section discussion of revisions to Parts 122 and 124, (which also are relevant to the permitting provisions in Part 501). Most issues discussed under this topic concern both Federal and State permitting programs, although a few issues are unique to the Federal program. The final topic addresses only issues that involve minimum requirements for approvable State programs and the procedures for EPA approval, oversight, revision, and

withdrawal of State sludge management programs. Discussions of each issue or regulatory provision will address the 1986 and the 1988 proposed rule (where applicable), public comments, the final rule and response to comments.

B. Relationship Between Today's Final Rule and the Sludge Technical Regulations (Part 503)

A major purpose of today's rulemaking is to establish the administrative framework for implementing the technical standards for sewage sludge use and disposal required by section 405(d) of the CWA. As noted above, the Act requires promulgation of at least two rounds of technical standards. The first round of standards is now under development as part of a separate rulemaking, which will be codified at 40 CFR Part 503. EPA published the proposed rule for these standards on February 6, 1989 at 54 FR 5746. All references to the technical or Part 503 standards or regulations in today's notice refer to those standards in their final, not proposed, form.

1. Description of Part 503

The Part 503 regulations propose to establish technical standards only for use and disposal of non-hazardous sewage sludge. Accordingly, the permitting program established by today's rulemaking applies only to the use or disposal of nonhazardous sludge. Sludges which are considered hazardous wastes under Subtitle C of RCRA in accordance with 40 CFR Part 261 will continue to be managed under Subtitle C alone. Disposal of hazardous sludge in accordance with the Subtitle C requirements will constitute compliance with section 405. Likewise, sewage sludge found to contain greater than 50 parts per million (ppm) of polychlorinated biphenyls (PCBs) will continue to be regulated under 40 CFR Part 761, rather than Part 503.

Ocean dumping of sewage sludge already is regulated under Title I of the MPRSA (33 U.S.C. 1401 *et seq.*), and the Agency has promulgated technical regulations under the MPRSA which govern this practice (40 CFR Parts 220 through 228). Ocean dumping of sewage sludge currently is limited to nine municipal authorities in the states of New York and New Jersey, and takes place at a site approximately 106 miles offshore. Recent amendments to the MPRSA (Pub. L. 100-688) prohibit ocean dumping of sewage sludge after December 31, 1991, and also prohibit any new dumpers from beginning this practice in the meantime. MPRSA sections 104B(a) (1)(B) and (2). The MPRSA amendments further envisage that within 270 days of the date of enactment (November 18, 1988), EPA is to enter into compliance and enforcement agreements for the termination of ocean dumping of sewage sludge and is to issue permits under the MPRSA to regulate the existing ocean dumpers. MPRSA section 104B(a)(1)(A). Given the existence of MPRSA technical regulations applicable to ocean dumping of sewage sludge and the recent MPRSA amendments prohibiting ocean dumping of sewage sludge after December 31, 1991, EPA does not intend to embark on developing technical regulations under Part 503 for the ocean dumping of sewage sludge.

The proposed Part 503 standards include numerical limits on certain pollutants that may interfere with the safe use or disposal of sewage sludge (or equations for calculating those pollutant limits); management practices to minimize adverse effects on public health and the environment from pollutants in sludge; monitoring requirements (including methodologies); recordkeeping and reporting requirements; and other requirements that prescribe the level of management control over sewage sludge. The standards focus on the ultimate use or disposal of sewage sludge rather than on treatment processes. In setting the standards, the Agency has taken into account the various ways that a pollutant may reach an individual, plant, or animal, including, but not limited to, groundwater, surface water, air, and the food chain.

The first round of the proposed Part 503 standards addresses the following use or disposal methods: land application (including various end uses such as agriculture, silviculture, and land reclamation), distribution and marketing of sludge and sludge-derived products, disposal in sludge-only landfills ("monofills"), disposal on surface disposal sites (with residence time greater than one year), and incineration in sludge-only incinerators. In addition, the disposal of sewage sludge in municipal solid waste landfills that accept other solid waste ("co-disposal landfills" or "MSWLFs") will be governed by separate regulations promulgated under the joint authority of Section 405 of the CWA and Subtitle D of RCRA. These regulations will be codified at 40 CFR Part 258. (*See* 53 FR 33313, August 30, 1988) for the 40 CFR Part 258 proposed rule.) Therefore, references to Part 503 in today's rule include Part 258.

The Regulatory Impact Analysis prepared for the Part 503 proposed rule indicates that the most commonly used POTW sewage sludge method is disposal in MSWLFs. EPA estimates that 6,664 POTWs send 3,162,345 dry metric tons (DMTs) of sludge, or 41 percent of the total annual POTW sludge production, to MSWLFs. One hundred sixty-nine POTWs (operating 282 sewage sludge incinerator units) incinerate 1,615,416 DMTs, or 21.4 percent, annually. Another 2,623 POTWs land apply, to agricultural and non-agricultural lands, a total of 1,202,158 DMTs, or 15.6 percent, of sewage sludge produced per year. There are 106 POTWs that distribute and market 705,485 DMTs, or 9.1 percent, of sewage sludge. Forty-nine POTWs dispose of 101,375 DMTs (1.3 percent) of sewage sludge in monofills. EPA estimates that approximately 2395 POTWs dispose 197,510 DMTs (2.6 percent) of sludge in surface disposal sites. Another 694,377 DMTs (9.0 percent) of sludge are disposed of by other means (including ocean dumping).

Certain practices and sludges that fall within the purview of section 405 are not covered in the first round of the Part 503 standards. As previously mentioned, standards for sewage sludge disposed of in MSWLFs were developed as part of the RCRA Subtitle D proposal and will be codified in Part 258 rather than Part 503. Similarly, the co-incineration of sewage sludge with other materials will not be covered, except possibly where the only other material is a fuel. The Agency is studying how best to regulate facilities co-firing sewage sludge with municipal solid waste. (*See*, Advance Notice of Proposed Rulemaking, 52 FR 2599, July 7, 1987.)

Part 503 proposes to regulate the ultimate use or disposal of sewage sludge. Therefore, the proposed rule does not cover sludge placed in pits, ponds, lagoons, and similar surface impoundments which traditionally have been considered either part of the wastewater treatment train or as temporary storage facilities. Sludge placed in a surface impoundment for less than one year is assumed to be part of the treatment train. On the other hand, sludge that is held for more than one year in a surface impoundment would be regulated under the proposed Part 503 regulations because it is assumed that after a year, the surface impoundment has become a disposal site. In addition, sludge that is physically removed from the treatment train and does not reenter the treatment train will be regulated under the appropriate use/disposal practice standard. For example, Part 503 does not propose to regulate the sludge that accumulates in wastewater treatment

lagoons (or the treatment lagoon itself), but if that sludge is removed from the wastewater treatment lagoon and applied to land, it would be regulated under the Part 503 land application requirements. Thus, the proposed Part 503 regulations focus on ultimate disposal, i.e., when the sludge reenters the environment.

The first round of the Part 503 standards would apply to sewage sludge generated at POTWs and other treatment works treating domestic sewage, such as privately-owned sewage treatment plants. It would not apply, however, to sewage sludge generated or treated at industrial or commercial facilities which treat domestic sewage with other wastewaters generated at the facility. (What constitutes "domestic sewage" and related issues are discussed more fully below in section V.D.II.) Until the Agency collects additional information on the characteristics of the sludge generated at such facilities, the sludge will continue to be regulated under rules promulgated under Subtitle D of RCRA as a nonhazardous solid waste (40 CFR Parts 257 and 258), or under Subtitle C as a hazardous waste (40 CFR Parts 261 through 268), as the case may be. EPA proposed in a separate rulemaking that industrial facilities notify the States and EPA of the volume of their sludge and the disposal methods and locations used (*see* 53 FR 33313, August 30, 1988). Once these and other data (e.g., viscosity, density, moisture content, and the organic carbon content of industrial sludge with a domestic sewage component) have been collected, the Agency will determine whether the Part 503 regulations should apply or whether additional regulations should be developed for industrial facilities that co-treat domestic sewage with industrial wastewater. The Agency anticipates that any additional requirements for industrial facilities treating domestic sewage along with industrial waste and wastewater would be developed under the joint authorities of sections 4004 and 4010 of RCRA and section 405(d) of the CWA.

Neither today's final rule nor the proposed Part 258 or Part 503 rule affect the status of existing federal regulations that apply to sewage sludge use and disposal, such as 40 CFR Part 257. Those requirements will remain in effect until specifically revised or rescinded by rulemaking. For example, the proposed Part 503 rule specifies that Part 257 will no longer apply to sewage sludge covered by the final Part 503 standards. Similarly, the proposed Part 258 rule, upon final promulgation, will remove the applicability of Part 257 to facilities covered by Part 258. However, until those rulemakings are final, the 40 CFR Part 257 requirements will remain in effect and will be implemented, where applicable, by means of the permit program established by today's rule. (Also see the discussion of EPA's "Strategy for Interim Implementation of Sludge Requirements in Permits Issued to POTWs" in section III.C.)

2. Timing

Numerous commenters on both the 1986 and 1988 proposed rules opposed the promulgation of State sludge management program rules (commonly referred to as "Part 501") in advance of the technical sludge regulations. Most opposition came from States and focused on the difficulties of planning for State sludge management programs (e.g., budget, legal authorities, organization) without knowing what the technical standards will require. For these reasons, several States expressed an unwillingness to commit themselves to seeking program approval until they knew more about the scope and content of the Part 503 standards. Several commenters stated that they could not comment intelligently on the Part 501 proposed rule in the absence of the Part 503 standards. Two commenters even were concerned that promulgation of the Part 501 rules would foreclose opportunity to comment on the Part 503 proposed rule. (In a related vein, one commenter said EPA should delay Part 501 until the "Process to Significantly Reduce Pathogens" (PSRP) standard is revised since the current requirement in 40 CFR Part 257 is unsound.) One commenter objected that this reversed the sequence of the UIC, NPDES, and RCRA programs. Another commenter stated that it would be more logical to "delegate" State programs after promulgation of Part 503 since Part 503 will probably result in changes to pretreatment standards as well. Finally, one commenter asserted that Congress did not intend that EPA promulgate Part 501 until after promulgation of Part 503.

EPA is promulgating a final rule for State sludge management programs and permitting requirements before final promulgation of the Part 503 technical standards. The 1987 amendments called for promulgation of State program approval procedures by December 15, 1986, nearly nine months before the first round of technical regulations were to be promulgated. Therefore, EPA disagrees that Congress intended that promulgation of the Part 501 regulation occur after promulgation of the technical standards. In addition, while EPA does not dispute all of the reasons advanced in opposition to this approach, the need to go forward with today's final rule outweighs the advantages in delaying promulgation for several reasons.

First, although today's final rule is closely related to the sludge technical standards, it is not dependent on it. Today's rule addresses primarily procedural and programmatic issues, which are unaffected by the technical standards. (Similarly, any revision of categorical or other pretreatment standards as a result of the promulgation of sludge standards can proceed independently of today's final rule. The relationship between the sludge and pretreatment programs is explained more fully in section V.I.1. of this preamble.) EPA recognizes that the full impact of the sludge permitting program under Section 405 will not be known until promulgation of the sludge technical standards. This will always be the case, since the CWA calls for subsequent rounds of technical standards which may impose new requirements and update old standards. Contrary to the comment that this reverses the sequence of other federal environmental permitting programs, the same was and is true in the NPDES and pretreatment programs, where the technical standards implemented through those programs were promulgated in numerous, separate rulemakings over a 15-year period. Significantly, nearly all the effluent guidelines for the NPDES program were promulgated after promulgation of the State program and permitting requirements. Since the process of promulgating technical standards is an ongoing one, delaying the State program and permitting requirement regulations merely delays implementation of the program. This would be contrary to clear Congressional intent.

Second, quick and effective implementation of the technical standards once promulgated will depend on having the administrative aspects of the permitting program in place. This is particularly critical for State programs. EPA will be responsible for issuing permits that implement the standards in the absence of approved State programs. State programs cannot be approved before promulgation of State program regulations. Therefore, EPA intends to strongly encourage States to seek program approval as soon as possible so as not to disrupt those programs and create a dual permitting scheme upon promulgation of the technical standards.

EPA recognizes that States may not be able to determine whether program approval is feasible or desirable until they know the contents of the Part 503

standards. Under today's rule, State programs are not mandatory (as they would have been under the 1986 proposed Part 501), so promulgation of today's rule will not impose the unknown upon States as many seem to fear. In addition, the technical standards in proposed form were made publicly available at about the same time as promulgation of the State program rules. Therefore, States will not have to make decisions about seeking program approval in the total absence of any information as to the scope and content of the technical sludge standards. In addition, waiting until promulgation of the Part 503 standards before promulgating the State program regulations would unnecessarily delay approval of programs in States that are willing to go forward despite uncertainties about Part 503.

Today's promulgation of a final rule that establishes State program and permitting requirements and procedures does not in any way affect the opportunity to comment on the Part 503 proposed rule. This will include an opportunity to comment on pathogen reduction requirements. Therefore, the commenters' concerns that promulgation of the Part 501 regulations would foreclose their opportunity to comment on the technical regulations is unfounded.

3. Part 503 Issues Raised in Comments

Although the Part 503 technical standards will be the subject of a separate rulemaking, several commenters raised issues related to technical standards. These comments are briefly addressed below. Any final decisions regarding issues related to the technical standards will be resolved in the context of the Part 503 rulemaking.

Several commenters, mostly POTWs, commented that the deadlines for compliance with technical standards (within one year after promulgation; two years if the regulations require major construction) are unrealistic and unreasonable. Since these compliance deadlines are established by statute, EPA cannot disregard them in regulations.

A few commenters urged that the Part 503 technical standards be issued as guidance rather than as regulations so that implementation of the standards would be flexible and take into account regional variations. In contrast, another commenter stressed the need for legally binding regulations to assure adequate protection of public health and the environment even though needs of industry might conflict.

Again, the Clean Water Act does not give the Agency much discretion in this matter. Section 405(d) requires promulgation of regulations. Section 405(e) makes those regulations directly enforceable against any person who uses or disposes of sewage sludge in a manner inconsistent with the provisions of the regulations. However, because the technical standards will be regulations, rather than non-binding guidance, does not mean they will be inflexible. In fact, the proposed Part 503 standards have been structured to take into account variations in the local environment and the different risks posed by the various use and disposal practices.

Several States requested that the regulations allow variances from the Part 503 standards for research and demonstration projects. Accounting for site-specific variations will be allowed in certain circumstances, but only within the Part 503 regulatory framework, as those rules will be designed to ensure protection of public health and the environment as required by the statute. There are no acceptable deviations from this standard and any method of sludge use and disposal must conform to this requirement. Concerns about the appropriateness of a particular standard are properly addressed during public comment on the proposed Part 503 rulemaking.

C. Relationship to Other Programs

The establishment of a new sludge permitting program in today's final rule does not supplant other existing, federal environmental programs that may have a direct or indirect bearing on sewage sludge use or disposal. Instead, the new sludge permitting program will provide a mechanism for implementing federal technical requirements and filling in gaps left by other media specific regulatory programs. The role of integrating cross-media environmental concerns and technical standards under the various existing programs will be fulfilled primarily by the sludge technical standards. For example, the Agency has adopted a Ground Water Protection Strategy which includes Guidelines for Ground-Water Classification. This classification divides ground water into three classes: Class I—Special ground waters that are highly vulnerable, ecologically vital or irreplaceable as a drinking water source; Class II—current or potential sources of drinking water; and Class III—ground waters not a source of drinking water and of limited beneficial use. Requirements for sludge applied over a Class I irreplaceable source may well be more stringent than for sludge applied over a Class III ground water which is not a drinking water source and has limited beneficial use.

D. Regulated Universe

This section discusses who and what is to be regulated under section 405 and how they are to be regulated. Much of the discussion consists of defining key terms.

1. Sewage sludge

The proposed rules defined sewage sludge to mean "any solid, semi-solid, or liquid residue which contains materials removed from municipal or domestic wastewater during treatment, including primary and secondary solids, septage, and portable toilet waste." The definition did not include grit, screenings, scum, or sewage sludge incinerator ash, as explained in the preamble to the 1986 proposal, because of the relatively small volumes, different characteristics, limited management practices, and general lack of public exposure to these materials. In the 1986 proposal, EPA specifically solicited comments on this point.

EPA received over 25 comments on various aspects of the sewage sludge definition in response to the 1986 proposal and approximately 15 comments in response to the 1988 proposal. Commenters focussed on two major issues: (1) Whether the definition should include grit, screenings, scum or ash; and (2) whether septage should be included in the definition. In addition, commenters raised various other questions about the definition of sewage sludge (such as the inclusion of portable toilet wastes and sludge-derived products) as well as the definition of septage.

Today's final rule defines "sewage sludge" to mean "any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge." In addition to the reasons discussed below, today's definition of "sewage sludge" is designed to be consistent with the approach proposed in the Part 503 technical standards.

Grit, screenings, scum, and ash. The definition of sewage sludge in the final rule is the same as the proposed rule in that it excludes grit, screenings, and the ash generated during incineration of sewage sludge, primarily for the reasons

stated in the preamble to the 1986 proposal. For purposes of clarification, today's definition of sewage sludge specifically excludes these materials. These materials are still considered to be solid wastes and will continue to be regulated as such under RCRA. Today's definition of sewage sludge differs from the 1986 and 1988 proposed rules, however, by including scum in the definition of sewage sludge. Today's final definition also includes minor editorial changes to specify that it includes residues from advanced wastewater treatment (as well as from primary and secondary treatment).

Nearly all commenters on the issue (17 State agencies and 8 POTWs or municipalities) supported EPA's decision to exclude grit and screenings from the definition of sewage sludge. Screenings are relatively large pieces of solid material that are caught on screens at the headworks of the treatment plant. Grit is the material that settles out before primary treatment such as sand, small pebbles, and similar material. In addition to the reasons cited by EPA in the preamble, commenters favored exclusion of these materials because they were being adequately regulated under existing State programs, the additional administrative burden of regulating them would not be justified by environmental results, and exclusion of grit and screenings from the sewage sludge program would encourage public acceptance of land-based management options for sewage sludge from POTWs.

In response to the original proposal, five commenters favored regulating grit and screenings under sewage sludge management programs. Two States said they should be included because they could be adequately regulated under the Part 501 sewage sludge management programs (one noting that these materials should not be forgotten). One POTW favored regulating these materials under the sewage sludge program as an alternative to regulating them under a separate program. Another POTW said they should be included because they are mixed, and therefore disposed of, with sewage sludge.

EPA agrees with the commenters that favor excluding grit and screenings from the definition of sewage sludge. These commenters confirmed EPA's rationale that these wastestreams are small (in one case, comprising only one percent of all wastestreams "generated" at the treatment plant), that they have vastly different properties from sewage sludge generated during wastewater treatment, that they are usually separately handled and disposed of, and are adequately regulated under solid waste programs. Because grit and screening are already regulated as solid wastes under subtitle D of RCRA, EPA disagrees that regulating these materials separately from the sewage sludge program would require duplication of effort. EPA neither agrees nor disagrees with the commenter who favored including grit and screenings in the definition of sewage sludge because they are mixed and disposed of with sewage sludge. The evidence suggests that grit and screenings are more likely to be handled separately from sewage sludge, which is a major reason for not including them in the definition of sewage sludge. If however, these materials are mixed with sewage sludge and then disposed, they would be considered sewage sludge under today's definition (as a sewage sludge product).

Most commenters who favored excluding grit and screenings from the definition of sewage sludge also favored excluding scum from the definition. Scum is the material that floats upward and must be skimmed off the top of the wastewater treatment tanks. The fate of scum is more varied. Several commenters said it is handled the same as grit and screenings. As noted by one commenter, it can be concentrated and returned to sludge digesters. Sometimes it is mixed and disposed of with the primary sludge. However, unlike grit and screenings, scum shares many characteristics with the other residues generated during waste water treatment and is typically disposed of with other sewage sludge. Therefore, it is being included in the definition of sewage sludge.

The ash generated during incineration of sewage sludge is not included in today's definition of sewage sludge. Again, most commenters favored exclusion of ash from the definitions for the reasons EPA gave in the preamble to the 1986 proposed rule. However, in response to that original proposal, two States argued that the large volume of incinerator ash justified regulation under the sewage sludge program. One POTW favored regulating ash under a sewage sludge program as a means of coordinating regulation of POTWs under one program. While the amount of sludge incinerator ash compared to other sewage sludge may be relatively high at POTWs which incinerate sludge, overall the amount of incinerator ash still appears to be relatively small. More importantly, as one commenter noted, incinerator ash is like other ash material (sterile and dry), and not like sludge. Accordingly, like other ash, it is typically disposed of in landfills, and consequently is regulated under existing solid waste programs. Consolidating regulation of POTWs under one program is a desirable goal but does not provide technical justification for treating incinerator ash the same as sewage sludge.

Sewage sludge incinerator ash is a solid waste and therefore, the Agency will continue to regulate it like other solid wastes (and other incinerator ashes) under RCRA (i.e., under Subtitle D if it is non-hazardous and under Subtitle C if it constitutes a hazardous waste). If, however, incinerator ash is mixed and disposed of with sewage sludge (for example, in land application), it will be regulated as sewage sludge.

Two States expressed a middle position on the question of whether grit, screenings, and ash should be regulated under the sewage sludge program, stating that some degree of monitoring and reporting of these materials was necessary, but extensive procedures should not be required. This approach is consistent with the Agency's decision not to regulate these materials under the sewage sludge management program, but rather to continue to regulate them under solid waste program requirements. Moreover, today's final rule does not preclude States from regulating grit, screenings, and ash as stringently as they think appropriate under State programs.

Septage. Public comments on the issue of including septage in the definition of sewage sludge were more divided. Supporters of the proposed definition, which would include septage in the definition of sewage sludge, included States, POTWs, and one environmental group. The most common reason given was that septage is a significant source of domestic sewage treatment waste and therefore needed to be addressed under the sewage sludge program. In a similar vein, one commenter noted that septage should be included because it is a residual of sewage treatment like other sewage sludge. Several commenters who supported covering septage addressed only septage that was discharged to POTWs, noting that regulation of septage should or could be an integral part of a pretreatment program.

More commenters opposed including septage in the definition of sewage sludge than favored it. Most opposition came from States. Some simply disagreed with EPA's reasoning that septage exhibits similar properties as sewage sludge and requires similar constraints on its use and disposal. In many cases, opposition centered on the different regulatory approach many

States used to regulate septage and the significant number of small entities potentially within the scope of such a program, particularly as balanced against the environmental benefit of regulating a relatively small amount of material. Other commenters objected because septage regulation historically has been the concern of local health authorities.

Under today's final rule, septage will be considered sewage sludge, just as it has been under preexisting federal regulations. However, as stated in the preamble to the proposed rule, only septage that is used or disposed of by one of the use or disposal methods regulated under the Part 503 regulations will be regulated under the Section 405 sludge management program. (EPA, however, retains authority under section 405(d)(4) to take appropriate action to protect public health and the environment in the absence of Part 503 regulations. See discussion in section V.E. below.) Thus, septage that is applied to land will be considered a part of the sludge management program. Septage that is discharged or hauled to POTWs is not covered by today's program (although it may be subject to the POTW's pretreatment program) because there are no Part 503 standards planned at this time for this disposal practice. However, such septage will be regulated indirectly under the Part 503 program through requirements on the use or disposal of the sludge generated by the POTW (which would be derived from septage and any other material introduced into and consequently removed by the treatment works). Also, for those septage and portable toilet wastes introduced into the POTW, EPA expects the POTW to exercise its pretreatment program authorities to verify the source and composition of the wastes, and the compatibility of the wastes to ensure NPDES permit compliance.

EPA recognizes that certain differences exist between sewage sludge generated at POTWs and other treatment works and the residues pumped from septic tanks. However, they pose similar threats to the environment when disposed improperly. EPA proposed in Part 503 that the requirements for the use and disposal of sewage sludge also apply to septage. Thus, including septage within the scope of today's rulemaking is appropriate. This does not mean that EPA intends to regulate septage through permits issued to the generators (i.e., the owners and operators of septic tanks) as will be the case with POTW sewage sludge. As explained below, the definition of "treatment works treating domestic sewage" specifically excludes septic tanks.

In today's final rule, septage is separately defined. (Under the proposed rule septage was separately defined under Part 501 but not under Part 122.) The final rule also includes several minor changes to the definition of "septage", made in response to comments. First, "holding tanks" has been added as a receptacle in which septage can be found. Although they serve a different purpose from septic tanks (collecting and holding sewage rather than treating it), the residues that accumulate at the bottom of holding tanks are similar to the accumulated residues from septic tanks. The change to the proposed rule clarifies EPA's intent to treat the septage from both types of tanks the same.

Second, the words "or maintained" have been added to the end of the definition of "septage." This is in response to a comment that the word "cleaned" is ambiguous and that "maintained" would be clearer. EPA intends the settled material in septic tanks and similar receptacles which is removed for any reason be covered by the definition. Therefore, both words have been used in the definition to ensure that the definition is read broadly.

EPA did not amend the definition of septage to include "similar aerobic and anaerobic material." This suggested addition came from a commenter who was concerned that pumped out material from small domestic aerobic package plants which do not have sludge storage tanks might be excluded under the proposed definition. It is not necessary to specifically include this material because, like sewage sludge generated at most POTWs, it clearly falls under the definition of sewage sludge as a "residue removed during the treatment of municipal wastewater or domestic sewage."

Portable toilet wastes. The proposed definition of sewage sludge included "portable toilet wastes." Today's final rule is the same in this regard. In addition, the final definition specifies that pumpings from Type III marine sanitation devices (as defined in 33 CFR Part 159) are included (when brought to shore for disposal). These pumpings are included because they are often applied to land and present some of the same environmental and health concerns as other sewage residues applied to land (e.g., the potential for ground and surface water contamination, pathogens).

EPA received several comments specifically addressing portable toilet pumpings. One commenter supported including portable toilet wastes because, among other reasons, the chemicals sometimes used for treatment could be of concern. Other commenters, however, stated that portable toilet wastes were fundamentally different from treatment plant sludge because they are raw, untreated sewage and therefore should not be included. EPA disagrees. As noted by the other commenter, these wastes are sometimes chemically treated. In any case, lack of treatment is a reason for including, rather than excluding, these materials to ensure that reintroducing them to the environment does not threaten public health or the environment. Like septage, however, portable toilet pumpings taken to POTWs for treatment (rather than directly re-entering the environment) are not covered under the sewage sludge program except as a component of the sludge generated at the POTW or other treatment works. Likewise, portable toilets or Type III marine sanitation devices, like septic tanks, are not "treatment works treating domestic sewage" and owners or operators would not be required to obtain a permit.

One commenter asked that EPA clarify whether pumpings from vault latrines, like those used in recreational areas and roadside restrooms, are within the scope of the regulations. Although these facilities seem to be immobile rather than portable, the wastes collected in them are similar to portable toilet wastes. Therefore, they would be handled the same under today's final rule, i.e., they are not covered by the sludge program if they are introduced into a POTW, but they are covered by the sludge program if they are used or disposed of by a method regulated under Part 503.

One commenter asked EPA to define portable toilet wastes to exclude moveable toilets such as those on trains, buses, airplanes, and private recreation vehicles. The final rule does not adopt this suggested change. The pumpings from these facilities are no different than those from other portable toilets. However, as noted above, although the collected wastes will be subject to the technical standards (and thus must be regulated under a State's program), the owners and operators of the portable toilets are not required to obtain a permit under today's final rule.

Sludge-derived products. The proposed definition of sewage sludge did not distinguish between sludge in its original form and sludge that has been somehow processed or altered for

purposes of creating a marketable product. EPA received comments questioning whether the definition would or should include sludge that has been composted or sludge that has been "high-heat dried." To clarify the intended scope of the definition, the final definition specifically states that sewage sludge includes sewage sludge products. A sewage sludge product is any mixture of sewage sludge and other material.

One commenter expressed concern that unless sewage sludge compost was considered sewage sludge and therefore governed by the regulations, potentially harmful material could escape regulation. (A related comment that composted sludge should be regulated like other sludge, unless contaminant levels have been reduced below a certain level, is addressed below.) EPA shares this concern, and therefore, composted sewage sludge will be regulated. The potential risks posed by pollutants in sewage sludge do not necessarily disappear because the sludge has been mixed with other materials or undergone certain treatment.

Another commenter argued that its sludge, which has been "high-heat dried" and packaged should be excluded from the definition of sewage sludge because it does not present the risks that were of concern to Congress (i.e., ocean dumping, incineration) when it enacted section 405. In fact, the argument continues, "high-heat dried" sludge reduces the need for landfills, incinerators, and ocean dumping and therefore exempting it from the new sludge permitting program would advance Congressional goals and the public interest.

EPA disagrees. Congress may have highlighted concerns about particular sewage sludge disposal methods, but it did not specifically exclude any practice or limit section 405 to any particular group of practices. Instead, it directed EPA to identify the uses, including disposal, that should be regulated. Moreover, as noted above, some pollutants in sewage sludge may continue to be of concern (for example, heavy metals) even though the sludge has undergone various processes or has been mixed with other materials. Further, while heat treatment may be effective in reducing or eliminating pathogen concerns, toxicity problems with the sludge may remain. Therefore, EPA has determined that it is necessary to regulate sludge-derived products.

Other. One commenter said that the regulation of sewage sludge under the Part 501 and Part 503 rules would conflict with existing regulations (i.e., 40 CFR Part 257) that define sewage sludge as a solid waste. Congress clearly intended EPA to develop new regulations that specifically focus on sewage sludge use and disposal. Therefore, the existence of existing regulations governing sewage sludge is not an obstacle to new regulations. The Part 503 rulemaking will delineate the scope and coverage of the Part 503 regulations, and propose revisions to 40 CFR Part 257 to exclude from coverage of Part 257 that sewage sludge regulated under Part 503. This will eliminate duplicate regulation of sewage sludge.

One commenter requested that sewage sludge be defined to include only sewage sludge generated by POTWs since (1) many State programs regulate only POTW sludge; and (2) this is the only sludge likely to be covered by the first round of technical standards. Another commenter on the earlier proposal made a similar suggestion based on resource concerns. Limiting the definition as suggested would be contrary to the plain meaning of the statute and Congressional intent. While it may have been possible to argue that only POTW sludge should be regulated under section 405 before the 1987 amendments, Congress foreclosed that option by requiring that the same sludge technical standards apply to sludge from POTWs and from other treatment works treating domestic sewage, and by prohibiting the use and disposal of sludge generated by these facilities except in accordance with the technical standards.

How soon treatment works treating domestic sewage will be subject to the Part 503 technical standards is a separate question. Contrary to the commenter's assumption, the first round of Part 503 technical standards is proposed to cover more than POTW sludge and will apply to all sludge generated at treatment works treating domestic sewage (see discussion of "domestic sewage" below), except those facilities treating domestic sewage along with process wastewater. Therefore, the first round of Part 503 will cover sewage sludge from privately owned treatment works. Consequently, under section 405(f) of the CWA, EPA will require that permits issued to privately-owned treatment works implement the Part 503 technical standards. However, as discussed below, facilities not covered by the first round of the technical standards may not have to be permitted until standards applicable to them have been promulgated. This will allow phased-in regulation, and thus alleviate concerns about the immediate resource demands that an expanded program would create for some States.

2. POTWs and Other Treatment Works Treating Domestic Sewage.

The requirement to include conditions in permits to implement the Part 503 technical standards under section 405(f) of the CWA applies to POTWs and "any other treatment works treating domestic sewage." Since these terms define the core of the basic permitting program, they generated numerous comments. EPA has thoroughly considered these comments, as well as the legislative history, in developing a final definition which best addresses the goals of section 405 and establishes a workable and effective permitting program. This has resulted in some changes from the proposed rule, as explained below.

Treatment works. The 1986 and 1988 proposals contained a definition of the "treatment works" derived from Section 212 of the Clean Water Act. It was defined to mean "any devices and systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage waste of a liquid nature, including land dedicated for the storage, treatment and disposal of sewage and resulting sludge." This broadly worded definition was designed for purposes of the construction grant program, principally to designate the type of projects potentially eligible for federal funding. "Treatment works" as used in section 405(f), however, serves a much different purpose, that is, to define entities which are required to obtain permits that implement the technical sludge standards promulgated under section 405(d). There were numerous commenters who apparently assumed that each process, piece of equipment, or land that came into contact with sewage or sewage sludge would be subject to separate permits. This is absolutely *not* the case; the definition is inclusive to make it clear that these devices are all part of the overall system. In most cases, one permit would be issued to the facility, covering the devices and systems used to collect, store, treat, recycle and reclaim sewage and sewage sludge.

Today's final rule adopts the proposed definition of "treatment works." However, it is now referred to as "treatment works treating domestic sewage" to clearly identify treatment works subject to regulation under section 405(f) of the CWA, which may or may not fall within the definition of "treatment works" as used in other programs such as NPDES and pretreatment. The basic purpose of this definition is to include facilities that generate sewage sludge or otherwise effectively control the quality of sewage

sludge or the manner in which it is disposed (and hence its effect on the environment). This definition includes facilities that treat sewage sludge such as incinerators. The definition of "treatment works treating domestic sewage" in today's final rule encompasses facilities that may process sewage sludge as would a generator, but that are separate from the generator's facilities. Thus, "treatment works" includes, for example, commercial sludge handlers which process sewage sludge from POTWs for distribution and sale. (It would not, however, include a commercial handler which distributes the sludge but does not alter the sludge before distribution.) These are the facilities for which permits are needed to effectively implement the technical sludge standards now under development. Permits will be issued to owners or operators of disposal facilities such as monofills, dedicated land disposal sites, and surface disposal sites, as these are "lands dedicated to the disposal of sewage sludge." However, under the Federal program, permits will not be required for owners or operators of land where sludge is beneficially reused such as farm lands and home gardens.

Part 122 contains a second part to the definition of "treatment works treating domestic sewage." It provides that the Regional Administrator may designate a particular facility as a "treatment works treating domestic sewage" for the purpose of CWA section 405(f) where necessary to protect public health and the environment from poor sludge quality, use, handling or disposal practices, or to ensure compliance with 40 CFR Part 503. This enables the Regional Administrator to carry out the intent of Congress to ensure that all persons subject to the standards for sludge use and disposal (e.g., persons who handle sewage sludge but who do not generate or treat sewage sludge) operate in compliance with such standards, and that adverse effects on the environment resulting from poor sludge quality, use, handling or disposal can be minimized. The authority to designate facilities as "treatment works treating domestic sewage" on a case-by-case basis is not required for either NPDES (Part 123) or non-NPDES (Part 501) State programs. Under today's final rule, States are required to have a program that requires permits for POTWs and other treatment works as defined in § 501.2, but are free to develop any appropriate program to regulate other users and disposers of sewage sludge to ensure compliance with the technical standards.

Septage treatment and disposal systems. As discussed above, the definition of sewage sludge includes "septage," the residues pumped from septic tanks during cleaning or maintenance. When Congress first considered expanding section 405 beyond POTWs to also cover treatment works treating primarily domestic sewage, its intent, in part, was to make the section 405(d) standards applicable to "septage treatment and disposal systems." (Sen. Rep. No. 99–50 on S. 1128 at 47 (1985)). EPA reads this language to refer to facilities where septage is collected for treatment prior to disposal (e.g., centralized septage treatment works such as lime stabilization units).

Under today's final rule, only "septage treatment and disposal systems"—not individual septic tanks—are considered treatment works treating domestic sewage and thus will be required to obtain permits after promulgation of applicable Part 503 technical standards. Permits are only required if the septage will be disposed of by one of the practices covered by 40 CFR Part 503. EPA estimates that approximately one-third of all septage is taken to POTWs for further treatment or mixture with the POTW's sludge. In fact, some States require that septage be taken to POTWs. As explained above, this practice will not be separately covered by 40 CFR Part 503. Instead, this septage would be regulated as a component of the POTW's or other treatment works' sludge.

Individual septic tanks are not considered "septage treatment and disposal systems" under today's final rule. To clarify this intent, the final definition specifically excludes septic tanks from the definition of "treatment works treating domestic sewage." EPA never intended to require permits for individual septic tanks, as reflected in the proposed rule by the specific exclusion of individual household septic tanks from the definition of "generator" (and, by reference, from the definition of "treatment works"). According to the 1980 census data, nearly 22 million households are served by septic tanks. To regulate individual septic tanks (whether serving one or several households) obviously would be extremely difficult and inefficient. It would also be impractical in terms of achieving environmental results since the owners and operators of septic tanks have no effective control over the actual disposition of septage pumped from their tanks (i.e., they cannot control the entities who pump and dispose of the septage).

Septage pumpers and haulers are not considered "treatment works treating domestic sewage" or "septage treatment and disposal systems" under today's final rule. Accordingly, these pumpers and haulers (and those who pump other sewage residues from portable toilets, Type III marine sanitation devices, and similar devices) are not required to obtain permits under section 405(f) of the CWA and today's final rule. Pumpers and haulers are considered "users and disposers" of sewage sludge, however, and therefore will be subject to the Part 503 regulations. See section 405(e) of the CWA. (See discussion of section 405(e) of the CWA, section III.A. above.)

Domestic sewage. Before the 1987 amendments, section 405(d) of the CWA applied only to "POTWs." The preamble to the February 1986 Part 501 proposal explained EPA's interpretation:

> EPA believes that section 405 of the CWA was intended to regulate sludges that derive from (POTWs) or other treatment works that treat *primarily* domestic sewage.
>
> Therefore, neither the Part 501 regulations nor the Part 503 regulations will apply to privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities. Such sludges are, however, regulated by EPA under the authority of RCRA." (51 FR 4459, February 4, 1986). (Emphasis added.)

Most commenters on the 1986 proposal (21 of 26) supported regulating sewage sludge from privately-owned treatment works that treat primarily domestic sewage the same as that from POTWs. The few commenters who opposed this position were concerned about resource burdens of regulating these facilities or questioned EPA's legal authority to regulate privately-owned treatment works.

In the 1987 amendments to the Clean Water Act, Congress expanded the universe of entities requiring a permit to include any treatment works treating domestic sewage, without qualification as to the amount of domestic sewage in the treatment works' total flow. The intended effect of the change in language, according to the legislative history, was to include what previously had been excluded, i.e., privately-owned treatment works operated in conjunction with industrial manufacturing and processing facilities that treat domestic sewage. *See* Conf. Rep. No. 99–1004, 99th Cong., 2d Sess. (1986) at 160. Accordingly, in the 1988 proposed rule, EPA included a permit requirement for "POTWs and any other treatment works that treat domestic sewage." Neither the Act nor the proposed rule defined "domestic sewage," however. This

omission resulted in comments from industries and industry trade associations urging EPA to define "domestic sewage" in such a way as to exclude industrial treatment works that treat site-generated sanitary sewage. Two States also asked EPA to clarify what is meant by "domestic sewage" and how it expected industrial sludges to be regulated.

Today's rule defines "domestic sewage" (for purposes of defining "treatment works treating domestic sewage") to mean "waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works." Thus, any treatment works which treats, in whole or in part, human-generated or household type wastes as part of its waste water treatment is within the purview of section 405(f) and the requirement to obtain a permit that implements applicable Part 503 standards. This includes industrial treatment works that treat site-generated sanitary wastes along with process or other wastes generated at the site. It does not however, apply to treatment works that generate sludges which constitute hazardous waste. As previously indicated, for purposes of section 405 regulation, requirements for sludges that fall within the definition of "hazardous waste" (40 CFR 261.3), regardless of their source, will continue to be those established under Subtitle C of RCRA.

Although industrial treatment works that treat domestic sewage and generate non-hazardous sludge will be regulated under section 405(f) of the CWA and today's final rule, the Agency does not plan at this time to cover these facilities in the first round of the Part 503 technical standards. EPA does not yet have sufficient information on these sludges to promulgate standards. Under the March 1988 proposed rule, permit conditions controlling sludge use and disposal from these facilities would have been developed on a case-by-case basis using "best professional judgment." EPA has determined that because so little is known about the sludges generated at these facilities (as compared to the data base for sludges from treatment works treating primarily domestic sewage) and because there are potentially thousands of facilities in this category, it is very difficult to find a defensible technical basis for routine case-by-case permitting of these facilities. Because these sludges are subject to regulation under RCRA, it is not clear that pursuing case-by-case permitting now rather than after applicable technical standards have been developed would result in significantly greater environmental benefits. Accordingly, under today's rule, these facilities will not be required to obtain permits under the sewage sludge program established by today's rule until EPA promulgates technical regulations applicable to the sewage sludge generated at such works, unless EPA determines that a permit or other measure is appropriate in a particular instance to "protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge" pursuant to section 405(d)(4) of the CWA. Disposal of sludge from these facilities also will continue to be regulated under RCRA. As discussed in section V. B. of this preamble, the Agency is gathering additional information about the sludges from industrial facilities to determine whether additional regulation should be pursued. One commenter asked whether coverage of industrial treatment works treating domestic sewage under section 405(f) would mean that the sludge disposal options available to domestic treatment works are also accessible to industry. Generally, the availability of disposal options will be determined by whether the sludge constituents and the manner in which the sludge is used or disposed meet the technical requirements in Part 503. However, as noted above, until more data on industrial sludges with a domestic sewage component is gathered and analyzed, the Agency is not in a position to say whether those sludges can be used or disposed of in the same manner as other sewage sludge. In the meantime, the use and disposal of industrial sludges will continue to be regulated under existing federal regulations (e.g., Subtitle D of RCRA for land application and landfilling of non-hazardous sludge; Subtitle C of RCRA for sludge constituting a hazardous waste).

Commenters who said that industrial facilities should be excluded from regulation under section 405(f) advanced several different reasons for their position: (1) Congress did not intend that these facilities be regulated under section 405(f); (2) the dictionary meaning of "domestic" means "from a home or household" and therefore does not include industrial facilities; (3) it does not make sense to regulate sludges which are primarily industrial the same as sludges which are generated during municipal waste water treatment; (4) there is no need to regulate these facilities under section 405(f) because they are regulated under Subtitle D of RCRA and existing State programs; (5) sanitary wastes typically are only a minuscule part of sludge at industrial facilities; and (6) such an approach would force costly segregation of sanitary wastes at industrial facilities which was not intended by Congress or considered by EPA in terms of economic impact.

The commenter who said that EPA's position was contrary to Congressional intent (despite reference in the legislative history to include coverage of privately owned treatment works even if they do not "primarily" treat domestic sewage) argued that Congressional intent to vastly expand coverage of section 405 would have been more clearly indicated in the statute and legislative history; instead Congress intended to include industrial treatment works that treated on-site generated sanitary wastes within the scope of section 405(f) only if those facilities also treat significant amounts of off-site generated household waste.

EPA disagrees. Nothing in the statutory language suggests such a narrowly defined scope. Further, Congress did clearly state its intent to significantly expand the scope of section 405(f). Congress not only made section 405 applicable to any treatment works treating domestic sewage (as opposed to an earlier version that applied to treatment works treating primarily domestic sewage), but it also specifically deleted an exclusion for industrial treatment works. The Conference Report explains:

> The conference substitute modifies the Senate provisions by deleting an exclusion of privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities. Such treatment works are covered * * * and their sludge is to be regulated by the same criteria as sludge from [POTWs]. Similarly, the Conference substitute regulates any treatment works treating domestic sewage, not just treatment works treating "primarily" domestic sewage.

Conf. Rep. No. 99–1004 at 160. This strongly suggests that Congress intended section 405 to be read broadly with regard to industrial treatment works treating domestic sewage.

The argument that industrial sludges should not be regulated under section 405 because they are already controlled under RCRA Subtitle D and State programs is not persuasive because POTW sludge is also a solid waste under RCRA and in many cases is regulated under State programs. If Congress intended EPA to regulate these activities, the fact that they may also be regulated under RCRA and State law is not reason enough to eliminate them from coverage under section 405.59.

In response to the comment that it does not make sense to regulate sludges that are primarily industrial the same as sludges generated during municipal wastewater treatment, it must be pointed out that many POTWs treat vast quantities of industrial waste. Also, as noted above, EPA is gathering additional information to determine if sludge from POTWs and industrial facilities are too dissimilar to be regulated under the same standards.

EPA will be establishing requirements for industrial sludges in the future, when there is sufficient information about the pollutants of concern in industrial sludges. It is possible that these standards may be co-promulgated under RCRA authority as well as under CWA section 405, and may apply to purely industrial sludges as well. If this is the case, no benefit would be derived by segregating industrial and sanitary wastes at industrial facilities.

One commenter asked EPA to clarify whether sludges such as those from brewery and poultry processing operations whose characteristics resemble domestic sludge, and pumpings from septic tanks serving mortuaries are covered under the definition. The sludges are covered by today's definition of sewage sludge if the treatment works generating the sludge also treats domestic sewage. However, assuming that the generating facilities are not POTWs, under proposed Part 503, these treatment works would be considered "industrial treatment works" and therefore not covered by the first round of Part 503 technical standards. Likewise, as with other industrial treatment works treating domestic sewage, these facilities would not be required to obtain a permit under today's rule before applicable Part 503 regulations have been promulgated, unless the permitting authority determined, under section 405(d)(4) or a comparable State authority, that a permit was needed earlier to protect public health and the environment.

It is important to note the definition of "domestic sewage" in today's final definition of treatment works treating domestic sewage is limited to the sludge management program under section 405 of the CWA and is designed specifically to carry out clear legislative intent with regard to that program. It does not alter or affect the definition of "domestic sewage" under other statutory provisions or regulations, such as section 1004(27), the domestic sewage exclusion under RCRA.

Municipality. The proposed rule adopted the definition of "municipality" from section 502(4) of the CWA. (The reference to section 502(4) has been deleted in the final rule as unnecessary.) One commenter noted that public schools, State parks, and the like were not considered municipalities under State law and asked whether they would be considered municipalities under the proposed rule. Strictly speaking, public schools and State parks are not considered "municipalities." "Municipalities" refers to particular political subdivisions of a State, not particular types of facilities. However, public schools and State parks could be owners or operators of "POTWs" and thus would be subject to the new sludge permit program.

Facility. The 1986 and 1988 proposals defined "facility" to mean "all land and structures, other appurtenances, and improvements on the land used for the treatment, storage, processing, utilization, or disposal of sewage sludge." One commenter to the 1986 proposal asked that EPA clarify whether "facility" includes private lands on which sludge is applied. Seven commenters on the 1988 proposal objected to the definition because it could be read to include sites on which sludge is applied, and consequently would require that each land application site be the subject of a separate permit action. This was not and is not EPA's intent. To ensure that there is no confusion on this point, today's final rule does not include a separate definition of "facility" in Part 501. Similarly, the proposed revision to the definition of "facility" in Part 122 is not in the final rule. This definition is unnecessary because other terms in today's final rule, such as "treatment works treating domestic sewage" adequately define the entities subject to the permitting requirements established by the regulations.

One commenter asked whether there was a difference between "facility" in proposed § 501.2 and "sludge management facility" in proposed revisions to § 124.10(d)(1) (vii). This question is now moot because the definition of "facility" has been dropped. New language appears in today's final revisions to § 124.10(d)(1)(vii). The phrase, "sludge management facility and disposal or use practice," which appeared in the proposed rule has been replaced by "sludge treatment works treating domestic sewage and use or disposal sites."

Note: Other changes to § 124.10(d)(1)(vii) are explained below in section V.G.2.

Similar editorial changes have been made in final revisions to the definition of "facility or activity" in § 124.2.

Sludge-only facilities. Section 405(f)(2) authorizes the Administrator to issue a permit "solely to impose requirements for the use and disposal of sludge that implement [the Part 503 technical regulations]" to "a treatment works described in Paragraph (1) that is not subject to section 402 of this Act and to which none of the other above listed permit programs nor approved State permit authority apply." Facilities needing a permit under this section are called "sludge-only facilities." Today's final rule expands the NPDES permit program to cover these facilities for which permits are required under section 405(f)(2). A treatment works that applies its effluent to land, rather than discharging it to surface waters is an example of a treatment works that might fall into the category of "sludge-only" facilities. Here, although the treatment works would not need an NPDES permit for surface water discharges, it may generate sewage sludge subject to regulation under section 405 and thus would require a sludge-only permit under today's rule.

EPA received very few comments on expanding the NPDES permit program to incorporate a program for regulating sludge use and disposal. One commenter specifically endorsed EPA's use of the permit program under Part 122 as the vehicle for issuing "sludge-only" permits authorized by section 405(f)(2). Another commenter, however, objected to using NPDES permits for "sludge-only" facilities that do not have surface water discharges, and argued instead that these facilities should be issued permits under solid waste programs. EPA disagrees. There is no existing Federal solid waste permitting program which the Administrator could use for issuing permits to "sludge only facilities." Using an existing permitting program, such as NPDES, is more efficient than establishing a new permit program. While the NPDES program traditionally has focused on effluent discharges from wastewater treatment plants, sludge generation and disposal is also an integral facet of wastewater treatment and therefore represents a natural extension of the NPDES program, regardless of which sludge use or disposal option is used. Congress clearly thought so when it provided for the expansion of traditional NPDES jurisdiction to include regulation of sewage sludge use and disposal.

Another commenter said that providing for "sludge-only" permits under NPDES when the treatment works is subject to permits under RCRA, SDWA or CAA would lead to confusion and possible unnecessary enforcement

against facilities which are otherwise in compliance with their dominant permit requirements. This situation should not arise under today's rule (and under the CWA) because "sludge-only" permits will be issued only when the Part 503 technical standards have not been included in a permit issued under RCRA Subtitle C, SDWA Part C (UIC program), CAA, MPRSA (ocean dumping permits), or an approved State sludge management program.

3. *Users and Disposers of Sewage Sludge*

The Water Quality Act of 1987 contains two provisions with respect to compliance with the technical standards. First, the Act requires that, where POTWs and other treatment works treating domestic sewage are concerned, the standards for sludge use and disposal are to be implemented through permits. CWA section 405(f)(1). In addition, the Act provides that "* * * it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations." CWA section 405(e). Thus the law requires that all persons disposing of sludge do so in accordance with applicable technical standards, even though the statute does not explicitly require such persons to obtain a permit implementing those standards.z

In the March 9, 1988 proposed rule, EPA solicited comments on the best means to regulate users and disposers; specifically, when would permits be appropriate. EPA also asked for comments on the appropriate scope of the generator treatment works' permit when the user or disposer of its sludge is covered by a permit.

There were 31 commenters who responded to this issue: 16 State agencies, eight municipalities, three commercial sludge handlers, one environmental group, one association, and one member of the general public. The commenters primarily focused on what a State would have to do to have its sludge management program approved, rather than the approach EPA should take where it is the permit authority.

Three State commenters felt that the requirements should be flexible: various regulatory options should be available to the State, and the State would decide whether to issue permits to the treatment works (generator) or to the disposer. One State commenter stated that EPA should require only that the State prohibit use and disposal of sewage sludge except in accordance with CWA section 405(d). One commenter expressed the view that States be given the authority to grant permits to other than sludge generators on a case-by-case basis. Six commenters felt that EPA should require that the treatment works' generator permit address sludge quality, and then the State would decide how to address requirements that apply at the disposal site, whether in the treatment works' permit, in a site permit, through rules of general applicability, general permits, or some other means, depending on the disposal mechanism. These commenters felt that where the sludge generator was not using or disposing of its sludge, its responsibility should be limited to sludge quality. However, another commenter questioned whether the generator's liability could be so limited, given other legal precedents. Two State commenters thought that issuing joint permits to all persons involved—generator, hauler, site owner—with responsibilities of each spelled out in the permit, would be appropriate.

Two commenters (one State and one environmental group) felt that all requirements should be in the treatment works' generator permit. These commenters felt that this was the best means of ensuring that the sludge would be disposed of in accordance with the technical standards, thus making the generator responsible for the ultimate disposal of its sludge. These commenters recommended that a process similar to the pretreatment program be established, so that the treatment works would regulate users of its sludge as it now regulates industrial users that discharge effluent to its headworks.

Several commenters expressed the view that to require permits for users and disposers, such as farmers, would discourage their participation and thus inhibit beneficial reuse of sludge. One commenter stated that a permitting program for beneficial users of sludge and sludge products is too rigid to meet the response times of beneficial land needs, which are quite volatile due to crop cycles, etc.

Seven commenters addressed the specific question of how to regulate the users of distributed and marketed sewage sludge. Two commenters expressed the view that users should be informed of requirements through labels, and should be required to comply with labeling instructions. One commenter stated that because of the numerous small users of distributed and marketed sludge and sludge products, it would be more efficient to regulate the producer of the product. Four other commenters also opposed requiring individual permits for users of sludge or sludge products. Two commenters expressed concern about the interstate commerce implications of distributed and marketed sludge products. One of these commenters recommended that national standards be developed for sludge products distributed in interstate commerce, and that these standards preempt State and local law. Another commenter asked if generators would have to obtain permits in every State in which its product is distributed and marketed.

There are many circumstances where the sludge generator may not dispose of its own sewage sludge. One of the more common examples is where treated sewage sludge is applied to land, by a farmer or by a private contractor, as a soil conditioner and fertilizer. It is clear that Congress intended section 405(e) to make the technical standards applicable to such users and disposers:

> Section 405(e) is amended to expand the applicability of the 405(d) sludge use and disposal regulations to "any person" * * *. The purpose of this * * * change is to impose the regulations on those that actually dispose of the sludge, which may not be the treatment works' owner or operator." U. S. Senate Committee on Environment and Public Works, Report No. 99–50, May 14, 1985.

The question then becomes: what is the best means of ensuring that the sludge will be used or disposed of by these other parties in accordance with the technical standards? This is one of the most complex problems of the sludge program.

One means of regulating these users and disposers is to rely on the direct enforceability of the technical standards. This has been the primary means of enforcing the current land application requirements contained in 40 CFR Part 257. It is clear from the legislative history on Section 405 that Congress intended that the technical sludge standards be self-implementing, i.e., all users and disposers are subject to them, whether or not they have a permit, and the standards may be enforced directly against users and disposers in such instances: "Notwithstanding the issuance of a permit that implements a section 405(d) guideline, the guideline itself would remain directly enforceable under sections 309 and 405(e) of the Act." (132 Cong. Rec. H10577, October 15, 1986.) (This is in contrast to the effluent guidelines, which are not self-implementing. The discharge limitations must be in the discharger's permit in order for the discharger to be subject to them. Enforcement actions are based on

the permittee violating the conditions of the permit.) Thus, since enforcement actions may be taken directly against violators, even in the absence of a permit, one means of ensuring compliance by users and disposers is simply to rely on this authority to take enforcement actions where necessary.

However, total reliance on this general authority may not result in effective implementation of the program in many instances. For example, some of the technical standards, as proposed, rely on site-specific factors, e.g., the concentration of pollutants in a particular sludge would have to be known before the sludge application rate can be calculated. Thus, simply referring to the technical standards would not be enough for the user to know how much sludge can be applied to land. The treatment works would need first to provide information on sludge quality, and then would need to factor in other site-specific considerations, such as whether sludge had been applied to the same land in previous years. Further, in the absence of a permit, it is often difficult for the regulatory agency to know who is using or disposing of sludge and whether they are doing so in accordance with federal and State requirements. Thus, an effective sludge program should utilize the permit mechanism to ensure adequate safety of the sludge use and disposal practices, without discouraging beneficial reuse and recycling.

EPA has decided not to adopt an approach requiring the generator to regulate users or disposers analogous to the pretreatment program. First, where the treatment works is, in effect, the recipient of a service (someone else is disposing of its sludge), it is not in the same position to regulate users of its sludge, as it is in the pretreatment context, where it is the provider of a service. The user of the sludge may simply refuse to accept it, thus inhibiting reuse and restricting the POTW's disposal options. Further, there are likely to be more multi-jurisdictional problems than there are with pretreatment, due to the fact that sludge is readily transportable and is often used or disposed of in a different county or State from where it is generated, and where the treatment works may not have any regulatory authority over the user.

Usually the requirements of 40 CFR Part 503 will be contained in the generator treatment works' permit. The Part 503 regulations and today's final rules are designed so that the generator treatment works' permit can serve as the primary implementation mechanism for ensuring compliance with the sludge technical standards. This approach also ensures the necessary link to the pretreatment program, so that the tools of that program (e.g., local limits) can be brought to bear on industrial users in order to improve the quality of the treatment works' sludge. However, there may be instances where the generator's permit coverage may be limited to the specific activities conducted by the generator. The availability of such approaches will vary, depending on the method of sludge use and disposal.

Today's rule includes sludge monofills, sludge incinerators, and dedicated land disposal sites (such as surface disposal sites) within the definition of "treatment works treating domestic sewage." This means that such facilities, even when privately owned or not connected to a POTW, are required to get a permit. Where the receiving facility is subject to a permit implementing the Part 503 standards, the generator's permit need not address the requirements in the recipient's permit regarding the operation of the recipient's facility. For example, if the sludge generator treatment works is sending its sludge to an incinerator, the generator's permit could contain requirements as to sludge quality, and any other information pertaining to the agreement between the generator and the incinerator (e.g., information on the incinerator's emission limits where such limits may drive sludge quality requirements). The incinerator's permit could contain emission standards and other requirements pertaining to the operation of the incinerator, such as feed rate, combustion temperature, etc. (Again, this incinerator permit may be an air permit, NPDES permit, one of the other permit programs listed under CWA section 405(f)(1), or an approved State program permit. Whatever the mechanism, it must implement the applicable Part 503 sludge standards for incinerators.) Thus, all applicable requirements would be in either the sludge generator's or the incinerator operator's permit. Another option would be to make the generator and the operator co-permittees. (Please note that, in today's rule, incinerator ash is not within the definition of sewage sludge. Therefore, users and disposers of incinerator ash are not subject to the sludge technical standards. However, since incinerator ash is a solid waste, such persons are subject to RCRA.)

Another instance where a generator's permit may be limited is where the generator sends its sludge to a monofill (a landfill that accepts only sludge), for reasons similar to those for incineration. Sludge sent to a sludge monofill will be regulated under Part 503. Part 503 will contain contaminant limits for sludge going to a monofill, and operation standards for the monofill. Where the treatment works generating the sludge operates the monofill, all of the monofill requirements would be in the treatment works' permit. Where the treatment works sends its sludge to a monofill that it does not own or operate, requirements regarding sludge quality could be in the generator's permit, as well as other information such as the nature of the agreement between the generator and the monofill. Requirements regarding operation of the monofill could be in the monofill operator's permit. (The monofill is a treatment works because it is used for sludge disposal.) Thus, in this case, as with incineration, all requirements would be implemented through a permit, either issued to the generating treatment works or the receiving treatment works. This is another instance where it may be appropriate to make the two parties co-permittees.

Sludge sent to a municipal solid waste landfill (a landfill that accepts other types of solid wastes as well as sludge) is another disposal practice where the generator's permit conditions would apply to the quality of the sludge generated, rather than to the operation of the landfill facility. Municipal solid waste landfills (MSWLFs) will be regulated under 40 CFR Part 258, rather than under 40 CFR Part 503. The 40 CFR Part 258 regulations were proposed in the Federal Register on August 30, 1988 at 53 FR 33313 under the joint authority of RCRA and section 405(d) of the Clean Water Act. Where the generator sends its sludge to a MSWLF that it does not own or operate, the permit issued to the sludge generating treatment works must at a minimum contain provisions requiring the generator to comply with the 40 CFR Part 258 criteria regarding the characteristics of sewage sludge that must be met if the sludge is placed in an MSWLF. Under 40 CFR Part 258 as proposed, this would mean that the generator treatment works' permit would prohibit the disposal in an MSWLF of sludge found to be hazardous (proposed § 258.28), and would require that the sludge pass the Paint Filter Liquids Test (proposed § 258.28). The operator of the MSWLF (receiving the sewage sludge) would be responsible for complying with the landfill design, operation, and closure requirements in 40 CFR Part 258, which would be implemented through the RCRA Subtitle D program. Thus, the requirements as to sludge quality (in this case, that it is non-hazardous and not too liquid) would

be in the sludge generator's permit, and the requirements as to landfill operation would be imposed on the landfill operator under RCRA Subtitle D. In addition to these requirements, the proposed Part 503 regulations require that the generator treatment works send its sludge to an MSWLF that has a State-issued Subtitle D permit. (*See* proposed § 503.4(d)(2), 54 FR 5746, 5878, February 6, 1989.) This means of reconciling the two programs for comprehensive but not duplicative coverage is discussed in the preamble to the proposed Part 258 regulations, at 53 FR 33383 (August 30, 1988) and in the proposed Part 503 regulations at 54 FR 5746, 5794 (February 6, 1989).

The most complex area for regulating non-permitted users and disposers of sludge arises with the land application of sewage sludge. Often, the treatment works will give away or sell its sludge to farmers to be used as a fertilizer or soil conditioner. It would be cumbersome and counter-productive for EPA to require all farmers and other users of sewage sludge to obtain permits, and might also have the very undesirable result of discouraging beneficial use and recycling. The Part 503 regulations propose that sludge applied to agricultural or non-agricultural land must either be applied by the treatment works itself, or the treatment works must have a contract or similar mechanism that spells out the Part 503 requirements with the person who is applying the sludge. This is one means of putting the recipient of the sludge on additional notice as to Federal requirements regarding use and disposal. The treatment works would be responsible for the proper use of its sludge by maintaining appropriate sludge quality, and specifying appropriate application rates and other management practices through agreements with the users (or with contractors who have agreements with the user). As stated earlier, the Part 503 regulations can be enforced directly against any user or disposer regardless of whether the user or disposer has a permit. Records of these agreements kept by the treatment works would inform the regulatory agency of who is using the sludge and what the requirements are.

While EPA will not require that recipients of sewage sludge for beneficial reuse on land obtain a permit, because they are not considered "treatment works treating domestic sewage," many States currently regulate sludge by permitting the site where the sludge is used or disposed. As long as the State program imposes the sludge quality and other applicable Part 503 requirements on the treatment works through its permit, ensures compliance with the technical standards, and meets the other requirements of Part 123 or 501, a State program taking this approach can be approved.

Another difficult situation for regulating other users and disposers is where the sludge is distributed and marketed. For example, a sludge compost or heat-dried sludge product may be sold to a nursery chain where it is purchased in small quantities (in bags or bulk) by consumers and applied to home lawns and gardens. While these end users are subject to the technical sludge standards, as a practical matter it is not possible or desirable to regulate all of the end users through a permit. Further, EPA seeks to encourage such reuse practices where appropriate. The proposed Part 503 regulations recognize that such end uses cannot be directly controlled, and therefore the contaminant limits for sludge products that are distributed and marketed must generally meet higher standards of quality. The Part 503 regulations also propose that labels be affixed to the product or leaflets containing information about the quality of the sludge and its appropriate uses accompany the product. The treatment works' permit would require that the treatment works' sludge meet limits regarding sludge composition and related conditions, and that the treatment works provide information to users through leaflets or labels accompanying the product regarding appropriate uses of its sludge, or require, through a contact, that the distributor provide the appropriate labels or leaflets. The user of the product would remain responsible for complying with the instructions provided in such leaflets and labels.

In addition to the agreement with the generator treatment works proposed in Part 503, the Agency may also regulate the distributor through a permit, particularly a distributor who accepts sludge from several treatment works and prepares it to be sold, possibly mixing the sludge with other sludges or other materials when producing products to be marketed. Where such "distributor" alters the sludge quality, it is a "treatment works treating domestic sewage" and is required to obtain a permit. Permitting these distributors is appropriate for three reasons: (1) To more effectively ensure that relevant information regarding sludge quality and appropriate uses is passed on to the end users; (2) to ensure that the quality of the end product, which may change from that of the sludge as a result of mixing with other materials, meets Part 503 requirements; and (3) the distributor may be located in a different State or county from the treatment works, where the State or county laws are more stringent than those where the treatment works is located. Again, it may be appropriate to make the treatment works and the distributor co-permittees.

In response to comments that federal regulations for distributed and marketed sludge preempt local law, EPA does not feel that this approach would be in accordance with section 405, which expressly provides that the decision of the appropriate use and disposal method is a local one (section 405(e)) or with CWA section 510, which provides that States are free to set more stringent standards. One commenter also asked whether a sludge distributor would be required to obtain a permit in every State where its product was sold. This is not a requirement under today's rules. However, the distributor must comply with whatever State law requires for distribution and/or sale of sludge or sludge products in that State.

Today's rule gives the EPA Regional Administrator the authority to designate a user or disposer as a "treatment works or other treatment works treating domestic sewage" where he or she deems it is necessary to protect public health and the environment from potential adverse effects of sewage sludge pollutants or poor practices, or to ensure compliance with the technical standards. Thus, the permit mechanism can be employed to help guarantee that sludge will be used or disposed of safely. Making the authority discretionary enables the permit authority to take this approach where warranted, rather than imposing a permit requirement on all sludge handlers, which EPA believes would be unworkable and undesirable. Where the Regional Administrator finds that such designation as a "treatment works treating domestic sewage" is necessary, he or she shall notify the user/disposer, who has 120 days to submit a permit application. The reasons for designating a user or disposer as a treatment works should be stated in the permit's supporting documents, such as the fact sheet or statement of basis. This designation authority applies only when EPA is responsible for administering the sludge program. States have some flexibility in developing appropriate means of regulating users and disposers of sewage sludge.

Note: The Part 503 standards are independently enforceable even if no permit is issued.

In summary, under today's rule, in general the generator treatment works' permit is the primary vehicle for implementing the technical standards. However, the generator's permit may be limited in some circumstances. All permits issued by EPA (i.e., in unapproved States) to POTWs or other treatment works treating domestic sewage would, at a minimum, contain conditions as to sludge quality, including monitoring, recordkeeping, and any other requirements necessary to ensure that concentrations of pollutants in sewage sludge and other requirements concerning sludge composition meet federal standards, including information as to agreements with the recipients of the sludge. In the case of incineration and disposal in monofills, the requirements could be divided between the generator treatment works' and the receiving treatment works' permit. In the case of sludge sent to a MSWLF, the generator treatment works is responsible for sludge quality and for sending its sludge to a facility which is State-permitted under RCRA Subtitle D. The landfill operator is directly subject to RCRA Subtitle D. With land application, proper use by recipients of the sludge is assured through contracts or similar mechanisms between the treatment works and contractors, and between contractors and the user. Requirements for sludge that is distributed and marketed are generally more stringent, because EPA, through permits, or the POTW, through contracts, cannot effectively control how the product is used. The generator treatment works is responsible for providing information as to appropriate uses; the user is responsible for complying with the instructions in the accompanying leaflets or labels. In special circumstances, someone who does not fit within the definition of "treatment works treating domestic sewage" may be designated as a treatment works and required to obtain a permit for its sludge use or disposal activities.

With regard to State programs, today's rule requires that States: (1) At a minimum, prohibit all use and disposal of sewage sludge that does not comply with federal standards, and (2) issue permits to POTWs or other treatment works treating domestic sewage which, at a minimum, require the permittee to comply with applicable Part 503 requirements regarding sludge composition and requirements for contracts with other persons handling the sewage sludge in the case of application to land and distribution and marketing. Today's rule gives flexibility to the States to devise appropriate means of regulating other users and disposers, such as site permits, general permits, rules of general applicability, etc.

E. EPA's Authority Under Section 405(d)(4) of the CWA

The revisions to Part 122 promulgated today codify the requirement in the 1987 amendments directing the Administrator, prior to the promulgation of the technical sludge regulations to "impose conditions in permits issued to [POTWs] * * * or take other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sludge." This provision provides the basis for EPA's interim sludge permitting strategy, discussed elsewhere in this preamble.

EPA reads section 405(d)(4) also to require EPA to protect public health and the environment after promulgation of the Part 503 technical standards including, where necessary, the development of permit conditions to control sludge use or disposal on a case-by-case or "best professional judgment" (BPJ) basis. This is in addition to the requirement to impose conditions in NPDES permits that implement the requirements of Part 503 (the technical standards) and applies whenever a technical standard in Part 503 does not address a particular pollutant or practice which EPA determines is of concern. Similarly, section 405(d)(4) authorizes imposition of interim sludge requirements in permits issued to non-POTWs (e.g., privately-owned treatment works treating domestic sewage, sludge incinerators unconnected to a facility treating domestic sewage) if necessary to protect public health and the environment prior to the promulgation of applicable Part 503 requirements.

In sum, in section 405(d)(4) Congress requires EPA to take action now to protect the environment and to utilize whatever mechanism is necessary, including the issuance of permits, to effect this protection. In the preamble to the proposed rule, EPA solicited comments on whether, pursuant to Section 405(d)(4), it should also write permit limits on a case-by-case, best professional judgment basis when an applicable Part 503 standard is outdated and therefore may no longer be adequately protective. This would enable EPA to use new information to write limits that implement the statutory standard without waiting until the completion of a new technical rulemaking, which can take several years to develop and finalize.

Numerous commenters, including States, POTWs, industries, and an environmental group, commented on various aspects of EPA's authority under section 405(d)(4). The main topics addressed in the comments included: (1) Appropriateness of writing BPJ sludge permit conditions in the absence of promulgated technical standards; (2) appropriate scope of BPJ conditions; (3) the status and effect of interim, BPJ sludge limits when an applicable Part 503 standard is promulgated; and (4) using BPJ limits in lieu of an applicable, but outdated, Part 503 standard.

Two commenters expressed general support, based on the statutory language, for writing BPJ sludge permit conditions in the absence of applicable Part 503 standards. Another commenter, however, said there was no need for such broad authority and that relying on the technical standards should be sufficient. Relying solely on the technical standards would ignore the language in section 405(d)(4) which provides for the development of permit conditions or other appropriate measures to prevent possible adverse effects of toxic pollutants in sewage sludge "prior to" the promulgation of technical standards. The legislative history also refutes the position that reliance on technical standards is sufficient by indicating that EPA's BPJ authority applies after promulgation of the first round of technical standards. Conf. Rep. No. 99-1004, 99th Cong., 2d Sess. at 160 (1986). Today's final rule merely codifies in § 122.1(b)(3) and § 122.44(b)(2) the authority granted by section 405(d)(4) to develop "interim" conditions and does not require individually developed sludge conditions in every NPDES permit. When such limits might be needed is generally a case-by-case determination. EPA has, however, published guidance and policy which explains how EPA is implementing section 405(d)(4). (See above discussion about EPA's Interim Implementation Strategy in section III.C.)

One commenter opposed the use of BPJ limits unless there would be an "opportunity for standard correction that is not preempted by anti-backsliding provisions." Under EPA's interim program and today's final rule, the basis for BPJ limits must be explained in the fact sheet that accompanies the draft permit. As with other permit terms, BPJ limits are subject to administrative and judicial review. Finally, as explained below in section V.F.2, the "anti-backsliding" provisions in the NPDES program do not apply to interim sludge limits. Therefore, the

concerns of the commenters in this regard are inappropriate.

Some commenters disagreed with EPA's interpretation of the proper scope of BPJ limits. One commenter stated that EPA's authority under section 405(d)(4) encompasses only "best management practices" (BMP) conditions, not limits on toxic pollutants in sludge. The commenter offered several arguments to support this interpretation: Congress used the words "conditions" in section 405(d)(4) rather than "limits," a distinction maintained throughout the Act; Congress did not intend imposition of toxic limits prior to the careful evaluation required to develop such limits through rulemaking (i.e., such limits would be contrary to the regulatory scheme of the Act); and imposing toxic limits now could potentially upset the balance between environmental and economic concerns by requiring capital expenditures that may not be necessary to meet subsequently promulgated technical standards. In contrast, another commenter said that EPA could develop BPJ limits only for those pollutants identified pursuant to section 405(d)(2) for POTWs prior to the adoption of final regulations under section 405(d)(2).

EPA disagrees that Congress intended the authority under section 405(d)(4) to be so precisely limited as suggested by commenters. There is no significance to the use of the words "conditions" rather than "limits" in describing EPA's authority with regard to the contents of permits. "Conditions" is a generic term that refers to a broad range of requirements, including numeric limits on sludge quality and best management practices, imposed on permittees through the terms of a permit. The legislative history supports this broad interpretation. The conference report on the 1987 amendments explains that "the conference substitute directs the Agency to impose conditions in individual 402 permits incorporating criteria and limitations on sludge or use or disposal or take other appropriate measures to protect public health and the environment. * * * until the Agency implements the regulations required by paragraph (2)." Conf. Rep. No. 99-1004, 99th Cong., 2d Sess. at 160 (1986). One reason for this provision was "* * * recognition of the fact that some compliance deadlines for toxic contaminants in the second phase of regulation may extend to late 1989. * * *" *Id.* at 159. While this supports Congressional intent to authorize permit conditions addressing pollutants identified pursuant to section 405(d)(2), it does not support the argument that only those pollutants that have been identified could be limited by "interim" conditions in permits or other appropriate measures.

EPA's interpretation of section 405(d)(4) is consistent with the regulatory scheme as explained in the legislative history. Still, EPA is sensitive to the problems that may arise if "interim" conditions significantly differ from those that will be required by the technical regulations. Thus, in developing its interim permitting strategy the Agency has sought to adopt approaches which are consistent with the anticipated direction of the technical standards. In addition, a primary emphasis of the interim strategy will be ensuring compliance with existing federal requirements, such as 40 CFR Part 257. Generally, additional limits will be required only for POTWs with known or suspected sludge use or disposal problems. The recommendations for additional limits are based on existing federal guidance and State requirements, and consist in most cases of best management practices, rather than numerical limits. EPA has adopted this approach in recognition that such measures are interim only. EPA's primary objective under section 405(d)(4) remains the protection of public health and the environment.

In a similar challenge to the scope of EPA's authority under section 405(d)(4), one commenter argued that the statutory deadlines in section 405(d)(2) mean that Congress intended the authority under section 405(d)(4) to expire by August 1988 (the statutory deadline for compliance with the first round of technical standards) and that EPA's interpretation of section 405(d)(4) as a continuing grant of authority "to further delay development of this program" is contrary to Congressional intent.

This argument is without merit. Nothing in the statute or legislative history suggests that EPA's authority under section 405(d)(4) expires by a date certain. (In contrast, the statute clearly states that authority to approve removal credits expires by August 1987, the deadline for promulgating the first round of technical standards.) Congress is undeniably impatient for promulgation of comprehensive sludge technical standards because of the potential environmental and public health impacts of disposing of contaminated sewage sludge. Congress' impatience and the focus of its concern are reflected in its decision to require interim measures in section 405(d)(4). To interpret EPA's authority under section 405(d)(4) to expire by a certain date regardless of the status of the technical standards totally ignores the purpose of interim limits to protect public health and the environment. Indeed this purpose, together with a statutory requirement to continually review, revise, and develop additional technical standards even after promulgation of the second round of regulations, argue for a continuing responsibility to impose interim conditions in the absence of technical regulations.

EPA received mixed comments on whether BPJ limits would be appropriate as substitutes for applicable technical regulations when those regulations were outdated and no longer were sufficient to protect public health and the environment. States, a POTW, and an environmental group all supported the general concept of using BPJ in lieu of an applicable, but outdated, Part 503 standard. Most commenters, however, expressed reservations or conditions, sometimes contradictory, as to the appropriate authority for taking such action. For example, two commenters said States should have the authority to supplant Part 503 standards to take into account local conditions or needs, while two other commenters (also States) said EPA must carefully control BPJ authority in this situation to avoid confusion, inconsistent application, and immediate State imposition of alternate BPJ limits upon promulgation of Part 503. Several supported this option only if the alternate standards would be subject to scientific review in addition to public review. One commenter said alternate limits that were less stringent than existing Part 503 regulations should also be available. On the other hand, three commenters, all regulated parties, opposed the use of BPJ limits in lieu of Part 503 standards as contrary to the scheme under the CWA for promulgating and regularly updating the technical standards.

Technical standards may become outdated. However, as noted by even the supporters of a broad BPJ authority, determining when a standard has become outdated and therefore not sufficiently protective of public health and the environment for any particular pollutant would be difficult. Moreover, the statute contemplates regular updating of the technical standards, through promulgation of new regulations, and requires EPA to see that accurate, up-to-date standards are in place. This scheme, and the integrity of existing technical standards, could be undermined by the use of BPJ limits to supplant regulations promulgated according to the Act's requirements. In any event, the potential need for interim

limits in lieu of "outdated" regulations is many years away. For these reasons, today's rule does not provide for the development of BPJ standards in lieu of an existing Part 503 standard. (Note, however, that EPA can develop BPJ limits for pollutants, management practices, etc., which are not regulated by the Part 503 standards applicable to the use or disposal method used by the permittee.)

F. Permitting Requirements (Part 122)

1. General

Part 122 establishes the essential requirements for NPDES permits issued pursuant to section 402 of the Act by EPA or an approved State. It establishes the scope of the NPDES permit program, general requirements governing the administration of the program, application requirements, required permit conditions, and permissible causes for modifying or terminating NPDES permits. Before today's final rule, these regulations specifically addressed sludge requirements for NPDES permittees in a very limited way. The NPDES regulations provided that sludge may not be discharged to waters of the United States and more generally required that NPDES permits contain any conditions required by section 405 of the Act regarding the disposal of sewage sludge from POTWs (§ 122.44(o)). Part 124 contains the procedural requirements for issuing NPDES permits and similarly lacked specific provisions for sludge.

The WQA of 1987 requires that the Part 503 technical sludge regulations be implemented through permits and designates NPDES permits as the primary implementation mechanism, unless the Part 503 requirements are implemented through permits issued under other Federal programs (Subtitle C of RCRA, Part C of the Safe Drinking Water Act, MPRSA, or the Clean Air Act) or State programs approved pursuant to section 405(f). See section 405(f)(1). Accordingly, today's final rule amends Part 122 to establish requirements for including in NPDES permits any terms and conditions necessary to implement the sludge standards in Part 503 as well as any others which may be necessary to protect human health and the environment pursuant to section 405(d)(4).

In addition, EPA is amending Parts 122 and 124 to make the permitting program established under those parts the vehicle for EPA issuance of "sludge-only" permits under section 405(f)(2) of the CWA. That section authorizes EPA to issue permits which implement the sludge technical standards to any treatment works that treats domestic sewage where the treatment works is not otherwise subject to NPDES and is not subject to sludge requirements that implement section 405 contained in other Federal permits or permits issued under an approved State program. A treatment works that applies its effluent to land or uses an evaporation pond rather than discharging it to surface waters is an example of a treatment works that might be a "sludge-only" facility. Here, although the treatment works would not need an NPDES permit for surface water discharges, it may be a "treatment works treating domestic sewage" under section 405(f) and thus would require a permit under the final rule.

The revisions to Parts 122 and 124 promulgated today apply to all NPDES permits for treatment works treating domestic sewage which are issued by EPA and by States which choose to administer an approved sludge management program as part of their NPDES programs. These revised permitting requirements and procedures are also the basis for the permit requirements that must be followed by States which choose to administer an approved sludge program independently from an NPDES program, i.e., under Part 501. Part 501 separately lists the permit requirements and procedures applicable to non-NPDES State programs. The discussion of comments and changes from the proposed rule relating to those requirements, however, are included in the discussion below on specific revisions to Parts 122 and 124.

2. Specific Revisions

Purpose and Scope. Several revisions § 122.1 reflect the expanded scope of the NPDES program to include requirements for sludge use and disposal pursuant to section 405 of the CWA. These include: updating the citation for the Clean Water Act in § 122.1(a)(1) to include Pub. L. 100–4, the Water Quality Act of 1987; adding a new paragraph (a)(3) which states that the permit program established under Part 122 applies to the use and disposal of sewage sludge by owners or operators of any treatment works treating domestic sewage (whether or not they would otherwise be required to obtain an NPDES discharge permit) unless all requirements implementing section 405(d) regulations have been included in a permit issued under one of the Federal permit programs listed in section 405(f)(1) or an approved State program; in paragraph (d)(2), adding the Part 503 technical sludge regulations to the list of separate regulations which the NPDES permit program is designed to implement; including in paragraph (g) the provisions from the amended section 405 that address the inclusion of sludge conditions in NPDES and "sludge-only" permits and the authority for approved State programs under section 405(f).

Sludge-only facilities. Today's final rule expands the scope of Part 122 to cover "sludge-only" permits (§ 122.1) and to indicate where the requirements for "sludge-only" permits differ from the requirements applicable to other NPDES permittees (e.g., § 122.21(c)(2)), specifying when a "sludge-only" facility would have to apply; § 122.21(d)(3)(ii), specifying the information a "sludge-only" facility must submit with its application; § 122.44(j)(2), requirement for pretreatment programs when necessary to assure compliance with Section 405 requirements). No one commented on the proposed revisions to specify requirements applicable only to "sludge-only" facilities; accordingly, they will be promulgated as proposed. The general requirements applicable to NPDES permittees would also apply to "sludge-only" permittees except where the requirements, by their own terms, apply only to discharges to surface waters. Comments on expanding the NPDES permit program to incorporate a program for regulating sludge use and disposal are discussed in Section V.C. above.

By definition, "sludge-only facilities" are unique to an EPA-administered sludge program, i.e, they are facilities not covered by an approved State sludge management program. There is some confusion on this point. One State read the proposed rule to mean that it would have to establish an NPDES program for purposes of regulating facilities that apply their effluent to land rather than regulating these facilities through an existing non-NPDES program. That is not the case. Although the State sludge program will apply to all "treatment works treating domestic sewage"—those that currently are subject to NPDES permits as well as those that are not (e.g., non-discharging facilities)—the State may continue to regulate the non-dischargers through an existing non-NPDES program as long as it meets the requirements of Part 501. "Sludge-only facilities" will have the same requirements as other "treatment works treating domestic sewage"; the only difference is that with the "sludge-only facilities" the sludge requirements are not being implemented through an existing permit issued under another program. Therefore, a State may continue to regulate, through a program approved under Part 501, those facilities

which would be considered "sludge-only facilities" if EPA were the permit-issuance authority. In fact, to be approved under Part 501, the State must regulate all POTWs and other treatment works treating domestic sewage, regardless of whether these facilities have surface water discharges.

In response to comments, today's final rule includes several editorial changes to the definition of "sludge-only facility." First, the final definition refers to the defined term "treatment works treating domestic sewage" to clarify that only those facilities which fall within that definition can be "sludge-only facilities." Second, the final definition deletes reference to the term "sludge use or disposal practices." Commenters erroneously interpreted this reference to mean that, for example, access points to the collection system, septic tanks, farmers, and homeowners would be included within the definition of "sludge-only facility" and thus would be required to obtain a permit. This is not EPA's intent and therefore the phrase has been eliminated. Instead, the definition now refers to "sludge use or disposal method(s) * * * subject to regulations promulgated pursuant to section 405(d) of the CWA." This means only those treatment works whose use or disposal methods are regulated by Part 503 are included in the definition of "sludge-only facility."

Permit as a shield. Consistent with the language in section 402(k) of the Act and the 1987 amendments to section 405, EPA proposed to amend § 122.5, the "permit as a shield" provision, to exclude section 405(d) from the scope of that provision. Thus, under the proposed revision to § 122.5, compliance with a permit would not necessarily constitute compliance with section 405(d). The proposed rule retained "permit as a shield" coverage for section 405 (a)–(b) because those sections concern EPA's authority to require NPDES permits and establish effluent limitations for disposal of sewage sludge to surface waters to the same extent as for other pollutant discharges regulated through NPDES permits, and thus were unaffected by the 1987 amendments to Section 405.

At the same time, EPA explained that it did not read the CWA to prohibit limited protection for permittees who comply with their permit in certain situations. Accordingly, it solicited comments on two alternative ways to provide some protection to permittees from enforcement actions when they are in compliance with permit conditions designed to implement a Part 503 (i.e. section 405(d)) standard. One suggested approach was to adopt a limited affirmative defense which a permittee could assert in an enforcement action if it were in compliance with a permit condition developed to implement the Part 503 standard allegedly violated. The defense would not be available if the permit did not address the requirement allegedly violated or for compliance with interim limits developed on a case-by-case basis pursuant to section 405(d)(4) if the pollutant or other parameter in question were subject to a subsequently-promulgated requirement in Part 503 that addressed that pollutant or parameter. Under the second proposed approach, EPA would promulgate a regulation that deemed permit conditions which implement particular Part 503 standards to be Part 503 standards. Under this option, compliance with those permit conditions would be compliance with Part 503 and hence, compliance with section 405(d) requirements. The reasoning behind both approaches was that: (1) It would be unfair to subject a permittee to an enforcement action for a violation of section 405 when the permittee was in compliance with permit terms specifically designed to implement the Part 503 standard allegedly violated; and (2) providing protection to the permittee in this case reinforces the integrity of the permitting system and acknowledges the permittee's good faith efforts to comply with the section 405(d) regulations by complying with its permit.

Several commenters took issue with EPA's interpretation of the section 402(k) and its applicability to section 405(d) standards. The one commenter who objected to EPA's "limited affirmative defense approach" asserted that providing such protection would be a blatant circumvention of Congressional intent. Instead, the commenter argued, EPA should rely on its enforcement discretion in appropriate situations. At the other extreme, several commenters asserted that section 402(k) of the CWA does include section 405(d), i.e., the proposed revision to § 122.5, which would delete permit as a shield protection for section 405(d), was unnecessary and unauthorized. In support of this position, these commenters argued that: failure to revise section 402(k) was an oversight or was unnecessary because section 405 already falls within the scope of section 402(k) via § 122.5; section 405(a)–(c) make section 402 procedures and requirements applicable with equal force to permits issued under section 405; if Congress had intended to exclude section 405(d) from section 402(k) protection it would have done so explicitly (as in the case of section 307(a)); the Agency's interpretation is contrary to Congressional intent that section 402(k) was designed to assure that mere promulgation of limitations will not subject a permittee to prosecution until limitations are made conditions of a permit; and the Administrator has ample authority to reopen permits if necessary to protect public health and the environment.

EPA disagrees that the CWA proscribes one position or the other. Congress created an ambiguous situation by not revising section 402(k) to give the same "permit-as-a-shield" protection for compliance with permits which implement section 405(d) standards as it did for other standards under the CWA, but at the same time requiring that section 405(d) be implemented through permits, including section 402 permits. The statute also requires, without exception, compliance with regulations promulgated pursuant to section 405(d) within one year after promulgation of the regulations, whether or not the standards have been included in a permit, and Congress clearly intended that the regulations be directly enforceable. Conf. Rep. No. 99–1004, 99th Cong. 2d Sess., printed in 132 Cong. Rec. H10577 (October 15, 1986). The fact that section 402(k) does not specifically exclude section 405(d) from its scope as it excludes section 307(a) adds to this ambiguity. EPA therefore must use its judgment in determining which course can best further Congressional goals. In this case, EPA has determined that those goals can best be served by promulgating a regulation that protects a permittee who complies with a Part 503 standard in the limited circumstances described above under the first proposed alternative. Further, EPA believes that such protection is warranted in the case of citizen suits brought under Section 505 of the CWA as well as for EPA enforcement actions. Therefore, it is necessary to establish this protection for permittees in the regulations, rather than by exercising enforcement discretion. Today's rule is consistent with the CWA because it does not protect against liability for a failure to comply with the statutory deadline (i.e., compliance with interim permit limits would not insulate a permittee from liability for failing to comply with Part 503 standards by the statutory deadline).

Despite disagreements about the rationale for and appropriate scope of protection, commenters overwhelmingly supported the general concept of

providing protection against enforcement to a permittee who complies with its permit for the reasons stated in the preamble to the proposed rule. Both alternatives discussed above received approximately the same amount of support, although commenters generally did not explain why they preferred one over the other. One commenter suggested that the need to provide such protection could be avoided by making the Part 503 standards advisory guidance rather than binding regulation. This alternative is not available under the CWA because the statute clearly requires that the Part 503 standards be in the form of regulations and that those regulations be directly enforceable.

In today's final rule, EPA is promulgating the first alternative, which establishes an affirmative defense to an enforcement action for violating the Part 503 regulations (i.e., section 405(d)) based on compliance with permit conditions designed to implement a particular Part 503 standard. EPA chose this approach rather than the second alternative, because the affirmative defense approach is more tailored to the narrow purpose of protecting permittees who are in good faith compliance with their permits against enforcement actions. The second proposed approach could have been read more broadly to establish an alternative standard-setting mechanism.

Permittees may assert the affirmative defense only in limited circumstances. It would apply when the permittee can demonstrate compliance with a permit condition that was developed to implement a particular Part 503 standard. One commenter said that the defense should cover both permitted and unpermitted conditions (covered by Part 503) to avoid confusion and frustration for the permittee and Agency. EPA agrees as long as the "unpermitted condition" is addressed in the applicable Part 503 standard and the permittee can demonstrate that it was not limited in the permit because it was determined not to be of concern (e.g., through documentation in the fact sheet). The defense would not apply, however, where a Part 503 standard is not included in the permit because the permittee failed to submit all relevant information requested during the application process or pursuant to its duty to update or supply missing information. Compliance with permit conditions implementing Part 503 standards is not a blanket shield, however. Compliance with permit conditions implementing Part 503 standards that apply to one disposal option would not be a defense to an action based on violating standards applicable to another disposal option. Likewise, it would not protect the permittee from liability for complying with subsequently promulgated or revised Part 503 standards applicable to the permittee's sludge use or disposal practices. Providing a defense in this situation would be contrary to the statutory deadlines in section 405(d)(2) for complying with the technical standards.

Under today's rule, compliance with interim limits developed on a case-by-case basis pursuant to section 405(d)(4) of the Act would not shield the permittee from an enforcement action for violating a subsequently promulgated Part 503 standard that was more stringent or broader than the interim limit. A few commenters specifically suggested that any defense should apply in this situation. Other commenters similarly argued that interim limits should protect a permittee from permit modifications to implement a Part 503 standard promulgated after permit issuance. For example, one State said that such protection is necessary because State law prohibits permit modification for ten years. Here again, providing a defense based on compliance with interim limits would be contrary to the statutory deadlines for complying with the technical standards in section 405(d)(2). (Note also that a ten-year permit is contrary to today's final rule. *See* § 122.46 and § 501.15(a)(5).) It is also important to note that today's final rule creates an affirmative defense to enforcement actions. It does not create a bar to permit modification for cause. Today's final rule has been revised to specifically provide for reopening and modifying permits to incorporate Part 503 standards which are promulgated after permit issuance.

One commenter argued that compliance with the permit should be a complete defense for each pollutant limited in the permit for all pathways of exposure including those regulated under other laws; otherwise excessive and unnecessary burdens would be imposed on small entities and their ability to compete, especially if liability reaches small entities like landscapers and garden shops. Limiting liability in this way is not possible since the CWA does not give EPA the authority to preclude liability under, or preempt, other laws (Federal, State, or local). (*See* sections 405(d)(5) and 510 of the CWA.) Any additional liability imposed on small entities has been imposed by the other statutes referred to by the commenter, not by these regulations. In fact, today's final rule creates a defense to liability (to the extent authorized by the CWA) when there has been good faith compliance by a permittee. Therefore, EPA disagrees that today's rule places an unnecessary, excessive, or unfair burden on small entities.

The affirmative defense created today applies only to a permittee's liability under the CWA (i.e., enforcement actions brought under Federal law). As noted above, EPA cannot in these regulations provide defenses to liability imposed under other laws, particularly State and local laws. Therefore, States with approved programs that wish to provide a similar defense under State law to permittees would have to do so separately. EPA would examine any defense under State law to ensure that it is not at odds with the limited defense available under Federal law.

Application procedures. Section 122.21 establishes application requirements for NPDES permittees. EPA proposed revisions to this section both for "traditional" NPDES permittees and "sludge-only" permittees. Today, the Agency is finalizing those revisions with the changes explained below.

The first revision to § 122.21(a), addresses who must apply for a permit. EPA proposed to revise this paragraph to state that, in addition to "any person who discharges or proposes to discharge pollutants," any person who owns or operates a "sludge-only facility" also has a duty to apply for a permit. EPA received no comments on this proposed revision. Therefore, the final rule is the same as the proposed rule.

The proposal also specified *when* sludge-only facilities would be required to apply: existing facilities within 120 days after promulgation of 40 CFR Part 503 (or earlier if necessary to protect public health and the environment); new facilities that commence operation after promulgation of 40 CFR Part 503, at least 180 days prior to the date proposed for commencing operation. This proposed revision has been changed to clarify more precisely when sludge-only facilities must apply, and, in response to comments, to address when other treatment works treating domestic sewage (i.e., those already covered under the NPDES program) must apply. Under today's final rule, States seeking program approval under Part 501 must also be able to implement requirements concerning when various parties must apply equivalent to those in today's final revisions to § 122.21. (*See* § 501.15(d)(1).)

Today's final revisions addressing when the application requirements must be submitted appear in a new paragraph

§ 122.21(c)(2). Under § 122.21(c)(2)(i), POTWs with currently effective NPDES permits must submit the required sludge information (explained below) with their next application or within 120 days after promulgation of an applicable Part 503 standard, whichever occurs first. POTWs are addressed separately because the 1987 amendments to the CWA provide for the immediate regulation of POTWs with NPDES permits. Under EPA's interim sludge permitting strategy, sludge permit conditions are to be considered for each POTW as its permit is reissued. Therefore, POTWs are required by today's final rule to submit information about sludge use and disposal with their next applications. Today's final rule also provides for a POTW to submit a new application if, during the permit term, a Part 503 standard applicable to the POTW is promulgated.

Sections 122.21(c)(2) (ii) and (iii) apply to non-NPDES POTWs, as well as all other treatment works treating domestic sewage, i.e., those facilities not specifically targeted for immediate regulation under section 405(d)(4) of the CWA. These include privately-owned treatment works treating domestic sewage and sludge-only facilities. As in the proposal, application information must be submitted by an existing facility within 120 days after promulgation of an applicable standard or earlier if the Director determines that a permit is needed to protect public health and the environment. Facilities that commence operation after promulgation of an applicable standard must submit the application information at least 180 days before the date proposed for commencing operation. Today's final rule is different from the March 1988 proposed rule in two respects. First, it has been rephrased to apply to privately-owned treatment works treating domestic sewage as well as to sludge-only facilities. Second, under the proposed rule, the duty to apply was triggered by promulgation of "40 CFR Part 503." This could be interpreted to require submission of application information upon the promulgation of the first round of the 503 standards even if those standards did not apply to the applicant's sludge use or disposal. Today's final rule clarifies that the duty to apply for a permit is triggered by promulgation of Part 503 standard that is applicable to the facility's sludge use or disposal methods. Therefore, facilities not covered by the first round of Part 503 standards (e.g., industrial manufacturing and processing or commercial facilities that treat domestic sewage along with process wastewater) generally will not be required to submit sludge application information until promulgation of Part 503 standards applicable to them. In all cases, however, the permitting authority could require any facility to submit information earlier when necessary to take interim measures to protect public health and the environment pursuant to section 405(d)(4) of the CWA or equivalent State authority.

Applicants are required to send their applications to "the Director." Under the NPDES regulation, "Director" means the Regional Administrator when EPA is the permit-issuing authority and the State Program Director in the case of an approved State NPDES program. One commenter asked that EPA revise the regulation to allow applications to be sent to "authorized administrators under the Director." Nothing in today's rule precludes States from requiring applicants to submit applications to authorized representatives of the Director. Therefore, a revision is not necessary. (Today's rule does, however, limit who may be authorized to make final decisions on permit actions. See the discussions on assignment of program responsibilities in section V.I.1 and on the conflict-of-interest standard for State permitting boards in section V.I.6 of this preamble.)

Today's rule does not require applicants to submit the required information about their sludge use and disposal practices on a particular form. One commenter said that EPA should require uniform national application forms to enable EPA and the States systematically to evaluate and use data from permit applicants. EPA agrees that these objectives are worth pursuing. EPA is in the process of updating the permit application forms for municipal dischargers, and expects to incorporate the sludge information required by today's final rule. The part of the form requesting sludge information should also be useful for obtaining information from non-municipal dischargers.

Application requirements. The March 1988 proposed rule also specified the application requirements for both sludge-only permittees and NPDES permittees that are POTWs or other treatment works treating domestic sewage in a proposed revision to § 122.21(d)(3). This revision provided that these permit applicants submit the information required under 40 CFR 501.15(a)(2). General information requirements included name, address, and location, and an identification of the activities which bring the facility under the jurisdiction of section 405. The applicant must also identify whether it is subject to any of the listed environmental permit programs. This is important in order to provide notice of the sludge permit to other affected programs and to determine whether some Part 503 requirements are already included in other permits.

More specific information requirements under the proposal included a topographic map of the treatment works property depicting the location of any sludge management facilities, including on-site disposal sites. Applicants also would have to describe their sludge use and disposal practices since use or disposal options will be the basis on which limits are established under Part 503.

Under the proposed rule, the description of sludge use and disposal practices would include a specific identification of the sites where the applicant proposes to transfer sludge for treatment and/or disposal, as well as the names of applicators, distributors, or other contractors that will handle the disposal of the applicant's sludge. In the case of sludge or sludge products (e.g., compost) which are distributed and marketed to the general public, the permit applicant would identify the distributor, if different from the applicant. This information will be important for purposes of tracking the sludge to ensure that it is properly managed as provided for in applicable Federal standards. (Whether persons other than the applicant (e.g., a contractor) must obtain a permit is discussed in section V.D.3 above.) Applicants must also state their annual sludge production volume.

The proposed rule also contained general requirements to submit available data on sludge quality and groundwater monitoring, to provide the permit writer with any additional information needed to ascertain compliance with the Part 503 standards, and to submit any other information the Director may reasonably require to assess the sludge use and disposal practices, for example, where permit conditions are developed on a case-by-case basis. In such circumstances, the permit writer may decide that groundwater factors at the disposal site, such as distance to water supply wells, water table fluctuations, and proximity to wetlands, should be considered in developing permit conditions.

The final rule includes two major changes to the proposed application requirements, which were adopted in response to comments. The first involves the use of approved land application plans for establishing requirements applicable to individual

land application sites identified after permit issuance (in lieu of the usual procedures for submitting application information and developing or modifying permit conditions). The second concerns the requirements to submit a topographic map. Each of these changes are explained in more detail below. In other respects, the final rule is substantially the same as the proposed rule.

Under the proposed rule, applicants would be required to identify on their permit application the location of all off-site sludge disposal sites. New sites identified after permit issuance would have to be first brought to the attention of the Director and the permit modified to approve specific application sites, following the usual procedures for permit modification.

A number of commenters, all State agencies, opposed requiring individual permit actions for land application site approvals because of the need for public notice and associated permit issuance procedures. Commenters asserted that the decision whether to provide notice for every site should be left to States or to local jurisdictions. Commenters also asserted that permitting procedures would be too burdensome if required for every site. One commenter noted that such procedures were not compatible with the need to issue land application approvals in coordination with crop growth cycles and suitable periods for sludge application. Two commenters asserted that requiring public notice for each site would discourage beneficial reuse because of public misunderstanding about risks. Two of the commenters proposed an alternative approach which is used by several States: rather than requiring individual permit actions for each approval of a land application site after permit issuance, the Agency should require POTWs (or other sludge generators) to submit a land application plan which would be subject to public notice and comment when the permit is issued.

After reviewing the comments on this issue, EPA has decided to modify its proposal so as not to unduly discourage beneficial reuse of sewage sludge. Today's rule adopts a variation of the commenters' alternate approach of requiring submission of a land application management plan. Under today's rule, an applicant that intends to apply its sludge to land must either: (1) Identify each land application site that will be used during the life of the permit on the permit application; or (2) submit a land application plan. Land application plans are not required for the land application of sludge that meets requirements for distribution and marketing of sewage sludge.

The application plan must, at a minimum, describe the territory covered by the plan, detail how the applicant or its agent will select and manage individual application sites, provide for advance notice of new land application sites and a reasonable opportunity to object to the permitting authority, and provide for public notice of new sites as required by State or local law, but in all cases, must require at least notice to adjacent or abutting land owners and occupants.

Additional details of the plan would be developed on a case-by-case basis, using guidance and any applicable Part 503 standards. For example, site selection criteria should address such conditions as slope of appropriate sites, any runon/runoff control measures, ground-water monitoring, and access control that may be needed at high use-rate sites, buffer strips around surface waters, drinking water wells and dwellings, minimum depth to usable ground water, and how an evaluation of site soil texture and parent geologic material will be factored into site selection. (These two factors influence permeability, infiltration, and drainage. Highly permeable soils such as sand and highly impermeable soil such as clay may present special design and operational problems.) Site management guidelines which should be addressed include sludge application rates, control of loadings of heavy metals (these pollutants tend to accumulate at application sites), seasonal limitations, and how compliance with important site selection factors (e.g., adequate buffer strips, slope limitations) will be maintained as the site is used.

Note: EPA's Process Design Manual for Land Application of Municipal Sludge is an excellent resource for permit writers to consult when reviewing land application plans.)

The applicant must submit its land application plan with its permit application. The land application plan would be subject to public notice and comment as part of the permit. Thereafter, approval of individual land application sites by the permitting agency is required, but the permitting procedures that normally would apply to permit modification (i.e., preparation of a draft permit, public notice, etc.) would not be required. Instead, approval of a new land application site (pursuant to an approved land application plan) would follow the procedures established in the plan. Minimally, the plan would require advance notice to the permitting authority and a reasonable opportunity to object, and notice to neighbors if not already required by State or local law. These are minimum requirements. The permit writer could determine that more extensive notice requirements are appropriate.

Today's rule also revises § 122.62 to provide for land application plans to be approved separately or revised as a permit modification.

EPA chose to provide for land application plans as an alternative to requiring identification of, and permit conditions for, all potential land application sites at the time of permit issuance because of the large number of land application sites that POTWs and other sludge generators use, and the impracticability of requiring full-scale permitting procedures before using any site that was not specifically identified at permit issuance. EPA considered, and rejected, requiring applicants to only apply sludge to sites identified in the permit application. As noted by commenters, this would severely restrict the flexibility of the applicant in managing reuse of its sludge, particularly for use on agricultural lands, and therefore discourage beneficial use, contrary to Agency policy and Congressional intent.

At the same time, EPA does not agree that public notice of sludge use and disposal is incompatible with beneficial reuse. In fact, public notice and education are necessary for building and maintaining public acceptance which will be critical for establishing viable beneficial reuse programs. Today's final rule provides for public notice without sacrificing the expedited procedures critical to programs for beneficial reuse of sludge on agricultural lands. Public notice is provided initially when the land application plan is developed as part of the permit. The public will have an opportunity to comment on the guidelines the POTW or its agent will follow in selecting and managing land application sites and on the notice procedures that the permittee must follow when it proposes to apply sludge to a site not identified in the plan. The requirement that permitting authorities approve individual sites gives the authority an opportunity to determine if the site is appropriate for sludge reuse under the criteria approved in the land application plan. State or local jurisdictions may choose at their discretion how much public notice should be required for each site identified after plan approval, but in all cases the permittee will be required to notify site neighbors.

To ensure that the public has a meaningful opportunity to comment on

the land application plan, today's final rule requires that the public notice of the permit reaches areas within the territorial scope of the land application plan. (See § 501.15(d)(5)(ii)(B) and § 124.10(c)(2)(i).) The public notice must indicate that the permit includes a land application plan (§ 501.15(d)(5)(iii)(a)(3) and § 124.10(d)(1)(vii)). In addition, a fact sheet must be prepared (§ 501.15(d)(4) and § 124.8(a) and the fact sheet for the draft permit must briefly describe the contents of the land application plan (§ 501.15(d)(4)(i)(C) and § 124.56(e)). The fact sheet should clearly explain that the land application plan will establish the public notice procedures that must be followed before applying sludge to future sites not known at the time of permit issuance. The other significant change to application requirements contained in today's final rule concerns the requirement to submit a topographic map. The March 1988 proposed rule would have required that all permit applicants submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the location of the sludge management facilities (including disposal sites).

Three State agencies, three POTWs or municipalities, and one POTW trade association provided comments on the topographic map requirement. Three commenters recommended deleting the topographic map requirement, leaving it for States to require at their discretion. Another commenter objected to the requirement for a one-mile radius and also recommended State discretion. One commenter read the proposal to require topographic maps for all sludge management sites and asserted that such a requirement was unreasonable and unnecessary for small sites. Two commenters recommended strengthening the requirement. One asked that topographic maps be required for all sites and not just sources, as most agronomic sites are more than one mile from the wastewater treatment plant. The others recommended that applicants be required to mark the location of all water bodies, water courses, wells, seeps and springs within a one mile radius of the perimeter of the site (not the source).

Today's final rule establishing map requirements differs from the proposed rule in one major way. The map must show the location of all water bodies and wells used for drinking water, in addition to the location of all sludge management facilities at the treatments works' site. Information about drinking water wells is needed only within a one-quarter mile radius beyond the property boundaries. Further, only information about drinking water wells listed in public records or otherwise known to the applicant must be submitted. Limiting the information about drinking water wells to existing information is consistent with similar requirements in the NPDES and RCRA programs. (*See* 40 CFR 122.21(f)(7) (NPDES); 40 CFR 270.13(1) (RCRA).)

Today's rule does not require all applicants to submit maps identifying all off-site (i.e., beyond the treatment works boundaries) sludge use or disposal sites it proposes to use. EPA agrees that maps may be necessary for some off-site locations, such as where large quantities of sludge are used or disposed of (e.g., landfills, sludge surface disposal sites, dedicated land disposal sites and incinerators) or where such information is necessary to develop adequate permit limits. Maps of disposal sites may indicate proximity to ground water recharge areas or surface waters, which may suggest the need for special permit limits to protect those areas from contamination. However, under today's rule whether maps for off-site use and disposal site would be appropriate is left to the discretion of the permitting authority. Today's final rule requires the applicant to submit this type of additional information when requested.

As proposed, today's final rule sets a minimum requirement for map dimensions (to which one commenter objected), but retains the size of the required map. A one mile radius has been determined by the Agency to provide sufficient information about potential environmental impacts from on-site activities on adjacent lands to determine appropriate permit conditions. In response to one comment, the Agency has added the requirement that maps depict water bodies (including surface waters, seeps, springs, etc.) and known drinking water wells within one-quarter mile of the property boundaries because sludge use and disposal may adversely affect surface water quality and nearby ground waters that may directly affect human health. As noted earlier, this makes the map requirements for sludge similar to requirements in other EPA programs. Indeed, since most treatment works affected by today's final rule are subject to the NPDES program, they will be able to meet most of the mapping requirements with the maps they prepare for the NPDES permit program (§ 122.21(f)(7)). Applicants would need only to add information not already specifically required, i.e., the location of on-site sludge management facilities. As with NPDES map requirements, applicants should use a standard U.S. Geological Survey map where available (7½ minute series; 15 minute series if the 7½ minute series is unavailable).

The final rules on application requirements also include two minor changes from the proposal. First, § 501.15(a)(2)(v), which requires a listing of all environmental permits, has been expanded to specifically require submission of any local sludge permits. (See paragraph (a)(2)(v)(I).) Second, proposed § 501.15(a)(2) (vii) would have required the applicant to submit any sludge monitoring data it had which was "representative of normal operating conditions at the facility * * *." In the final rule, the phrase "which is representative of normal operating conditions at the facility" has been deleted. EPA agrees with the commenter who said that all monitoring data, including data gathered under adverse conditions, should be reviewed before determining appropriate permit conditions. When submitting the monitoring data, the applicant should of course indicate the conditions under which the data was gathered.

As noted by one commenter, the requirement to submit monitoring data, "including available groundwater monitoring data with a description of well locations" does not mean that groundwater monitoring wells are required at all beneficial land application sites that receive sludge. Whether groundwater monitoring wells are required at any particular site will be determined either by the Part 503 technical standards or by the permitting authority using best professional judgment. When the applicant already has groundwater wells and monitoring data, the final rule requires the applicant to submit that data. In response to a comment, the final rule clarifies that the type of available groundwater data that an applicant may have, and thus must be submitted, includes approximate depth to groundwater. The commenter also suggested that drilling log data also would be useful for review purposes. When the applicant has such information, it must be submitted with the application.

Today's final rule, in a revision to § 122.21(p), requires that permit applicants must retain all sludge-related application data for five years, or longer if required by 40 CFR Part 503. This revision parallels § 501.15(a)(3) and is explained in section V.I.6. below.

General permits. Section 122.28 allows general permits to be issued to

cover a category of discharges within a specified geographic area when all sources: (1) involve the same or substantially similar type of operations; (2) discharge the same types of wastes; (3) require the same effluent limitation or operating conditions; (4) require the same or similar monitoring; and (5) in the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

Under the circumstances described in § 122.28 for NPDES, general permits have the potential to reduce significantly the administrative burden of issuing individual permits without sacrificing control over the regulated activities (and thus environmental quality). To provide the same advantages for regulating sludge use and disposal, EPA proposed to amend § 122.28 to allow general permits to cover sludge use or disposal practices under the same type of circumstances as permits for effluent discharges. Under the proposal, for example, a general permit could be written to cover all facilities that use the same disposal method and are subject to the same sludge quality requirements and management practices. It would not be necessary that all facilities covered by the sludge general permit also qualify for a general permit covering their effluent discharges. Thus, it would be possible for a facility to be covered by an individual NPDES permit which regulates its discharges and by a general permit which regulates its sludge practices.

Six commenters addressed the proposal to allow general permits for sludge. Only one commenter, a POTW, objected to general permits on the basis that sludge regulation typically calls for site-specific conditions. The commenter correctly notes that general permits are not useful when permit conditions would need to vary from site to site to implement the applicable standard correctly. Under the final rule promulgated today, general permits would not be allowed unless all entities covered by the general permit are subject to the same or similar permit conditions. Thus, where the sludge regulations require site-specific conditions that vary for each permittee, general permits would not be appropriate and individual permits would be required. While general permits may be useful for sludge regulations only in a limited number of situations, EPA thinks that the advantages they offer should nonetheless be available. For example, several commenters suggested using general permits for small treatment works in response to the Agency's solicitation of comments on the question of regulating small generators.

Three commenters endorsed the use of general permits for sludge regulation. One commenter, however, objected to allowing general permits for Class I facilities (i.e., pretreatment POTWs) because the reasons for designating a facility Class I (influent, size, complexity) militate against uniform requirements necessary for general permits. This objection is similar to the one discussed in the previous paragraph, as is the response. The rules describing when general permits may be used are sufficient to preclude use of general permits when they are inappropriate due to different conditions at the facilities. Therefore, there is no need for the rule also to prohibit general permits for a particular class of facilities.

One commenter asked whether EPA intended general permits to be available for similar land application projects, on similar soils, and which use sludge that is of similar quality. Since permits are not required for land application sites under today's rule, general permits for land application sites would not be appropriate. However, the concept of regulating multiple land application sites through one permit issued to the sludge generating treatment works is embodied in today's final rule through a provision for approved land application plans, discussed above in section V.F.2 of this preamble.

Permit boilerplate and conditions. Section 122.41 establishes "boilerplate" conditions which must be included in all NPDES permits, while § 122.44 establishes requirements for developing individual limits for each permit. The proposed rule contained several revisions to these sections to accommodate the need to include sludge-related conditions in permits.

Three of the proposed revisions related to the "permit as a shield" issue and the fact that under the CWA, compliance with an existing permit would not "shield" a permittee from having to comply with an applicable Part 503 standard by the statutory deadline. Several commenters objected to these revisions generally because it would be unfair to require a permittee to comply with new or additional conditions regarding sludge use or disposal in the middle of a permit term. However, as explained in the above discussion on "permit as a shield," the statute compels compliance with the Part 503 standards by set deadlines without exception. At the same time, the statute requires that the Part 503 standards be included in permits. To implement these directives, EPA is promulgating the following revisions in final form.

The first revision addresses the permittee's liability under the Clean Water Act for compliance with the Part 503 regulations. Section 122.41(a)(1) is revised to state that the permittee has a duty to comply with standards promulgated pursuant to section 405(d) (i.e., Part 503) whether or not the permit has been modified to incorporate the standard. Including this provision in all permits clearly notifies permittees of their potential liabilities under the Act for violations of section 405.

Two other revisions address the modification or revocation and reissuance of permits during their terms to incorporate Part 503 standards. Section 122.44(b) has been revised to authorize the permitting authority to modify the permit when Part 503 standards are promulgated after permit issuance if the standards are more stringent than existing permit limits. Similarly, § 122.44(c) is revised to require the permitting authority to include in permits a "reopener" clause, stating that the permit may be reopened to incorporate new section 405 standards under the circumstances described in § 122.44(b).

The final revision to § 122.44(b) differs from the proposed rule in that it authorizes, but does not require, the permitting authority to reopen a permit to incorporate subsequently promulgated Part 503 standards. Ideally, all permits will be modified or revoked or reissued upon promulgation of a Part 503 standard applicable to the permittee's sludge use or disposal practice, as the most effective way to assure that compliance will be achieved by the statutory deadlines. However, the permitting authority is not likely to have the resources to modify all permits at the same time. Creating a mandatory duty to reopen all permits could therefore be meaningless, and could delay giving attention to permittees which present pressing environmental problems. Today's final rule allows the permitting authority flexibility to establish priorities for permit modifications to address the most pressing concerns first. This approach was supported by State and regulated party commenters. In all cases, incorporation of an applicable Part 503 standard in permits would have to occur no later than at reissuance of the NPDES permit. Although permitting authorities have flexibility under today's rule, permittees would still be liable for compliance with Part 503 regulations by the statutory deadline.

Another group of revisions to §§ 122.41 and 122.44 relate to permittee monitoring requirements. The proposed revisions covered monitoring methodologies, frequencies, and reporting forms.

As explained in the preamble to the proposed rule, current regulations generally require that all monitoring be conducted in accordance with Part 136. However, Part 136 methods do not comprehensively address sludge monitoring and analysis. Therefore, to supplement Part 136, the Part 503 standards may specify required monitoring methodologies where Part 136 methods are inappropriate. Accordingly, EPA proposed to revise §§ 122.41(j)(4), 122.41(l)(4)(ii), and 122.44(i)(1)(iii) to state that sludge monitoring methodologies shall be as specified in Part 503, as well as Part 136. The one comment on this issue supported these proposed revisions. They remain unchanged in the final rule.

The more controversial issue raised by the proposed rule concerned required monitoring frequencies. Current NPDES regulations require that permits contain requirements for permittee reports of monitoring results at a "frequency dependent on the nature and effect of the discharge, but in no case less than once a year." § 122.44(i)(2). EPA proposed to revise this section to include reporting for sludge monitoring. Thus, the frequency of reporting sludge monitoring results which must be specified in the permit would be based on the nature and effect of the permittee's sludge use or disposal activity. How frequently reporting is appropriate would be determined by the permit writer's best professional judgment, but must be required no less than once a year.

The preamble to the proposed rule explained that the Part 503 standards may also specify recommended or required monitoring frequencies for various parameters and practices and that Part 503 was to be followed whenever applicable. The proposed Part 503 standards would establish minimum monitoring frequencies. In all cases, appropriate monitoring frequencies would be determined by the permit writer using his or her best professional judgment (i.e., in the absence of Part 503 standards or where the permit writer determines that monitoring should be more frequent than the minimum required by an applicable Part 503 standard).

EPA solicited comments on alternative approaches to setting monitoring frequencies. Specifically, the Agency asked commenters to address whether the regulations should establish minimum monitoring frequencies, and if so, whether the frequencies should be annually, quarterly, or monthly. EPA acknowledged the advantages of different approaches and explained that in establishing requirements, the Agency would balance the value of frequent monitoring for all permittees at regular intervals (early detection of violations and thus, potentially greater protection of the environment, and additional support for enforcement actions) against the cost burden imposed by monitoring requirements on the permittee and the need for monitoring frequencies tailored to the circumstances of the particular sludge generator.

Twenty-three commenters responded to EPA's solicitation of comments on the question of monitoring frequencies in the 1988 proposal. (Two commenters on the 1986 proposal also requested that EPA establish a minimum monitoring frequency.) One commenter said that the question of appropriate monitoring frequencies was a technical issue and therefore should be addressed in the Part 503 regulations rather than in this rulemaking. About half (mostly States) of the commenters directly or indirectly favored the approach embodied in the proposed rule which would leave the question of appropriate monitoring frequencies to the permit writer's best professional judgment. One commenter said that monitoring frequencies should be determined in the MOA. The most commonly cited reason for a flexible approach was that various factors should be taken into account in making this kind of determination. Among the alternatives for a minimum monitoring frequency (with additional monitoring as necessary on a case-by-case basis) discussed in the preamble, five (mostly POTWs) favored annual monitoring, one favored quarterly monitoring, one favored monthly monitoring, and one favored a tiered approach that would require Class I facilities to monitor monthly, and non-Class I facilities to monitor quarterly. Commenters also suggested various factors that should be considered in establishing appropriate monitoring frequencies such as the size of the facility, the type of disposal option used, and the cost to the permittee.

After careful consideration of all comments, EPA is promulgating a final rule which leaves monitoring frequency to the discretion of the permit writer, but requires at a minimum that monitoring be conducted annually. In addition, today's rule follows the proposal by requiring that the permittee report monitoring results at least annually (§ 124.44(i)(2)). Thus, there would always be at least one monitoring event during the reporting period. This helps ensure that the information is reasonably current without burdening the permittee.

EPA disagrees that the question of appropriate monitoring frequencies is solely a technical issue and therefore is an inappropriate subject for today's final rulemaking. Today's rule establishes a framework for a permitting program that implements the goals of section 405 and accordingly established many generic requirements for permit conditions. Today's rule requires that the appropriate monitoring frequencies be addressed in the permit. EPA agrees that monitoring requirements often involve technical questions. The Part 503 regulations propose minimum monitoring frequencies. To clarify this point and EPA's intent as discussed in the preamble to the proposed rule, today's rule specifically states that permits must include, at a minimum, any applicable monitoring requirements in Part 503, but in no case is monitoring to be conducted less frequently than once a year. Other proposed revisions requiring permit conditions to implement Part 503 standards would accomplish the same result. However, to avoid any confusion or question about this point, EPA has decided to restate the requirement in the regulation specifically addressing monitoring requirements.

Note: The final rule addresses sludge monitoring requirements separately from effluent monitoring to avoid confusion.

Beyond requiring compliance with applicable Part 503 requirements, and, at a minimum, annual monitoring, today's rule leaves the question of monitoring frequency to the permit writer's judgment. The final rule, in § 122.44(i)(1)(iii), clarifies that the permit must contain any monitoring requirements that are determined to be necessary on a case-by-case basis. The clear message of the comments was that numerous factors affect the appropriate monitoring frequency in any given situation. This supports a flexible approach. It does not mean that a more frequent schedule of monitoring to detect violations is no longer considered a valid goal of permittee self-monitoring requirements. However, nothing suggested in the comments succeeded in convincing EPA that it could establish a greater monitoring frequency in regulations that would be appropriate for the broad variety of situations and facilities. Guidance would be more appropriate for this purpose.

Monitoring requirements in permits should yield data that are representative

of the monitored activity (see § 122.48(b)). Size and the potential for a permittee's sludge quality to vary will be critical factors in establishing an appropriate frequency. For example, monthly monitoring might be appropriate for some large POTWs with complex influent.

Two commenters stated that an annual priority pollutant scan would be too costly a burden to place on smaller communities. Similarly, another commenter expressed concern that an "excessive" number of parameters (at an "excessive" frequency) would be required in the absence of the Part 503 technical standards. Nothing in the proposed or final rule establishes which pollutants should be monitored. Comments addressing the priority pollutant scan apparently refer to a recommendation in EPA's draft interim sludge permitting strategy. This strategy provides guidance on developing permit conditions, including monitoring conditions, prior to the promulgation of the Part 503 technical regulations, and accordingly would provide guidance for implementing today's final rule requiring monitoring conditions in permits that reflect the nature and effect of the regulated activity. EPA's Interim Strategy recommends annual priority pollutant scans to establish baseline data on sludge quality, and as a means to identify potential use and disposal problems prior to development of the technical standards. However, the Strategy also included exceptions to this recommendation which recognized that less extensive data might serve as well in two situations typical of small facilities: Use of wastewater treatment lagoons, and the absence of industrial influent. In addition, it must be remembered that the Interim Strategy serves to help identify potential problem facilities, and gives such facilities priority attention. Thus, the approach defers lesser problems. With the promulgation of the Part 503 technical standards, all facilities to whom the standards apply must comply with the standards, regardless of their size, number of industrial users, or other site-specific factors. With regard to monitoring parameters, permittees would, at a minimum, monitor for the pollutants limited in the Part 503 regulations that apply to that permittee's use or disposal method. Of course, the permit writer would use his best professional judgment to determine if monitoring for additional pollutants should be required in the permit.

Two commenters suggested that in some situations, for example, small privately-owned treatment works without industrial influent, research or literature analyses of sludge composition should be accepted as a substitute for actual monitoring at individual facilities. EPA disagrees with this approach. Research or literature analyses on sludge from particular sources can be useful tools for determining appropriate monitoring frequencies. However, literature values are not useful for compliance monitoring purposes. Actual monitoring results are needed to establish compliance status. Relying on literature values would also preclude detection of potentially serious, but unpredictable, problems such as sludge contamination caused by illegal dumping of hazardous wastes or by household or other non-industrial hazardous wastes. For these reasons, EPA is requiring that monitoring results must be based on actual monitoring.

The proposed rule also addressed how monitoring must be reported. The Agency proposed to revise § 122.41(1)(4)(i) and (ii) to state that monitoring of sludge use and disposal practices should be reported on forms specified by the Director (rather than on the DMR form, which is required for effluent data reporting under the NPDES program). EPA explained that it was not requiring use of a uniform reporting form because it had not yet developed a uniform reporting form for the results of permittee monitoring of sludge activities. Under the proposed rule, the Director (EPA or an approved State) would be expected to develop forms to elicit the relevant data from the permittee based on the monitoring and other conditions in the permit. Alternatively, the Director could specify other appropriate forms for reporting monitoring information, such as the forms used by the laboratory to report results of its analyses.

EPA received two comments on this proposed revision. A POTW supported it. The other commenter opposed letting Regions and States develop their own forms and strongly encouraged EPA to develop national reporting forms for sludge because they would improve the national database for sludge and promote equitable compliance enforcement and removal credit analysis. EPA agrees that uniform reporting forms could enhance the effectiveness of data collected. Accordingly, it is planning to study whether national forms are feasible for the sludge program (which has reporting requirements much more varied than those in the NPDES program). Once it is decided that such forms should be developed, they would be proposed for public notice and comment. However, EPA is not requiring reporting on such forms at this stage.

One commenter objected to § 122.41(1)(4)(ii), which requires the permittee to include on self-monitoring reports the results of monitoring done more frequently than required by the permit. The commenter expressed concern that this requirement could discourage voluntary monitoring. This is not the intent. The requirement to submit all monitoring has been an established requirement of the NPDES program for over ten years. It assures that self-monitoring reports are representative of the monitored activity and do not represent selected results. The March 1988 proposed rule merely proposed that this requirement apply as well to sludge monitoring reports (using sludge monitoring methods established or approved in 40 CFR Part 503). Since self-monitoring of sludge and related activities fulfills the same function as self-monitoring under NPDES, there is no apparent reason for the requirement to be different for sludge monitoring. Accordingly, the final rule is the same as the proposed.

EPA proposed minor wording revisions to various provisions to establish that the activity or requirement addressed by Part 122 regulations includes sludge use and disposal activities as well as effluent discharge activities (e.g., § 122.41(d), "duty to mitigate"; § 122.64(a)(4), termination of permit when permittee ceases regulated activity). EPA received no adverse comments on these proposed revisions and therefore is promulgating them in final form.

Another proposed revision concerned the compliance schedule provisions in § 122.47 (and an analogous provision in § 501.15(a)(6)). Section 122.47(a)(3)(i) was proposed to be revised to specify that interim progress reports on compliance with sludge standards must be required at least every six months. This called for less time between interim milestones than for NPDES compliance schedules because of the relatively short deadlines in the CWA for compliance with the sludge standards. Today's final rule is the same as the proposed.

EPA received one comment supporting the compliance schedule provision. Two commenters opposed this provision on the grounds that the compliance deadlines are unrealistic. One commenter suggested that States be given authority to determine compliance schedules for individual POTWs on a case-by-case basis. As explained in section V.B.3 above, the deadlines for compliance with the Part 503 technical standards were established by Congress

in the CWA. Therefore, EPA cannot establish different deadlines through regulations. Where compliance with a Part 503 standard is not an issue (for example, where the permit establishes case-by-case "interim" limits), the permitting authority would have more flexibility in establishing a compliance deadline. However, under today's final rule, compliance must be required as soon as possible.

As explained in the preamble to the proposed rule, where the existing provision in the NPDES regulations was broad enough to include a permittee's sludge activities as well as its discharge activities, it would apply to both unless specifically limited. Thus, no revisions to the existing language in those provisions were proposed because they were not necessary. This includes "need to halt or reduce activity not a defense" under § 122.41(c); "proper operation and maintenance" under § 122.41(e); duty to provide information" under § 122.41(h); "inspection and entry" under § 122.41(i). (Comparable requirements were proposed to be included in the Part 501 regulations and have been included in the final rule.)

In response to this proposal, a POTW said the boilerplate requirement stating that the need to halt or reduce the regulated activity would not be a defense to noncompliance (§ l22.41(c); § 501.15(b)(4)) would leave POTWs with no alternative, and asked EPA whether it planned to provide technical assistance to POTWs for permit violations beyond the POTW's expertise. This provision does not impose additional liability on permittees. It merely notifies the POTW that it will be held to strict compliance with its permit, even if it means that the POTW has to cease a particular activity in order not to violate the permit. In other words, the POTW cannot argue that it violated its permit because the only way it could avoid a violation was to cease or reduce the activity. A permittee will be expected to halt or reduce the regulated activity if it is the only way to achieve compliance. Otherwise, the permittee will be in violation of its permit and the CWA.

EPA cannot guarantee technical assistance to POTWs but generally expects to include technical assistance as a component of the national sludge program. In the meantime, POTWs should take full advantage of whatever assistance is available to develop new, or strengthen existing, pretreatment programs.

Commenters also offered suggestions for adding other permit requirements, based on the NPDES regulations, to the Part 501 regulations. One suggested addition was a "duty to reapply" analogous to § 122.41(b). EPA agrees that this provision would be useful to include in non-NPDES permits and therefore is adding it to § 501.15(b)(14).

Another suggested addition was a provision specifying when the noncompliance reports required by § 501.15(b)(12)(iv) must be submitted, using as models § 122.41(l) (6) and (7). EPA agrees with the general idea of specifying when required reporting must be submitted. However, § 122.41(l) (6) and (7) are generally tailored to specific types of noncompliance found in the NPDES program and therefore are not the most appropriate models for the sludge program. Instead, the final rule requires that any instances of noncompliance must be reported with the permittee's next scheduled self-monitoring report or as required by Part 503. See § 501.15(b)(12)(iv).

The final category of permit regulations discussed in the proposed rule was existing provisions which were intended to continue to apply exclusively to the permittee's discharge activities (i.e., were not intended to apply to sludge permit or sludge condition in permits). In some cases, revisions were unnecessary to achieve the intended results because the provision, by its own terms, is limited to effluent discharges (e.g., bypass and upset defenses (§ 122.41(m), (n)); new sources and new dischargers (§ 122.29)). However, in other cases EPA proposed, and today is finalizing, minor revisions to some provisions to clarify that they apply to discharge activities only (e.g., § 122.44(l)(1), reissued permits; § l22.45(b)(1), production-based limits).

The most significant provision in this category of regulations that do not apply to sludge use and disposal activities is § 122.44(l)(1), commonly known as the "antibacksliding" provision. This means that if the permit contains requirements developed on a case-by-case basis (i.e., based on the permit writer's best professional judgment) under EPA's interim sludge permitting strategy (discussed in section III.C. of this preamble) which are more stringent than subsequently promulgated Part 503 standards, the reissued permit may include requirements based on the less stringent Part 503 standard rather than the more stringent case-by-case interim limit. This would be true not only for pollutant concentration limits, but also for monitoring or testing requirements or management practices in Part 503. Because the Part 503 standards (and permit conditions implementing them) must protect public health and the environment from reasonably anticipated adverse effects, "backsliding" from more stringent interim requirements should not result in significant public health or environmental effects.

Permit modifications. Under NPDES, permits may be modified or revoked and reissued only for cause. Section 122.62 lists the causes for which permit modification or revocation and reissuance is deemed permissible. EPA proposed two revisions to this section related to sludge. Both are being promulgated as final.

First, § 122.62(a)(1) is revised to clarify that a permit may be modified (or revoked and reissued if the permittee agrees) when there is a change in the permittee's sludge use or disposal practice after permit issuance which would justify the application of different or additional limits. This revision directly relates to a corresponding revision to require a permittee to notify the Director of any significant change in sludge use or disposal practices under § 122.41(l)(1)(iii) (also promulgated today). These revisions are intended to cover situations where the permittee decides to switch to a different sludge use or disposal practice different from the one(s) described in the permit application and covered by the permit. It would not cover situations where the permittee alternates sludge practices (e.g., depending on the season) and the permit addresses each alternative.

Two commenters objected to requiring permit modifications when the permittee wants to change sludge use or disposal methods. One commenter said permit modification is unnecessary when the permittee is merely sending its sludge to a different disposal site permitted under a solid waste program. The commenter also suggested that minor modifications be used if no significant impact to the environment occurs. The other commenter argued generally that permit modifications for changes in sludge use or disposal methods was incompatible with well-designed sludge management plans and facilities that employ a variety of use or disposal methods.

EPA disagrees with the underlying assumption of the comments that sludge use and disposal standards need not be implemented through permits. Congress clearly provided otherwise. EPA also disagrees that minor modification procedures are appropriate because whether a particular method may significantly affect the environment cannot be determined in advance and without knowledge about the permittee's particular situation. However, both situations described by the commenters can be addressed at the time of permit issuance rather than

through permit modification. Nothing in today's final rule precludes addressing more than one sludge use or disposal method in the permit, whether employed on a regular basis or as a "back-up" method when the primary means of sludge use or disposal is unavailable.

One commenter said that requiring a permittee to notify the Director of changes in its sludge disposal practice was unnecessary since any deviation from permit terms would be an obvious violation of the permit. The purpose of the notice provision is not to excuse permit noncompliance, as the commenter seems to assume. Instead, it allows the permittee the flexibility to change use and disposal practices if it chooses, but requires the permittee to notify the permitting authority about any anticipated change in activity which may require changes in the permit. Based on this information, the permitting authority would then have to determine whether or not to require modification of the permit in order for the planned activity to occur (i.e, modification would be needed to avoid noncompliance). Therefore, the notification requirement serves a useful purpose, both for the permitting authority and the permittee.

An analogous notification provision in the proposed Part 501 rule specified that changes that must be reported included sending sludge to additional disposal sites not reported during the permit application process. This phrase (with a minor editorial change) has been added to the final revisions to § 122.41(l)(1)(iii) as well, with the caveat that notification is not necessary when additional sites are reported pursuant to an approved land application plan. As discussed elsewhere in this preamble, the final rule allows treatment works to seek approval of a land application plan for beneficial reuse projects, in lieu of requiring permit modification each time the sludge is sent to a previously unidentified site. This caveat appears in both the Part 122 and Part 501 notification provisions and is intended to complete other changes made to the final rule to allow for approval of land application plans.

The second revision would allow permit modification whenever required by a reopener clause to incorporate limits based on new standards for sludge use and disposal promulgated in 40 CFR Part 503. (In related revisions promulgated today, permits may be modified when the new standards are more stringent than existing permit limits (§ 122.44(b)) and the permit must contain a "reopener" clause to this effect under § 122.44(c)(4).) This revision authorizes the permitting authority to revise a permit to include Part 503 standards. As noted in earlier discussions, a permittee must comply with any applicable Part 503 standard by the statutory deadline even if its permit had not been revised to incorporate the standard. This revision also gives the permittee a basis for requesting modification of the permit to eliminate uncertainty about how the standard applies to the permittee's particular situation, when this is not readily apparent on the face of the regulation. Another advantage to obtaining specific limits implementing a Part 503 requirement is that it would provide the permittee with a basis for asserting the affirmative defense as provided in § 122.5.

In addition, EPA is revising § 122.62 by adding a new paragraph (a)(18) to provide for a permit modification to approve a new land application plan or revise an existing one. Land application plans are discussed in more detail above in the discussion about application requirements.

One commenter suggested that the regulations also provide for permit modification when there are changes in the permittee's influent "which result in a change to the applicable sludge regulations." The applicability of a particular sludge regulation depends on the use or disposal practice used by the POTW rather than on the characteristic of its influent. Therefore, it is unclear why a modification would be needed in this situation. A change in influent can affect sludge quality and consequently determine whether or not the permittee is able to comply with its permit limits and continue its chosen sludge practice. However, a separate provision to allow modification in this instance is not necessary because § 122.62(a)(1) (major or substantial alterations or additions to the permitted activity) would cover this situation.

Finally, one commenter noted that some of the permit regulations EPA expected to apply to sludge activities as well as discharge activities were being challenged in a pending lawsuit. The commenter, a party to that lawsuit, asked that it be given an additional opportunity to comment if any of the challenged rules were set aside and remanded. That lawsuit has since been decided. *See NRDC* v. *EPA*, 859 F.2d 156, 28 ERC 1401 (D.C. Cir. 1988). The only NPDES regulation remanded for further Agency action does not apply to sludge use or disposal activities. Therefore, additional revisions to today's final rule are not necessary as a result of that litigation.

G. Permitting Procedures (Part 124)

1. General

Part 124 establishes the procedural requirements for issuing, modifying, and terminating permits under several Federal programs, including NPDES. EPA proposed to have the procedural requirements in Part 124 that apply to NPDES permits apply as well to "sludge-only" permits authorized by section 405(f)(2) of the CWA. EPA also proposed revisions to Part 124 based on the incorporation of requirements addressing sludge conditions in NPDES permits. Today's rule finalizes proposed revisions to Part 124 with only minor changes from the proposal as described below.

2. Specific Revisions

"Sludge-only" permits. To make the Part 124 procedures apply to permits issued by EPA to "sludge-only facilities," EPA proposed revisions to several sections, including § 124.1 (purpose and scope), § 124.3 (application for a permit), § 124.71 (applicability of Subpart E governing evidentiary hearings) and § 124.111 (applicability of Subpart F governing non-adversary panel proceedings). EPA did not receive any comments on these proposed revisions. Therefore, the final rule will be the same as the proposed. As explained in the preamble to the proposed rule, EPA intends these revisions, together with the revisions to Part 122 described above, to serve as the requirements and procedures for EPA issuance of permits under section 405(f)(2) of the CWA to treatment works treating domestic sewage where the Part 503 standards have not been included in any of the permit programs listed in section 405(f)(1).

NPDES permits. The other proposed changes to Part 124 addressed the expanded content of NPDES permits to include requirements for sludge use and disposal. Among those proposed changes were revisions to the definitions of "applicable standards and limitations," "facility or activity," and "general permit." The definitions of "applicable standards and limitations" and "general permit" remain unchanged from the proposed rule. The definition of "facility or activity" has been revised slightly in the final rule to refer to "treatment works treating domestic sewage" rather than "treatment works," consistent with revisions to the same definition in Part 501.

Note: The preamble to the proposed rule erroneously stated that a new definition of "Class I sludge management facility" was proposed to be added to Part 124. A new

definition was not proposed since all definitions in § 501.2, including the definition of "Class I sludge management facility," were proposed to be adopted in Part 124. Today's final rule incorporates by reference in Part 124 all definitions in Part 501. Therefore, a separate definition of "Class I sludge management facility" in Part 124 is not needed.

Draft permits. A proposed revision to § 124.6(d)(4) would have required that draft permits include conditions necessary to meet the requirements of standards for sludge use and disposal and any other conditions related to sewage sludge required under §§ 122.41, 122.42 and 122.44. EPA received no comments on this proposed revision. Today's final rule is the same as the proposal.

Fact sheets. EPA proposed two changes to the rules governing the preparation of fact sheets to establish how sludge conditions were to be addressed. First, a proposed revision to § 124.8 would require that fact sheets be prepared for "Class I sludge management facilities." A similar requirement appeared in the Part 501 proposed rule (§ 501.15(d)(4)).

One State, commenting on Part 501, said generally that fact sheets and draft permits are unnecessary and cause delays. EPA disagrees. The purpose of draft permits and fact sheets is to inform the public and the regulated party (and EPA in the case of State-issued permits) of the restrictions that will be placed on sludge use and disposal practices and the basis for those limits. This information is needed so that interested parties can comment intelligently on what the agency proposes. The fact sheet also documents the agency's rationale for its actions on the permit, and therefore plays a critical function if the permit is subsequently challenged. Preparing the draft permit and fact sheets undeniably takes time in the short term. However, it can save time over the long term by minimizing questions, objections, and challenges to permits. Therefore, EPA is adopting a final rule that is the same as the proposed rule. A fact sheet must be prepared for Class I sludge management facilities, (i.e., POTWs required to have an approved pretreatment program under 40 CFR 403.8 or any other treatment works treating domestic sewage classified as such because of its potential to affect public health and the environment adversely).

The second proposed revision would require that fact sheets explain how "conditions or standards for sludge use and disposal" were derived (§ 124.56(a)) and where the regulated activity or facility is located (§ 124.56(c)). The purpose of the revision to § 124.56(a) was to require that the fact sheet contain an explanation of how sludge limits or conditions were calculated, whether based on the technical sludge standards (Part 503) or on the permit writer's best professional judgment. However, the proposed regulatory language was unclear in this regard and could be read to refer only to sludge limits and conditions based on the Part 503 technical standards. To clarify that EPA intends the fact sheet to address BPJ conditions as well, the final rule also includes a revision to § 124.56(b) to specifically reference conditions developed on a case-by-case or BPJ basis pursuant to section 405(d)(4) of the CWA.

Public notice. Section 124.10 governs when and how public notice of permit actions must be made. In the March 1988 proposal, EPA proposed two revisions to the public notice requirements. EPA is finalizing the first revision unchanged from the proposal since it received no public comments objecting to the proposed rule. This revision to § 124.10(c)(1)(ii) requires the permit authority to mail the public notice of a permit action to any agency known to have issued or be required to issue a sludge management permit or ocean dumping permit for the same facility or activity.

The second proposed revision to § 124.10 would require the public notice to describe the location of each sludge management facility (including disposal sites) and disposal or use practice (§ 124.10(d)(1)(vii)). Commenters on similar provisions in Part 501 objected to requiring public notice of each agricultural land application site where sludge is beneficially reused either because those sites may not be known at the time of the permit issuance or because subsequent notice for each site would jeopardize a land application program through delays which would interfere with crop cycles and other circumstances affecting agricultural use.

In response to these comments, today's final rule specifies that only use or disposal sites known at the time of permit application must be described in the public notice.

As discussed in section V.F.2. above, today's final rule also provides for land application plans where the sludge generator is unable to identify all future beneficial use sites that will be used during the permit term. Today's rule establishes minimum procedural requirements for land application plans, but does not require full-scale permit modification procedures for each new land application site. The land application plan itself, developed as part of the permit, would establish the procedures that must be followed before sludge could be applied to previously unidentified sites. To ensure that the public has a meaningful opportunity to comment on all aspects of the land application plan, today's final rule includes several revisions to Part 124 (and corresponding provisions in Part 501). First, § 124.8(a) has been revised to require a fact sheet whenever a permit includes a sewage sludge land application plan. (See also § 501.15(d)(4).) Thus, where a non-"Class I sludge management facility" has a land application plan, there must be a fact sheet. Second, the publication of the public notice must be co-extensive with the geographical area covered by the land application plan (§ 124.10(c)(2)(i); § 501.15(d)(5)(ii)(B)). Third, the public notice must indicate that a land application plan is a part of the proposed permit (§ 124.10(c)(2)(i); § 501.15(d)(5)(iii)(A)(3)). Fourth, the fact sheet must briefly describe how each required element of the land application plan listed in § 501.15(a)(2)(ix) is addressed in the proposed permit (§ 124.56(e); § 501.15(d)(4)(i)(C)).

Some commenters objected to any public notice because it could trigger a "not-in-my-back-yard" or "NIMBY" public response which could defeat attempts to beneficially reuse sewage sludge, no matter how environmentally safe it might be. EPA is aware that public opposition to beneficial reuse may not always be justified by environmental risks. However, EPA does not view withholding information as an appropriate response to public concerns about sewage sludge use and disposal. Instead, as noted by several commenters, public education concerning the potential benefits and risks of sludge reuse is needed.

Permit termination after approval of State programs. Finally, EPA today is revising § 124.5(d) to allow EPA to terminate a permit in the course of transferring permit responsibility to an approved State under § 501.14(b)(1) without having to issue a notice of intent to terminate (and without following the procedures applicable to draft permits). (Note: Although the preamble to the proposed rule indicated that this revision to § 124.5(d) was being proposed, the proposed revised language was inadvertently omitted from the March 9, 1988 notice.) No comments were received on the proposed revision. Accordingly, the final rule is the same as the proposed rule.

H. State Program Requirements: General

Today's final rule establishes the minimum requirements for approved State sludge management programs and procedures for approving, revising, and withdrawing approval of State programs. As proposed, a State may administer an approved sludge management program as part of an NPDES program or as a non-NPDES program. State programs are optional. If a State does not obtain program approval, EPA will be responsible for ensuring that the technical sludge standards are implemented through permits issued to POTWs or other treatment works treating domestic sewage in that State.

In developing the final rule, EPA relied on the authority and program direction provided in the Clean Water Act amendments of 1987. Except in very general terms, the 1987 amendments do not give EPA much direction on fashioning State program procedures and requirements. However, Congress provided some clearly articulated general principles. In section 405(f)(1), Congress directed EPA to promulgate procedures for approving State programs that "assure compliance with any applicable requirements of (section 405 of the CWA)." The legislative history further states that "approved programs must have substantive standards at least as stringent as those contained in the 405(d) guidelines." Sen. Rep. No. 99–50 at 47 (May 14, 1985). *See also* 132 Cong. Rec. H10576 (October 15, 1986).

EPA's expectations for approvable State programs are contained in Part 501, which applies to non-NPDES State programs. EPA used the February 1986 proposed rule as the basis for much of the March 1988 Part 501 proposal. For the permitting requirements and procedures which became necessary after Congress determined that the sludge technical regulations were to be implemented through a permit, EPA used the NPDES program regulations as the model for two reasons. First, those regulations reflect over fifteen years of experience and growth in a successful program. Second, the Act provides for implementation of the technical sludge standards through NPDES permits and approved State NPDES permit programs. Equity and consistency support similar requirements for non-NPDES programs.

A State sludge program may be administered as part of an existing State program (e.g., the State solid waste management plan) or it may be a separate section 405 sludge program, so long as it meets the requirements of the Part 501 regulations. States are, of course, free to adopt more stringent or more extensive requirements under section 510 of the CWA. State programs will be reviewed for their ability to meet the requirements of the Act and to ensure that there are no State provisions which may undercut or hinder implementation of the program, such as provisions authorizing variances from Federal technical standards.

Today's final rule also establishes the additional requirements that approved NPDES State programs would have to meet to be approved under section 405(f). The requirements are contained in the revisions to 40 CFR Part 123. Today's rule adds relatively few new requirements for States with existing NPDES programs. This assumes that the existing Part 123 requirements are broad enough to cover sludge requirements. Therefore, an NPDES State which seeks approval under section 405 would have to demonstrate through an application for program modification that its program covers implementation of sludge requirements to the same extent as other NPDES permitting activities and also covers activities unique to sludge management.

Although a State may choose to seek approval of its sludge management program under Part 123 (as part of its NPDES program) or Part 501 (as a non-NPDES program), the basic requirements for approval under either Part are the same. Maintaining consistency among State program requirements will help ensure that minimum standards apply nationwide, regardless of which program a State chooses for its sludge management program. The purpose of the program requirements under both parts is to produce programs which adequately ensure compliance with section 405(d) and meet the Congressional goal of approving State programs which are no less stringent than the Federal program.

The State program discussion first examines general issues, followed by a section-by-section analysis of Part 501 and revisions to Part 123.

1. Need for Regulations and EPA Approval of State Programs

Regulations establishing minimum requirements applicable to all States that administer an EPA-approved sludge program are necessary to ensure that the environmental goals of the program as envisioned by Congress will be met nationwide. These regulations provide for consistency and uniformity among programs, which promotes equitable treatment for regulated parties and integrity of the national program. Meeting these objectives demands a fairly rigorous approval process and close scrutiny of the State's program.

One commenter suggested that instead of requiring States to obtain program approval, that all sludge use and disposal be regulated through existing CWA programs: NPDES States would simply include sludge conditions into NPDES permits, while non-NPDES States would use the section 401 certification process to integrate their sludge programs into CWA programs. This suggested approach is not supported by the CWA. First, section 405(f) clearly provides for approved State programs. (A similar argument that NPDES States must revise their NPDES programs to include sludge regulation is discussed below in section V.H.3.) Second, the purpose of the section 401 State certification process is to advise EPA of conditions that are needed to implement State water quality criteria and standards so they can be incorporated into EPA-issued discharge permits. Congress did not amend section 401 to provide for sludge use and disposal as contemplated by the commenter. Further, it is unclear how the section 401 certification process, which addresses State requirements, would be useful for implementing the section 405(d) technical standards as required by the CWA. (For similar reasons, another commenter's suggestion that both NPDES and non-NPDES States should be able to incorporate State sludge requirements into federally-enforceable permits is inappropriate.)

A consortium of State sludge management agencies commented that EPA approval of State programs was important only for States without existing effective State sludge management programs, and that for States with effective programs, EPA's role should be that of facilitation, technical and financial assistance, research support, and information gathering. This commenter did not suggest reliable means or criteria for determining into which category a State would fall. Indeed, that is a major purpose of the approval process established in today's regulation. To obtain approval, States are asked to demonstrate that they have effective programs and that they can implement the Federal standards. EPA cannot responsibly fulfill its obligations under the Clean Water Act to approve State programs that assure compliance with section 405 without such information. For similar reasons, the "diversion" of resources from regulatory activities to undertake the approval process that

some commenters noted, is largely unavoidable.

Some commenters suggested alternatives to the formal approval process set forth in the proposed rule, that shifts the burden of information gathering and synthesis from the States to EPA. One commenter said that the adequacy of State programs could be determined through audits and oversight rather than through formal submissions (again for those States with existing effective programs). Another suggested that EPA undertake field audits and use checklists to gather information about State programs rather than requiring the State to submit documentation of their programs to EPA. Another suggested "self-certification." These methods, while useful, are more suited to ensuring that approved State programs continue to implement adequate programs than to determining whether such programs are adequate at the outset.

Shifting the entire burden of gathering information of the State's program to EPA would be inefficient. States are in the best position to gather information about their programs, especially if their sludge program is scattered among several agencies. Similarly, the State's Attorney General is the most authoritative source on State law. Even though EPA believes that States must continue to bear the major burden of documenting the adequacy of their programs, EPA will try to streamline the process and develop model documents to minimize time spent on developing program submission. In addition, the Agency plans to undertake informal program reviews to assist States in evaluating their programs to determine what changes would be needed to meet the approval requirements. Finally, EPA also has made numerous changes in specific requirements like the inventory (often cited as the most resource intensive of the requirements) and the list of bans and prohibitions to ease the burden on States.

2. Required Scope of Approved State Programs

Section 501.1(d) requires that States have authority to regulate all sludge management activities that may be practiced in the State (except that disposal of sewage sludge considered to be a hazardous waste under Subtitle C of RCRA need not be a part of a State's program under today's rule). This includes a range of sludge treatment and processing activities (plus related activities such as transportation and storage) and specific sludge use and disposal practices (e.g., land application, landfill, distribution and marketing, incineration, and any other sludge use and disposal practices, other than ocean dumping, as may be covered by federal regulations). For related activities, such as transportation and storage, the State need not demonstrate a comprehensive regulatory scheme. For example, States are not expected to have a manifest system for the transportation of sewage sludge. What is needed, however, is a showing that the authority exists to regulate these activities, as needed, to protect public health and the environment.

Unlike the proposed rule, today's final rule does not attempt to list all sludge management activities or practices that future federal regulations may address and that a State must be able to regulate. Instead, the final rule simply retains the general reference to "sludge treatment, processing and short term storage practices as may be covered by federal regulations." In some cases this section covers activities which will not be covered by the first round of the Part 503 technical standards (e.g., transportation, storage, treatment). However, States are still required to have the authority to regulate these activities in the event that subsequent rounds of Part 503 may regulate them, and because even in the absence of applicable Part 503 standards, States must have authority to take appropriate measures to protect public health and the environment from the adverse effects of sludge use or disposal comparable to EPA's authority under section 405(d)(4) of the CWA (§ 501.1(c)(4)).

Consistent with section 313(a) of the CWA, the State's approved program must also apply to federal facilities to the same extent as to other entities within the State. This requirement was stated explicitly in the 1986 proposal (proposed § 501.15(b) introductory language), but was inadvertently omitted in the 1988 proposal. (The reference to federal facility compliance in § 501.1(c)(i) clearly signalled the Agency's intent, however.) To clarify that federal facilities are covered, the final rule reinstates the explicit requirement that "The State sludge management program shall also be applicable to all federal facilities in the State."

Note: State NPDES programs are already required to cover federal facilities within the State.

In addition, the definition of "treatment works treating domestic sewage" in §§ 501.2 and 122.2 has been revised to specifically include federal facilities.

One commenter on the 1986 proposal said that the federal facility requirement was inadequate, given problems States have encountered in gaining access to federal facilities (particularly military installations which resist on national security grounds), and argued that the regulations should require States to demonstrate workable procedures to ensure access to federal facilities, guarantee federal facility compliance with all permitting, monitoring, and reporting requirements, and be subject to the same enforcement actions as non-federal facilities. The commenter further stated that EPA should assume responsibility for enforcement whenever States encounter resistance from federal facilities. EPA disagrees that additional regulations are necessary because today's final rule already requires that federal facilities be covered under an approved State program to the same extent as other entities. To require more, as suggested by the commenter, would be essentially meaningless and would not be an appropriate way to deal with the situations described by the commenter.

Although States will be required to have general authority to regulate these types of activities, they would not be expected to have specific regulations or the program capacity necessary to carry out such regulations until after the sludge technical regulations have been promulgated. Requiring States to have broad legal authority at the outset, however, minimizes the need for subsequent statutory changes, which may take up to two years (see § 501.32), in order to have authority to implement new federal regulations. Minimizing delays in State programs' ability to implement new federal sludge use and disposal requirements is particularly important because the CWA requires compliance with any new regulations within one year after promulgation (or within two years if the regulations require construction).

3. Mandatory v. Optional Programs

Under today's final rule, State sludge management programs are optional. All NPDES permits must contain the sludge standards mandated by CWA section 405(d) unless they are addressed under another Federal permit or a permit issued pursuant to an approved State sludge program. If the State does not have an approved program, EPA will implement the standards either through an NPDES permit (when it is the NPDES permit authority) or through a "sludge only" permit authorized by section 405(f)(2) of the CWA.

Giving States the option to choose whether to seek program approval represents a significant departure from the February 4, 1986 proposal which

would have required States to develop and submit sludge programs to EPA for approval as part of the continuing planning process required under section 303(e). EPA abandoned the mandatory program approach because in the 1987 amendments to the Clean Water Act Congress authorized, but did not expressly mandate, that States develop section 405 sludge programs. In contrast, when Congress amended the Clean Water Act in 1977 and added requirements to develop pretreatment programs, it expressly mandated that States with existing NPDES programs modify those programs to add pretreatment authority. EPA interprets this failure to require States to obtain EPA approval of their sludge programs to mean that Congress intended State programs to be optional.

At the time of the 1986 proposed rule, State programs were the only available vehicle for implementing a comprehensive sludge management program since the Federal statutes that established technical requirements for sludge use and disposal did not specify Federal implementation mechanisms. This too, changed with the 1987 amendments to the Clean Water Act authorizing EPA to issue permits in the absence of approved State programs. This scheme establishing Federal and State roles in the sludge management program is similar to the NPDES program where State programs are also optional. This is another reason for concluding that State sludge management programs under section 405(f) should be optional. However, as stated in EPA's 1984 "Policy on Municipal Sludge Management," it is EPA's policy that sludge management is a local concern and thus should be handled at the State and local level, within the context of broadly-established national objectives and standards. Section 101(b) of the CWA also encourages States to play a primary role in the implementation of the CWA programs. Therefore, EPA will encourage the States to develop approvable sludge programs, through such mechanisms as the continuing planning process and section 106 work program development.

Most commenters on this issue supported optional, rather than mandatory, State programs. Reasons given for supporting optional programs included the unreliability of Federal and State funding for State sludge programs, uncertainty about what the technical standards will require, questionable legal basis for mandating State programs under the CWA (particularly before the 1987 amendments), and the importance of handling sludge at the State and local level.

Support for mandatory State programs was similarly varied. One State supported mandatory programs, contingent upon availability of Federal funding. Unfortunately, EPA cannot guarantee this. One commenter supported mandatory State programs because "States are more familiar with facilities and regional concerns than EPA." EPA agrees that State programs are preferable for this reason but does not think it provides a sufficient basis for making State programs mandatory. Another commenter said State programs should be mandatory because "States require guidance and minimum standards for compliance monitoring." EPA agrees that establishing minimum standards for approvable State programs is necessary, but again does not think that this provides a sufficient basis for mandating State programs. Where States are unable or unwilling to meet the minimum standards, the standards will be met through the Federal permitting program.

One commenter, an environmental group, argued that EPA must require all States to have sludge management programs to plan for sludge use and disposal throughout the State pursuant to section 303(e), even if sludge permitting programs under section 405(f) were not mandatory. Essentially, the commenter argues that EPA cannot abandon the rationale for requiring State programs which it used as the primary basis for proposing State program regulations initially in 1986, i.e., that sludge management programs would be a part of the continuing planning process required of all States under section 303(e). EPA disagrees. In 1986, section 303(e) was the strongest basis available for establishing State programs and it did not readily adapt to an optional approach. The 1987 amendments, however, contained comprehensive provisions for sludge management and provided a more explicit basis and different approach for establishing State sludge management programs. In this context, EPA thinks it is appropriate to follow the Congressional lead in the 1987 amendments and make State sludge programs optional. Nothing in the 1987 amendments suggested that Congress intended to distinguish between management and permitting programs.

Because EPA has decided to make State programs optional, rather than mandatory, several provisions from the 1986 proposal are no longer applicable. Accordingly, EPA has not responded to comments on these provisions in promulgating the final rule. These provisions include one specifying a two year deadline for States to apply for program approval and a waiver for "quasi-States" (e.g., the District of Columbia).

The same commenter that argued that all States must be required to have EPA-approved sludge management programs also argued that States with approved NPDES programs must be required to obtain approval of their sludge permitting programs. The commenter offered three basic reasons in support. First, control over sludge use and disposal is an integral part of the pretreatment program and thus of NPDES permits. Therefore, States which issue NPDES permits must be able to regulate sludge use and disposal. Second, the 1987 amendments reinforce this interpretation in section 405(f)(1) by stating that " 'any permit issued under section 402 * * * shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) * * *' " and that exceptions to this requirement are to be narrowly defined. Finally, the commenter argued that the CWA has always required sludge use and disposal to be addressed in NPDES permits under section 405 (a)–(c). The rationale behind these arguments appears to be that using NPDES permits to implement sludge requirements is the most sensible way to integrate sludge and pretreatment requirements.

EPA agrees that using the NPDES permit that also contains pretreatment requirements to control sludge use and disposal is a logical way to coordinate these closely linked activities. However, it does not follow that this is the only approach allowed under the Clean Water Act. On the contrary, the CWA embodies a flexible approach with regard to sludge permitting. Section 405(f)(1) requires conditions to implement the sludge technical standards in NPDES permits only if those standards have not been included in permits issued under certain other programs, including State programs that have been approved by the Administrator as adequate to assure compliance with section 405. Thus, the Act recognizes that the sludge requirements could be in a variety of permits and designates NPDES permits as the "backup" permit implementation of the sludge standards.

POTWs that are required to have approved pretreatment programs will still be required to comply with the sludge standards and to develop local limits or take other measures as part of their pretreatment program to assure

compliance with those standards regardless of what kind of permit the State uses to implement the sludge technical standards. Coordination may be more difficult when these related activities are regulated through different programs, but flexibility for state programs and minimizing disruption to existing non-NPDES programs are equally important goals.

A few commenters asked for clarification about EPA's role when an approved NPDES State does not have an approved sludge management program under section 405(f). One State commenter feared that undue disruption to existing State sludge and NPDES programs would result if EPA were to issue and enforce sludge permits in an approved NPDES State. Another State commenter, however, specifically endorsed this approach as nondisruptive to existing State NPDES programs because it would allow them to continue issuing NPDES discharge permits even if the State does not have an approved sludge program. A POTW expressed concern that its ability to continue disposing of sludge would be jeopardized if its State did not have an approved program and that it may be required to obtain both State and Federal sludge permits.

In the absence of an approved State sludge program, EPA will be responsible for issuing permits to treatment works treating domestic sewage that implement the sludge technical standards even if the State has an approved NPDES program. This approach follows from determining that Congress intended EPA-approved State sludge programs to be optional, even in NPDES States. Therefore, dual permitting under State and Federal programs is possible. While this may be perceived by some as disruptive to existing State programs, the alternative of making State sludge programs mandatory was viewed by EPA (and implied by commenters who favored the optional approach) to be more disruptive.

Permittees' liability for compliance with the sludge technical standards issued pursuant to section 405(d) of the CWA will be the same regardless of whether EPA or an approved State issues the permit. The CWA does not prohibit sludge disposal without a permit (as it does for effluent discharges), so a treatment works' ability to continue disposing of sludge should not be jeopardized by the absence of an approved State program or by the lack of a permit. However, under today's rule, treatment works must apply for a permit within the time frames established by today's rule (see §§ 122.21(c)(2) and 501.15(d)(1)(ii)) and must comply with any technical standards applicable to its sludge use or disposal method(s) by the compliance deadlines established in the technical regulations.

4. Partial Programs.

In the proposed rules, EPA asked for comments on whether partial State sludge programs should be allowed where a particular State agency had responsibility for regulating a particular use or disposal method, and the State only sought to administer this portion of the program (for example, the State Air office regulating sludge incinerators, but no other sludge use and disposal method). The 1988 proposal did not provide any regulatory language addressing partial program approvals, stating that the regulatory language would be included in the up-coming proposal to revise the NPDES regulations.

A similar, somewhat analogous provision appeared in the earlier, February 4, 1986 proposed rule. In that notice, EPA proposed to allow a State to request program approval for less than a complete sludge management program if the State submitted a general plan and schedule to implement a complete program within five years of the effective date of the regulation. There were nine commenters on this phased-in approval approach: seven States, one environmental group, and one association. It is important to note that the 1986 proposal would have *required* States to develop and obtain approval of a sludge program (whereas under the 1988 proposal, State sludge programs would be optional). It is within the context of requiring sludge programs that the commenters responded. Six of the nine commenters supported the phase-in approach. One supporter (a State) added a condition that compliance monitoring and reporting be included as minimum program elements. Another State added a caveat that the largest generators should be controlled first, and that the elements of a State program which comply with federal requirements should be the minimum components necessary for immediate implementation. Three commenters opposed the phased-in approach, expressing concern that the regulation provided an unreasonably long schedule for program development and thus there would be no incentive for State compliance. One State expressed concern that funding would drop out after the first two years.

There were six commenters on partial program approvals in response to the March 1988 proposal: five States and one environmental group. The five States all recommended that EPA allow partial State program approvals, on the basis that it provides greater flexibility in adapting the new federal regulations to existing State programs, and enables the State to target limited resources. Two of the States recommended that the issue be dealt with in the Part 501 regulations, rather than in the general NPDES proposal. One State commenter suggested that a State be allowed to seek delegation of the sludge program for existing NPDES effluent permittees, but that EPA be allowed to issue "sludge-only" permit. Another State commenter expressed the view that partial program approval should be allowed if a particular State agency has responsibility for regulating a particular sludge use and disposal method. This approval should be based on whether the particular State agency has the authority and resources to regulate the sludge management facilities under its jurisdiction consistent with the relevant provisions of the 40 CFR Part 503 technical regulations when promulgated.

The remaining commenter opposed allowing partial State sludge programs, principally on the basis that section 402(n) of the Clean Water Act allows partial programs, under certain conditions, for programs regulating discharges to navigable waters, not for the use and disposal of sewage sludge. This commenter expressed the view that State sludge programs should only be allowed as part of an NPDES program, on the basis that sludge regulation cannot effectively occur without NPDES and pretreatment integration. Therefore, sludge programs should be partially delegated only as a required element of a State NPDES program. With regard to circumstances where an alternative permitting program was used (such as the Clean Air Act), the appropriate provision would be proposed § 501.3, which would provide for coordination among the various permit programs to protect against duplicative permit coverage. The commenter also expressed the view that the "major category" of dischargers to navigable waters would cover all POTWs and other treatment works treating domestic sewage, and that the program must cover in a complete fashion all such facilities.

The preamble discussion to the proposed rule stated that the issue of partial sludge programs would be discussed in the proposed revisions to the NPDES regulations. Also, the March 1988 proposal did not contain any regulatory language for partial sludge

programs. Thus, while it would be simpler and faster to simply finalize the partial program issue in today's notice, EPA feels that this might unfairly compromise those individuals who were relying on having additional opportunity to comment when the general revisions to the NPDES regulations are proposed. Accordingly, today's notice contains only one provision addressing partial programs: Section 501.1(d)(1) provides that a State seeking approval of its sludge program pursuant to section 501 (i.e., the State is not using NPDES authority) may submit a partial program to be approved by EPA to the same extent as a State seeking approval of its sludge program under Part 123 (i.e., as a modification of its NPDES program). The proposed revisions to the NPDES regulations will contain a specific discussion and proposed regulatory language for Part 123 on partial sludge programs that will therefore apply to 501 sludge programs as well. Comments received from both the March 9, 1988 and February 4, 1986 proposed rules on the issue of partial sludge programs will be considered again and addressed in the rule revising the NPDES regulations.

5. Mixed Programs

Because the proposed regulations provided for approval of NPDES and non-NPDES State sludge programs (as well as the potential for partial program approval), several commenters raised questions about "mixed" programs (i.e., combinations of NPDES and non-NPDES programs in one State), and asked for clarification on how "mixed" programs should be implemented. One State read the proposed rule to require both NPDES and non-NPDES State program approvals where the State's NPDES program does not currently cover non-discharging POTWs (or where such facilities are regulated under another State program). Similarly, one State asked whether a State with an approved NPDES program would have to seek separate (non-NPDES) program approval for facilities such as land disposal sites not currently regulated under the State's NPDES program. Another State generally asked whether a State could regulate different required State program elements under different programs, such as NPDES and RCRA. A group of POTWs specifically endorsed this approach.

As explained in the above discussion about optional versus mandatory State programs, EPA has attempted wherever possible to provide flexibility to States, particularly with regard to the organization of State programs. EPA has also sought to minimize the differences between the Part 501 and Part 123 requirements so that States can choose freely an approach that best suits their existing organization and needs. Whether a State should seek approval of an NPDES or non-NPDES sludge program is left to the State's discretion. With very few exceptions, such as the conflict-of-interest standard for NPDES permitting bodies mandated by section 304(i) of the CWA and the requirement that all State agencies administering the NPDES program have statewide jurisdiction over a class of activities in § 123.22(b), the requirements would be the same.

Because the sludge permitting requirements will apply to many treatment works that now have NPDES permits, EPA expects that States with existing NPDES programs would find modifying their existing NPDES program and authorities the most sensible approach. To accomplish this modification, NPDES States would have to amend their NPDES legal authorities to include provisions for sludge management regulation that ensure compliance with section 405 requirements, in much the same way as EPA has in today's final revisions to Parts 122 and 124, and submit modifications of existing NPDES program documents to meet new requirements in revisions to Part 123. Where a State chooses to use a non-NPDES program to regulate sludge, it must follow the approval procedures in Part 501. The difference between using Part 123 or Part 501 is critical primarily in ascertaining how much documentation a State must submit to show that its program satisfies section 405 and the program requirements in today's rule.

Theoretically, separate approved Part 501 and Part 123 sludge programs could co-exist in a State only if each program receives approval as a partial program. Although EPA agrees that flexibility is an important goal, the fragmentation of sludge regulation and increased number of State programs to oversee that would result from allowing separate approved Part 501 and Part 123 sludge programs argues against this approach as potentially inefficient and confusing to the regulated community. As discussed above, the question of partial programs under both programs will be considered together in forthcoming regulations (including whether and how partial sludge programs should be allowed).

6. Small Generators

The March 1988 proposal solicited comments on alternative ways to permit numerous small facilities (for example, non-discharging, privately-owned domestic sewage treatment works) not previously regulated under any existing State or Federal program other than through individual permits so as to minimize the additional resources that would be needed to fulfill the permitting requirement. EPA also encouraged States to submit any data they have on the number of such facilities in their States and the amount and kind of sludge they produce.

One commenter argued that EPA should not even consider alternative ways to regulate small facilities, such as general permits or rules of general applicability, without a complete inventory of these facilities and data on their sludge quality. The commenter's concern was that by proposing alternative approaches, the Agency assumed that these facilities posed little or no risk. This is not the case. Whether an alternative, such as a general permit, is appropriate in a particular situation would depend on the facts in that particular situation. Seven State agencies also submitted comments on this issue, suggesting different ways to approach regulating small entities. Three States suggested that EPA should provide a *de minimis* exemption for small generators. Without clear statutory authority to provide such exemptions, however, the Agency prefers to avoid this approach. Also, as noted above, the Agency does not take the position, absent data, that small facilities pose no risks. Therefore, the Agency cannot justify adopting this approach. However, it should be noted that many small generators who send their sludge to POTWs for treatment (i.e., small package plants) will not be subject to the Part 503 standards and therefore would not be required to have a permit to implement those standards. Also, as discussed in section V.D.2, owners and operators of septic tanks are not required to obtain permits under today's final rule because septic tanks are not considered to be "treatment works treating domestic sewage" for purposes of section 405(f) of the CWA. This answers the concerns of one State which anticipated a significant resource burden if permits were required for single family residences.

Two commenters suggested tailoring permit conditions and procedures to the size of the facilities to minimize the burden on small facilities. This is possible under today's final rule. As one commenter noted, the NPDES permit program is already flexible in this regard by allowing testing and monitoring requirements to be determined according to site-specific conditions such as the size of the facility. The same flexibility is a part of the sludge

permitting program under today's final rule. Other requirements, such as application information that must be submitted, are also likely to be less for small facilities than for larger facilities, because the systems are less complex. Similarly, certain permit procedures apply only to Class I Sludge Management facilities, which are likely to be larger facilities.

One commenter suggested phasing-in coverage of the program, beginning with municipalities and then addressing the small industrial or sewage treatment package plants. This occurs in two ways under today's final rule. First, permits generally will not be required for non-POTWs until a Part 503 standard applicable to the facility has been promulgated. Thus, industrial facilities which treat domestic sewage and industrial wastes together will not be required to obtain permits (or have sludge conditions included in existing permits) immediately because, under current Agency plans, sludge from these facilities will not be covered by the first round of Part 503. (Permits or other measures could be required, however, on a case-by-case basis if the Director determines that the facility's sludge may adversely affect public health or the environment under the authority of section 405(d)(4) of the CWA. These sludges would also be subject to RCRA regulations as solid wastes, as they are under existing law.) More generally, today's final rule gives the permitting authority discretion to establish permitting priorities (based on potential harm to public health or the environment) in determining when to incorporate Part 503 standards once those standards have been promulgated. (See the discussion below on permit reopeners.)

One commenter suggested that general permits be used for "boilerplate type situations" that require minimum review, such as lime stabilization units for treating septage and portable toilet pumpings prior to land application. Another commenter also suggested the use of general permits in limited situations. General permits allow similar facilities requiring similar requirements to be covered by one general permit rather than by individual permits. Whether they are appropriate in any given case, of course, cannot be determined in advance. However, EPA agrees that general permits may be a useful tool in the sludge permitting program. Accordingly, revisions to the NPDES general permit regulations to allow for their use to regulate sludge use and disposal have been adopted as a part of today's final rule and are discussed in section V.F.2 above. States may also be approved to issue general permits for sludge use and disposal.

7. Indian Tribes

In the 1987 amendments to the CWA, Congress authorized Indian Tribes to be treated as States for purposes of administering an approved NPDES program. See section 518. (This would include NPDES programs that include sludge management programs approved under 40 CFR Part 123 as adequate to assure compliance with section 405 of the CWA.) Regulations to implement this authorization are being developed in a separate rulemaking.

In the March 1988 proposal, EPA proposed to authorize Indian Tribes to be treated as States for purposes of administering *non*-NPDES sludge management programs under section 405 as well. Thus, the March 1988 proposal created a potentially larger role for Indian Tribes than the February 4, 1986 proposed rule. (That proposal would have provided that EPA and a tribal government could develop, on a case-by-case basis, an appropriate role for the tribal government in carrying out a sludge management program on Indian lands where the federal government administers the program. See proposed § 501.19, 51 FR 4468.)

In the 1988 proposal of Part 501, EPA proposed treating Indian Tribes as States for purposes of *non*-NPDES section 405(f) sludge management programs even though section 518(e), which addresses the status of Indian Tribes under the CWA, does not specifically list section 405 as a program for which EPA may treat an Indian Tribe as a State. EPA reasoned that omission of section 405 from section 518 was the result of oversight, not of deliberation. EPA advanced two basic reasons in support of this position. First, section 518 authorized treating Indian Tribes as States for other sludge management activities, e.g., Title II (construction grants) and section 303 (water quality standards and implementation plans). Second, section 518 would clearly allow Indian Tribes to be treated as States for purposes of administering an approved NPDES program (including sludge management) and there is no reason why Indian Tribes should not be similarly treated for purposes of administering a non-NPDES program that regulated the same activities.

Accordingly, EPA proposed to include in the definition of "State" in § 501.2 an "Indian Tribe which is eligible for treatment as a State under regulations promulgated under section 518 of the CWA." The March 1988 proposal did not include a proposed rule addressing how Indian Tribes would establish eligibility for treatment as States. Instead, it expressed EPA's plans to address this issue in a separate rulemaking that would apply to various programs under the CWA, since the requirements were not expected to differ significantly among the programs.

The one State commenter on this issue argued that EPA does not have authority to treat Indian Tribes as States for purposes of section 405(f) because section 518(e) of the CWA does not list section 405. For the reasons stated in the preambles to the proposed rule and today's rule, EPA disagrees. Therefore, the final definition of "State" in § 501.3 is the same as the proposed definition. As discussed in the preamble to the proposed rule, the regulations addressing how Indian Tribes may be treated as States for purposes of the sludge program will be proposed separately as part of a regulation treating Indian Tribes as States under the NPDES program.

Where an Indian Tribe does not have an approved State program, EPA expects to be the permitting authority for facilities on Indian lands because States usually do not have authority to administer and enforce their environmental programs on these lands. In this situation, EPA will work with the tribal government and other interested agencies in the development of an appropriate role for the tribal government in administering the sludge program on Indian lands (consistent with the 1986 proposal and the practice under other federal environmental programs).

I. Part 501: Non-NPDES State Programs.

The following is a section-by-section analysis of Part 501, which establishes program requirements and procedures for States that use programs other than NPDES to administer an approved sludge management program (i.e., States without NPDES programs and States with approved NPDES programs which choose to implement a sludge program separate from their NPDES program).

1. Purpose, Scope, and General Program Requirements.

Subpart A consists of three sections. Section 501.1 explains the purpose and scope of Part 501 and generally what requirements State programs must have in order to be approved under section 405(f) of the CWA. In the final rule this section has been slightly reorganized. The paragraph explaining assignment of program responsibilities, which appeared as paragraph (e) in the proposed rule, now appears as

paragraph (1). The other two sections in Subpart A include § 501.2 which defines key terms used in the regulations and § 501.3 which discusses coordination with other programs.

Authority (§ 501.1(a)). As discussed above, EPA's primary authority for promulgating State sludge management program regulations comes from section 405(f) of the CWA, which was added by the 1987 amendments. EPA also has general authority to "prescribe such regulations as are necessary to carry out [the Administrator's] functions under this Act." CWA section 501(a). section 101(e) also supports today's rulemaking (measures to promote public participation). Finally, section 518(e) authorizes the Administrator to promulgate regulations for purposes of treating Indian tribes as States (see discussion on this issue above). Since the authority provided in these sections is broad enough to promulgate regulations to implement specific provisions of the CWA, citation to other Clean Water Act sections have been dropped in the final rule. For this reason also, EPA disagrees with the commenter who argued that EPA must list as authority all CWA provisions which might be implemented or assisted through approved State sludge management programs (e.g., section 405(d), section 307(b)).

Scope. Section 501.1(c) of the final rule sets forth the general requirements for EPA to approve State sludge programs as adequate to implement CWA section 405. Consistent with Congressional intent, States that seek to administer a State sludge program in lieu of the federal program must have authority generally as broad as EPA's to regulate sludge use and disposal. This would include the legal authority and programmatic capability to implement a permit program for the use and disposal of sewage sludge, to implement and enforce the Part 503 technical standards and any other federal sludge standards (e.g., 40 CFR Part 257), and generally to take action to protect the public health and environment from adverse effects of toxic pollutants in sewage sludge. One commenter said that approved State programs must be equally as broad as EPA's programs, not "generally" as broad as stated in the preamble to the proposed rule. This suggestion is inappropriate because, as explained elsewhere, States may not have authority to regulate in certain instances, for example, on Indian lands or in the ocean. The required scope of State programs is also discussed above in section V.H.2.

Section 501.1(c) establishes these basic requirements for approved State programs. The final rule is substantially the same as the proposed rule. States must be able to assure compliance with the Federal sludge technical standards; issue permits to POTWs and other treatment works treating domestic sewage that apply and assure compliance with Federal standards and requirements under section 405 (including conditions developed on a case-by-case basis to protect public health and the environment when there are no applicable technical regulations); regulate use and disposal of sewage sludge by nonpermittees; take actions to abate violations of the State sludge programs (including civil and criminal penalties); and generally to take actions to protect public health and the environment from the adverse effects that may occur from toxic pollutants in sewage sludge.

Although this paragraph has not changed substantially from the proposed rule, minor editorial changes have been made to clarify EPA's intent. First, paragraph (c)(1) was revised to state that States must have authority "to require compliance by any person who uses or disposes of sewage sludge with standards for sludge use or disposal issued under section 405(d) of the CWA * * *" (new language underlined). The first underlined change tracks statutory language and clarifies that compliance must be required of any person that handles sewage sludge, not just generators. As explained in the discussion about users and disposers above in section V.D.3, States have some flexibility in how they regulate users and disposers. The second change to this paragraph substitutes a term defined in § 501.2 for the previous language without changing the meaning.

Second, paragraph (c)(2), which was phrased in terms of a prohibition against the use and disposal of sewage sludge not in compliance with a permit that implements federal requirements, now clearly states that States must have authority to issue permits that apply, and assure compliance with, Federal standards. Again, this more closely tracks statutory language. As noted in the preamble to the proposed rule, this is the most important requirement for an approvable State sludge program under Section 405 because the CWA requires State sludge programs to implement sludge standards through permits issued to POTWs and other treatment works treating domestic sewage. The permit requirement in the 1988 proposal superseded two provisions in the 1986 proposal relating to sludge management oversight: The requirement for provisions for project-specific approvals and the requirement to describe the processes and procedures to be used for reviewing the planning, design, construction and operation of sludge management facilities.

Section 501.1(d) describes the types of sludge use or disposal practices that States must be able to regulate. This paragraph is discussed in detail above in section V.H.2. In addition, EPA received a comment saying that the proposal was confusing because it required States to be able to regulate ocean dumping of sewage sludge under § 501.1(d)(1)(B)(v), while stating elsewhere in Part 501 that such regulation is precluded by the Marine Protection, Research, and Sanctuaries Act. EPA agrees, and therefore has dropped ocean disposal from the listing of practices that States must be able to regulate.

As discussed in the preamble to the Feb. 4, 1986, proposal (51 FR 4461), MPRSA sections 106 (a) and (d) generally exclude States from regulating or permitting ocean dumping. While the States are precluded from regulating ocean dumping by the MPRSA, States with POTWs that currently ocean dump sewage sludge should continue to work with EPA and the dumpers in identifying and implementing suitable land-based alternatives. State involvement in the area of land-based alternatives is especially important in light of the MPRSA amendments prohibiting sewage sludge ocean dumping after December 31, 1991, and those amendments recognize the need for active State involvement with regard to land-based alternatives. *See,* H.Rep. 100–1090 at pg. 29. In particular, those MPRSA amendments specifically provide that States are to participate in the negotiations of plans to cease ocean dumping through the implementation of alternatives (MPRSA sections 104B(c)(2)(A) and (3)(A)), establish a State Clean Oceans Fund to provide financial assistance to dumpers in implementing alternatives to ocean dumping (MPRSA section 104B(c)(5)), and report on progress being made in implementing alternatives to ocean dumping (MPRSA section 104B(h)). While MPRSA sections 106 (a) and (d) preempt States from regulating ocean dumping, EPA encourages States with POTWs that ocean dump sewage sludge to participate in the development and implementation of land-based alternatives to ocean dumping in furtherance of the MPRSA's new requirements for the termination of ocean dumping of sewage sludge.

More stringent State or local laws. The 1986 proposed rule (in § 501.15(d)) also acknowledged that section 510 of the CWA does not preclude States or their political subdivision from enacting laws governing sludge use or disposal that are more stringent than Federal law. However, to further encourage beneficial reuse of sludge, the 1986 proposal also provided that "State or local agencies should not ban or unreasonably restrict any sewage sludge management practice unless local circumstances require such restrictions." The 1988 proposed rule (in § 501.1(j) also codifies section 510 of the CWA and preserves the rights of States and local jurisdictions to adopt and enforce more stringent or more extensive requirements than those required under Federal law. The 1988 proposal, however, did not retain the sentences addressing beneficial use and unreasonable local bans or restrictions on sludge management practices.

Seven commenters, all State agencies, responded to the 1986 proposal, all addressing the status of more stringent local laws. Three commenters said that EPA should not state in the regulations that local jurisdictions can enact stricter laws because such laws (1) are *de facto* bans; (2) conflict with State law; and (3) cause costly delays and litigation. Similarly, two other commenters supported the sentence which advises local agencies against bans or unreasonable restrictions on sludge management practices. One of these commenters suggested further that the regulations require that any local law be consistent with Federal and State requirements and not ban practices allowed by State or Federal law. In a related vein, the only commenter on the 1988 proposal expressed concern that more stringent State and local laws would unduly burden its sludge handling activities, which often crossed State lines. The commenter urged, therefore, that EPA, in effect, preempt this area of regulation. In contrast, two commenters opposed the admonition against unreasonable bans or restrictions because it was not an appropriate subject for Federal regulation and because State law would determine the "reasonableness" of any local law.

Today's final rule on the status of stricter State and local laws is the same as the 1988 proposal (although now it is codified at § 501.1(i)). Section 510 of the CWA clearly states that nothing in the CWA precludes more stringent State and local laws. Similarly, section 405(d)(5) of the CWA states that: "Nothing in this section is intended to waive more stringent requirements established by this Act *or any other law*" (emphasis added). Although section 510 of the CWA would apply in any event, restating it in the regulations serves important notice to the regulated community and other interested parties that section 510 applies in the sludge use and disposal context as well. Commenters who objected to this provision because they objected to the local laws (or State laws in the case of interstate sludge activities) themselves erroneously assume that EPA can through regulation prohibit stricter local laws or preempt this area of regulation. This is clearly contrary to the CWA. For this reason also, EPA deleted the sentences addressing beneficial use and unreasonable local bans or restrictions. EPA's policy of encouraging beneficial use has not changed. Consistent with this policy, EPA's discourages unreasonable restrictions on sludge use and disposal. However, EPA agrees that admonitory provisions in the regulations are not the most appropriate means of implementing the goal of maximizing beneficial use. (It also apparently mislead commenters into thinking that EPA had authority to dictate local law or preempt State and local law where no such authority exists.) With respect to concerns about interstate sludge activities, many States have expressed a general willingness to following EPA's lead on technical standards for sludge use and disposal. Therefore, EPA expects that differences among State standards and requirements will decrease after promulgation of the Part 503 standards. EPA also expects that promulgation of Federal standards will encourage public acceptance of beneficial use of sludge, which should further reduce the number of local restrictions thought necessary to protect public health.

Paragraph (j) of this section states that nothing in Part 501 prohibits a State from administering a more extensive program than what is required for EPA approval. However, the additional coverage under the State program would not be considered a part of the EPA-approved State program. The Attorney General's statement, described below, would identify the additional coverage.

MPRSA preemption. Federal law does preempt State or local law in one important area. This preemption is noted in § 501.1(k), which states that sections 106 (a) and (d) of the Marine Protection, Research, and Sanctuaries Act generally preclude States from regulating or issuing permits for ocean dumping. Approval of a State program under Part 501 does not change this preemption.

Effect of EPA approval. EPA will approve State programs that meet the requirements of Part 501 (§ 501.1(e)). Upon approval, EPA generally will cease issuing those permits implementing sludge standards to permittees that will be within the jurisdiction of the approved State program and make arrangements to turn over responsibility for EPA-issued permits to the State. In some cases, such as a permit subject to a pending appeal action, EPA may retain jurisdiction. Section 501.1(f) addresses how this situation is to be handled. This paragraph parallels § 123.1(d) which addresses the same logistics of transferring responsibility for the NPDES permit program.

Section 501.1(g) explains that approval of a State program does not affect EPA's authority to take enforcement actions for violations of section 405. This provision appeared in both the 1986 and 1988 proposals. One commenter on the 1986 proposal objected to this statement of federal enforcement authority, claiming that State enforcement authority is adequate to control domestic waste water sludge. Under the CWA, EPA has the authority to take enforcement actions for violations of the CWA even where the State has similar authority. Section 501.1(g) notifies the State and the public of its authority and intent to use this "backup" enforcement authority to ensure compliance with the CWA where the State fails to take appropriate enforcement actions. EPA did not receive comments on either of these paragraphs (§ 501.1 (f) and (g)) in response to the 1988 proposal and therefore is promulgating a final rule that is the same as the proposed rule.

Assignment of program responsibilities. The March 1988 proposal contained a provision specifically to allow States to assign program responsibilities to local agencies (other than field offices of the State agencies) under certain circumstances. This provision was included in recognition that local agencies, such as local health departments and soil conservation or agricultural extension offices, may play a significant role in carrying out various sludge management activities in some States. The purpose of the proposal was to allow decentralized administration of State sludge programs to continue and thus minimize disruption to existing State programs. EPA also reasoned that because proper sludge disposal may often depend on local conditions and disposal site characteristics, the knowledge and proximity of local

agencies to regulated activities could enhance efficient and effective administration of program responsibilities.

The proposed rule was carefully limited. It did not allow separate approval of local programs (by the State or EPA) or relieve the approved State agency of overall responsibility for program administration. It prohibited a State from assigning program responsibilities to a local agency under control of a political subdivision that also owns or operates a POTW or other facility that treats or disposes of sewage sludge, so as to avoid a conflict of interest inherent in a situation in which the local agency plays dual roles of regulator and regulated party. Beyond these broad parameters, the proposed rule did not specify the extent to which a State agency could use local agencies to carry out program responsibilities.

The proposed rule required that any assignment to local agencies be well documented and supported in the State's submission for program approval. States were also expected, through provisions in the MOA, to assume oversight responsibilities to ensure that the assignment is carried out properly. In addition, to assure that EPA could effectively carry out its oversight responsibilities in local delegation situations, the lead State agency would remain responsible for all program reporting and other activities related to EPA oversight of the State's approved program (e.g., submission of proposed permits for EPA review). Finally, State agencies would be required to retain all necessary authority to carry out program responsibilities so that they could step in where local agencies fail to carry out assigned functions adequately.

EPA solicited comments on whether additional limitations should be established to guard against potential problems such as inconsistent application of program requirements within the State. Also, because of concerns about potential conflict of interest situations (i.e., where local agencies executing sludge responsibilities are part of the same political subdivision or other governmental entity with authority over POTWs or other sludge treatment or disposal facilities), EPA solicited comments regarding the roles of local agencies in existing State sludge programs, including the various functions they perform (e.g., permitting, compliance monitoring, enforcement), the extent to which they are the final decision-makers, and their relationships to State agencies, POTWs, and other sludge treatment and disposal facilities.

EPA received nearly 15 comments on this section from the whole range of commenters. Approximately two-thirds of the commenters generally supported the proposal for reasons similar to those discussed in the preamble to the proposed rule; a few supported with reservations; and only one commenter said assignment to local agencies should not be allowed. Most States which commented on the proposal generally supported it. Responses from POTWs was more divided.

The commenter most opposed to the proposal said that local delegation could complicate permitting and administration for POTWs with facilities in different local jurisdictions. The commenter suggested that if local delegation were allowed, the State must be designated as the lead agency and the local agency assigned program functions must be larger than the POTW it regulates (specifically, a city, county, or township should not regulate a multi-county sanitary district). Now that EPA has clarified in the final rule that permits will not be required for each "facility" at which the POTW's sludge is used or disposed, it is not clear how extensive the problem referred to by the commenter would be. In any event, nothing in proposed rule was intended to dictate relations between the various political subdivisions of the State. That is best left to State law. No changes to final rule are needed to accomplish this.

Commenters expressed several reservations about allowing local agencies to carry out program responsibilities. One State agency said it should be allowed if the State can assure quality control, e.g., minimum standards, program reviews, joint inspections. These are the types of State oversight activities that should be addressed in the MOA under § 501.15(1)(4).

Two commenters addressed local agencies' capabilities for carrying regulatory activities. One commenter said local agencies may lack authority and expertise to implement pretreatment standards that will be needed to meet the Part 503 technical regulations. This comment confuses activities expected of the sludge management program with those already required by the pretreatment program and therefore is unfounded. A POTW commented that stringent limitations are needed because local agencies may not have the technical expertise to regulate adequately. In this case, assignment of program responsibilities would be clearly inappropriate. The purpose of this provision is to allow local agencies which currently regulate sludge use and disposal and hold the expertise in this area to continue this role under an approved State program. To clarify that any assignment must be to an agency that is competent, the final rule has been changed in two respects. First, the introductory section has been rephrased to state that "the Administrator may allow a State to assign portions of its program * * *" (rather than "A State may assign * * *"). This clarifies EPA's intent that whether assignment to local agencies should be allowed is discretionary with EPA. To help make this determination, the final rule requires the State's program description, in addition to what was required in the proposed rule, to describe the capabilities of the local agency to carry out assigned functions.

On a more general level, one commenter stated that in all cases, the lead State agency must have final decision-making authority because delegation to local agencies or field offices often results in inadequate regulation and enforcement. Similarly, another commenter said that local delegation should be prohibited unless the State agency can demonstrate legal authority and resources to exercise direct control over local agencies involved in sludge management, i.e., a "genuine" statewide program is needed to meet the requirements and purposes of the Act. The final rule addresses these concerns by requiring the State agency to "retain full authority and ultimate responsibility for administering all aspects of the State's approved program * * *" (§ 501.1(l)(6)) and to include in the MOA provisions for adequate State oversight of local agencies to which it has assigned program responsibilities (§ 501.1(l)(4)).

Only two commenters, both State agencies, specifically addressed the question whether additional restrictions were needed to ensure consistent application of State requirements. One said the proposed rule contained adequate restrictions because States should determine the role of local agencies. The other commenter suggested that any additional requirements to ensure consistency could be incorporated into the MOA as needed. EPA agrees that this is a reasonable and flexible approach for ensuring program consistency.

Several commenters addressed the potential conflict-of-interest problems that could occur when a State assigned program functions to a local agency that was also a regulated party. Two conflict-of-interest provisions in the proposed rule affect assignment to local agencies: (1) § 501.1(e)(1), which

prohibited assignment to a "local agency under the jurisdiction of a political subdivision which owns or operates a POTW or other facility that treats or disposes of sewage sludge;" and (2) § 501.15(a)(7), which prohibits membership on any board or body that approves permits from including any person who receives a significant portion of his or her income from a permittee or applicant for a permit.

Note: This provision was specifically endorsed by one commenter, an industry.

Three commenters, all addressing the sludge program in Washington State, said the proposal was too restrictive because it would effectively prohibit assignment of program responsibilities. The commenters considered this result inappropriate because local agencies responsible for protecting public health and the environment would not knowingly violate federal or State laws designed to protect public health and the environment and that any perceived conflict of interest could be remedied by sending all permits to the State agency for review, and if necessary, veto.

Since nearly all political subdivisions own or operate a waste water treatment works, the conflict of interest provisions in the proposed rule effectively prohibit assignment of program responsibilities to local agencies, contrary to EPA's intent. Therefore, the final rule contains two changes to allow for assignment to local agencies while still protecting against potential conflicts of interest. First, § 501.1(l)(1) (which appeared at § 501.1(e)(1) in the proposal) has been amended to prohibit assignment to any local agency which also owns or operates a POTW. This prohibits direct conflicts-of-interest, i.e., a POTW regulating itself. Unlike the proposed rule, however, it would allow assignment to a local agency which does not own or operate a POTW but which is part of a political subdivision which owns or operates a POTW.

The second change affects the conflict-of-interest provision that applies to any board or body that approves permits. Although addressed to State permitting bodies, it would apply to any local board or body that has been assigned permit issuance responsibility. As proposed, it prohibits any person receiving a significant source of income from a permit holder or applicant from being a member of the board or body that approves permits. This would effectively prohibit assignment to any local agency because the decision makers of local agencies in nearly all cases include at least one person who is employed by or receives a significant source of income from a permit holder or applicant (i.e., the municipality or other political subdivision).

Under the final rule, the Administrator may waive this stringent conflict-of-interest standard if the board or body can certify that it meets a "conflict-of-interest standard imposed as part of another EPA-approved permitting program or an equivalent standard" (§ 501.15(f)(ii)). The only conflict-of-interest standard EPA is aware of that would provide such an alternative is the one found in section 128 of the Clean Air Act, 42 U.S.C. 7428. That section requires that a board or body that approves permits shall have "at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits * * *" and that "any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed." As discussed more fully below, the Agency believes it is important to make this alternative standard available for non-NPDES State sludge programs. Today's final rule also makes this standard (or the equivalent) available in the case of assignment of permit issuance responsibilities to local agencies. In all cases, however, the approved State agency must be able to exercise direct control over permits issued as part of the approved program.

One commenter said that a POTW that receives sludges from other POTWs should regulate the incoming waste since it is the receiving POTW's discharge permit which will be affected. EPA agrees. However, this situation is different from that envisioned in the proposed rule. Generally, today's rule does not establish requirements for sludges discharged (through the sewer, hauled by truck, or transported through another conveyance) for treatment to POTWs. Like other incoming waste and influent, this is more the province of the pretreatment program. The sludge program will focus instead on the ultimate disposal of sludge when it enters the environment. Nothing in today's final rule concerning conflict of interest precludes a POTW or other permittee from regulating incoming wastes.

Similarly, nothing in today's rule governing assignment of responsibilities to local agencies prohibits a POTW or other treatment works from controlling the end use of its sludge when handled by another entity. In fact, as discussed in detail in section V.D.3 of this preamble concerning the regulation of users and disposers of sewage sludge, sludge generators may be required to control end use of their sludge by others in some situations.

One commenter asked whether a local agency to which permitting responsibilities has been assigned would also be required to have the civil and criminal enforcement authorities required of State agencies under Part 501 if the State had these authorities. Today's final rule does not require that assignment of program responsibilities be allowed only when the local agencies have all authorities required of States. Therefore, a local agency that conducted permitting activities for the responsible State agency need not also have the enforcement authorities required by Part 501 (unless, of course, it had also been assigned enforcement responsibilities). In all cases, the State must have authority to carry out all program requirements. Thus, a State would be expected to have the enforcement authorities required by Part 501 even if a local agency had similar authority (i.e., a State cannot meet Part 501 requirements by showing that a local agency has the required authority).

Definitions. Section 501.2 defines key terms used in Part 501. Several of the proposed definitions, including "sewage sludge," "treatment works treating domestic sewage," and "septage" have undergone changes in the final rule and are discussed above in section V.D. This section addresses changes to other definitions in Part 501.

A key definition in Part 501 is "Class I sludge management facility." Under the regulations, "Class I sludge management facilities" ("Class I facilities") are expected to receive priority attention from approved States and are subject to more intensive EPA oversight. The February 1986 proposal defined "Class I facilities" as any POTW required to develop a pretreatment program under 40 CFR 403.8. EPA received only one major objection to this definition by a municipality which stated that continued focus on major POTWs diverted attention away from other serious sources of environmental problems such as agricultural and non-point sources. The two other commenters representing States on this issue, however, favored the proposed definition because it focused the program on the largest sludge generators.

The March 1988 proposal took a different approach by defining "Class I sludge management facility" to be any sludge facility classified as such by the Regional Administrator in conjunction with the State Director, analogous to NPDES "major facilities" (see 40 CFR 122.2). The purpose of the 1988 proposal

was to allow priority facilities to be determined through a negotiated process between the Region and the State administering an approved program. This would allow flexibility for targeting efforts on areas of specific concern to the State (e.g., disposal on or near ecologically sensitive areas such as estuaries) and on particular facilities with known or suspected problems with their sludge. The preamble further explained that EPA could, based on available information and national concerns, issue guidance on Class I determinations. Examples of potential Class I candidates included sludge incinerators (because available information suggests that these facilities may have greater potential to threaten the environment) and major POTWs required to have pretreatment programs under 40 CFR 403.8 (because facilities are so classified on the basis of their size and industrial contribution). EPA specifically invited comment on the process for identifying Class I facilities contained in the proposed definition of "Class I sludge management facility."

EPA received 19 comments on the 1988 proposed definition of "Class I sludge management facility." Two States and one individual supported the proposed definition because of the flexibility it offered. One supporter noted that national guidance for designating Class I facilities still would be needed. Most commenters opposed the proposed definition because it was too flexible. Minimally, these commenters wanted the definition to include acceptable criteria for designating Class I facilities.

Reasons for wanting more specificity in the definition included promoting consistency among State programs, discouraging automatic designation of large municipalities as Class I facilities, and ensuring more objectivity. Commenters also suggested a wide range of criteria for inclusion in the definition, based on specific types of facilities (e.g., disposal-only facilities, pretreatment POTWs, and NPDES majors), specific use or disposal practices (e.g., incineration, ocean dumping), general characteristics (e.g., amount of sludge produced, design flow), and general effect (e.g., potential for a significant impact on the environment).

Today's final definition of "Class I sludge management facility" borrows from both proposals and the comments asking for more specificity. It is defined as "any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including such POTWs located in a State that has elected to assume local program responsibilities pursuant to 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as such by Regional Administrator in conjunction with the State Director because of the potential for its sludge use or disposal practices to adversely affect public health or the environment." Most significantly, the definition now directly and indirectly articulates the overriding goal of section 405 to protect public health and the environment from unsafe sewage sludge use and disposal.

Under the final definition, any POTW required to develop a pretreatment program under § 403.8 will be considered a "Class I facility." This means not only POTWs that currently have approved pretreatment programs, but also any POTW falling within the definition of § 403.8(a), including those POTWs located in States that have chosen to exercise the option to assume local responsibilities under § 403.10(e). At a minimum, the definition of "Class I Facility" includes these POTWs. Pretreatment POTWs will be considered "Class I sludge management facilities" regardless of their status under the NPDES program as "major" or "minor" facilities. As one commenter noted, the possible reasons for requiring a POTW to develop a pretreatment program—size, complexity, industrial influent, and recurring problems with sludge contamination—also support treating these POTWs as priorities under the sludge program. Currently, 1,485 POTWs are required to have local pretreatment programs. They account for approximately 78 percent of all sludge generated by POTWs and 87 percent of industrial flow to POTWs. Although only a few commenters responding to the 1988 proposal specifically endorsed designating § 403.8(a) POTWs as Class I facilities, many of the other categories or criteria suggested by commenters for designating Class I facilities are included within the pretreatment classification, e.g., size, sludge production, use of ocean dumping or incineration, and potential to adversely affect public health and the environment.

Treatment works other than pretreatment POTWs also can be designated as Class I sludge management facilities under the final definition. As in the 1988 proposal, the designation would be made by the Regional Administrator in conjunction with the State Program Director. Designation of Class I facilities, however, would still be subject to negotiation between the Regional Administrator and State Program Director. Thus, the definition is intended to preserve flexibility to accord priority status to facilities which are of particular concern to States or which may pose significant risks. The final definition states that this discretionary category is to be based on the potential to adversely affect public health and the environment. This criteria was added in response to requests for more specificity and is not intended to minimize flexibility.

Shortly after promulgation of today's rule, EPA will initiate a process for identifying "Class I Sludge Management Facilities," similar to the one used to classify NPDES major facilities. As part of this process, EPA will be working with the States and the regulated community to best define those facilities that should be accorded priority status. The identification of § 403.8(a) POTWs in today's rule is a bare minimum and serves to ensure that at least these facilities are covered until the final criteria are established. A State or Region may of course, designate an individual facility as a "Class I" at any time, based on that facility's potential to adversely affect public health and the environment.

One commenter suggested that all NPDES "major" facilities be designated as Class I sludge management facilities. EPA disagrees.

Note: Contrary to one commenter's interpretation, the proposed rule did not say that all NPDES "majors" would be considered "Class I sludge management facilities."

"Majors" are targeted for priority treatment under the NPDES program, usually based on the potential for their discharges to adversely affect receiving water quality. The criteria for determining which facilities should be majors do not necessarily correlate with the criteria for determining which treatment works should be given priority treatment under the sludge program. Therefore, there is no basis for automatically assuming that NPDES "majors" should also be "Class I facilities" for purposes of sludge regulation.

Two commenters objected to providing for Regional and State negotiation in designating Class I facilities. One State said that EPA involvement was unnecessary and did not add to the overall program, particularly given the goal of having State and local governments responsible for sludge management. Conversely, an industry commenter said that EPA headquarters should have sole

responsibility for designating Class I facilities to avoid inconsistency, unpredictability, and confusion; States could address specific problems of local interest in other ways such as more stringent State laws under section 510 of the CWA. EPA continues to believe that both States and EPA should play a role in defining program priorities.

The proposed rule included definitions for the terms "distributor," "generator," "use" or "utilization practice," and "users" which were expected to be in forthcoming technical regulations (40 CFR Part 503). Those definitions are no longer being used as general definitions in the technical regulations and serve no useful purpose in Part 501. Accordingly, they have been deleted in the final rule.

The proposed rule also included a definition of "facility" that has been deleted in the final rule. As explained above in the discussion of revisions to Part 122, the use of the broadly defined word "facility" created confusion particularly with regard to requirements which EPA intended to apply only to entities required to obtain permits under section 405(f), and not necessarily to all "facilities." Therefore, it has been deleted. In several instances throughout the regulations, "facility" has been replaced with "treatment works treating domestic sewage" to further clarify when a particular requirement applies to entities required to obtain permits under section 405(f) (e.g., § 501.14(c)(2); § 501.15(a)(2)(ii)).

The final rule includes several definitions that were not in the proposed rule. In all cases, these definitions were defined elsewhere and are being added to Part 501 because they are frequently used in the regulations. These definitions are: "CWA;" "POTW;" "Publicly owned treatment works;" and "Standards for sludge use or disposal."

Finally, the definition of "approved program" has been changed to "approved State program" in response to a comment that use of "approved program" and "approved State" in the regulations was confusing. For purposes of Part 501, "approved State program" means a State program approved by EPA pursuant to Part 501. Conforming changes have been made throughout the final rule by inserting "approved State program" anywhere "approved program" or "approved State" previously appeared.

Coordination with other programs. The 1988 proposed rule included a provision authorizing coordination of permit issuance under the approved State program with permit issuance under other Federal or State environmental permit programs that may affect the same facilities or regulate activities related to sludge management. This provision remains unchanged in the final rule. Since sludge use and disposal occur in different environmental media, coordination with other programs may be very important to promote consistency and efficiency. Coordination with the issuance of NPDES discharge permits (whether issued by EPA or another State agency) may be particularly appropriate since a facility's sludge operation is closely linked to its wastewater treatment processes and, in the case of POTWs, its pretreatment program. Similarly, ground water impacts are an important consideration for several sludge use and disposal practices (e.g., monofills, land application). In these cases, consulting with the agencies or offices responsible for implementing such programs as wellhead protection and sole-source aquifer programs can be useful.

Today's final rule on coordination among sludge-related programs differs from the coordination provision in the 1986 proposed Part 501. The earlier proposal would have required a State to have provisions for coordination among a wide range of State and local programs including regulatory, technical, and financial assistance, and public education programs that may affect sewage sludge use and disposal. (*See* proposed § 501.15(a)(9) at 51 FR 4466, February 4, 1986.) EPA dropped this detailed requirement in the 1988 proposal so as to maximize State flexibility in program areas not directly related to assuring compliance with federal technical sludge standards. (However, the State must still explain in the program description coordination among programs and offices where State program responsibility is divided among various programs.) Nonetheless, EPA agrees with one commenter on the 1986 proposal that coordination is important to POTWs whose various sludge activities are regulated under different programs. Coordination can also enhance the effectiveness of the various State programs.

A majority of commenters on the 1986 proposal raised questions about the relationship between the sludge and pretreatment programs that are still relevant under today's final rule. One commenter argued that the regulations must require integration of the sludge, NPDES, and pretreatment programs. As discussed elsewhere, EPA interprets the CWA as providing more flexibility for State programs than this approach would allow, even though integration of these programs would be a sensible organization. Under today's final rule, States must determine how best to organize their agencies to meet requirements for program approval.

The same commenter who argued for mandatory integration with the pretreatment program also argued that the regulations should (1) indicate when and how local pretreatment limits must be revised when the POTW is unable to comply with new sludge technical standards; and (2) commit the Agency to reevaluating categorical pretreatment standards to take into account promulgation of new technical standards under section 405(d) of the CWA. Other commenters requested clarification about the relationship between the two programs, including how different program goals and objectives are affected; how procedures are implemented, including reporting to EPA and enforcement mechanisms; how NPDES and non-NPDES States should implement the two programs; and how the sludge technical standards should be used in local pretreatment programs to allocate wasteloads among industrial users (IUs). The following discussion briefly addresses each of these issues.

A major determinant of sludge quality is the composition of wastewater entering the treatment works. The pretreatment program under sections 307 and 402(b)(8) of the CWA is intended to control pollutant discharges to POTWs. It imposes pollution controls (known as the national categorical pretreatment standards and prohibited discharge standards) on industrial and commercial facilities which discharge to POTWs (IUs), and requires certain POTWs (e.g., those with a design flow greater than 5 mgd or small POTWs with a significant industrial flow) to establish local pretreatment programs to regulate IUs. These local programs include the development of local discharge limits for IUs. Reducing pollutant loadings to a POTW through pretreatment typically reduces pollutant loadings to the POTW's sludge.

A POTW's pretreatment requirements are included in its NPDES permit, and are enforceable to the same extent as other permit conditions. Among the goals of the pretreatment program is the prevention of interference. The definition of "interference" includes a POTW's inability to comply with regulations governing its chosen sludge use or disposal methods due to contamination caused by industrial user discharges to the POTW. (40 CFR 403.3(i)(2)). When national categorical pretreatment standards do not reduce pollutant loadings to a POTW sufficiently to prevent pass through and interference, the POTW must develop and enforce "local limits" applicable to

its IUs or take other measures to prevent pass through and interference. In addition, IUs are prohibited from discharging pollutants to POTWs that would cause interference. Thus, there is both a practical and regulatory connection between the pretreatment and sludge programs.

Despite the direct links with the sludge technical standards, the pretreatment program is a separate regulatory program. The Agency believes that establishing new requirements for the pretreatment program in today's rule, particularly a requirement to reevaluate national categorical pretreatment standards in light of new sludge standards, is unnecessary. First, the Clean Water Act, including the 1987 amendments, already provides for regular reevaluation of the categorical standards and effluent guidelines (sections 307(b) and 304(m)). In response to section 304(m), the Agency recently proposed plans for reviewing and revising existing effluent guidelines and categorical pretreatment standards and promulgating new guidelines and standards for discharges of toxic and nonconventional pollutants. Examining possible effects on sludge quality will be a part of this effort. *See* 53 FR 32584, August 25, 1988. Second, under the pretreatment program, local limits may play a more important role than national categorical standards in achieving compliance with sludge technical standards because sludge quality requirements may vary depending on site-specific factors. Local limits are more efficient in dealing with such site-specific situations.

In addition, sludge quality is only one of several factors that must be considered for local limit requirements and, in some cases, for compliance with sludge technical standards. Thus, promulgation of new sludge technical standards will not necessarily lead to revised local limits, although the promulgated technical sludge standards likely will lead to at least a reevaluation of existing local limits. Local limits may already be more stringent than necessary to comply with sludge standards, because they are based on stringent effluent discharge limits or other requirements. Also, a POTW may be able to comply with sludge standards by modifying its sludge management practices (e.g., by decreasing the amount of sludge applied to a given parcel of land), rather than through "cleaner" sludge. Moreover, a POTW may decide to switch to another sludge use or disposal method, rather than improving the quality of its sludge through revised local limits. Congress clearly provided for this option in section 405(e) of the CWA. The feasibility of each option can be determined through a local limit analysis. Guidance for conducting this analysis and for allocating the "waste load" among IUs is contained in the "Guidance Manual for the Development and Implementation of Local Discharge Limitations under the Pretreatment Program," EPA Office of Water Enforcement and Permits, December 1987.

The regulations for the pretreatment program at 40 CFR Part 403 already address how POTWs must adjust their pretreatment programs in response to changes such as promulgation of sludge technical standards. (*See*, e.g., § 403.5(c) (development of local limits) and § 403.18 (modification of POTW pretreatment program) (53 FR 40562, October 17, 1988)). (*See also* proposed revisions to § 403.5(c) which clarify POTWs' continuing responsibility to develop and enforce local limits. 53 FR 47652, November 23, 1988).

The requirements for sludge use and disposal applicable to a particular POTW (e.g., interim sludge conditions in permits and, when promulgated, the sludge technical standards) serve as one of the environmental criteria which "drive" the POTW's pretreatment program requirements. Therefore, the approval authority for the POTW's pretreatment program (either EPA or NPDES States with approved pretreatment programs) needs to know what those sludge requirements are. Although this does not require that the same regulatory authority administer both programs, it does require coordination among the programs.

2. Development and Submission of State Programs

Section 501.11 summarizes the basic components of a program submission, each of which is described in greater detail in subsequent sections. The essential components of a program submission are: a letter from the Governor requesting program approval, a description of the State's sludge management program, a statement of the State's legal authority to implement the program from the Attorney General, and a Memorandum of Agreement (MOA) between the Regional Administrator and the State Program Director. In addition, this section requires States to submit copies of "all applicable statutes and regulations, including those governing State administrative procedures. § 501.11(a)(5). The 1986 proposal included similar requirements.

In response to the 1986 proposal, two States objected to the requirement that the program submission include copies of the statutes and regulations governing the State's program. The commenters said this requirement was unnecessary or redundant. EPA disagrees. Copies of statutes and regulations are needed, in conjunction with the Attorney General's Statement, to determine whether the State has adequate legal authority to carry out an approved program. Requiring a State to submit these documents with its program submission helps to ensure that EPA has complete and up-to-date authorities when reviewing the State's submission. Therefore, the final rule is the same as the proposed.

EPA did not receive any other major comments affecting this section as presented in the March 1988 proposal. Instead, commenters addressed their concerns in comments on the separate sections establishing the requirements for each program submission component. Therefore, the final rule will be substantially the same as the proposed rule. The only change in the final rule for this section is a format change. All requirements related to approval procedures (most of paragraphs (b) through (d)) have been moved to § 501.31, which specifically addresses procedures for review and approval of State programs. Material which was redundant has been deleted.

A State's application for program approval is not considered "submitted" until EPA determines that the submission is complete. Under § 501.11(b) EPA will notify the State whether its submission is complete within 30 days after EPA receives the State's submission. If the submission is incomplete, EPA will identify the information needed to complete the submission. A complete submission triggers the review and approval procedures described in § 501.31.

EPA received one comment in response to the 1988 proposal related to a requirement for the State to submit a "responsiveness summary" with its program submission, and to undertake other public participation activities before submitting its program to EPA for review. These requirements were in the 1986 proposal but were dropped in the 1988 proposal. The commenter objected to deleting these requirements. A responsiveness summary describes public participation activities related to the State's application for program approval, public comments received on the State's program and a response to those comments. The responsiveness summary was to have been prepared by the State after it made its program submission available for public comment and conducted other public

participation activities. EPA dropped the responsiveness summary and related requirements imposed on the States in the 1988 proposal but still provided for all necessary public participation activities through approval procedures to be undertaken by EPA Regional offices (see § 501.31 described later in section V.1.11). The effect of this change is to eliminate redundant requirements (as requested by several commenters on the 1986 proposal), not to reduce the public's opportunity to participate in EPA's decision on State program approval.

It is also important to note that public participation procedures undertaken by EPA as part of the State program approval process are not substitutes for procedures States may be required by State law to follow in adopting regulations or other program requirements. Therefore, EPA expects that interested persons will have had at least one previous opportunity to comment on State regulations. (They also will have a separate opportunity to comment on federal regulations from which State regulations may be derived.) The focus of public comment on the State's program submission then is whether the State's program meets EPA requirement for approvable programs. For this purpose, the minimum 45 day comment period provided in § 501.31(c)(1) should be adequate. Although a longer comment period may be provided at the discretion of the Regional Administrator, EPA does not agree with a commenter on the 1986 proposal that a 60 or 90 day comment period is needed to allow regulated parties time to review and comment on the technical regulations that apply to the various use or disposal methods which may be used by a treatment works.

3. Program Description. (Section 501.12)

This section provides a detailed discussion of the nature and contents of the program description. The program description explains how the State intends to administer its sludge program. While the legal authorities define the scope of the State's intended implementation, the program description is a narrative description of scope, structure, coverage and processes of the State's program. The program description should explain how the program is adequate to meet the essential requirements of CWA Section 405: to implement the technical standards through permits and to protect public hea1th and the environment from adverse effects from pollutants in sewage sludge.

When first proposed in February 1986, the requirements for the program descriptions elicited general comments from several States that the requirements were too detailed. However, EPA must have a very clear understanding of how a State's program works to evaluate it for approval, and after approval, to work with the State on an on-going basis. The program description is also the primary document for explaining the State's program to the public and regulated community, which helps to ensure that they have a meaningful opportunity to comment on the State's application for approval. Therefore, detailed information is needed and serves a critical purpose. At the same time, EPA has carefully evaluated the need for specific information, and in several cases described below, has reduced or eliminated information requirements.

An important feature of the program description is designation of a lead agency when more than one State agency will be responsible for administering the approved program. The lead agency requirement was in both the 1986 proposal (§ 501.12(a)) and the 1988 proposal (§ 501.12(b)). A majority of commenters on this issue supported the lead agency requirement as necessary to assure consistency, provide common direction to regulated parties, and to simplify the working relationship between EPA and the approved State program. EPA agrees that having a lead agency serves an important purpose and therefore has retained in the final rule the requirement that the program description designate a lead agency when more than one State agency will be responsible for administering an approved program. The final rule differs from the 1988 proposed rule in that it no longer requires each involved State agency to have statewide jurisdiction over a class of activities. This is intended to provide more flexibility to States.

In response to the 1986 proposal, three commenters objected to the lead agency requirement. One commenter said the designation should be optional with the State. The other two commenters objected because they read the lead agency provision to require reorganization of State agencies or even statutory amendments to consolidate all program activity under one agency. This reflects a misunderstanding about the lead agency requirement. It does not require agency reorganization, but instead requires that one of the agencies responsible for program administration serve as the lead contact for working with EPA on issues relating to the approved State program. Thus, the lead agency would be responsible for coordinating program approval (e.g., submit documents to EPA, serve as a contact for inquiries from the public, negotiate necessary changes) and serving as the State contact for EPA oversight activities (e.g., permit reviews, semi-annual noncompliance reporting, and annual program reports). Fulfilling this coordination role may require additional work on the part of the lead agency, but it provides an alternative to reorganizing State agencies to achieve the same purpose. Designating only one agency to act as liaison with EPA is also an efficient use of resources for both EPA and the State.

Section 501.12(b) requires the description to include an explanation of the organization and structure of the agency or agencies that will administer the program, including the number and general responsibilities of the employees. This must be accompanied by an organizational chart for all agencies which will be responsible for administering the program. One State commented that submitting the organization chart was unnecessary. This requirement is included because EPA needs to know how the State agency is structured. Organization charts display often complex relationships in an easy-to-understand form and therefore are very useful in describing the agency's structure. Most agencies have organization charts readily available; submitting them with the program description should not be unduly burdensome. Therefore, the final rule retains the requirement to submit an organization chart for each involved agency.

The 1988 proposal required States, as part of the program description, to submit a discussion on estimated costs and available resources necessary to implement the program. These requirements were more extensive than what was proposed on February 4, 1986, because additional information was deemed necessary to evaluate whether State resources are adequate to implement the program. In the 1988 proposal, EPA specifically solicited comments on whether cost and resource factors are appropriate measures to consider in determining whether to approve the State's program.

Two commenters on the 1986 proposal stated that the cost and resource requirements were too cumbersome and detailed, and therefore should be deleted, while one State supported the requirement. In contrast, all but one of the commenters on the 1988 proposal said that cost and resources are

appropriate measures to gauge the adequacy of State programs. In fact one commenter said that more detailed information on program funding is needed to evaluate the adequacy of the State program. EPA agrees and in the final rule requires greater detail on the costs and resources of the State program in the program description.

In the final rule, § 501.12(b)(2) has been revised to specify an initial two year time period for which the State must provide the estimated costs of establishing and administering the program after approval. The proposed rule did not specify what period of time the information must cover. Requiring information for the first two years of a program should establish what resources are necessary to begin and implement a program. One commenter suggested that these requirements be annual. EPA's intent is to ensure a State can establish and support a program for purposes of approving the program. Annual reporting is more appropriately addressed through program oversight and grant negotiations.

Proposed § 501.12(b)(3) required an estimate of resources available for program implementation. Under the final rule, States must submit an estimate of the sources, as well as the amounts of funding needed for the first two years after program approval. This estimate will allow EPA to consider start-up activities as well as initial implementation activities in determining whether a program is viable. A comparison of the resources needed for program establishment and implementation against the sources and amounts of available funding will help make this assessment.

Another comment addressed the difficulty of estimating costs until the technical regulations are published. EPA understands that in the absence of technical standards, program planning cannot be precise. EPA proposed the technical standards (40 CFR Part 503) on February 6, 1989 (54 FR 5746). Therefore, States will have the proposed Part 503 rules as a source of information upon which to base estimates of resources needed to administer an approved program. Moreover, today's final rule requires a general estimate of costs and resources needed to develop and administer State programs. EPA seeks information that is sufficient to evaluate the State's ability to implement a program.

The program description must include a description of applicable State permitting, administrative, and judicial review procedures. This includes a description of any administrative review or appeal procedures and criteria, as well as procedures and criteria for any variances available under State law, to allow EPA to review these for consistency with the requirement of section 405 to comply with the sludge technical standards. The program description must also contain copies of application and reporting forms. EPA disagrees with a State which commented that submitting forms is unnecessary. The requirement to submit forms is particularly critical for the sludge management program since EPA has not yet developed uniform national forms. Therefore, EPA will need to review State forms to see if they require the information required by this Part.

A major part of the program description is the facility inventory (§ 501.12(f)). The March 1988 proposal required the State to submit a complete list of all POTWs or other treatment works treating domestic sewage, i.e., all facilities required to obtain sludge permits, as a precondition to program approval. (The March 1988 proposal was considerably pared down from the February 4, 1986 proposal, which would have required an inventory of all sewage sludge generators and sewage sludge disposal facilities in the State, including firms which pump and service septic tanks and portable toilets, and an inventory of known violations.) Under the March 1988 proposal, the States would still be expected eventually to complete an inventory of all generators and disposal facilities and sites and were required to explain in the program description how and when the inventory would be completed and the State's plan for maintaining the inventory. However, only a partial inventory of generators was required as a precondition to program approval.

The inventory requirement in both proposals generated numerous comments. Most commenters on the 1986 proposal focused on the requirement to inventory firms which pump and service septic tanks and portable toilets. Nearly all opposed that requirement as unnecessary (as, for example, where State law requires septage to be discharged to POTWs) or too burdensome. Several States commented generally that overall the inventory requirement was too burdensome and would take too much time and expense to compile. One State recommended requiring only a list of the sludge generators and sludge management facilities. Another commenter suggested that the inventory be phased-in, beginning with Class I generators.

All the commenters on the 1986 proposal to provide an inventory of known violation of sludge requirements were opposed to such an inventory. They questioned the need for the information for EPA review of a State program. One commenter stated that such an inventory would be difficult to compile until there was an operational State program. The requirement to submit an inventory of known violations was dropped in the 1988 proposal. Also, based in part on comments, EPA dropped the requirement for the inventory to include all firms that pump and service septic tanks and portable toilets in the 1988 proposed rule. This requirement also is not a part of today's final rule.

The inventory requirement in the final rule is basically the same as that in the March 1988 proposal in that it retains the phased-in option. The rule has been expanded to specify: (1) Which facilities must be included in the initial inventory and which can be included later; (2) what type of information about each facility must be included in the initial inventory and what information can be submitted later; and (3) a deadline for completing any partial inventories.

The purpose of requiring an inventory as part of the State's program submission is to ensure that the State has identified which facilities will need permits before taking on the task of issuing permits. Later, the inventory also will serve as a planning tool and compliance monitoring and tracking system and thus needs to provide a comprehensive picture of sludge use and disposal in the State. Ultimately, the inventory will include all POTWs, non-industrial treatment works treating domestic sewage, industrial treatment works treating domestic sewage, and all sewage sludge disposal and use sites not included as a treatment works. However, the initial inventory need only include all facilities that are or will be required to obtain a permit upon promulgation of 40 CFR Part 503, i.e., all POTWs and non-industrial treatment works treating domestic sewage. These are the facilities that come under the first round of permitting either because they are POTWs (and hence are subject to section 405(d)(4) of the CWA), or because they are privately-owned treatment works covered by the first round of the Part 503 technical regulations (including 40 CFR Part 258). States would have to expand their inventories later to include industrial treatment works treating domestic sewage and use and disposal sites not included under another category, before final promulgation of Part 503 standards applicable to these facilities. One State commented that since "treatment works" included land for storage,

treatment and disposal of sludge, no apparent difference existed between the initial and later inventories. As explained above, each component of a treatment works is not considered a separate treatment works. Therefore, there is a difference between treatment works and off-site use or disposal sites. In addition, beneficial use sites such as farms, home gardens, etc., do not fall within the definition of "treatment works treating domestic sewage" in today's rule. The reference in the definition to land used for storage, treatment or disposal refers to monofills, surface disposal sites, etc. (See discussion of definition of "treatment works" in section V.D.2 above). Therefore, an inventory of the beneficial use sites is not required with the program submission.

In the 1988 proposed rules, the information about each facility required in the inventory was listed in the § 501.21 provision requiring a State to update the inventory as part of an annual report. The relationship between the two inventory requirements was not clear from the face of the regulation and therefore created considerable confusion. For example, one commenter said the inventory requirement was too vague and needed to specify what information was expected. Another said the inventory was unnecessary because the information was already required in the annual report. To remedy this problem, § 501.12(f)(1) now also specifies required inventory information, including: (1) Name, location, and ownership status; (2) sludge use or disposal practice(s); (3) annual sludge production volume; (4) other environmental permit numbers; and (5) compliance status. This list does not include influent characteristics, as suggested by a commenter. Influent characteristics can help predict sludge characteristics and therefore may be useful information, particularly for identifying potential sludge (and other environmental) problems. For this reason, POTWs with pretreatment programs are required to review and evaluate influent characteristics on a regular basis. However, this type of detailed information is not suitable for the inventory of sludge facilities, which is designed to provide general data about the regulated community, not as the basis for developing site-specific requirements.

In addition, § 501.12(f)(2) requires that the inventory include all sewage sludge disposal and use sites not included as part of the inventory of treatment works. Information about each site would include name, location, permit number (if any), and source of sewage sludge. Keeping track of the source of the sludge is important so that, if necessary, POTWs records of metals loadings to a particular site can be traced. Today's final rule clarifies that site information is *not* required for the end use of sludge that meets distribution and marketing requirements (e.g., home gardens).

The initial inventory submitted with the program application must include for each facility the information in the first two categories (i.e., § 501.12(f)(1) (i) and (ii)). The remaining information can more easily be gathered through program implementation activities and therefore would be submitted as part of the annual report. These phased-in information requirements basically follow the suggestion of a State commenter to the 1986 proposal.

Note: For similar reasons, the March 1988 proposal dropped a requirement from the 1986 proposal that would have required States to submit an inventory of "known violations."

One commenter said that the regulation should specify a deadline for completing the inventory. EPA agrees. Therefore, the final rule requires a State that submits only a partial inventory with its application for program approval to also submit a detailed plan showing how the State will complete the inventory of treatment works within five years after approval of the State's program. EPA did not adopt the commenter's suggested deadline of "one year after applications are due under section 405(d)(2)(D)." First, the CWA does not specify an application deadline. Second, today's final rule ensures completion of the inventory in a reasonably timely manner by requiring annual inventory updates (§ 501.21) and completion of the inventory by the end of a full permit cycle.

EPA also received several other comments on the inventory requirement. One commenter said that in addition to requiring an inventory, EPA should require States to use it to devise a rational overall plan for sludge use and disposal. The purpose of the inventory requirement, together with other requirements in Part 501, is to make sure that a State program has certain elements which are necessary to assure compliance with Part 405. Beyond this, it would not be appropriate to direct States in the regulations how to use the required information.

Some States said that, however desirable, the inventory would require considerable resources and that additional funding would be needed to compile them. These comments were submitted mostly in response to the 1986 proposal. EPA recognizes that compiling a comprehensive inventory is a major undertaking, but it will be essential for administering the regulatory program envisioned in section 405. For the past few years, EPA has encouraged States, often through Section 106 grants funds, to compile inventories. In fact, several States responding to the March 1988 proposal reported significant progress in compiling inventories.

Finally, one commenter suggested that EPA develop a uniform reporting format for inventories to prevent redundant State efforts and to provide a uniform data base. In response to similar requests from States in comments on the February 1986 proposal, EPA is developing a computer software package for this purpose called the Sludge Inventory Database (SID). SID is designed to provide assistance to States and other potential users in compiling detailed inventory information on: (1) The identities and locations of POTWs and other treatment works treating domestic sewage; (2) the sludge treatment processes used by these facilities (including production data for each treatment process); and (3) the sampling and analysis data which reflect the chemical constituent of the sewage sludge. EPA is also working on a system to integrate SID data into various EPA mainframe data bases to facilitate the development of a national inventory of sewage sludge generators, processors, and disposers.

Another requirement for the program description contained in the March 1988 proposal was an identification of any separate State programs for regulating septage disposal. The February 1986 proposal would have required a more extensive description of the State's septage disposal program. EPA opted for less extensive requirements in the 1988 proposal because how a State regulates septage would be significant for the purposes of its section 405(f) sludge program only in that its program must ensure that the use and disposal of septage is adequately regulated as contemplated by the proposed technical standards. For this reason, EPA would need know whether there was a separate State program for septage use and disposal.

Several commenters said this requirement was unnecessary if EPA would not be regulating all septage disposal. As long as septage is considered sewage sludge for purposes of Part 503 (and hence, of Part 501), it will be important for States to inform EPA about which State agency regulates septage that is applied to land or disposed of by one of the other practices

regulated under Part 503. However, EPA agrees that the requirement in the proposed rule to identify separate septage programs is redundant and therefore has deleted it in the final rule. Under § 501.12(b), the program description must describe each State agency that will be responsible for administering the approved program and delineate the responsibilities of each agency. Therefore, the program description already requires the State to identify any separate septage use and disposal program (to the extent that program regulates use or disposal that comes under Part 503 regulations).

Under both the 1986 and 1988 proposals, States were asked to submit separate documentation of any State or local bans or prohibitions against particular sludge use or disposal practices. No commenters explicitly supported this requirement. Two commenters said it was redundant with regard to stricter State laws because another provision already required submission of all State statutes applicable to the State's sludge management program. Other State commenters objected to the requirement as unduly burdensome (apparently because local bans or prohibitions can be widespread), particularly if, as one commenter feared, it entailed documentation of all local zoning decisions. Finally, one State said such documentation was useless because in its State many local bans or prohibitions were legally questionable and did not interfere with the State's sludge management program.

The requirement to document State or local bans or prohibitions has been dropped in the final rule. It is not essential for purposes of evaluating the adequacy of the State's program because the reasonableness of bans or prohibitions is not a requirement for approving State programs. In fact, the CWA specifically reserves the right of States and local governments to adopt and enforce stricter laws under section 510, and section 405(e) states in part that "the determination of the manner of disposal or use of sludge is a local determination." Also, as commenters pointed out, compiling the list could require considerable resources. Given the lack of compelling need, EPA agrees that the potential burden of compiling a separate document is not justified as a generic requirement for State program approval. States still must submit copies of all State statutes and regulations that govern their program. Moreover, EPA still expects that in discussing the State's legal authority, the Attorney General's Statement will identify where State laws are stricter or have broader coverage than Federal law.

Although today's rule does not make the "reasonableness" of State or local restrictions a factor in determining whether to approve a State program, EPA encourages States to evaluate carefully whether such restrictions are justified by environmental and public health concerns and to encourage local jurisdictions to do the same. The validity or status of a local prohibition is typically a matter of State law. Therefore, to facilitate local sludge management and planning, EPA encourages States to clarify and publicize the status of local bans and prohibitions under State law.

4. Attorney General's Statement (Section 501.13)

In the Attorney General's Statement (AGS), the State documents its legal authority to carry out the program implementation requirements set forth in Part 501. With the AGS, the Attorney General (AG) certifies that, in his or her opinion, the laws of the State provide adequate authority to carry out the program. The AGS discusses the State's legal basis for conducting each aspect of the program with citations to the specific statutory and regulatory provisions that authorize each program element, and an explanation of how each provision provides the requisite authority. It also addresses any significant difference between State and federal law. All referenced State statutes and regulations relied on in the AGS must be in full force and effect by the time the program is approved.

The 1986 and 1988 proposals regarding the Attorney General's Statement were the same except in one minor respect. Under the February 1986 proposal, the AGS could be signed by the Attorney General "or other appropriate State legal counsel." In the March 1988 proposal, EPA explained that this language was not specific enough in requiring that the legal counsel signing the AGS have full authority to represent the State agency. To remedy any ambiguity, the Agency proposed to adopt the language used in the NPDES State program regulations, § 123.23. No commenters objected to this proposed change and therefore it has been included in the final rule.

Under today's final rule, the AGS must be signed by the Attorney General or a representative of the AG who is authorized to sign and can bind the State by so doing. Alternatively, the Statement may be signed by an independent legal counsel. To qualify as an independent legal counsel, the signatory must have full authority to represent the State agency in court on all matters pertaining to the State program, including defending actions against the State and bringing actions to enforce against program violations.

5. Memorandum of Agreement (Section 501.14)

The Memorandum of Agreement (MOA) is a binding agreement between EPA and the State which establishes the basis for cooperation and coordination between them and for ensuring that the State program is administered in an effective manner consistent with the objectives of the Clean Water Act. The MOA defines the State/EPA relationship and the responsibilities of each party, charts the procedures EPA and the State will follow in carrying out these various responsibilities, and generally defines the manner in which the sludge management program will be administered.

The main body of the MOA consists of a listing of the responsibilities and procedures which will be used to ensure coordination between the State and EPA. Under the March 1988 proposed rule, these included provisions for transferring permit applications and other program information from EPA to the State; provisions that establish the frequency and content of reports the State will submit to EPA; an agreement that the State will allow EPA routinely to review relevant State records, reports and files; provisions on the State's compliance monitoring and enforcement program, such as coordination with EPA on inspections and on enforcement activities; and procedures for modifying the MOA.

Basic provisions regarding MOA requirements were essentially the same in the 1986 and 1988 proposals. Three States and one environmental group submitted general comments on the 1986 MOA proposal. One State objected to an MOA as redundant to having an acceptable program. Another State said an MOA was unnecessary since no funds were involved. The third State said the MOA requirements were too specific and inflexible. In contrast, another commenter argued that the MOA requirements were not specific enough, particularly with regard to the frequency and content of reports and information States are required to submit to EPA.

EPA disagrees with the comments. The MOA is necessary to establish the roles and responsibilities of EPA and the State in administering the sludge program and to detail how these activities will be carried out in the particular State. This agreement about

the fundamentals of program administration is independent of grant agreements or other funding agreements. Reaching this agreement in advance reduces ambiguity and confusion as to expectations between the State and EPA as to how the program will be run. While the regulations establish what must be addressed in the MOA (which may encompass requirements established in other parts of the rule such as the semi-annual and annual reports) EPA and the State have flexibility in negotiating specific details (for example, the schedule for submitting required reports, whether the reports will be submitted separately or as an addition to existing reports, procedures for conducting joint inspections, etc.). EPA believes that the final rule represents a reasonable balance between specificity and flexibility.

These basic requirements of the MOA were not challenged further by commenters on the 1988 proposal and therefore the final rule remains substantially the same as the 1988 proposal. Minor changes and comments on specific provisions are discussed below.

Two States objected to provisions in the 1986 proposal to allow federal agency access to State records (similar to § 501.14(b)(5) in the 1988 proposal)—one for no stated reason, and the other because the requirement was too specific or would duplicate other State submittals. EPA disagrees. Providing for EPA access to State records is not too specific because it is critical that the State and EPA reach agreement on this issue. EPA is unaware of other State submittals that duplicate this requirement. If a separate agreement exists, the MOA simply could incorporate the agreement by reference.

A major aspect of the MOA addressed by commenters concerned the procedures for EPA review of State permits. The proposed rule required EPA and the State to specify the classes or categories of permits that will be sent to EPA for review and comment, and the classes of permits for which such review will be waived. The proposed rule provided that EPA could waive review for any class of sludge permits except for Class I sludge management facilities. It also specified that the MOA must also provide for termination of the waiver, for individual permits and classes of permits, at the written direction of the Regional Administrator.

One commenter recommended that EPA waive review of all permits except those issued to Class I facilities, i.e., facilities that can significantly affect the environment. Similarly, another commenter opposed mandatory review except where there is a reasonable concern that the facility could adversely affect public health and the environment. Because the definition of a Class I facility is designed to focus on the permittees most likely to adversely affect public health and the environment, limiting mandatory review to Class I facilities is consistent with these comments. Today's final rule does not categorically waive review of all non-Class I permits as the one commenter suggested, but it does allow Regional Administrators, at their discretion, to do so when negotiating MOAs with the States. The appropriateness of waiving review of a particular type or class of non-Class I facilities will vary, depending on local conditions and other factors. For purposes of ensuring that State programs can assure compliance with section 405, it is important that EPA retain the ability to review any category or type of permit.

One commenter objected to this provision of the proposed rule on the grounds that, under section 402(f) of the CWA, EPA cannot waive review of permits except by regulation; therefore, deciding on the scope of the waiver in the MOA would be inappropriate (since the MOA is not a regulation and thus is not subject to public notice and comment). EPA disagrees for several reasons. First, the State program regulations in Part 501 that affect the permitting aspects of the program are modelled on comparable provisions in the NPDES program which, in turn, are governed by Section 402 of the CWA. However, EPA's authority for implementing the non-NPDES State program regulations is section 405(f) of the CWA. Therefore, what may or may not be required under section 402(f) of the CWA is irrelevant, since this provision implements section 405(f), not section 402(f). Unfortunately, the proposed rule may have been misleading in this regard because it referred to section 402(d)(3), (e), or (f) of the CWA. This was inadvertent and the citation has been omitted in the final rule. In any event, EPA is in fact establishing by regulation the category of permits for which it may waive review, i.e., all non-Class I facilities. What may be addressed in the MOA is the extent to which EPA will actually exercise its waiver. Finally, the MOA, along with other elements of the State's program submission, is subject to public notice and comment, upon initial program approval (see § 501.31) and whenever a State's program is revised (see § 501.32(b)) (except in cases of nonsubstantial revisions).

EPA proposed that the procedures and requirements in § 123.44 governing EPA review of State-issued NPDES permits (including the authority to object to, and, where necessary, veto permits that are outside the guidelines and requirements of the CWA) generally apply as well to permits issued under State programs approved under Part 501. As explained in the preamble to the proposed rule, based on past experience in other programs, EPA believes that the ability to veto State-issued permits which do not adequately implement Federal standards is an important tool for effectively assuring that State programs implement Federal requirements. This approach is also consistent with the NPDES program where EPA has authority to veto State-issued NPDES permits that are not in accord with the guidelines and requirements of the Act (including those implementing sludge standards). There is no reason why the availability of a veto authority should depend on whether a State sludge program is approved under the NPDES program in Part 123 or separately under Part 501. Therefore, the final rule is the same as the proposed rule.

One commenter argued that without specific authority in the CWA, EPA cannot extend its existing NPDES veto authority to non-NPDES permits. As discussed above, EPA is not relying on an expanded interpretation of veto authority over State-issued NPDES permits in section 402 as the basis for asserting similar authority over non-NPDES State-issued permits with inadequate sludge provisions. Instead, it relies on the authority in section 405(f) to establish State program requirements as necessary to assure compliance with section 405 requirements and its general rulemaking authority under section 501(a) of the CWA. The authority to review, object to, and veto State-issued permits is a reasonable and necessary means to assure compliance with sludge standards under section 405.

The commenter also objected to the proposed rule because it provided for an EPA veto based on the permit's failure to include case-by-case limits necessary to fulfill the statutory standard in section 405(d)(4) of the CWA (i.e., in the absence of an applicable Part 503 technical standard, conditions necessary to "protect public health and the environment from the adverse effects that may occur from toxic pollutants in sewage sludge"). (Note: This provision appears as a revision to § 123.44(c)(6), which is incorporated by reference into § 501.14(b)(2)). In addition to denying that EPA has veto authority over non-NPDES permits, that

commenter argued that section 402 limits EPA's veto authority to instances where the State issues a permit that does not follow the guidelines and requirements of the Act, and that guidelines and requirements do not include unpublished, *ad hoc* determinations of EPA, citing in support case law interpreting section 402 of the CWA. Moreover, the argument continues, EPA's authority under section 405(d)(4) expired in August 1988.

It is important to emphasize that EPA expects that vetoes based on the permit's failure to include conditions "to protect public health and the environment from the adverse effects that may occur from toxic pollutants in sewage sludge" would be extremely rare. Such limits rely for their development on the permit writer's "best professional judgment" based on the facts in a particular case and therefore warrant considerable deference. However, it is necessary that EPA have the authority, in egregious cases, to veto a State-issued permit when it fails to protect public health and the environment.

EPA agrees that veto authority over State-issued permits cannot be unlimited. However, it disagrees that the proposed rule exceeds EPA's authority under the CWA. "Guidelines and Requirements of the Act" includes requirements under section 405(d)(4) of the Act. Recently, the U.S. Court of Appeals for the D.C. Circuit upheld the NPDES veto authority regulation under these criteria. *NRDC* v. *EPA*, 859 F.2d 156, 187, 28 ERC 1401, 1426 (D.C. Cir. 1988). In addition, EPA has published a guidance document called the "Guidance for Writing Case-by-Case Permit Requirements for Municipal Sewage Sludge" (USEPA, Permits Division, September 1988) which explains how it intends section 405(d)(4) to be implemented. Also, as explained in section V.E. above, EPA interprets the directive to take appropriate measures to protect public health and the environment under section 405(d)(4) (including the authority to develop permit conditions on a case-by-case basis and to veto a State-issued permit that does not adequately protect public health and the environment) as a continuing responsibility that applies in the absence of an applicable Part 503 technical regulation. Therefore, it disagrees that its authority under section 405(d)(4) expires on any certain date, regardless of when applicable technical standards are promulgated.

One commenter stated that EPA oversight should be limited to POTWs and should consist of on-site evaluation of the State's program for purposes of approving the program. This suggests that EPA oversight of individual State permits should be eliminated. EPA disagrees for the reasons stated above. This does not mean that EPA should or will maintain the same level of oversight after program approval regardless of State performance. The purpose of EPA's oversight is to assure that an approved State continues to administer a program that adequately implements Federal standards and meets minimum program requirements. As with program approval, EPA cannot determine when less oversight might be warranted on an on-going basis in the absence of information about the State's performance.

One commenter said that § 501.14(c)(2), which governs EPA receipt of final State permits, was inadequate because EPA must routinely receive copies of final permits so that it has a basis for determining whether to rescind its permit waiver, consistent with the current NPDES program requirements. Section 501.14(c)(2) requires States to send EPA copies of final permits (i.e., permits as they are finally issued after the public and EPA comment periods) for all Class I facilities, but requires submittal of final permits for non-Class I facilities only upon request by EPA. This differs from the corresponding NPDES provision, which requires submittal of all final permits. In Part 501, EPA limited the routine submission of final permits to Class I permits to reduce the paperwork burden on EPA and the States and because, as a practical matter, these are the only permits likely to be reviewed in any detail. Requiring States to submit all final permits therefore does not serve any significant purpose. EPA agrees that routinely receiving all final permits would provide readily available information for determining whether to rescind its permit review waiver. However, it is not the only basis for this determination and State permits always remain fully accessible to EPA. In fact, nothing in the final rule precludes EPA from requiring routine submission of all final permits. Whether such submission is necessary is left to the discretion of the Regional Administrator.

Two States objected to the 90-day period for EPA review of State draft permits. One said that it would interfere with a State requirement that permits be issued within six months of a completed application; further, the information could be outdated by the time of permit issuance, and in any event, EPA could not meaningfully review site-specific permits without site inspection and familiarity with the permit application. The other commenter said that the 90-day review period was incompatible with issuing permits for land application sites which are numerous, frequently not identifiable in advance, and cannot wait for lengthy periods of time. This State also said that it issued new permits every year and therefore a 90-day review period could cripple its permitting program.

Ninety days is a reasonable time for EPA review. It should be noted that EPA may waive review for a large number of permits. In some cases, States may have to adjust their permitting procedures to accommodate EPA review. Generally, however, the 90-day review period should not interfere with the commenter's six-month requirement except where there is a problem with the permits. EPA should have sufficient information to determine whether or not the permit is within the guidelines and requirements of the Act since the basis for permit limits should be explained in the fact sheet.

The requirements for EPA review of individual permits assume that permits are reissued every five years. States which choose to reissue permits more frequently will have to decide whether such frequent reissuance is desirable in light of the 90-day EPA review period. In addition, as explained elsewhere, EPA has provided alternate procedures for covering individual land application sites that do not require issuance of separate permits for each land application site when the generator's permit includes an approved land application program. This should significantly reduce the number of permits (e.g., site permits) which must be submitted to EPA for the 90-day review period and consequently minimize the concerns raised by the commenter.

6. Permitting Requirements and Procedures (Section 501.15)

General. This section was added to the proposed Part 501 in the March 1988 proposal in response to the 1987 amendments to the Clean Water Act, which required a permit program as the primary mechanism for implementing the technical standards for sludge use and disposal.

In developing the regulations to implement this requirement, the NPDES permitting program was used as the basis for the specific provisions proposed in Part 501. The proposal set forth the specific requirements for ensuring effective permitting programs and was divided into four principal subsections. Paragraph (a) specified

general requirements the State must be able to implement and standards for program implementation. Paragraph (b) listed boilerplate provisions which all permits must contain. Paragraph (c) contained provisions for permit actions such as transfers, modification, revocation and reissuance, and termination. Paragraph (d) contained procedures for permit issuance. In addition, paragraph (e) listed optional program provisions.

Overall, the final rule is substantially the same as the proposed rule. The section has been slightly reorganized, however, by creating a new paragraph (f) at the end of this section which now contains the conflict-of-interest standard for State permitting boards (§ 501.15(a)(7) in the March 1988 proposal). Most of the provisions in this section have counterparts in the revisions to Parts 122 and 124, also promulgated today, and have been discussed in the context of those revisions. Discussion of those provisions will not be repeated in this part of the preamble. The provisions not already discussed elsewhere in the preamble are addressed below.

Public access to information. Section 501.15(a)(1) deals with confidentiality of information and requires the State to deny claims of confidentiality for: (1) The name and address of the permittee, and (2) permits, permit applications and effluent data. The State may protect other information claimed as confidential. This proposal is consistent with the confidentiality rules in the NPDES program (§ 122.7), which are mandated by sections 308 and 402(j) of the Clean Water Act. The final rule is the same as the proposed rule.

EPA received only one comment on this section. The commenter generally requested that the regulations ensure that citizens have access to public records and the "standard be rigid and not subject to State or local interpretation * * *." As a preface to this comment, the commenter reported difficulty with obtaining records directly from the regulated party and being told by a State agency that it would be charged for the actual cost of obtaining requested public records.

Today's final rule balances the public interest in access to information and the permittee's interest in confidentiality. It does not require a permittee to respond directly to public requests for information, but instead requires the permittee to submit necessary information to the permitting authority. This permitting authority must make the information listed in § 501.15(a)(1) available to the public. States are not precluded from charging "actual costs" for providing copies of public records. EPA believes this is a reasonable requirement. (In fact, EPA's own rules regarding public access to information allow the Agency to charge "reasonable fees." See 40 CFR Part 2.)

Permit application information. Section 501.15(a)(2) lists the information States must be able to obtain from a permit applicant. These information requirements have undergone changes from the proposal which are explained in the discussion about revisions to § 122.21, the NPDES permit application section. In addition, also as explained in that discussion, a new paragraph has been added to Part 501 (§ 501.15(d)(1)) to specify when permit applications must be submitted.

Paragraphs (a)(3) and (a)(4) in the proposed rule addressed retention of permit application data and who must sign permit applications. The final rule on signatory requirements is the same as the proposed rule, since the Agency received no comments on this issue.

The final rule concerning record retention (paragraph (a)(3)) requires that records be retained five years rather than three years as proposed. The Agency had proposed that monitoring and application information must be retained for three years by permit holders and sought comment on whether permit holders should be required to retain records for five years to coincide with the term of the permit. Nine State agencies, one POTW, one industry trade association, one environmental group and one member of the public provided comments. Five commenters recommended that EPA require that records be retained for three years. They counseled that three years was adequate, appropriate and consistent with other Federal environmental programs such as NPDES and RCRA, and that there would be no advantage to a five-year term as regulators can require that records be kept longer than three years when needed for an enforcement action. One noted that while permit holders should be required to retain records for only three years, States should keep records for a longer period.

Eight commenters supported requiring that permit holders retain records for five years or for a longer period. One commenter noted that a five-year period would be consistent with the Federal statute of limitations for Clean Water Act violations. Several commenters recommended that records of sludge loading rates at land application sites and of sludge quality analyses for sludges reused at these sites should be kept indefinitely. One commenter recommended that, at a minimum, records should be retained for the life of the facility. One commenter noted that POTWs must have records to document any potential limitations or liabilities for their past, present, and future sludge management programs.

After considering these comments, EPA has decided to require that permit holders retain records for a period of five years, or longer where required by the Part 503 technical regulations. EPA chose to require a five-year period because the Federal statute of limitations for CWA violations is five years.

Note: Records may not be destroyed during an enforcement action.

A five-year period also coincides with the maximum permit term and ensures that all records will be available when the application for a new permit is submitted and reviewed. EPA recognizes that a five-year record retention period is longer than is currently required for NPDES and RCRA recordkeeping; nevertheless, the Agency finds the arguments for a five-year period in the case of regulating sewage sludge to be compelling. (For this reason also, today's final rule revises § 122.21(p) to specify that sludge application data must be retained five years or longer if required by Part 503.) In many cases, permittees may have cumulative limits in their permits, so that it will be important to track sludge information over longer periods of time. The Agency considered the additional burden the five-year retention time might impose on permittees, but determined that this burden would be less than other alternatives, such as requiring the permittee to summarize and "rollover" information every three years, which would be necessary if permittees were required to retain records for only three years. Tying the record retention time to the permit term facilitates the carryover of this information on cumulative loadings from permit to permit, easing the burden for both permittees and permitting authorities.

While EPA will not set such a requirement in today's rule, as a matter of guidance, the Agency believes that it is prudent for States to require that permit holders retain records of cumulative heavy metal loadings to land application sites longer than five years. Records of heavy metal loadings should be retained as these compounds tend to accumulate at sites with little diminution over time. In contrast, organic pollutants tend to break down due to microbial action and exposure to climate. The proposed Part 503

regulations will include limits based on cumulative heavy metal loadings. Thus, there needs to be a way to ensure that these loadings are not exceeded beyond a five-year timeframe. This may be accomplished by having the permittee or the State retain the records. An alternative approach would be to require that a summary of heavy metal loadings to land application sites be prepared every five years and signatures attached attesting to the accuracy of the information. The summary could be retained for five years, revised before the next round of records for land application sites is disposed, and the new summary retained. Another option might be to take soil samples. The choice is up to the State. In the program description, the State must describe how it plans to ensure that metals are not being applied to the land in excess of the requirements.

Permit duration. Under the proposed § 501.15(a)(5), sludge permits could be issued for a term of up to five years. The preamble discussion to the proposed rule explained that because many of the requirements will be new, a longer permit term would be inappropriate. The State may, of course, write permits for a shorter term.

Two States and one POTW questioned the need to limit permits to five years. One State noted that the Act does not limit the permit term. Another said that a five-year term would conflict with the Paperwork Reduction Act. Comments suggested that ten year permits are used in at least two States.

As explained in the preamble, many of the requirements in the permits will be new. Therefore, it is important to periodically review the permit. Five years is a reasonable term and is consistent with the maximum term for NPDES permits. Nothing in the Paperwork Reduction Act governs permit duration and therefore fixing a permit term in today's regulation does not conflict with that statute.

Many of the commenters' concerns may reflect a misunderstanding of who will be required to obtain permits. Today's rule would require maximum five year permit terms only for facilities required to have permits under federal law, i.e., treatment works for whom Part 503 standards have been promulgated. The five-year limit would not necessarily apply, however, to State-issued permits required under State law for individual land application sites or sludge treatment processes. Where States use permits that are not mandated by the CWA or this Part, they may set permit terms they deem appropriate. The only requirement would be that the permit requirements and procedures could not interfere with the State's ability to require compliance with the Part 503 technical standards by the statutory deadline.

Compliance schedules. Paragraph (a)(6) provides that schedules of compliance may be used (but are by no means mandatory), except that a State may not issue a permit with a compliance schedule which goes beyond the statutory deadline. CWA section 405 mandates that compliance with the Part 503 technical standards be achieved by one year from the date of their promulgation, except where the standards would require major construction, in which case the permittee has up to two years to achieve compliance. Where a compliance schedule goes beyond one year, this section would require interim requirements and reporting to ensure that the permittee is on schedule.

Given the relatively tight statutory deadlines (even assuming the technical regulations require major construction), some commenters questioned the utility of compliance schedules. Obviously, compliance schedules in permits will have a more limited application in the sludge program than has been the case in the NPDES and other programs. However, EPA believes the prudent course is to provide for compliance schedules in the regulations now, rather than wait until their need appears more widespread.

Permit conditions. Section 501.15(b) is the second principal subsection, and sets forth the permit conditions all State permits would need to contain in order for the program to be approvable. These provisions are important because they put the permittee on notice as to the applicability of Clean Water Act provisions, and identify the effect of the permit with regard to compliance and non-compliance with the Clean Water Act for enforcement purposes.

The first paragraph of § 501.15(b) requires that the permit include requirements (which may vary from permittee to permittee and therefore need to be developed individually for each permit) necessary to comply with the Part 503 sludge standards and generally the requirement in CWA section 405(d) to protect public health and the environment. This includes requirements as to sludge quality, monitoring frequency, management practices, etc.

The final rule has been changed from the proposed rule to specify that permits for POTWs and other generators required to obtain a permit under section 405(f) must contain conditions addressing at least sludge quality and related conditions (monitoring and reporting). However, as explained in the discussion about users and disposers above in section V.D.3 of this preamble, the generator's permit need not contain Part 503 technical standards applicable to its sludge use or disposal option that address site limitations if those limitations have been included in a permit issued to the site owner or operator.

Paragraph (b) also requires that States be able to include a number of "boilerplate" permit conditions in permits. Several of these relate to the permittee's liability under the Clean Water Act for sludge use and disposal activities. These include provisions specifying that: The permittee must comply with all conditions, and that noncompliance with any of the permit conditions constitutes a violation of the Clean Water Act; the permittee must comply with the Part 503 technical standards, even if the permit has not been modified to incorporate them (see also discussion above concerning "permit as a shield," revisions to Part 122 regulations, and paragraph (13) of this section); and informing the permittee of the civil and criminal penalties in the Clean Water Act for permit violations and noncompliance with section 405.

This section also contains several other boilerplate permit conditions which a State must be able to include in permits issued under the approved program. These permit conditions specify that: It is not a defense in cases of noncompliance to claim that it would have been necessary to halt or reduce the permitted activity in order to comply (paragraph (4)); the permittee must take all reasonable steps to prevent sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting health or the environment (paragraph (5)); the permittee must at all times properly operate and maintain facilities and systems (paragraph (6)); the permit may be modified, revoked and reissued, or terminated for cause (paragraph (7)); the Director may request information to determine compliance, or whether cause exists to modify or terminate the permit, and the permittee has an obligation to furnish such information within a reasonable time (paragraph (8)); the permittee must allow the Director or an authorized representative to enter onto the premises, inspect the facility, have access to records and conduct sampling (paragraph (9)); the permittee must monitor and report monitoring data no less frequently than once a year or more frequently as specified by the Part 503 standards or where the permit writer

determines that additional or more frequent monitoring is needed, monitoring must be representative of the monitored activity, parameters for monitored information will be set forth in the permit, monitoring must be conducted in accordance with procedures established under 40 CFR Part 136 or part 503 unless others have been specified in the permit, and anyone who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method or makes a false statement or representation is subject to Clean Water Act criminal penalties (paragraph (10)); the signatory requirements in 40 CFR 122.22 must be followed (paragraph (11)); the permittee must give advance notice to the Director of any planned changes in the sludge disposal practices or facilities that may justify the application of different permit conditions, or which may result in noncompliance with the permit, must also report all instances of noncompliance, and notify the Director before transferring the permit (paragraph (12)); and a reopener clause, to provide for permit modification or revocation and reissuance where more stringent technical standards than are currently in the permit are promulgated (paragraph (13)).

In most cases, these boilerplate provisions are the same as the proposed rule. Several of the provisions generated comments which have been addressed in the discussion of the final revisions to Part 122. Only three changes have been made to the final rule. The first, a minor change discussed earlier, involves specifying in paragraph (10) that the permit must include any monitoring requirements (including frequency requirements) necessary to implement Part 503 technical standards. The second involves adding a required boilerplate condition based on 40 CFR 122.41(b) that notifies the permittee of its duty to reapply for a new permit if it plans to continue the permitted activity beyond the expiration date of its current permit. (The reason for this change is explained in the Part 122 discussion above in section V.F.)

The third change involves § 501.15(b)(6) which establishes the duty of proper operation and maintenance. The proposed rule was taken directly from § 122.41(e), except that it did not include the last sentence to the paragraph which states: "This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit." One commenter objected to the omission of this sentence in the Part 501 counterpart on the grounds that the sentence resulted from a successful industry challenge to the NPDES regulations and that it was equally applicable to the sludge situation.

EPA's authority for promulgating today's regulation is different from its authority to promulgate NPDES regulations. Therefore, EPA disagrees that any litigation or other action affecting the NPDES regulations would necessarily affect a comparable sludge regulation. Nonetheless, EPA agrees that the sentence omitted from the proposed § 501.15(b)(6) has validity in the sludge program and therefore has included it in the final rule. This sentence clarifies that back-up equipment or facilities are not required as a matter of course; instead, they are required only when necessary to maintain compliance with the permit. One situation might be where regular downtime for a particular process or piece of equipment can be reasonably anticipated and stopping operations is not a feasible alternative for maintaining compliance (e.g., back-up dewatering equipment might be necessary if all of the POTW's sludge is disposed of at a co-disposal landfill that does not accept materials containing free liquids). This provision does not require that permittees develop contingency plans (as the 1986 proposal would have required). Whether contingency plans are needed must be determined on a case-by-case basis.

It is important to note that this paragraph states a general duty of all permittees. It would not supersede or otherwise affect a specific Part 503 requirement addressing operation and maintenance requirements. It also includes a duty to operate and maintain adequate laboratory controls and appropriate quality assurance (QA/QC) procedures. Thus, permittees should keep records of QA/QC results.

Permit actions. Section 501.15(c) discusses procedures for permit actions. This covers permit transfers, permit modification, permit termination, and permit issuance.

Paragraph (1) addresses permit transfers, and sets out procedures for automatic transfer so that permit modification or revocation and reissuance can be avoided in some instances. One commenter said that the automatic transfer provision should be deleted because decisions about permit transfers may involve several factors (e.g., bonding, compliance issues). Under today's final rule, a State need not adopt the automatic transfer provision as part of the their program in order to obtain EPA approval. Editorial changes to the final rule clarify that providing for automatic transfers is discretionary. States may always choose to omit required provisions if the result is a more stringent requirement. (States must be able to prohibit transfers without prior notice, however.) Even under the automatic transfer provision, the State Director can prevent an automatic transfer simply by notifying the current permittee that he or she intends to modify or revoke and reissue the permit.

Paragraph (2) discusses permit modification, and revocation and reissuance. When permits are modified, only the provisions subject to the modification are reopened. Permits may be modified only for cause as defined in (2)(ii). For example, the promulgation of new technical sludge standards by EPA would be cause for modifying the permit. Permit revocation and reissuance is more severe; the entire permit is reopened and subject to revision and the permit reissued for a new term. Revocation and reissuance can only be done in three circumstances: (1) cause exists for termination, but the Director decides to revoke and reissue; (2) cause exists for modification only, but the permittee agrees to revocation and reissuance; or (3) the Director has received notice of a proposed permit transfer under § 501.15(b)(12)(iii). (A permit may also be modified to reflect a transfer.)

This paragraph is the same in the final rule as it was in the proposed. Most comments addressing permissible causes for modifying a permit centered on the promulgation of applicable Part 503 standards during a permit term. This issue, as well as other comments on the causes for modifying a permit, are discussed in detail in section V.F.2 above. As explained in that discussion, the final rule contains a new cause for modification to approve land applications plans.

The most severe permit action, termination of the permit, is described in paragraph (3). Permits can be terminated (or permit renewal applications denied) for four reasons: (1) Noncompliance; (2) permittee's failure to disclose all relevant facts; (3) the permitted activity endangers health or the environment and can be adequately regulated only by modifying or terminating the permit; and (4) a change in condition that requires either reduction or elimination of the permitted activity. EPA received no significant comments on this provision and accordingly is promulgating a final rule that is the same as the proposed rule.

Permit issuance procedures. Subsection 501.15(d) describes the

permit issuance procedures that the State would need the authority to administer. In addition to typical procedures for licensing type actions, this section sets forth minimum provisions to ensure adequate public participation. The State may of course provide for more extensive public involvement, e.g., by providing lengthier public comment periods, requiring more public hearings, having more extensive public notice, etc.

One commenter said generally that the permit procedures in § 501.15(d) were too cumbersome and time-consuming for "simple permits" such as for the transport of sludge from one plant to another for further processing. This comment reflects a misunderstanding about when a permit is required under Part 501. Separate permits are not needed each time sludge is transported. Permits issued to treatment works may be effective for up to five years and should comprehensively address the treatment works' method(s) of sludge use and disposal during that period. Part 503 does not propose to regulate the transportation of sludge. Whether conditions are needed in the permit to address sludge transportation would thus be decided on a case-by-case basis as necessary to protect public health and the environment. In this event, the conditions would be included in the permit at the time of issuance. Permit modifications would be necessary, however, if the permittee wants to use a sludge use or disposal method not addressed in the permit or to incorporate applicable Part 503 standards promulgated after issuance of the permit.

The first paragraph describes minimum application procedures and provides that the State Agency must not commence processing a permit until the applicant has fully satisfied the application requirements discussed in § 501.15(a)(2). It differs from the proposed rule in one important respect. The subparagraph describing when persons subject to the permitting requirement under section 405(f) (i.e., treatment works treating domestic sewage) must be required to submit their applications has been expanded to address POTWs and privately-owned sewage treatment works separately, consistent with changes made to 40 CFR 122.21, explained in section V.F.2 above. (Note: Part 501 does not address "sludge-only facilities" separately as does Part 122. "Sludge-only facilities" by definition only exist when EPA is the permit-issuing authority.) The effect of this change is to clarify that permit applications, and hence permits, generally are not required for non-POTWs until promulgation of a Part 503 standard applicable to their sludge or sludge use or disposal practice.

Section 501.15(d)(2) sets forth procedures for permit modification, revocation and reissuance, and termination. Interested persons may petition the Director to take such action by written request, or he may do so on his own initiative, provided that one of the reasons specified in § 501.15(c) exists. No comments addressed these procedures. The final rule is the same as the proposed rule.

Paragraph (3) requires draft permits to be prepared where the Director tentatively decides to issue the permit, and whenever the permit is modified, revoked and reissued, or terminated. A draft permit must include all of the conditions required to be in the permit under the provisions of § 501.15 (which includes conditions required for compliance with Part 503). Today's final rule on when draft permits must be prepared is the same as the proposed rule. Additional revisions to this paragraph for land application plans are discussed in section V.F.2 above.

One State suggested that draft permits be required only when public hearings are held and also expressed the view that draft permits are generally unnecessary and cause delays. EPA disagrees. Draft permits inform interested persons (including the permit applicant) about what the permitting authority proposed to require of the permittee during the term of the permit and thus provide the basis for comments on the permits (and for determining whether to request a public hearing). This allows potential problems with the permit to be identified and, if appropriate, resolved before final issuance. Draft permits are a key element of the permitting issuance process. The importance of this process is explained in the more detail above in section V.G.2.

Paragraph (4) discusses fact sheets. Under today's final rule, State programs must prepare a fact sheet for permits issued to any "Class I Sludge Management Facility," or when the permit contains conditions developed on a case-by-case basis to protect public health and the environment. The purpose of the fact sheet is to explain the basis for any permit condition and thus allow meaningful public comments on the draft permit. Accordingly, the fact sheet is required to set out the significant factual, legal, methodological, and policy questions considered in preparing the draft permit, including a brief description of the facility and the use and disposal practices, and an explanation of how the limits and conditions for sludge use and disposal were derived. Fact sheets also must be prepared whenever a permit includes a land application plan, and must explain how each required element of the land application plan is addressed.

The requirements governing fact sheets in this section are the same requirements applicable to fact sheets in the NPDES program. Changes in the fact sheet requirements made in response to comments on the proposed rule are explained in the discussion of revisions to Part 124 in section V.G.2 above.

Public notice and comment procedures are the subject of paragraph (5). Under today's final rule, the State program must require that the Director give public notice of the draft permit and if a public hearing has been scheduled. The public notice must identify the name and address of the processing office, the name and address of the applicant, a brief description of the activity described in the permit application (e.g., sludge incineration), whether the permit includes a land application plan, and a description of the procedures for submitting comments. The notice must provide for no less than a 30-day comment period during which any interested person may submit written comments and request a public hearing. Where the notice is for a public hearing, the notice must designate the date, time, and place of the hearing, and specify its nature and purpose.

One State, commenting generally on the public notice procedures, urged EPA to reconsider requiring these procedures for all States, even though its State already had public notice procedures comparable to those in the proposed rule. This commenter explained that, in the State's experience, responding to public comments demanded a great deal of time and effort on the part of the technical staff. In a related vein, another commenter remarked that in its experience public participation resulted in decisions not to issue permits because of public misperceptions about sludge. EPA recognizes that public participation may place additional demands on State programs. Some of this demand may result from public misunderstanding. However, encouraging public participation in permit and enforcement actions is an important goal of the CWA. EPA views public involvement as supportive of implementing the requirements and goals of the CWA. While demanding resources in the short term, it ultimately benefits the sludge

program by helping to educate the public about sludge use and disposal. As recognized by the State commenter, public awareness and understanding is critical to public acceptance of sludge use and disposal, particularly beneficial reuse of sludge.

Two States and one POTW submitted comments opposing public notice for draft permits. One State said that the regulations should not require public notice; instead, State requirements should prevail. EPA believes that minimum procedural requirements are important to provide consistency among State programs and to provide for public participation in the permitting process. See section 101(e) of the CWA.

One State recommended that instead of requiring public notice of the draft permit, that EPA allow public notice of permit applications so that the public comment period would run concurrently with the State review of the application and also would allow public comments to be incorporated into the review letter. Without more information, it is not possible to determine whether this alternative scheme is functionally equivalent to that in the proposed rule. The purpose of the public notice is to allow public participation on the issue of whether or not the conditions in the permit ensure compliance with the CWA, not just whether the permit applicant has submitted complete and accurate information. Therefore, unless the permit application under the State's program is essentially the same as the draft permit under Part 501 (i.e., it sets out how the permittee will comply with applicable requirements, including those required by Parts 501 and 503), public notice of the application would be of limited value.

Another suggested alternative was to allow public notice of the disposer permit (which allows for consideration of site-specific concerns) to suffice. Again, without more information EPA cannot determine this would be an acceptable alternative. However, under today's final rule, permits for the sludge generator generally will be required regardless of whether permits for disposers are also required. Public notice of the draft permit for the generator would be required under today's final rule.

One commenter asked that the regulations be revised so that they do not require a separate public notice for sludge management plans when the plan is a part of a permit and the permit reissuance process already provides for public notice. Nothing in today's final rule requires a separate or duplicative public notice in this situation. The public notice requirements can be met through existing public notice procedures as long as they meet the minimum requirements established in § 501.15(d)(5) of today's rule regarding when notice is required, how and to whom it must be given, and what the notice must contain. As the commenter noted, this may be easily accomplished by revising existing permit reissuance procedures.

One commenter, who generally supported the public notice requirements for individual permit actions, suggested that § 501.15(d)(5)(ii)(B) be revised to indicate the public notice requirements for Class I sludge management facilities in that paragraph are in addition to the public notice requirements in § 501.15(d)(5)(ii)(A), which apply to all permits. This suggested revision clarifies the Agency's intent and accordingly has been adopted in the final rule.

Several other commenters addressed public notice in the context of permits for land application of sewage sludge. This issue is discussed at length in the earlier discussion about land application plans. (See section V.F.2 of this preamble). Briefly, today's proposed rule establishes special rules for land application programs to meet the special needs of that use option and thus to encourage beneficial reuse of sludge.

The State regulations must specify that public comments will be considered before making a final decision; that significant comments will be responded to in writing and made available to the public; and that any provisions in the final permit which differ from the proposed permit will be noted and explained in the written response to comments.

Under today's rule, State-issued general permits will not be subject to review by EPA's Office of Water Enforcement and Permits, as § 123.44(a)(2) provides for NPDES general permits, but would be reviewed by the EPA Region to the same extent as other State-issued sludge permits (i.e., minimally, all permits for Class I facilities must be reviewed by the Region). States considering the use of general permits for sludge should so indicate in their program description and Attorney General's Statement, and make sure that State law would allow issuance of general permits.

Optional permitting provisions. Section § 501.15(e) lists optional program provisions. These provisions, which the State is not required to adopt, are currently in the NPDES program and generally make the program less stringent or easier to administer. If the State decides to adopt general permits, permit continuation, or minor modification of permits for sludge, its provisions must be no less stringent than the corresponding Federal provisions identified in paragraph (e). EPA received no comments on this section.

The final rule includes a new provision, however, listing the newly created affirmative defense in § 122.5. Although this provision, a modified "permit as a shield" protection for compliance with Part 503-based permit limits, applies as a matter of Federal law, it would not necessarily apply under State law. States, however, may determine that the affirmative defense would be important for their programs for the same reasons as EPA. As with other provisions listed in this paragraph, States may, but need not, adopt these provisions as part of an approved program. However, if the State decides to adopt one, it must be no less stringent than the provisions referenced in this section.

Conflict of interest standard for permitting authority. In the 1988 proposal, the Agency proposed to use the conflict-of-interest rules that applied to NPDES State programs (§ 123.25(c)) for non-NPDES sludge management programs. Section 123.25(c) requires that no member of a board or body which approves a permit receives or has for the past two years received income from permit holders or applicants. Since the NPDES standard for conflict-of-interest is considered relatively stringent, EPA solicited comments on whether another standard would be more appropriate. In particular, the Agency discussed an alternative which would allow a State that used a program approved under another Federal statute as the basis for its sludge program under Part 501 to comply with the conflict-of-interest provision applicable under the other Federal statute (e.g., section 128 of the Clean Air Act, 42 U.S.C 7248).

The proposed rule addressing conflict-of-interest generated few comments. Three commenters, including two States, supported adopting the NPDES standard. One commenter, however, said that rather than prohibiting membership, EPA should instead require recusal in cases of direct conflict-of-interest. However, recusal only for individual instances of actual conflict-of-interest offers little assurance that the integrity of the permitting program will be protected. Adopting such a standard also would create a significant disparity in requirements between NPDES and non-NPDES sludge management program that would be difficult to justify. Therefore, EPA has decided to issue a final rule that adopts the NPDES conflict-of-interest standard.

The final rule also would allow an alternative standard used in other EPA-approved State programs or the equivalent of such a standard. The only alternative standard EPA is aware of is the conflict-of-interest standard established in section 128 of the Clean Air Act. This standard is described in section V.I.1 above.

Note: NPDES State sewage sludge management programs would have to meet the conflict-of-interest requirements in § 123.25(c), which are mandated by section 304(i) of the CWA. The alternate confict-of-interest standard is available only for non-NPDES State sludge management programs.

Under the conflict-of-interest regulations promulgated today, State agencies or departments are not considered "permit holders or applicants for a permit." Section 501.15(f)(1). Without this exemption, many States could not administer an approved program because State agencies often hold permits. A similar exemption for federal agencies or departments is being considered and may be addressed in the forthcoming proposed revisions to the NPDES regulations. It is not a part of today's final rule, however.

Municipalities, on the other hand, may be "permit holders or applicants for a permit." Under the proposed rule, employees of a municipality that owns or operates a facility required to obtain a permit could not sit on the board or body that approves all or portions of sludge permits issued in an approved State. One commenter noted that this proposed rule would prohibit municipalities that own or operate POTWs required to obtain permits from regulating septage disposal within their jurisdiction, as is often the case. Under the final rule, this conflict-of-interest requirement has been relaxed somewhat so as to allow for assignment of program responsibilities to local agencies if an alternative conflict-of-interest standard can be met by the permit issuing board or body. This change is explained in more detail in section V.I.1. above.

One commenter suggested that because municipalities and counties often regulate septage disposal, the conflict-of-interest provision should be incorporated into the MOA. Thus, a State which currently has conflict-of-interest regulations could be allowed to use these regulations in its sludge management program. This comment is unclear. However, to the extent that the commenter is suggesting the State be allowed to negotiate in the MOA for a conflict-of-interest standard that would allow municipal regulation of septage disposal to continue despite the conflict of interest standard in Part 501, EPA declines to adopt such an approach as it has too much potential for inconsistent requirements among programs.

7. Compliance Evaluation Program (Section 501.16)

This section would require that States have requirements and procedures for compliance monitoring and evaluation. The proposed rule adopted by reference 40 CFR 123.26. (The 1986 proposal also used § 123.26 as the basis for compliance monitoring program requirements). Section 405 of the Clean Water Act makes it unlawful for any person to use or dispose of sewage sludge except in accordance with the Part 503 standards. Thus, it is important that the State's compliance monitoring program cover non-permittees (e.g., disposal sites) as well as permittees.

Most comments on this section were received in response to the 1986 proposed rule rather than on the March 1988 proposal. Several States objected to this section as being too detailed, depriving States of program flexibility, and therefore requested that it be deleted. Flexibility is an important goal, but it is not a sufficient reason in itself to leave an entire, critical component of the sludge management program to individual States' discretion. As noted by another commenter, minimum uniform standards for State programs are just as important in the area of compliance monitoring as in other areas of approved State programs. Accordingly, EPA proposed requirements that in its experience are the "bare essentials" for an adequate compliance monitoring program. Comments on specific aspects of the proposal are considered below.

One comment addressed the requirement that the State use procedures for handling samples that would allow those samples to be admissible in court, i.e., employ chain of custody procedures. (*See* 40 CFR 123.26(d).) The commenter said that although there were sound reasons for requiring "litigation quality" samples, the extra expense was not worth it in all cases. The commenter suggested that instead, this subject be addressed in guidance to allow States to better allocate financial resources.

Chain of custody procedures ensure that samples are not altered between the time they are taken and the time they may be needed as proof of violations in an enforcement action. When such procedures are not followed, it may be difficult to establish the integrity of the sample and get the results admitted as evidence. Therefore, the regulations require chain of custody procedures when samples are taken for purposes of determining compliance. In EPA's experience, chain of custody procedures add minimal costs to sampling programs. Generally, chain of custody procedures merely require that a log to record basic information about the sample (e.g., date and place collected) and certification by handlers that the sample has not been altered be kept as the sample is moved from one place or person to the next. Certainly, following these procedures costs less than would the alternative of resampling where noncompliance has been detected (but where chain of custody procedures were not used) in order to establish an evidentiary basis for the enforcement action.

One commenter suggested that compliance evaluation programs be required to specifically address potential effects of synthetic organic chemicals in sewage sludge which may be disposed of in landfills or applied to food chain crops. This suggestion is based on concerns about the suspected carcinogenic, mutagenic, and teratogenic effects of synthetic organic chemicals that are being detected in sewage sludge from treatment facilities in highly industrialized areas. Nothing in the proposed or final rule would preclude States from addressing this particular concern. Generally, which chemicals must be monitored in sludge will be addressed in the technical regulations under Part 503. Whether additional pollutants of concern in particular areas should be regularly monitored, however, is best left to the discretion of the States and permit writers.

An important element of a State's compliance evaluation efforts is a program to verify the accuracy of self-monitoring reports (§ 123.26(b)). EPA received four comments on this subject. Two States, in response to the 1986 proposal, requested that the requirement for procedures to verify self-monitoring reports be deleted. In contrast, two citizen groups (one in response to the 1986 proposal and one in response to the 1988 proposal) expressed concern about reliance on self-monitoring, implying that additional State monitoring should be required instead. As noted by one of the citizen group commenters, a State monitoring and inspection program is particularly critical where most monitoring is done by the regulated parties. Therefore, the final rule retains the general requirement for States to have a program to verify self-monitoring reports.

States must also be able to determine, independent of self-monitoring reports, the compliance status of regulated

parties. In particular, the 1988 proposed rule contained a requirement that States inspect "all Class I sludge management facilities where applicable at least annually" (§ 123.26(e)(1), incorporated by reference in § 501.16). The 1986 proposal recommended, but did not require, annual inspections of Class I sludge management facilities. One commenter on the 1986 proposal specifically endorsed establishing the annual inspection as a requirement. Another commenter on the 1986 proposal however, a State, requested that it be allowed to continue inspections on a two-year cycle because it had limited resources and the facilities were widely scattered among a large area. Five commenters, all State agencies, provided comments on the 1988 proposed requirement. The commenters generally supported annual inspection of Class I sludge management facilities, except for sites where sludge is applied to land. Several commenters asserted that annual inspection of privately-owned agricultural landspreading sites used by Class I facilities would be burdensome and proposed instead that the frequency of these inspections be left to State discretion, or that inspections only be required prior to site approval. One commenter asserted that annual inspections would be impractical (manpower demand would be seasonal, inspections would have to be performed at the time of application to have any value, inspectors would have to visit unused fields as permittees should be encouraged to have numerous sites available whether or not the sites are used). One commenter requested that EPA clarify what is meant by "inspection." Another one noted that whether annual inspections would be appropriate would depend on the definition of "Class I" and "facility."

After considering these comments, EPA has decided to retain the 1988 proposed language in today's final rule: compliance evaluation programs must include inspections of "all Class I sludge management facilities where applicable at least annually." EPA did not adopt the suggestion to require inspections every two years rather than annually. While this may require some States to devote additional resources to their inspection program, EPA believes that limiting the annual inspection requirement to "Class I sludge management facilities" appropriately balances State resource concerns and the need to establish minimum State program requirements that ensure compliance with Section 405 requirements. EPA encourages States, where possible, to combine sludge inspections with other inspections, such as pretreatment inspections, to more efficiently use resources.

Although the final rule retains the same language as the proposed rule, it does not require annual inspection of all beneficial reuse land application sites. As set forth at § 501.2 in today's rule, the definition of "Class I sludge management facility" has been revised to include any POTW meeting the criteria in § 403.8(a) and any other treatment works treating domestic sewage classified as such by the Regional Administrator in conjunction with the State Program Director because of its potential for adversely affecting public health and the environment. Thus, beneficial reuse land application sites are not themselves Class I management facilities by definition, and compliance evaluation programs are not required to inspect all beneficial reuse sites receiving sludge from Class I sludge management facilities annually. (Note: The definition of "facility" has no significance for the annual inspection requirement. Also, as discussed elsewhere in today's preamble, EPA has dropped the definition of "facility" from today's rule, primarily because it created too much confusion.)

EPA does not address a minimum frequency for inspection of land application sites receiving sludge from Class I sludge management facilities in today's rule. Neither does the Agency define "inspection." Instead, the Agency will address these issues as it has in the NPDES program and prepare compliance evaluation program guidance. Addressing these issues in guidance rather than regulation provides both EPA and the States with important flexibility in responding to particular fact situations and changing program priorities.

Similarly, today's final rule does not establish a minimum inspection frequency for non-Class I sludge management facilities. One commenter on the 1986 proposal asked that States be required to do periodic inspections of non-Class I facilities. EPA expects that State inspection programs will include non-Class I facilities, but the appropriate frequency and other details concerning these inspections will be left to negotiation between the State and EPA in the MOA or other program agreements. The same commenter also requested that the regulations require a thorough inspection of each non-Class I facility as soon as the sludge technical regulations are promulgated to determine whether the facility is properly classified as a non-Class I facility, since "Class I designation" is based in part on evidence of a pretreatment problem, which in turn may depend on the technical sludge regulations. EPA disagrees that mandatory inspections of non-Class I facilities upon promulgation of the technical standards are necessary for this purpose. Whether a particular treatment works requires a pretreatment program under § 403.8(a) (and hence will be considered a Class I sludge management facility under today's rule) is adequately addressed by the pretreatment regulations at 40 CFR Part 403. Moreover, State inspections are only one means of determining compliance. Non-Class I facilities will still be expected to meet the self-monitoring requirements that apply to all permittees.

8. Enforcement Authority (Section 501.17)

General. The proposed rule required States to have adequate enforcement authority in their State statutes, including the ability to enjoin violations and bring both civil and criminal actions for any violations of permits, the permit program, or the sludge use and disposal standards set forth in 40 CFR Part 503. The March 1988 proposal differed in two respects from the February 1986 proposal. First, the March 1988 proposal did not provide for alternative civil penalties, which would allow the Regional Administrator and State Program Director to agree to a lesser civil penalty authority if sufficient to deter violations. This provision was deleted to minimize inconsistency among State programs regarding fundamental enforcement authorities. The March 1988 proposal also differed in that it required States to have authority to seek criminal fines. This requirement was added because the 1987 amendments to Clean Water Act made knowing violation of section 405 subject to the criminal penalties of the CWA.

Today's final rule is essentially the same as the March 1988 proposed rule. States may, of course, have other enforcement authorities than those required by this section, but these would be considered additions to, not substitutes for, the required enforcement authorities. Similarly, States cannot provide additional defenses or rights not authorized by federal law. Thus, a State could not allow a permittee to challenge its permit limits in an enforcement proceeding, and State law that provided such an option would be inconsistent with the federal requirements. Similarly, a State could not restrict its enforcement

by limiting the use of information in an enforcement action.

States must be able to immediately restrain unauthorized activity which is endangering or causing damage to public health or the environment. (§ 501.17(a)(1)). This requirement can be met through authority to issue administrative cease and desist orders or to seek temporary restraining orders in court. (States need not have both authorities as feared by one commenter.) In response to this provision in the 1988 proposal, one commenter said that States should be required to have authority to enjoin authorized as well as unauthorized activities which are endangering or causing harm to public health or the environment. The commenter's suggested revision is unnecessary for purposes of ensuring that States have adequate authority to ensure compliance with section 405 of the CWA and for protecting public health and the environment. "Authorized activity" in this case means sludge use or disposal activities undertaken in compliance with sludge permit conditions and the technical requirements promulgated under section 405(d) of the CWA. It is reasonable to assume that authorized activities will not threaten or cause harm to public health and the environment.

Note: This required enforcement authority also parallels what is required of approved NPDES States in § 123.27(a)(1).

Consistent with section 405(e), States must be able to enforce against violations of the Part 503 technical standards by any person who uses or disposes of sewage sludge, not just permittees. Thus, the same enforcement authorities required by this section must be available against non-permittees as well as permittees. As requested by a commenter, this has been clarified in the final rule with minor editorial changes to § 501.17(a)(3). Where a State's program is broader than the Federal program, however, the penalties that apply to additional coverage would not be considered in determining the adequacy of the State's program.

State penalty authority must allow the State to seek civil penalties in the amount of at least $5,000 per day of violation. Four States supported the $5,000 amount as appropriate to provide adequate enforcement authority. Several commenters opposed the $5,000 because it would be excessive in some situations. Similarly, other commenters said that penalties should be determined at the discretion of the States based on the type and severity of the violation. In contrast, one State said automatic fines imposed upon owners for significant permit violations would help improve public perception and confidence in the ability of regulatory agencies to control sludge management activities.

These comments reflect a misunderstanding about the required penalty authority. Today's rule does not mandate a minimum $5,000 penalty for all violations and therefore does not disturb traditional enforcement discretion (including a policy requiring automatic fines in certain situations). Instead, it requires the State to have the authority to seek at least up to $5,000 per day of violation. Thus, for a particular violation, a State might decide that $1,000 per day is an appropriate penalty. This would be allowed under today's final rule. Section 501.17(a)(3)(i) requires that the State must be able to seek at least a $5,000 per day penalty if appropriate to the violation.

Under today's rule, the State must be able to seek injunctive relief in two instances. First, it must be able to restrain immediately any unauthorized activity endangering the public health or the environment. Second, it must have authority to sue to enjoin any threatened or continuing violations without first revoking the permit.

States must be able to seek criminal fines (for willful or negligent violations) in the amount of at least $10,000 per day of violation, and seek criminal fines for knowingly making false representations or certifications, or knowingly rendering monitoring devices inaccurate, in at least the amount of $5,000 for each instance of violation. No commenters specifically addressed the question of criminal fines.

Today's required penalty authorities parallel those in the NPDES program. (*See* § 123.27(a)(3)(i); § 123.27(c).) (As noted by one commenter, this means that States which are unable to obtain NPDES approval because they lack the required penalty authority would be unable to obtain approval of a separate State sludge program.) This does not mean they are redundant and should be deleted, as suggested by one State. They would be redundant only if the State will be regulating sludge through its existing NPDES program (and the State's enabling statute authorized penalties for violations of sludge requirements and permit conditions), in which case the Part 501 regulations would not apply. One commenter specifically endorsed parity between the penalty authorities required of NPDES and non-NPDES programs, but argued that the CWA also required parity with EPA's penalty authority (although States could leave $10,000 per day civil penalties intact). EPA has never interpreted the CWA to require States to have the same penalty authority as does EPA and therefore disagrees. The U.S. Court of Appeals for the D.C. Circuit recently upheld EPA's interpretation. *See NRDC* v. *EPA*, 859 F.2d 156, 178, 28 ERC 1401, 1420 (D.C. Cir. 1988).

One commenter stated that it is inappropriate for one government agency to fine another government agency resulting in "the people" fining themselves. Instead, States should be able to rely on other enforcement measures to achieve compliance by other government agencies. Apparently, the commenter, a POTW, objects to requiring States to be able to seek penalties against POTWs. Conversely, another commenter recounted a situation where a State allegedly failed to seek fines against a POTW despite six years of non-compliance. This commenter asked that the regulations require States to seek fines against POTWs in this situation and also against the industrial users of the POTW that are the source of the problem. Under the Clean Water Act, POTWs are treated the same as other regulated parties with regard to penalties. State programs likewise should be required to treat POTWs the same as other regulated parties. Fines may also be necessary to bring POTWs into compliance. However, as discussed above, EPA does not intend to dictate in the regulations how States should exercise enforcement discretion. EPA will oversee the State's enforcement program and may, in particular cases where it believes the State's enforcement response to be inadequate, file its own enforcement action in accordance with the CWA and the MOA.

EPA noted in the preamble to the proposed rule that the minimum penalty ceiling required of approved State programs may be raised for the NPDES program and that similar increases would follow in Part 501. To date, the Agency has taken no action to raise the minimum penalty ceiling. Therefore, any such increase will be addressed in a future rulemaking. Any State program approved under this Part before the minimum ceilings are raised would be given sufficient time to enact new legislation (i.e., up to two years).

One State asked that EPA provide guidance and develop specific standards and criteria for assessing fines based on the nature and severity of the violation. In particular, the State noted a problem with seeking fines in the absence of a documented water quality impact. EPA is in the process of examining what

guidance will be needed as the sludge program moves into a more active implementation phase. Enforcement guidance is a likely candidate. However, it is important to emphasize that the environmental effects of concern to the sludge program as established in the CWA and these regulations goes beyond water quality impacts. Therefore, whether or not to seek fines for a particular violation should not depend solely upon a documented water quality impact. EPA would consider such a narrow approach inadequate.

Public participation in enforcement (§ 501.17(d)). EPA proposed to require State programs to provide for public participation in the enforcement process. Proposed § 501.17(d) would allow States to choose from two options. The first option is for State law to provide for intervention as of right in any enforcement action (§ 501.17(d)(1)). States choosing this option may not place restrictions on this right. Alternatively, where State laws allow permissive intervention in State civil or administrative actions, the State could agree not to oppose such intervention in any enforcement proceeding. Under this option, the State would also have to agree to investigate and respond to citizen complaints and publish all settlement agreements for a public comment period of at least 30 days (§ 501.17(d)(2)).

EPA received only one response to this section, from a State which raised several concerns. First, the commenter suggested that the right to intervene under § 501.17(d)(1) should be limited to adjacent property owners, municipalities, and counties in the case of land application, i.e., require a demonstration of standing before intervention is allowed. EPA does not object to the general concept of limiting intervention to those who have standing, but only when standing is broadly defined, i.e., that which is allowed under Article III of the U.S. Constitution. This intent is reflected in the phrase "any citizen having an interest which is or may be adversely affected." State statutory limits on standing that are narrower than such Constitutional privileges are insufficient for purposes of § 501.17(d)(1). (See 45 FR 33383, May 19, 1980, which discusses the NPDES provision on which § 501.17(d) is based.)

With regard to § 501.17(d)(2) (the second option), the same commenter questioned whether telephone responses would be an adequate substitute for written responses as a means to reduce the burden of responding to all complaints. That section requires a State to provide assurance that it will "investigate and provide written responses to all citizen complaints submitted pursuant to procedures specified in § 123.26(b)(4)." This referenced section requires all States, as part of a compliance monitoring and evaluation program, to have "procedures for receiving and *ensuring proper consideration* of information submitted by the public about violations" (emphasis added). Read together, these sections do not seem to require written responses in all cases, but would allow States to respond by telephone when the complaint clearly does not warrant a more extensive response, e.g., a phone request asking whether a particular facility has obtained a required permit. However, the State should have procedures and guidelines for determining the appropriate level and type of response to various types of complaints of violations, which EPA would consider in determining whether the requirements of § 501.17(d)(2)(i) are met.

Finally, the commenter said that providing a 30 day comment period on any enforcement action would unnecessarily delay the enforcement process and could allow environmental damage to continue during the comment period. Section 501.17(d)(2)(iii) would require notice only for proposed settlement actions, not for the resolution of all enforcement actions. Therefore, the 30-day comment period should not interfere with seeking immediate injunctive relief to abate an immediate threat to public health or the environment. Similarly, the requirement does not apply to enforcement actions not required as a part of an approved State program, e.g., actions to recover damages to natural resources. In other cases brought for violations of the program, the potential for accumulating substantial penalties should provide violators with sufficient incentive to cease violation and thus prevent further harm to public health or the environment.

9. Sharing of information between States and EPA (Sections 501.19 and 501.20)

Section 501.19 incorporates 40 CFR 123.41, which requires that the State make available to EPA upon request, any information obtained or used in the administration of a State program. (A similar provision appeared in the 1986 proposal as a requirement for the MOA.) This section also provides procedures for the sharing of information, allows EPA to make any nonconfidential information available to the public, and also requires EPA to furnish to the State nonconfidential information in its files which the State needs to implement the approved program. Two commenters on the 1986 proposal objected to a similar requirement for EPA access to State records. As noted in the discussion about the State/EPA MOA, EPA disagrees with the commenters that EPA access to State records is unnecessary and redundant. Therefore, this section remains unchanged in the final rule.

Section 501.20 incorporates § 123.42, which addresses the transfer of relevant information collected by EPA to the State agency upon program approval. Under that section, the MOA between the State and the Regional Administrator must provide for: (1) Transfer of all copies of pending permit applications and other relevant information to the State, and (2) procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Regional Administrator which the Regional Administrator has identified as incomplete until the Director receives information sufficient to correct the deficiency. In the absence of significant comments, this section too remains unchanged in the final rule.

10. Program reporting to EPA (Section 501.21)

This section contains the requirements for semi-annual and annual reports to be submitted to EPA. These reports are important for tracking the State program and evaluating compliance monitoring and enforcement performance.

The 1986 proposal required the States to submit quarterly reports on "substantial" noncompliance of Class I facilities. In addition, annual reports containing inventory updates, lists of "substantial" noncompliance by Class I facilities, and summaries of instances of "substantial" noncompliance by non-Class I facilities were required. The 1988 proposal incorporated two changes. First, substantial noncompliance was no longer defined as "noncompliance which may adversely affect public health and the environment," and second, the States were no longer required to report the "unexplained presence of elevated levels of toxic or hazardous substance(s) in a facility's sewage sludge." EPA deleted the above annual reporting requirements in response to comments that these requirements were too general, would unnecessarily duplicate the requirement to report significant noncompliance with the Part 503 technical standards, and would encompass virtually all noncompliance.

Today's final rule is basically the same as the March 9, 1988 proposed rule. The annual reporting requirements

remain unchanged. However, the final rule does include major and minor changes to the quarterly reporting requirements in response to comments. Also, in the final rule the term "substantial compliance," which was used in both the 1986 and 1988 proposals, was changed to "noncompliance." The word "substantial" was deleted as unnecessary and to avoid potential confusion with the NPDES term "significant." Thus, the semi-annual and annual reporting requirements in § 501.21 which previously read "substantial noncompliance" now read "noncompliance." The change in terminology does not affect the types of "noncompliance" that must be reported in § 501.21(a)(1), as described below.

Sixteen individuals commented on the February 4, 1986 proposed rule and nine commenters provided comments on the March 9, 1988 proposed rule. Almost all comments were received from the States. Thirteen States commented on the 1986 proposal and eight States commented on the 1988 reproposal. In addition, two POTWs/municipalities and one environmental group commented on the 1986 proposal and one POTW/municipality commented on the 1988 proposal. The two major issues most commenters focused on were: (1) The frequency of State reporting; and (2) the content of the semi-annual and annual reports.

Note: See discussion below regarding the change from quarterly to semi-annual reports. Comments addressing the promulgation of the Part 503 technical standards are addressed above in the discussion on timing.

Semi-annual reports. Section 501.21(a) details the incidents of noncompliance by Class I sludge management facilities which shall be reported in the Semi-annual Sludge Violation Reports.

Note: Much of the information for semi-annual reporting is based on permittee self-monitoring reports now required.

These reports provide EPA with permittee information identifying the noncomplying facility and other information such as the date and type of noncompliance and actions taken to achieve compliance. In addition, instances of significant failure to comply with Part 503 standards and permit conditions, failure to complete construction of essential elements of a sludge facility (as provided in a compliance schedule or as otherwise necessary to meet permit and/or Part 503 standards), and failure to provide adequate monitoring or other reports, are also required to be reported in the semi-annual reports.

The majority of commenters strongly opposed quarterly reports. Commenters objected that they are overly restrictive, unnecessary and divert resources from active sludge management. Several States commented that they would not have the resources to produce the required reports. Two commenters noted that quarterly reports are more appropriate for continuous discharges than for intermittent sludge discharges and that annual reports would be adequate. Several commenters also questioned the utility of quarterly reports. After reviewing this requirement, EPA agrees that requiring reports on a quarterly basis does not sufficiently add to EPA oversight at this time to justify the additional costs of these reports. Instead, EPA has decided that semi-annual reports (as suggested by one commenter) will reduce reporting requirements and provide sufficient information to adequately track the State program and evaluate compliance and enforcement.

Note: All references to quarterly reports in the rest of this discussion should be read to mean the semi-annual reports now required.

One commenter suggested that the contents of quarterly reports be left up to the discretion of the State Director. Providing for this type of discretion would not ensure the uniform reporting necessary for effective enforcement and oversight. Conversely, an environmental group commented that the quarterly reports should contain the same information required in the annual reports. EPA disagrees that the information not included in the quarterly reports is necessary for program oversight. Annual reporting is sufficient for enforcement and State program oversight.

Several commenters suggested that quarterly reports be replaced by allowing the State to notify EPA of instances of substantial noncompliance as they occur rather than on a regular schedule. One of these commenters remarked that reporting only violations as they occurred would bring more EPA attention to instances of noncompliance than would inclusion of these violations in monthly, quarterly or annual reports. While this idea has weight, reporting noncompliance as it occurs will not significantly increase EPA's enforcement or oversight ability. A semi-annual report will minimize the resource drain on the States and will be sufficient to allow EPA to target problem facilities or problems with the State's enforcement program.

Annual reports. Section 501.21(b) describes the annual report which provides EPA with information necessary to evaluate permittee noncompliance and assess State Programs. EPA intends the focus of the annual report to be on significant noncompliance. The annual reports shall contain the information required in the semi-annual reports, and information to update the inventory of sewage sludge generators and disposers submitted with the program plan or previous annual reports, as well as specific and summary information on noncomplying Class I and non-Class I facilities.

Note: Comments and other issues concerning inventory requirements are addressed in the program description section.

In addition, as a component of program oversight, EPA is also requiring a summary of the results of State compliance monitoring efforts to verify self-monitoring reports in the annual report.

Two commenters found the annual reporting requirements restrictive and unnecessary. One commenter asked EPA to reduce these requirements. Annual reports update inventories, describe program changes, and summarize instances of substantial noncompliance by non-Class I facilities. This information is not covered by semi-annual reports and is necessary for program review. Another commenter stated that the information required in annual reports is supplied in other required reports. EPA has not required this information on a routine basis (although portions of the inventory requirement may have been requested as part of the State's work plans).

A number of commenters asked that EPA define in detail several terms used in the semi-annual and annual reporting requirements of the 1986 proposal. In particular, determining noncompliance was problematic for many commenters. Several commenters suggested that EPA clearly define "significant failure to comply." The accompanying Part 503 regulation will provide minimum federal requirements for sludge use and disposal. When a violation of these standards would be considered "significant" for purposes of State reporting to EPA is not defined in today's rule. Instead, this will be addressed in guidance and may, in the future, be codified. Where adequate clarification of other terms has not been provided in the final rule, the Part 503 regulation or guidance will provide additional details. The types of noncompliance which must be reported are detailed in § 501.21(a)(1) (i) through (v).

As requested by one commenter, the final rule no longer provides that "The

State Program Director and Regional Administrator may choose to include reporting incidents of substantial noncompliance by additional non-Class I facilities at their discretion." EPA agrees that because this sentence describes an optional provision and not a minimum requirement, including it in the regulation is unnecessary. Of course, the State Director and Regional Administrator are free to agree on additional reporting not specifically required by the regulation. As with other details about program administration not addressed in detail in the regulation, EPA expects that the State Director and Regional Administrator will reach agreement on these activities in the MOA and other program agreements.

An environmental group stated that reporting should be required for all noncompliance, not just for "substantial" noncompliance. Limited resources require that EPA target the most critical problems. The primary purpose of State reporting to EPA is for general program oversight. While EPA may use this information as the basis for its decisions on enforcement actions, States are not simply acting as information collection agents for EPA. The administration of a State program is primarily the State's responsibility. Therefore, reports on "substantial" noncompliance are sufficient for the purposes of § 501.21. Of course, more detailed information about any instance of noncompliance (whether by a Class I or non-Class I sludge management facility) would be available to EPA and, in the case of permittee self-monitoring reports required by the permit, to the public. Similarly, another commenter stated that reporting for non-Class I noncompliance should be the same for Class I noncompliance. The types of noncompliance that must be reported are the same for each class of permittee. What differs is the frequency of reporting.

Two comments addressed discrepancies with or replication of NPDES reporting requirements. One commenter questioned whether § 501.21(b)(4) is warranted since it requires more specific permittee information than § 123.45(c) does for NPDES minors. EPA also received a conflicting comment stating that the reporting requirements as proposed duplicate NPDES requirements. EPA has expanded the reporting requirements for non-Class I facilities because there are only a small number of Class I facilities, and the noncomplying non-Class I facilities can realistically be classified as Class I facilities which need similar attention.

Several commenters requested that EPA develop a computer software program to promote reporting uniformity and minimize duplication of effort. Another commenter suggested that EPA develop a standardized reporting format (such as questionnaires, tables, and checklists) for the same reasons. EPA is in the process of developing an information system which will assist the States in fulfilling these reporting requirements. However, such a system cannot replace formal reporting as has been suggested by one commenter because a narrative response is required in some cases (e.g., § 501.21(b)(4)(i)(D) requires States to describe steps being taken to bring noncomplying non-Class I facilities into compliance).

Finally, several commenters suggested that EPA use existing programs, such as the section 305(b) reports for State program oversight, or randomly sample existing State programs to evaluate compliance. Section 305(b) requires biannual reports to Congress which were not intended for this purpose. Other suggested alternatives to program reporting do not provide the level of detail EPA requires for compliance evaluation and enforcement.

11. Program Approval, Revision, and Withdrawal (Sections 501.31 through 501.34)

Review and approval procedures. Section 501.31 outlines the procedures for State submission and EPA review and approval of a State program that apply after EPA makes a determination under § 501.11(b) that the State's submission is complete.

Once the program is determined to be complete, EPA must provide public notice of receipt of the submission. As noted by a commenter on the 1986 proposal, notice that EPA will be considering the State's application for program approval is an important step because it informs the public about its opportunity to comment on the State's application. The notice must indicate where and when the State's submission is accessible to the public and the cost of obtaining a copy. It also delineates the fundamental aspects of the State's proposed program and must provide a minimum comment period of 45 days. Finally, the notice must state whether a public hearing has been scheduled (or how one can be requested, if none has been scheduled) and list the name of a contact person who can provide additional information.

Under the proposed rule, EPA would publish the notice in the **Federal Register**, in enough of the largest newspapers in the State to attract Statewide attention, and in individual notices mailed to all interested persons and government agencies, as well as to all permit holders and applicants subject to sludge use and disposal requirements. The Agency solicited comments on whether individual notice to "permit holders and applicants" was necessary or whether the other required forms of notice (**Federal Register**, State newspapers, and mailing lists) would be sufficient.

Comments on this issue were evenly divided. Individual notice received broad-based support (a State, an environmental group, a POTW, and an association representing POTWs), primarily because it would better inform the regulated community and give them opportunity to comment. Opponents included five States and one industry. In opposition, commenters said that money could be better spent on research, regulated parties will be subject to the same standards regardless of who issues the permits, and notice would only confuse the regulated community.

EPA has carefully considered all comments and has decided in the final rule to require individual notice to regulated parties (in addition to persons on the general mailing list of interested persons). It is important that the regulated community and other interested parties have notice and opportunity to comment on the State's program, particularly since the sludge management program is new. This can best be accomplished with widespread notice of the State's submission. The State's program could be administered differently from the federal program even though the federal technical standards will be a key feature in both programs. Likewise, the State could be reorganizing its sludge management functions or program offices as part of a plan to obtain EPA approval. Therefore, it is difficult to understand how notice would confuse the regulated community. Instead, such notice (and subsequent information activities) could help clarify critical aspects of the program's administration.

One commenter requested that State permit programs be sent to all permit holders whenever "sludge management programs" are included in an NPDES permit. This is neither feasible nor necessary. As discussed above, regulated parties will receive individual notice that EPA is considering a State program for approval and will have 45 days to comment on the State's submission (increased from 30 days in response to comments on the 1986 proposal and consistent with the NPDES regulations). Regulated parties will have sufficient opportunity to review and

comment on the State program when EPA is making the approval decision. After State program approval, permit applicants will of course have an opportunity to comment during the permit issuance process on any State permit proposed to be issued. (See § 501.15(d).)

The final rule differs slightly from the proposed rule in that it requires individual notice to "all treatment works treating domestic sewage listed on the inventory required by § 501.12(f)" rather than to "permit holders and applicants." The change serves two purposes. First, it more clearly defines the category of persons who are to be sent the notice and distinguishes this category from NPDES permit holders and applicants. Second, using the inventory of potential permittees, which the State must submit as part of its program application, minimizes the resources needed to compile the mailing list. This addresses concerns raised by some commenters about the potential burden of the notice requirements. It should also help ensure that notice will be sent to those facilities most likely to be immediately affected by State program approval. (In this regard, it should be noted that requiring individual notice for "all treatment works treating domestic sewage * * *" is intended to be a general target. In other words, failure to notify *all* treatment works (e.g., those not on the initial inventory) would not provide a legal basis for challenging EPA's approval of a State program.)

The proposed rule also would have required that the public notice "provide for a public hearing within the State to be held no less than 30 days after the notice is published in the **Federal Register**" (§ 501.31(b)(2) of the 1988 proposal). EPA solicited comments on this aspect of the approval procedures as well, particularly whether a public hearing on EPA's approval of the State program should be mandatory (as in the 1988 proposal) or whether it should be required only when public interest is demonstrated (as in the 1986 proposal).

Only two commenters, both regulated parties, supported mandatory public hearings; one without explanation, the other as a means to inform the regulated community and provide opportunity to comment. Six commenters supported discretionary hearings, with various suggestions for when a hearing should be required. Most said that hearings should be held when there was "significant" or "demonstrated" public interest. One commenter said a hearing should be held if there is a single request.

EPA agrees with the commenters opposing automatic, mandatory public hearings on State program approval. Under the final rule, a public hearing will be held "whenever the Regional Administrator finds, on the basis of requests, a significant degree of public interest in the State's application or that a public hearing might clarify one or more issues involved in the State's application." § 501.31(c)(2). Providing for public hearings only when there is sufficient public interest or other useful reason for holding a hearing efficiently uses resources without sacrificing public participation. EPA strongly encourages public hearings whenever public interest has been shown. However, it does not agree that automatic triggers, such as the single request suggested by one commenter, are needed to ensure adequate public participation. It is more appropriate to give Regional Administrators flexibility to exercise judgment in this regard.

One commenter who responded to the 1986 proposal said that the Regional Administrator should not hold any public hearings on the State's application since the State could hold any necessary hearing and EPA could participate in the State hearing if it wished. EPA disagrees. The decision whether or not to approve a State program rests with EPA and, as the decision-maker, EPA should also determine whether a public hearing is necessary.

As discussed above, the State's application will be widely noticed, including individual notice to a large segment of the regulated community. Thus, both the public and the regulated community will have ample notice and opportunity to request a hearing. If a hearing has not already be scheduled at the time of the notice required by paragraph (c)(2), that notice will include information about how to request a public hearing. If the Regional Administrator subsequently decides to hold a hearing, notice of the hearing must appear in the **Federal Register** at least 30 days before the scheduled date of the hearing, which states when and where the hearing will be held.

One commenter on the earlier proposal said the regulation should specify that the hearing be held "at a location selected by the State submitting a program" to ensure that State concerns are heard and to satisfy the intent of public hearings. EPA disagrees that further specificity in the regulation is necessary or desirable. States have ample opportunity to voice their concerns before, during, and after the public hearings. The regulation already specifies that the public hearing will be held "within the State." Under general principles, decisions such as where to hold hearings are guided by the goal of maximizing public participation and thus satisfying the intent of public hearings. (See, for example, 40 CFR 25.12(c).) Although ensuring the State's opportunity to participate in a hearing would be of paramount importance, the Regional Administrator must also consider the convenience of the hearing location to other parties who have expressed an interest. Therefore, the details of the public hearing, including location, are best left to the discretion of the Regional Administrator.

The Administrator has 90 days from the date of receipt of the complete program to approve or disapprove of the program. (§ 501.31(d).) In response to a comment, today's final rule clarifies that the 90-day review period begins only after EPA has determined that the program is complete (in accordance with § 501.11(b)). As a general rule, 90 days should be sufficient time to make this decision. Failure to make a decision by the 90-day deadline does not mean that the State's program is approved by default, however. Also, the 90-day period may be extended by mutual agreement between the State and EPA. One commenter objected to providing for an extension of the deadline without also publishing notice of, and reasons for, the extension and providing for public notice and opportunity to comment. The same commenter also objected to any extension of the comment period based on "material changes" to the State program submission. According to the commenter, extensions of the 90-day review period unnecessarily delay action on the State's program. EPA disagrees. Flexibility is needed to provide EPA with adequate time to consider changes to the State's submission made by the State or in response to problems identified during public review. In most cases, providing for extensions of the review period to accommodate "mid-stream" changes would be less time-consuming than either of the alternatives: disapproving a program at the end of the 90-day period and starting the process over again to review the changes or approving the program and considering changes through program revision procedures. Moreover, now that the CWA clearly authorizes a federal permitting program, delay in approving a State program does not necessarily delay implementation of environmental controls. In addition, EPA sees no useful reason to subject this type of interlocutory procedural decision to notice and comment. Extensions of the review periods do not diminish the

public's opportunity to comment on the adequacy of the State's program.

The Regional Office will prepare a responsiveness summary identifying the public participation activities conducted, summarizing significant comments and responding to these comments. Notice of approval will be published in the Federal Register. If the program is disapproved, the Administrator will notify the State of the reasons for disapproval and what final revisions would be necessary to make the program approvable. One commenter suggested that EPA publish a notice of disapproval as well, to inform the public of final agency action. Since the effect of disapproval would be to maintain the status quo, it is not clear what purpose such a notice would serve. Therefore, the final rule has not been revised to require notice of disapproval.

One commenter said the use of different terms to designate the authority responsible for approving State programs, such as "EPA," "Administrator," "Agency," and "Regional Offices" in this section was confusing. This commenter also suggested that such decisions be made at the Regional level "after obtaining concurrence on a case-by-case basis from headquarters based on a national flexible program emphasis." In a related vein, a commenter on the 1986 proposal urged generally that Regional Administrators be given greater control over State program approval decisions because the Regional Administrator is in a better position than EPA in Washington to determine if a State program provides adequate control over sewage sludge.

The language in this section is taken from an analogous section in Part 123, the NPDES State program regulations. The use of different terms reflects the involvement of both Headquarters and the Regional Office in State program approval decisions. Details about approval procedures are provided in additional guidance. Briefly, the Administrator or his designee is the final decision-making authority. However, the Regional Office plays the lead role in working with the State to develop an appropriate program and in processing the State's application, and in recommending final decisions. The Region's role will be established through an internal delegation of authority document rather than in the regulation. Headquarters concurs on major decisions. Although Regional Offices are more familiar with particular State programs, EPA Headquarters' involvement ensures minimum consistency among State programs nationwide. Therefore, the final rule retains essentially the same language as the proposed.

Two minor changes have been made to clarify any remaining confusion. First, the words "the Agency's" have been replaced by "EPA's" in the last sentence of § 501.31(d). Second, a definition of "Administrator" has been added to § 501.2, which includes "an authorized representative" of the Administrator as part of the definition (consistent with the definition of "Administrator" in Part 122).

Program revision. Section 501.32 addresses revision of State programs. The procedures for program revision are very similar to the procedures used in the original program approval process (and therefore, except in cases of nonsubstantial revisions, provide for public participation as requested by a commenter on the 1986 proposal). The revision procedures in the proposed rule were based on analogous provisions in Part 123. EPA received no significant comment on the proposal and therefore is promulgating a final rule that is the same as the proposed rule.

Revision may be necessary any time the State or Federal laws or programs change. Under paragraph (a), State program revisions necessitated by changes or additions to the Federal regulations governing sewage sludge use and disposal, including changes to this Part, must be made within one year from promulgation of the applicable regulations, or within two years if an amendment to a State statute is required.

Program withdrawal. Sections 501.33 (criteria for withdrawal) and 501.34 (procedures for withdrawal of State programs) incorporate 40 CFR 123.63 and 123.64, the NPDES provisions for program withdrawal. The final rule is the same as the March 1988 proposed rule.

Under these sections, withdrawal can occur voluntarily (where the State decides to transfer all program responsibilities back to EPA) or involuntarily (EPA decides to withdraw approval where the State program no longer complies with the Clean Water Act or regulations). The rule does not provide for partial withdrawal of a State's program (as would the 1986 proposed Part 501) because it would result in a piecemeal program that would be difficult to administer and oversee and could create considerable confusion. Grounds for initiating State program withdrawal proceedings include: (1) The State's legal authorities no longer meet CWA requirements; (2) the operation of the State program fails to comply with EPA regulations; (3) the State's enforcement program fails to comply with EPA regulations; or (4) the State program fails to comply with the terms of the Memorandum of Agreement.

One commenter addressed the program withdrawal criteria provision in response to the 1986 proposal (which was substantially the same as the 1988 proposal). The commenter requested that criteria for withdrawal that is based on enforcement program performance (see § 123.63(a)(3)(ii)) be revised to read: "Failure to seek adequate enforcement penalties or fines or to collect such penalties or fines," rather than "Failure to seek adequate enforcement penalties or to collect administrative fines when imposed."

The commenter did not give a reason for requesting the change in language. The final rule does not adopt the suggested change. The criteria do not address collection of judicially imposed penalties because, unlike administrative fines, the approved State agency may have little, if any, control over collection of those penalties. It would be ineffective to hold a State program accountable for an activity which they cannot control and therefore remedy any deficiencies.

The commenter also objected to a requirement that program withdrawal occur for "major or significant" failings of the State, and argued that any failing that is not purely *de minimis* means the State is no longer entitled to program approval and EPA must withdraw the program. The specific provision to which the commenter objected was not in the 1988 proposal and is not in the final rule. However, it is important to note that, as is the case under the NPDES program, EPA considers withdrawal of an approved State sludge management program a drastic remedy that should be invoked only where a State is unable or fails to take corrective action to solve State program deficiencies. *See also Save the Bay, Inc.* v. *Administrator,* 556 F.2d 1282 (5th Cir. 1977).

Another commenter, in response to the 1986 proposal, addressed program withdrawal procedures. The commenter requested that the regulation specify that any public hearings on the question of withdrawal take place "at a location selected by the State submitting the program." As discussed above, the commenter made the same request with regard to program approval hearings. The procedures governing program withdrawal are those set out in the NPDES State program regulation at § 123.64. Although those procedures do not specify where the hearings must be

held, they include well-established procedural safeguards and provide adequate opportunity for the State to present its position. Therefore, EPA has not adopted the suggested change in the final rule.

J. Part 123: NPDES State Sludge Management Programs

1. General

Part 123 establishes the program requirements and approval procedures for States which seek EPA approval to administer an NPDES permit program pursuant to section 402 of the CWA in lieu of the federal NPDES permit program. All 39 States which currently have EPA-approved NPDES programs govern, at a minimum, the discharge of pollutants to waters of the United States, including the discharge of sewage sludge to waters of the United States (see sections 405(a)–(c) of the CWA). None of these State programs, however, have been approved by EPA to administer a program which meets the requirements of sections 405(d) and (f) of the CWA for the safe use and disposal of sewage sludge (where sludge is not discharged to navigable waters).

In the 1987 amendments to the CWA, Congress directed the Administrator of EPA to promulgate procedures for the approval of State programs that assure compliance with section 405(d) of the CWA and also identified section 402 permits as appropriate vehicles for implementing section 405(d) requirements. Section 405(f). To accommodate both goals, EPA proposed to amend Part 123 to allow States to incorporate a sludge management program as part of their approved NPDES programs. Today's revisions to Part 123 are designed to "fill in the gaps" of existing NPDES requirements by adding requirements which are specific to sludge management programs.

2. Specific Revisions

Today's revisions to Part 123 apply only to those States which choose to use their NPDES program for administering an EPA-approved sludge management program. States with existing NPDES programs will not be required to obtain approval of a sludge management program in order to maintain approval of their NPDES program. Instead, sludge management programs are optional. Moreover, existing NPDES States may choose to implement an approved sludge program through an existing non-NPDES program pursuant to Part 501. Section 123.1(c) states the availability of these options.

The limited applicability of today's revisions to Part 123 addressing sludge management programs is also addressed in the introductory paragraph to § 123.25(a), which lists permitting requirements in Parts 122 and 124 applicable to the federal NPDES program, which a State must also be able to implement as part of an approved NPDES program. Today's final rule clarifies that a State which chooses not to seek approval of a sludge management program as part of its NPDES program is not required to have authority to implement the sludge-related revisions to those provisions of Parts 122 and 124 listed in § 123.25(a) which are promulgated after enactment of the 1987 amendments to the CWA. However, States that use their NPDES programs to administer an approved sludge program would have to be able to implement these revisions.

Program description. To obtain NPDES approval, States must submit a comprehensive description of the program they propose to administer in lieu of the federal program (§ 123.22). For States which seek approval of their sludge management program as part of an NPDES program, EPA proposed to revise § 123.22 to include three additional requirements: (1) An inventory of all POTWs and other treatment works treating domestic sewage, together with a plan for completing and maintaining an inventory of all sewage sludge generators and disposal facilities; (2) identification of any program for regulating the disposal of septage and portable toilet pumpings handled under a program that is separate from that for sewage sludge; and (3) a description of any bans or prohibitions imposed by State or local authorities on specific sludge management practices.

The additional requirements for the program description in today's final rule differs significantly from the proposed rule. The differences parallel those made in § 501.12 and are explained in more detail in the above discussion of Part 501. Briefly, the inventory requirement has been revised by providing more specific information on which facilities and information must be included as part of the initial program submission and establishing deadlines for submitting any remaining information. The identification of a separate program governing disposal of septage and portable toilet pumpings has been deleted as redundant, and the requirement to document separately all State or local bans or prohibitions on particular sludge management practices has been dropped as not essential.

Compliance evaluation program. The program description also must describe the State's compliance evaluation program (§ 123.22(e)). Section 123.26 establishes the minimum requirements for State compliance monitoring programs. EPA proposed two revisions to § 123.26(e) for sludge management programs: (1) Specifying in paragraph (e)(1) that the inventory of all sources covered by NPDES must include permits which implement section 405(f) of the CWA to ensure inclusion of nondischarging sludge treatment works; and (2) a requirement that the annual inspection in paragraph (e)(5) include all Class I sludge management facilities in addition to all major dischargers. Today's final rule does not include the revision to the inventory of sources requirement in § 123.26(e)(1). The proposed revision was unnecessary since two other revisions already required the same information. As discussed elsewhere, under revisions to §§ 123.22 and 123.45, States must submit and regularly update an inventory of sludge facilities. This inventory will serve as the basis for the State's compliance monitoring and tracking program.

EPA is promulgating a final rule requiring annual inspections of Class I facilities that is the same as the proposed rule (§ 123.26(e)(5)). EPA received substantive comments on this provision regarding the scope of inspection requirements, which are addressed in the above discussion about the parallel provision in Part 501. In addition, one commenter asked for clarification of the words "where applicable" in the annual inspection provision. The phrase "where applicable" clarifies that States with NPDES programs that choose to set up separate State sludge management programs (or choose not to have an approved sludge management program) do not need to inspect Class I sludge management facilities as part of their NPDES program.

Memorandum of Agreement. The Memorandum of Agreement (MOA) between the State Director and the Regional Administrator must describe which classes and categories of permits the Regional Administrator will review before issuance by the State and those for which the Regional Administrator will waive review. Section 123.24(d) lists the classes and categories of permits for which review cannot be waived. Today, EPA is revising this paragraph to add to this list the category of Class I sludge management facilities (as defined in § 501.2). Under today's rule, permits issued to these treatment works must be submitted to EPA for review and comment, and, where appropriate, objection. EPA's reasons for this

requirement and response to comments on the proposed rule are discussed above in section V.H.1.

In related revisions, EPA proposed to amend § 123.44, which governs EPA review of and objections to State permits, in two instances to reflect the broadened scope of the NPDES program to include regulation of sludge use and disposal. Both revisions concern the grounds upon which a Regional Administrator may object to a State-issued permit. The first proposed revision was to § 123.44(c)(5), which addresses the adequacy of monitoring and related requirements in permits. It added "standards for sewage sludge use and disposal" as a requirement of the CWA for which monitoring requirements must adequately assure compliance, or else be subject to objection by the Regional Administrator. Similarly, § 123.44(c)(6) was proposed to be revised to add "standards for sewage sludge use or disposal" and "sewage sludge use or disposal requirements developed on a case-by-case basis pursuant to section 405(d) of CWA" as benchmarks against which the Regional Administrator will evaluate State-issued permits. Today's final rule is the same as that proposed. EPA received one comment objecting to the revision to § 123.44(c)(6) regarding case-by-case limits, which is addressed above in section V.I.5.

The MOA also must contain provisions specifying reports and information the State is expected to submit to EPA (§ 123.24(b)(3)). Program reporting requirements are listed, in part, in § 123.45, which specifies requirements for noncompliance reporting. EPA proposed to amend § 123.45 by adding a new paragraph (e), which would require a State to submit reports on noncompliance with sludge requirements as specified in § 501.21, i.e., semi-annual reports summarizing instances of significant noncompliance and annual reports. The proposal also specified that the sludge noncompliance reports may be combined with the reports currently required under § 123.45.

Today's final rule with regard to noncompliance reporting is the same as the proposed rule. EPA did, however, make changes to § 501.21, the section which is incorporated by reference in today's final rule. Those changes are explained above in section V.I.10.

Incorporating sludge management into existing NPDES programs. States which are approved for NPDES already have in place many of the program requirements that will be required of States which seek approval under Part 501. Consequently, NPDES States need only seek modification of their existing programs under § 123.62 if they wish to implement the sludge program through their existing NPDES programs rather than submit entirely new programs. Typically, EPA expects that a program modification to incorporate sludge would require a State to submit an updated program description (including the information about sludge management activities discussed above), an addendum to the Attorney General's Statement and, where necessary, revisions to the Memorandum of Agreement. NPDES States would need to demonstrate that legal authority exists to issue NPDES permits for sludge use and disposal where there is no discharge of the sludge to surface waters, and that they have the additional authority to implement the Part 503 technical regulations. (See § 501.1.) Existing State regulatory and statutory provisions regarding inspection, monitoring, reporting and enforcement must be broad enough to include section 405 implementation. In addition, States would be expected to make any revisions to their legal authority necessary to implement "sludge revisions" to Parts 122 and 124 proposed today which are applicable to State programs (as specified in those parts).

A few commenters misread the 1988 proposal as not requiring "fully documented" programs when a State modifies its existing NPDES program to include an approved sludge program. Section 123.62(b)(1) requires a State to submit modified program documents when it seeks to revise an existing State NPDES program. Thus, States will be expected to fully document their authority and ability to administer an approved sludge program. This program revision would be similar in scope to a revision to add pretreatment to an existing NPDES program. As noted above, States with existing NPDES programs have many of the permitting requirements and procedures already in place, and therefore will not have to substantially modify their programs. But to be approved, States would have to modify their program documents to explain how the existing program applies to the new sludge component.

K. Miscellaneous

One commenter on the 1986 proposal argued that in several areas where EPA expressed an intent to issue supplemental guidance (e.g., self-monitoring frequencies, compliance inspection schedules), the Agency must promulgate regulations rather than issue guidance. In most instances noted by the commenter, the final rule is more specific in establishing minimum requirements than the 1986 proposal (e.g., minimum self-monitoring frequencies, State inspections of Class I sludge management facilities). However, EPA still expects to issue guidance documents which interpret today's final rule and provide guidance on applying general requirements to specific situations, consistent with past practice. EPA disagrees with the commenter that guidance is inappropriate in these situations.

EPA received several comments not addressed above with regard to provisions in the 1986 proposal that were not included in the 1988 proposal. A separate summary of these comments and the Agency's response to them has been included in the public record of this rulemaking.

VI. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and, therefore, subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in the costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Today's rule establishes the mechanism (permits) for implementing standards for sludge use and disposal which will be promulgated under a separate rulemaking (to be codified at 40 CFR Part 503). The potential impacts of the Part 503 standards on regulated parties and the need for a Regulatory Impact Statement will be considered in conjunction with that rulemaking. Therefore, EPA disagrees with commenters who said that the economic impacts of this rule were not properly considered in the absence of information about Part 503.

Today's rule also establishes requirements for the submission and approval of State sludge management programs. States are not required to seek program approval under these rules. In any event, the requirements relating to optional State submission of programs for EPA approval do not impose large costs upon State regulatory agencies. Therefore, the rule does not satisfy any of the criteria for a major rule as specified in section 1(b) of the

Executive Order and as such does not constitute a major rulemaking. This regulation was submitted to the Office of Management and Budget (OMB) for review.

VII. Paperwork Reduction Act

An Information Collection Request document has been prepared by EPA, which discusses reporting requirements imposed by today's final rule and estimates the annual burden to respondents (POTWs, other treatment works treating domestic sewage, and States seeking EPA approval of their sludge management programs) for complying with these requirements. This document reflects changes made to the final rule in response to public comments on the information collection requirements contained in the proposed rule. No public comments addressing the ICR itself were received. However, EPA received numerous comments on the proposed regulations which imposed information collection requirements. EPA's responses to these comments are included in the above discussion of the final rule.

The preamble to the proposed rule stated that EPA would respond in the preamble to the final rule to any comments submitted by the Office of Management and Budget (OMB) on the ICR which was prepared to accompany the proposed rule. OMB submitted three comments on the ICR.

OMB's first comment was that the ICR goes beyond the scope of the proposed rule. The ICR covers only the rules promulgated today. However, information collection requirements for the sludge program will also be established in the Part 503 technical rules. The ICR now more clearly explains the relationship between today's rule (and ICR) and the Part 503 rule (and ICR). The two offices responsible for the ICRs worked closely to coordinate their efforts. The final ICR clearly distinguishes the respective burdens imposed by the two rules.

OMB's second comment was that it would carefully consider the burdens of any minimum monitoring frequency imposed by the rule. Today's rule requires monitoring and reporting at least annually for all permittees. As discussed in the preamble, EPA has determined that, as a general rule, annual monitoring (for at least the parameters regulated in 40 CFR Part 503) is the minimum necessary to assure compliance with federal standards. More frequent monitoring may be imposed as part of the Part 503 technical standards or by the permit writer based on best professional judgment.

OMB also questioned whether State reporting to EPA needed to occur quarterly as proposed. Today's rule reduces the frequency for State noncompliance reports from quarterly to semi-annually, in response to concerns about the reporting burden imposed on States. EPA expects that semi-annual reports will be adequate for purposes of State program oversight and enforcement actions.

The information collection requests in this rule have been approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB Control No. 2040–0128. The reporting and recordkeeping burden on the public for this collection is estimated at 200,008 hours for 16,379 respondents, with an average of 12.2 hours per response. There are two major categories of respondents with significantly different burdens. EPA expects that States seeking program approval will have an average annual burden of 664 hours per State, and treatment works treating domestic sewage (i.e., permittees) will have an average annual burden of 11.26 hours per respondent. 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 have questions or 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 No. 1237.03), contact Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202–382–2745); and Timothy Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of its rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's proposed rule most directly affects State agencies. It also affects treatment works that generate and dispose of sewage sludge, by specifying that any applicable requirements promulgated under separate regulations be implemented through requirements in permits issued to the treatment works. In nearly all cases, these treatment works already are required to obtain the permits under existing federal or State programs. Accordingly, I hereby certify pursuant to 5 U.S.C. 605(b) that this amendment will not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control.

40 CFR Part 123

Confidential business information, Hazardous materials, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Penalties.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply, Indians—lands.

40 CFR Part 501

Confidential business information, Environmental protection, Reporting and recordkeeping requirements, Publicly owned treatment works, Sewage disposal, Waste treatment and disposal.

Dated: April 14, 1989.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 122, 123, 124, and Chapter I of Title 40 of the Code of Federal Regulations are amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.1 is amended by revising paragraphs (a)(1) and (d)(2), by adding new paragraphs (b) (3) and (4); by redesignating paragraphs (g) (6), (7), and (8) as paragraphs (g) (8), (9), and (10); by redesignating paragraph (g)(5) as paragraph (g)(7) and revising it and by adding new paragraphs (g)(5) and (g)(6) to read as follows:

§ 122.1 Purpose and Scope.

(a) * * *

(1) These regulations contain provisions for the *National Pollutant Discharge Elimination System* (NPDES) Program under section 318, 402, and 405 of the *Clean Water Act* (CWA) (Pub. L. 92–500, as amended by Pub. L. 95–217, Pub. L. 95–576, Pub. L. 96–483, Pub. L. 97–117, and Pub. L. 100–4; 33 U.S.C.1251 *et seq.*)

* * * * *

(b) * * *

* * * * *

(3) The permit program established under this Part also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain an NPDES permit in accordance with paragraph (a)(1) of this section, unless all requirements implementing section 405(d) of CWA applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator as adequate to assure compliance with section 405 of the CWA.

(4) The Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in § 122.1, where he or she finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA section 405(d). Any person designated as "treatment works treating domestic sewage" shall submit an application for a permit under § 122.21 within 120 days of being notified by the Regional Administrator that a permit is required. The Regional Administrator's decision to designate a person as a "treatment works treating domestic sewage" under this paragraph shall be stated in the fact sheet or statement of basis for the permit.

* * * * *

(d) * * *

(2) *Technical Regulations.* The NPDES permit program has separate additional regulations. These separate regulations are used by permit issuing authorities to determine what requirements must be placed in permits if they are issued. These separate regulations are located at 40 CFR Parts 125, 129, 133, 136, 40 CFR Subchapter N (Parts 400 through 460), and 40 CFR Part 503.

* * * * *

(g) * * *

(5) Section 405(d)(4) of the CWA requires the Administrator, prior to promulgation of standards for sewage sludge use and disposal, to "impose conditions in permits issued to publicly owned treatment works under section 402 of this Act, or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge."

(6) Section 405(f) provides that NPDES permits must include requirements implementing the standards for sludge use and disposal (40 CFR Part 503) "unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator * * *." Section 405(f) also authorizes the Administrator to issue permits with requirements for sludge use or disposal that assure compliance with 40 CFR Part 503 to any treatment works treating domestic sewage that is not subject to NPDES (i.e., has no point source discharge) and has not been issued a permit that includes applicable 40 CFR Part 503 standards under the other permit programs listed in section 405(f)(1) of the CWA.

(7) Sections 402(b), 318 (b) and (c), and 405 (c) and (f) of CWA authorize EPA approval of State permit programs for discharges from point sources, discharges to aquaculture projects, and use and disposal of sewage sludge.

* * * * *

3. Section 122.2 is amended by revising the definitions of "applicable standards and limitations," "sewage sludge," and "toxic pollutant" and by adding definitions for "class I sludge management facility," "septage," "sewage sludge use or disposal practice," "standards for sewage sludge use or disposal," "sludge-only facility," and "treatment works treating domestic sewage" as follows:

§ 122.2 Definitions.

* * * * *

Applicable standards and limitations means all State, interstate, and federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

* * * * *

Class I sludge management facility means any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including such POTWs located in a State that has elected to assume local program responsibilities pursuant to 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

* * * * *

Septage means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

* * * * *

Sewage Sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

* * * * *

Sludge-only facility means any "treatment works treating domestic sewage" whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under § 122.1(b)(3) of this Part.

Standards for sewage sludge use or disposal means the regulations promulgated pursuant to section 405(d) of the CWA which govern minimum

requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

* * * * *

Toxic pollutant means any pollutant listed as toxic under section 307(a)(1) or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing section 405(d) of the CWA.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under section 405(f) of the CWA, the Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal in 40 CFR Part 503 as a "treatment works treating domestic sewage," where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR Part 503.

* * * * *

4. Section 122.5 is amended by revising paragraph (a) to read as follows:

§ 122.5 Effect of a permit.

(a) *Applicable to State programs, see § 123.25.* (1) Except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA and "standards for sewage sludge use or disposal" under 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, 403, and 405 (a)–(b) of CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 122.62 and 122.64.

(2) Compliance with a permit condition which implements a particular "standard for sewage sludge use or disposal" shall be an affirmative defense in any enforcement action brought for a violation of that "standard for sewage sludge use or disposal" pursuant to sections 405(e) and 309 of the CWA.

* * * * *

5. Section 122.21 is amended by revising paragraph (a), by redesignating paragraph (c) as (c)(1) and adding a new paragraph (c)(2), by revising paragraph (d)(3), and by adding an introductory phrase in paragraph (p) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

(a) *Duty to apply.* Any person who discharges or proposes to discharge pollutants or who owns or operates a "sludge-only facility" and who does not have an effective permit, except persons covered by general permits under § 122.28, excluded under § 122.3, or a user of a privately owned treatment works unless the Director requires otherwise under § 122.44(m), shall submit a complete application (which shall include a BMP program if necessary under 40 CFR 125.102) to the Director in accordance with this section and Part 124.

* * * * *

(c) * * *

(2) *Permits under section 405(f) of CWA.* (i) POTWs with currently effective NPDES permits shall submit the application information required by paragraph (d)(3)(ii) of this section with the next application submitted in accordance with paragraph (d) of this section or within 120 days after promulgation of a "standard for sewage sludge use or disposal" applicable to the POTW's sludge use or disposal practice(s), whichever occurs first.

(ii) Any other existing "treatment works treating domestic sewage" not covered under paragraph (c)(2)(i) of this section shall submit an application to the Director within 120 days after promulgation of a "standard for sewage sludge use or disposal" applicable to its sludge use or disposal practice(s) or upon request of the Director prior to the promulgation of an applicable "standard for sewage sludge use or disposal" if the Director determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(iii) Any "treatment works treating domestic sewage" that commences operations after promulgation of an applicable "standard for sewage sludge use or disposal" shall submit an application to the Director at least 180 days prior to the date proposed for commencing operations.

(d) * * *

(3)(i) All applicants for EPA-issued permits, other than POTWs, new sources, and "sludge-only facilities," must complete Forms 1 and either 2b or 2c of the consolidated permit application forms to apply under § 122.21 and paragraphs (f), (g), and (h) of this section.

(ii) In addition to any other applicable requirements in this Part, all POTWs and other "treatment works treating domestic sewage," including "sludge-only facilities," must submit with their applications the information listed at 40 CFR 501.15 (a)(2) within the time frames established in paragraph (c)(2) of this section.

* * * * *

(p) *Recordkeeping.* Except for information required by paragraph (d)(3)(ii) of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by 40 CFR Part 503), * * *

* * * * *

6. Section 122.28 is amended by revising the first sentence in paragraphs (a)(1) and (a)(2)(ii) introductory text, and by revising paragraphs (a)(2)(ii) (B) and (C), and paragraphs (b)(2)(i) (B), (C), and (F) to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

(a) * * *

(1) *Area.* The general permit shall be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (a)(2)(ii) of this section, except those covered by individual permits, within a geographic area. * * *

* * * * *

(2) * * *

(ii) A category of point sources other than storm water point sources, or a category of "treatment works treating domestic sewage," if the sources or "treatment works treating domestic sewage" all:

* * * * *

(B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general NPDES permit;

(C) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

* * * * *

(F) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit; or

* * * * *

7. Section 122.41 is amended by revising paragraphs (a)(1), (d), and (j)(4), by adding a new paragraph (l)(1)(iii), and an introductory phrase at the beginning of the first sentence of paragraph (j)(2) and by revising paragraphs (l)(4)(i) and (l)(4)(ii), to read as follows:

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

* * * * *

(a) * * *

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

* * * * *

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

* * * * *

(j) * * *

(2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), * * *

* * * * *

(4) Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in the permit.

* * * * *

(l) * * *

(1) * * *

(iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

* * * * *

(4) * * *

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

* * * * *

8. Section 122.44 is amended by redesignating paragraph (b) as paragraph (b)(1) and adding a new paragraph (b)(2), by adding a new paragraph (c)(4), by revising paragraphs (i)(1)(iii), by adding a new sentence to the end of paragraph (i)(2), by adding a new paragraph (j)(3), and by revising paragraph (l)(1) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) *Standards for sewage sludge use or disposal* under section 405(d) of the CWA unless those standards have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under section 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Director may initiate proceedings under these regulations to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

(c) * * *

(4) For any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the CWA. The Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

* * * * *

(i) * * *

(1) * * *

(iii) Other measurements as appropriate including pollutants in internal waste streams under § 122.45(i); pollutants in intake water for net limitations under § 122.45(f); frequency, rate of discharge, etc., for noncontinuous discharges under § 122.45(e); pollutants subject to notification requirements under § 122.42(a); and pollutants in sewage sludge or other monitoring as specified in 40 CFR Part 503; or as determined to be necessary on a case-by-case basis pursuant to section 405(d)(4) of the CWA.

* * * * *

(2) * * * For sewage sludge use or disposal practices, requirements to monitor and report results with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally, this shall be as specified in 40 CFR Part 503 (where applicable), but in no case less than once a year.

* * * * *

(j) * * *

(3) For POTWs which are "sludge-only facilities," a requirement to develop a pretreatment program under 40 CFR Part 403 when the Director determines that a pretreatment program is

necessary to assure compliance with Section 405(d) of the CWA.

* * * * *

(l) *Reissued permits.* (1) Except as provided in paragraph (l)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62.)

* * * * *

9. Section 122.45 is amended by revising paragraph (b)(1) to read as follows:

§ 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(1) In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

* * * * *

10. Section 122.47 is amended by revising paragraph (a)(3)(i) to read as follows:

§ 122.47 Schedules of compliance.

(a) * * *

(3) * * *

(i) The time between interim dates shall not exceed 1 year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

* * * * *

11. Section 122.62 is amended by revising paragraphs (a)(1) and (a)(7) and by adding a new paragraph (a)(18) to read as follows:

§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

* * * * *

(a) * * *

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

* * * * *

(7) *Reopener.* When required by the "reopener" conditions in a permit, which are established in the permit under § 122.44(b) (for CWA toxic effluent limitations and standards for sewage sludge use or disposal, see also § 122.44(c)) or 40 CFR § 403.10(e) (pretreatment program).

* * * * *

(18) *Land application plans.* When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

12. Section 122.64 is amended by revising paragraph (a)(4) to read as follows:

§ 122.64 Termination of permits (applicable to State programs, see § 123.25).

(a) * * *

(4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

13. The authority citation for Part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

14. Section 123.1 is amended by revising paragraphs (b) and (c) as follows:

§ 123.1 Purpose and scope.

* * * * *

(b) These regulations are promulgated under the authority of sections 304(i), 101(e), and 405 of CWA, and implement the requirements of those sections.

(c) The Administrator shall approve State programs which conform to the applicable requirements of this part. A State NPDES program will not be approved by the Administrator under section 402 of CWA unless it has authority to control the discharges specified in sections 318 and 405(a) of CWA. Permit programs under sections 318 and 405(a) will not be approved independent of a section 402 program. (Permit programs under section 405(f) of CWA (sludge management programs) may be approved under 40 CFR Part 501 independently of a section 402 permit program.)

* * * * *

15. Section 123.2 is revised to read as follows:

§ 123.2 Definitions.

The definitions in Part 122 and Part 501 apply to all subparts of this Part.

16. Section 123.22 is amended by adding a new paragraph (f) to read as follows:

§ 123.22 Program Description.

* * * * *

(f) A State seeking approval of a sludge management program under section 405(f) of the CWA as part of its NPDES program, in addition to the above requirements of this section, shall include the inventory as required in 40 CFR 501.12(f).

17. Section 123.24 is amended by revising the last sentence in the introductory text of paragraph (d), and by adding a new paragraph (d)(8) to read as follows:

§ 123.24 Memorandum of Agreement with the Regional Administrator

* * * * *

(d) * * * While the Regional Administrator and the State may agree to waive EPA review of certain "classes or categories" of permits, no waiver of review may be granted for the following classes or categories:

* * * * *

(8) "Class I sludge management facilities" as defined in 40 CFR 501.2.

* * * * *

18. Section 123.25 is amended by revising the introductory text of paragraph (a) and by revising paragraph (a)(37) to read as follows:

§ 123.25 Requirements for permitting.

(a) All State Programs under this Part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that a State which chooses not to administer a sludge management program pursuant to section 405(f) of the CWA as part of its NPDES program is not required to have legal authority to implement the portions of the following provisions which were promulgated after the enactment of the Water Quality Act of 1987 (Pub. L. 100–4) and which govern sewage sludge use and disposal. In all cases, States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

* * * * *

(37) 40 CFR Parts 129, 133, Subchapter N and 40 CFR Part 503.

* * * * *

19. Section 123.26 is amended by revising paragraphs (e)(5) to read as follows:

§ 123.26 Requirements for compliance evaluation programs.

* * * * *

(e) * * *

(5) Inspecting the facilities of all major dischargers and all Class I sludge management facilities (as defined in 40 CFR 501.2) where applicable at least annually.

20. Section 123.44 is amended by revising paragraphs (c)(5) and (c)(6) to read as follows:

§ 123.44 EPA review of and objections to State permits.

* * * * *

(c) * * *

(5) Any provisions of the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including effluent standards and limitations or standards for sewage sludge use and disposal required by CWA, by the guidelines and regulations issued under CWA, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable effluent standards and limitations or standards for sewage sludge use and disposal under sections 301, 302, 306, 307, 318, 403, and 405 of CWA have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of CWA or of any regulations issued under CWA; the provisions of this paragraph apply to determinations made pursuant to § 125.3(c)(2) in the absence of applicable guidelines, to best management practices under section 304(e) of CWA, which must be incorporated into permits as requirements under section 301, 306, 307, 318, 403 or 405, and to sewage sludge use and disposal requirements developed on a case-by-case basis pursuant to section 405(d) of CWA, as the case may be;

* * * * *

21. Section 123.45 is amended by adding a new paragraph (e) to read as follows:

§ 123.45 Noncompliance and program reporting by the Director.

* * * * *

(e) *Sludge noncompliance program reports.* The Director shall prepare and submit semi-annual noncompliance and annual program reports as required under 40 CFR 501.21. The Director may include this information in reports submitted in accordance with paragraphs (a) through (d) of this section.

PART 124—PROCEDURES FOR DECISIONMAKING

22. The authority citation for Part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300f *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* and Clean Air Act, 42 U.S.C. 1857 *et seq.*

23. Section 124.1 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 124.1 Purpose and scope.

(a) This part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES "permits" (including "sludge-only" permits issued pursuant to § 122.1(b)(3)), other than RCRA and UIC "emergency permits" (see §§ 270.61 and 144.34) and RCRA "permits by rule" (§ 270.60). * * *

* * * * *

24. Section 124.2 is amended by revising the first sentence of paragraph (a) introductory text, and by revising the definitions of "applicable standards and limitations," "facility or activity," and the first sentence of "general permit" to read as follows:

§ 124.2 Definitions.

(a) In addition to the definitions given in §§ 122.2 and 123.2 (NPDES), 501.2 (sludge management), 144.3 and 145.2 (UIC), 233.3 (404), and 270.2 and 271.2 (RCRA), the definitions below apply to this Part, except for PSD permits which are governed by the definitions in § 124.41.* * *

* * * * *

Applicable standards and limitations means all State, interstate, and federal standards and limitations to which a "discharge," a "sludge use or disposal practice" or a related activity is subject under the CWA, including "standards for sewage sludge use or disposal," "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

* * * * *

Facility or activity means any "HWM facility," UIC "injection well," NPDES "point source" or "treatment works treating domestic sewage" or State 404 dredge or fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

General permit (NPDES and 404) means an NPDES or 404 "permit" authorizing a category of discharges or activities under the CWA within a geographical area.* * *

* * * * *

25. Section 124.3 is amended by revising the third and sixth sentences in paragraph (c) to read as follows:

* * * * *

§ 124.3 Application for a permit.

* * * * *

(c) * * * Each application for an EPA-issued permit submitted by an existing HWM facility (both Parts A and B of the application), existing injection well or existing NPDES source or sludge-only facility should be reviewed for completeness within 60 days of receipt. * * * When the application is for an existing HWM facility, an existing UIC injection well or an existing NPDES source or "sludge-only facility" the Regional Administrator shall specify in the notice of deficiency a date for submitting the necessary information.

* * *

* * * * *

26. Section 124.5(d) is amended by revising the last sentence to read as follows:

§ 124.5 Modification, revocation and reissuance, or termination of permits.

* * * * *

(d) * * * In the case of EPA-issued permits, a notice of intent to terminate shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved State under §§ 123.24(b)(1) (NPDES), 145.24(b)(1) (UIC), 271.8(b)(6) (RCRA), or 501.14(b)(1) (Sludge).

* * * * *

27. Section 124.6 is amended by revising paragraph (d)(4)(v) to read as follows:

§ 124.6 Draft permits.

* * * * *

(d) * * *

(4) * * *

(v) NPDES permits, effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under §§ 122.41, 122.42, and 122.44, including when applicable any conditions certified by a State agency under § 124.55, and all variances that are to be included under § 124.63.

* * * * *

28. Section 124.8 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 124.8 Fact sheet.

* * * * *

(a) A fact sheet shall be prepared for every draft permit for a major HWM, UIC, 404, or NPDES facility or activity, for every Class I sludge management facility, for every 404 and NPDES general permit (§§ 237.37 and 122.28), for every NPDES draft permit that incorporates a variance or requires an explanation under § 124.56(b), for every draft permit that includes a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), and for every draft permit which the Director finds is the subject of wide-spread public interest or raises major issues. * * *

* * * * *

29. Section 124.10 is amended by revising paragraph (c)(1)(ii), and the first sentence in (d)(1)(vii) and adding a phrase after "permits" and before, "publication" in paragraph (c)(2)(i) to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

(c) * * *

(1) * * *

(ii) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, 404, sludge management permit, or ocean dumping permit under the Marine Research Protection and Sanctuaries Act for the same facility or activity (including EPA when the draft permit is prepared by the State);

* * * * *

(2) * * *

(i) For major permits, NPDES and 404 general permits, and permits that include sewage sludge land application plans under 40 CFR 501.15(a)(2)(ix), * * *

* * * * *

(d) * * *

(1) * * *

(vii) For NPDES permits only (including those for "sludge-only facilities"), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice(s) and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area. * * *

* * * * *

30. Section 124.56 is amended by revising paragraphs (a), (b)(1)(iv), and (c), and by adding a new paragraph (e) to read as follows:

§ 124.56 Fact sheets.

* * * * *

(a) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal as required by § 122.44 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

(b) * * *

(1) * * *

(iv) Limitations set on a case-by-case basis under § 125.3 (c)(2) or (c)(3), or pursuant to Section 405(d)(4) of the CWA.

(c) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and

* * * * *

(e) For permits that include a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), a brief description of how each of the required elements of the land application plan are addressed in the permit.

31. Section 124.71 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 124.71 Applicability.

(a) The regulations in this subpart govern all formal hearings conducted by EPA under CWA sections 402 and 405(f), except those conducted under Subpart F. * * *

* * * * *

32. Section 124.111 is amended by revising the first sentence of paragraph (a)(1)(i) to read as follows:

§ 124.111 Applicability.

(a) * * *

(1) * * *

(i) In any proceedings for the issuance of any NPDES permit under CWA sections 402 and 405(f) which constitute "initial licensing" under the Administrative Procedure Act, when the Regional Administrator elects to apply this subpart and explicitly so states in the public notice of the draft permit under § 124.10 or in a supplemental notice under § 124.14. * * *

* * * * *

33. Chapter I of Title 40 of the Code of Federal Regulations is amended by adding a new Subchapter O consisting of Part 501 to read as follows:

SUBCHAPTER O—SEWAGE SLUDGE

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

Subpart A—Purpose, Scope, and General Program Requirements

501.1 Purpose and Scope.
501.2 Definitions.
501.3 Coordination with other programs.

Subpart B—Development and Submission of State Programs

501.11 Elements of a sludge management program submission.
501.12 Program description.
501.13 Attorney General's statement.
501.14 Memorandum of agreement with the Regional Administrator.
501.15 Requirements for permitting.
501.16 Requirements for compliance evaluation programs.
501.17 Requirements for enforcement authority.
501.18 Prohibition.
501.19 Sharing of information.
501.20 Receipt and use of federal information.
501.21 Program reporting to EPA.

Subpart C—Program Approval, Revision and Withdrawal

501.31 Review and approval procedures.
501.32 Procedures for revision of State programs.
501.33 Criteria for withdrawal of State programs.
501.34 Procedures for withdrawal of State programs.

Authority: 33 U.S.C. 1251 *et seq.*

Subpart A—Purpose, Scope and General Program Requirements

§ 501.1 Purpose and scope.

(a) These regulations are promulgated under the authority of sections 101(e), 405(f), 501(a), and 518(e) of the CWA, and implement the requirements of those sections.

(b) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State sludge management programs under section 405(f) that are not part of a State's NPDES program, and the requirements State programs must meet to be approved by the Administrator under section 405(f) of CWA. Sludge Management Program submissions may be developed and implemented under any existing or new State authority or authorities as long as they meet the requirements of this Part. (States seeking approval of their sludge program as part of their NPDES program are to follow the requirements and procedures for program modification set forth in 40 CFR Part 123.)

(c) Any complete State Sludge Management Program submitted for

approval under this part shall have the following as a minimum:

(1) The authority to require compliance by any person who uses or disposes of sewage sludge with standards for sludge use or disposal issued under section 405(d) of the CWA, including compliance by federal facilities;

(2) The authority to issue permits that apply, and ensure compliance with, the applicable requirements of section 405 of the Clean Water Act to any POTW or other treatment works treating domestic sewage, and procedures for issuance of such permits;

(3) Provisions for regulating the use or disposal of sewage sludge by non-permittees;

(4) The authority to take actions to protect public health and the environment from any adverse effects that may occur from toxic pollutants in sewage sludge; and

(5) The authority to abate violations of the State sludge program, including civil and criminal penalties and other ways and means of enforcement.

(d) In addition, any complete State Sludge Management Program submitted for approval under this Part shall have authority to address:

(1) All sewage sludge management practices used in the State, including associated transport and storage, that are practiced or planned to be practiced in the State, unless the State is applying for partial sludge program approval in accordance with 40 CFR 123.30. The State sludge management program shall also be applicable to all federal facilities in the State. Sludge management activities and practices shall include as applicable:

(i) Sludge treatment, processing, and short term storage practices as may be covered by federal regulations;

(ii) Sludge use and ultimate disposal practices, including:

(A) Land application,

(B) Landfilling,

(C) Distribution & marketing,

(D) Incineration,

(E) Surface disposal sites, and

(F) Any other sludge use and disposal practices as may be covered by federal regulations.

(e) The Administrator will approve State programs which conform to the applicable requirements of this Part.

(f) Upon approval of a State program, the Administrator will suspend the issuance of federal permits for those activities subject to the approved State program. After program approval EPA will retain jurisdiction over any permits (including general permits) which it has issued unless arrangements have been made with the State in the Memorandum of Agreement for the State to assume responsibility for these permits. Retention of jurisdiction will include the processing of any permit appeals, modification requests, or variance requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request, or variance request is not finally resolved when the federally issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved.

(g) Notwithstanding approval of a State sludge program, EPA has the authority to take enforcement actions for any violations of this Part or sections 405 or 309 of the CWA.

(h) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part.

(i) Nothing in this part precludes a State or political subdivision thereof, or interstate agency, from adopting or enforcing requirements established by State or local law that are more stringent or more extensive than those required in this Part or in any other federal statute or regulation.

(j) Nothing in this part precludes a State from operating a program with a greater scope of coverage than that required under this part. If an approved State program has greater scope of coverage than required by federal law, the additional coverage is not part of the federally approved program.

(k) Sections 106(a) and (d) of the Marine Protection, Research, and Sanctuaries Act (MPRSA), 33 U.S.C. 1416, generally preclude States from regulating or issuing permits for ocean dumping. Nothing in this regulation is intended to confer on the States the authority to engage in the regulation or permitting of ocean dumping in contravention of the provisions of sections 106(a) and (d) of the MPRSA.

(l) The Administrator may allow a State sewage sludge management agency to assign portions of its program responsibilities to local agencies, provided that:

(1) No assignment is made to a local agency which owns or operates a POTW or other facility that treats or disposes of sewage sludge;

(2) The program description required by § 501.12 of this Part identifies any assignment of program responsibilities to the local agency(ies), describes the capabilities of the local agency to carry out assigned functions, and includes copies of any documents which execute the assignment and an agreement between the State sewage sludge management agency and the local agency(ies) defining their respective program responsibilities;

(3) The Attorney General's Statement required by § 501.13 of this part states that any assignment of program responsibilities to the local agency(ies) described in the program description is valid under State law and that State and local law do not otherwise prohibit the local agency(ies) from executing the program responsibilities assigned by the State sewage sludge management agency;

(4) The Memorandum of Agreement (MOA) required by § 501.14 of this part includes adequate provisions for the State sewage sludge management agency's oversight of the program responsibilities assigned to the local agency(ies);

(5) The State sewage sludge management agency retains all responsibility for the program reporting required by § 501.21 of this part and for all other activities required by this part or by the MOA related to EPA oversight of the State's approved program; and

(6) The State sewage sludge management agency retains full authority and ultimate responsibility for administering all aspects of the State's approved program in accordance with the requirements of this Part and the MOA.

§ 501.2 Definitions.

"Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

"Approved State program" means a State program which has received EPA approval under this Part.

"Class I sludge management facility" means any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including such POTWs located in a State that has elected to assume local program responsibilities pursuant to 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Regional Administrator in conjunction with the State Program Director because of the potential for its sludge use or disposal practices to adversely affect public health or the environment.

"CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972), Pub. L. 92–500, as amended by Pub. L. 95–217, Pub. L. 95–576, Pub. L. 96–483, Pub. L. 97–117, and Pub. L. 100–4, 33 U.S.C. 1251 *et seq.*

"Municipality" means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law (or an Indian tribe or an authorized Indian tribal organization), or a designated and approved management agency under section 208 of the Clean Water Act. This definition includes a special district created under State law such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in section 201(e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, or disposal of sewage sludge.

"Permit" means an authorization, license, or equivalent control document issued by EPA or an "approved State program" to implement the requirements of this Part.

"Person" is an individual, association, partnership, corporation, municipality, State or Federal Agency, or an agent or employee thereof.

"POTW" means a publicly owned treatment works.

"Publicly Owned Treatment Works" means a treatment works treating domestic sewage that is owned by a municipality or State.

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank, when the system is cleaned or maintained.

"Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary or advanced waste water treatment, scum, septage, portable toilet pumpings, Type III Marine Sanitation device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit, screenings, or ash generated during the incineration of sewage sludge.

"Standards for sewage sludge use or disposal" means the regulations promulgated at 40 CFR Part 503 pursuant to section 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to the generation or treatment of sewage sludge from a treatment works treating domestic sewage or use or disposal of that sewage sludge by any person.

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, and an Indian Tribe eligible for treatment as a State pursuant to regulations promulgated under the authority of section 518(e) of the CWA.

"State Program Director" or "Director" means the chief executive officer of the State sewage sludge management agency.

"State sewage sludge management agency" means the agency designated by the Governor as having the lead responsibility for managing or coordinating the approved State program under this Part.

"Toxic pollutant" means any pollutant listed as toxic under section 307(a)(1) or any pollutant identified in regulations implementing section 405(d) of the CWA.

"Treatment works treating domestic sewage" means a POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including Federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

§ 501.3 Coordination with other programs.

Issuance of State permits under this Part may be coordinated with issuance of RCRA, UIC, NPDES, 404 and other permits whether they are controlled by the State, EPA, or the Corps of Engineers. (See for example 40 CFR 124.4 for procedures for coordinating permit issuance.)

Subpart B—Development and Submission of State Programs

§ 501.11 Elements of a sludge management program submission.

(a) Any State that seeks to administer a program under this Part shall submit to the Administrator at least three copies of a program submission. The submission shall contain the following:

(1) A letter from the Governor of the State requesting program approval;

(2) A complete program description, as required by § 501.12 describing how the State intends to carry out its responsibilities under this Part;

(3) An Attorney General's Statement as required by § 501.13;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 501.14; and

(5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures.

(b) Within 30 days of receipt of a State program submission, EPA will notify the State whether its submission is complete. If it is incomplete, EPA will identify the information needed to complete the program submission.

(Information collection requirements in paragraph (a) were approved by the Office of Management and Budget under control number 2040–0128.)

§ 501.12 Program description.

Any State that seeks to administer a program under this part shall submit a description of the program it proposes to administer in lieu of the federal program under State law or under any interstate compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, the responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency must be designated as a "lead agency" (i.e., the "State sludge management agency") to facilitate communications between EPA and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the federally required portion of the program. This description shall include:

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program;

(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support; and

(3) An estimate of the sources and amounts of funding for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section.

(c) A description of applicable State procedures, including permitting procedures, and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program.

(e) A complete description of the State's compliance tracking and enforcement program (see 40 CFR 501.16 and 501.17).

(f)(1) An inventory of all POTWs and other treatment works treating domestic sewage that are subject to regulations promulgated pursuant to 40 CFR Part 503, which includes:

(i) Name, location, and ownership status (e.g., public, private, federal),

(ii) Sludge use or disposal practice(s),

(iii) Annual sludge production volume, and

(iv) NPDES, UIC, RCRA, Clean Air Act, and State permit number, if any,

(v) Compliance status, and;

(2) An inventory of all sewage sludge disposal and use sites not included under paragraph (f)(1) of this section (except those sites to which sludge that meets the requirements for distribution and marketing is applied such as home gardens), which includes the name, location, permit number (if any), and source of sewage sludge.

(3) States may submit either:

(i) Inventories which contain all of the information required by paragraphs (f)(1) and (2); or

(ii) A partial inventory that covers at a minimum all information required by paragraphs (f)(1) (i) through (ii) of this section together with a detailed plan showing how the State will complete the inventories within five years after approval of its sludge management program under this part.

§ 501.13 Attorney General's statement.

Any State that seeks to administer a program under this part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State, or an interstate compact, provide adequate authority to carry out the program described under § 501.12 and to meet the requirements of this part. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program. If a State seeks to carry out the program on Indian lands, the statement shall include an appropriate opinion and analysis of the State's authority.

§ 501.14 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Program Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). If existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the federal government, a procedure may be established to transfer responsibility for these permits.

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection. These provisions shall follow the permit review procedures set forth in 40 CFR 123.44, except that where a State issues a general permit for sludge, the review by the Office of Water Enforcement and Permits provided in 40 CFR 123.44(a)(2) for NPDES general permits will not apply.

(3) The Memorandum of Agreement shall also specify the extent to which EPA will waive its right to review, object to, or comment upon State-issued permits. While the Regional Administrator and the State may agree to waive EPA review of certain "classes or categories" of permits, no waiver of review may be granted for permits issued to "Class I sludge management facilities" as defined in § 501.2.

(4) Whenever a waiver is granted under paragraph (3) of this section, the Memorandum of Agreement shall contain a statement that the Regional Administrator retains the right to terminate the waiver as to future permit actions, in whole or in part, at any time by sending the State Director written notice of termination.

(5) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate. The procedures shall implement the requirements of § 501.21.

(c) The Memorandum of Agreement shall also provide for the following:

(1) Prompt transmission to the Regional Administrator of notice of every action taken by the State agency related to the consideration of any permit application or general permit, including a copy of each proposed or draft permit and any conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit, except those for which permit review has been waived under paragraph (b)(3) of this section. The State shall supply EPA with copies of notices for which permit review has been waived whenever requested by EPA; and

(2) Transmission to the Regional Administrator of a copy of every permit issued to a Class I sludge management facility. Copies of final permits issued to other treatment works treating domestic sewage shall be transmitted to the Regional Administrator upon request.

(3) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or

activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(4) When appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits from both EPA and the State under different programs (See for example 40 CFR 124.4).

(5) Provisions for modification of the Memorandum of Agreement in accordance with this Part.

(d) The Memorandum of Agreement, the annual program grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this Part. The State/EPA Agreement may not override the Memorandum of Agreement.

(The information collection requirements in paragraph (c) of this section have been approved by the Office of Management and Budget under control number 2040-0128)

§ 501.15 Requirements for Permitting.

(a) *General requirements.* All State programs under this Part shall have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

(1) *Confidentiality of information.* Claims of confidentiality shall be denied for the following information:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and effluent data. This includes information submitted on the permit application forms themselves and any attachments used to supply information required by the forms.

(2) *Information requirements.* All treatment works treating domestic sewage shall submit to the Director within the time frames established in paragraph (d)(1)(ii) of this section the following information:

(i) The activities conducted by the applicant which require it to obtain a permit.

(ii) Name, mailing address, and location of the treatment works treating domestic sewage for which the application is submitted.

(iii) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(iv) Whether the facility is located on Indian lands.

(v) A listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management program under RCRA.

(B) UIC program under SDWA.

(C) NPDES program under CWA.

(D) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(E) Nonattainment program under the Clean Air Act.

(F) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(G) Ocean dumping permits under the Marine Protection, Research, and Sanctuaries Act.

(H) Dredge or fill permits under section 404 of CWA.

(I) Other relevant environmental permits, including State or local permits.

(vi) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the treatment works treating domestic sewage, depicting the location of the sludge management facilities (including disposal sites), the location of all water bodies, and the location of wells used for drinking water listed in the public records or otherwise known to the applicant within ¼ mile of the property boundaries;

(vii) Any sludge monitoring data the applicant may have, including available ground water monitoring data, with a description of the well locations and approximate depth to ground water, for landfills or land application sites (see Appendix I to 40 CFR Part 257);

(viii) A description of the applicant's sludge use and disposal practices (including, where applicable, the location of any sites where the applicant transfers sludge for treatment and/or disposal, as well as the name of the applicator or other contractor who applies the sludge to land if different from the applicant, and the name of any distributors when the sludge will be disposed of through distribution and marketing, if different from the applicant);

(ix) For each land application site the applicant will use during the life of the permit, the applicant will supply information necessary to determine if the site is appropriate for land application and a description of how the site is (or will be) managed. Applicants intending to apply sludge to land application sites not identified at the time of application must submit a land application plan which at a minimum:

(A) describes the geographical area covered by the plan;

(B) identifies site selection criteria;

(C) describes how sites will be managed;

(D) provides for advance notice to the permit authority of specific land application sites and reasonable time for the permit authority to object prior to the sludge application; and

(E) provides for advance public notice as required by State and local law, but in all cases requires notice to landowners and occupants adjacent to or abutting the proposed land application site.

(x) Annual sludge production volume;

(xi) Any information required to determine the appropriate standards for permitting under 40 CFR Part 503; and

(xii) Any other information the Program Director may request and reasonably require to assess the sludge use and disposal practices, to determine whether to issue a permit, or to ascertain appropriate permit requirements.

(3) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least five years from the date the application is signed, or as required by 40 CFR Part 503.

(4) *Signatories to permit applications and reports* as provided in 40 CFR 122.22.

(5) *Duration of permits.* (i) Permits issued to treatment works treating domestic sewage pursuant to section 405(f) of the CWA shall be effective for a fixed term not to exceed five years.

(ii) The term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(iii) The Director may issue a permit for a duration that is less than the full allowable term under this section.

(6) *Schedules of compliance*—(i) *General.* The permit may, when appropriate, specify a schedule of compliance leading to compliance with the CWA and these regulations. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than any applicable statutory deadline under the CWA.

(ii) *Interim dates.* If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the date for their achievement. The time between interim dates shall not exceed six months.

(iii) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(6)(ii) is applicable.

(b) *Permit conditions applicable to all permits.* In addition to permit conditions which must be developed on a case-by-case basis in order to meet applicable requirements of 40 CFR Part 503, paragraph (a) (1) through (6) of this section, and permit conditions developed on a case-by-case basis using best professional judgment to protect public health and the environment from the adverse effects of toxic pollutants in sewage sludge, all permits shall contain the following permit conditions:

(1) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(2) *Compliance with sludge standards.* The permittee shall comply with standards for sewage sludge use or disposal established under section 405(d) of the CWA (40 CFR Part 503) within the time provided in the regulations that establish such standards, even if this permit has not yet been modified to incorporate the standards.

(3) *CWA penalties.* Section 309 of the Clean Water Act (CWA) sets out penalties applicable to persons who violate the Act's requirements. For example, section 309(d) provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed $25,000 per day for each violation. Such violations also may be subject to administrative penalties assessed by the Administrator pursuant to section 309(g) of the CWA. Any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, or 405 of the Clean Water Act is subject to a fine not less than $2,500 nor more than $25,000 per day of violation or by imprisonment for not more than 1 year, or both. Any person who knowingly violates a permit condition implementing sections 301, 302, 304, 307, 308, or 405 shall be punished by a fine not less than $5000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years or both.

(4) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(5) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or prevent sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(6) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(7) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(8) *Duty to provide information.* The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(9) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(i) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(iv) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances, parameters or practices at any location.

(10) *Monitoring and records.* (i) The permittee shall monitor and report monitoring results as specified elsewhere in this permit with a frequency dependent on the nature and effect of its sludge use or disposal practices. At a minimum, this shall be as required by 40 CFR Part 503, but in no case less than once a year.

(ii) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The permittee shall retain records of all monitoring information, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report or application, or longer as required by 40 CFR Part 503. This period may be extended by request of the Director at any time.

(iii) Records of monitoring information shall include:

(A) The date, exact place, and time of sampling or measurements;

(B) The individual(s) who perfored the sampling or measurements;

(C) The date(s) analyses were performed;

(D) The individual(s) who performed the analyses;

(E) The analytical techniques or methods used; and

(F) The results of such analyses.

(iv) Monitoring must be conducted according to test procedures specified in 40 CFR Part 503 or 136 unless other test procedures have been specified in this permit.

(v) The Clean Water Act provides that any person who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished for the first conviction by a fine of not more than $10,000 or by imprisonment for not more than 2 years per violation, or by both. Subsequent convictions for the same offense are punishable by a fine of not more than $20,000 per day of violation, or imprisonment of not more than 4 years, or both.

(11) *Signatory requirements.* (i) All applications, reports, or information submitted to the Director shall be signed

and certified according to the provisions of 40 CFR 122.22.

(ii) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit shall, upon conviction, be punished for the first conviction by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both. Subsequent convictions shall be punishable by a fine of not more than $20,000 per day of violation or by imprisonment of not more than 4 years, or by both.

(12) *Notice requirements.* (i) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility, or significant changes planned in the permittee's sludge disposal practice, where such alterations, additions, or changes may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(ii) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(iii) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA.

(iv) *Other noncompliance reporting.* The permittee shall report all instances of noncompli.ance. Reports of noncompliance shall be submitted with the permittee's next self monitoring report or earlier. if requested by the Director or if required by an applicable standard for sewage sludge use or disposal or condition of this permit.

(v) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(13) Reopener. If a standard for sewage sludge use or disposal applicable to permittee's use or disposal methods is promulgated under section 405(d) of the CWA before the expiration of this permit, and that standard is more stringent than the sludge pollutant limits or acceptable management practices authorized in this permit, or controls a pollutant or practice not limited in this permit, this permit may be promptly modified or revoked and reissued to conform to the standard for sludge use or disposal promulgated under Section 405(d) of the CWA. The permittee shall comply with applicable standards for sludge use or disposal by no later than the compliance deadline specified in the regulations establishing those standards, whether or not this permit has been modified or revoked and reissued.

(14) *Duty to reapply.* If the permittee wishes to continue an activity regulated by the this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Permit actions.* All State programs under this Part shall have the legal authority to implement the following provisions as a minimum and must be administered in conformance with each.

(1) *Transfer of permits*—(i) *Transfers by modification.* Except as provided in paragraph (ii) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued to identify the new permittee and incorporate such other requirements as may be necessary to assure compliance with the CWA.

(ii) *Automatic transfers.* As an alternative to transfers under paragraph (c)(1)(i) of this section, the State Director may authorize automatic transfer of any sludge permit to a new permittee if:

(A) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (c)(1)(ii)(B) of this section;

(B) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(C) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (c)(ii)(B) of this section.

(2) *Modification or revocation and reissuance of permits.* (i) When the Director receives any information (for example, where the Director inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under § 501.15(d)(2)(i), or conducts a review of the permit file), he or she may determine whether or not one or more of the causes listed in paragraphs (c)(2) (ii) and (iii) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit and may request an updated application if necessary. When a permit is modified, only the conditions subject to a modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. A draft permit must be prepared and other procedures in § 501.15(d) followed. If cause does not exist under this section, the Director shall not modify or revoke and reissue the permit.

(ii) *Causes for modification.* The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

(A) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different from or absent in the existing permit.

(B) *Information.* The Director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(C) *New regulations.* New regulations have been promulgated under section 405(d) of the CWA, or the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued.

(D) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an Act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonable available remedy. However, in no case may a compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

(E) *Land application plans.* When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

(iii) The following are causes to modify or alternatively, revoke and reissue, a permit.

(A) Cause exists for termination under § 501.15(c)(3) and the Director determines that modification or revocation and reissuance is appropriate.

(B) The Director has received notification (as required in the permit, see § 501.15(b)(12)(iii)) of a proposed transfer of the permit.

(3) *Termination of permits.* The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(i) Noncompliance by the permittee with any condition of the permit;

(ii) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(iii) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(iv) A change in any condition that requires either a temporary or a permanent reduction or elimination of any activity controlled by the permit.

(d) *Permit procedures.* All State programs approved under this Part shall have the legal authority to implement each of the following provisions and must be administered in accordance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements.

(1) *Application for a permit.* (i) Any person who is required to obtain a permit for the use or disposal of sewage sludge shall complete, sign, and submit to the Director an application for a permit within the time specified in paragraph (d)(1)(ii) of this section.

(ii) (A) Any POTW with a currently effective NPDES permit shall submit the application information required by paragraph (a)(2) of this section when its next application for NPDES permit renewal is due or within 120 days after promulgation of a "standard for sewage sludge use or disposal" applicable to the POTW's sludge use or disposal practice(s), whichever occurs first.

(B) Any other existing "treatment works treating domestic sewage" not covered under paragraph (d)(1)(ii)(A) shall submit an application to the Director within 120 days after promulgation of a "standard for sewage sludge use or disposal" applicable to its sludge use or disposal practice(s) or upon request of the Director prior to the promulgation of an applicable "standard for sewage sludge use or disposal" if the Director determines that a permit is necessary to protect public health and the environment from any adverse effects that may occur from toxic pollutants in sewage sludge.

(C) Any "treatment works treating domestic sewage" that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the Director at least 180 days prior to the date proposed for commencing operations.

(iii) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

(2) *Modification, revocation and reissuance, or termination of permits.* (i) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in § 501.15(c). All requests shall be in writing and shall contain factors or reasons supporting the request.

(ii) If the Director tentatively decides to modify or revoke and reissue a permit he or she shall prepare a draft permit incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the Director shall require the submission of a new application. If the Director tentatively decides to terminate a permit he or she shall prepare a Notice of Intent to Terminate and follow the public notice and comment procedures outlined in Section 501.15(d)(6).

(3) *Draft permits.* Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application. If the Director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the necessary conditions to implement this Part, 40 CFR Part 503, and section 405 of the CWA.

(4) *Fact sheets.* A fact sheet shall be prepared for every draft permit for a Class I sludge management facility, for every draft permit requiring permit conditions developed on a case-by-case basis to implement section 405(d)(4) of the CWA, for every draft permit that includes a sewage sludge land application plan under § 501.15(a)(2)(ix), and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(i) The fact sheet shall include:

(A) A brief description of the type of facility or activity which is the subject of the draft permit;

(B) Any calculations or other necessary explanation of the derivation of conditions for sludge use and disposal, including a citation to the applicable standards for sludge use or disposal and reasons why they are applicable, or in the case of conditions developed on a case-by-case basis to implement section 405(d)(4) of the CWA, an explanation of, and the bases for, such conditions; and

(C) For permits that include a sewage sludge land application plan under § 501.15(a)(2)(ix), a brief description of how each of the required elements of the land application plan area is addressed in the permit.

(5) *Public notice of permit actions and public comment period.* (i) The Director shall give public notice that the following actions have occurred:

(A) A draft permit has been prepared. The public notice shall allow at least 30 days for public comment.

(B) A hearing has been scheduled. Public notice shall be given at least 30 days before the hearing.

(ii) *Methods.* Public notice of activities described in paragraph (d)(5)(i) of this section shall be given by the following methods:

(A) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

(*1*) The applicant;

(*2*) Any other Agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD, NPDES, MPRSA, or 404 permit for the same facility or activity (including EPA);

(*3*) Any State agency responsible for plan development under CWA section 208(b)(2), 208(b)(4) or 303(e);

(*4*) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and to each State agency having any authority under State law with respect to the construction or operation of such facility; and

(*5*) Any person who requests a copy.

(B) For Class I sludge management facility permits and permits that include

land application plans under § 501.15(a)(2)(ix), publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity, in addition to the methods required by paragraph (d)(5)(ii)(A) of this section;

(C) In a manner constituting legal notice to the public under State law; and

(D) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(iii) *Contents*—(A) *All public notices.* All public notices issued under this Part shall contain the following minimum information:

(*1*) Name and address of the office processing the permit action for which notice is being given;

(*2*) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(*3*) A brief description of the activity described in the permit application (including the inclusion of land application plan, if appropriate);

(*4*) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application;

(*5*) A brief description of the comment procedures required by § 501.15(d)(6) and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

(*6*) Any additional information considered necessary or proper.

(B) *Public notices for hearings.* In addition to the general public notice described in paragraph (d)(5)(iii)(A) of this section, the public notice of a hearing shall contain the following information:

(*1*) Reference to the date of previous public notices relating to the permit;

(*2*) Date, time and place of the hearing; and

(*3*) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(6) *Public comments and requests for public hearings.* During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (d)(8) of this section.

(7) *Public hearings.* The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit. The Director may also hold a public hearing at his or her discretion, (e.g. where such a hearing might clarify one or more issues involved in the permit decision).

(8) *Response to comments.* At the time a final permit is issued, the Director shall issue a response to comments. The response to comments shall be available to the public, and shall:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing.

(e) *Optional program provisions.* The following provisions may be included in a State program at the State's option. If the State decides to adopt any of these provisions, they must be no less stringent than the corresponding Federal provisions:

(1) Continuation of expiring permits (40 CFR 122.6);

(2) General permits (40 CFR 122.28);

(3) Minor modifications of permits (40 CFR 122.63); and

(4) Effect of permit: affirmative defense (40 CFR 122.5(b)).

(f) *Conflict of interest.* Except as provided in paragraph (f)(2), State sludge management programs shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous two years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(1) For the purposes of this paragraph:

(i) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.

(ii) "Significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(iii) "Permit holders or applicants for a permit" does not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(iv) "Income" includes retirement benefits, consultant fees, and stock dividends.

(v) Income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

(2) The Administrator may waive the requirements of this paragraph if the board or body which approves all or portions of permits is subject to, and certifies that it meets, a conflict-of-interest standard imposed as part of another EPA-approved State permitting program or an equivalent standard.

§ 501.16 Requirements for compliance evaluation programs.

State sludge management programs shall have requirements and procedures for compliance monitoring and evaluation as set forth in § 123.26.

§ 501.17 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

Note: This paragraph ((a)(1)) requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit; and

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) Civil penalties shall be recoverable for the violation of any permit condition; any applicable standard or limitation; any filing requirement; any duty to allow or carry out inspection, entry or monitoring activities; or any regulation or orders issued by the State Program Director. These penalties shall be

assessable in at least the amount of $5,000 a day for each violation.

(ii) Criminal fines shall be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any permit condition; or any filing requirement. These fines shall be assessable in at least the amount of $10,000 a day for each violation. States which provide the criminal remedies based on "criminal negligence," "gross negligence" or strict liability satisfy the requirement of this paragraph (a)(3)(ii).

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false statement, representation or certification in any program form, or in any notice or report required by a permit or State Program Director, or who knowingly renders inaccurate any monitoring device or method required to be maintained by the State Program Director. These fines shall be recoverable in at least the amount of $5,000 for each instance of violation.

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the appropriate Act.

Note.— For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.

(c) A civil penalty assessed, sought, or agreed upon by the State Program Director under paragraph (a)(3) of this section shall be appropriate to the violation.

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraphs (a)(1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide responses to all citizen complaints submitted pursuant to the procedures specified in 40 CFR 123.26(b)(4);

(ii) Not oppose intervention by any citizen in any civil or administrative proceeding when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

§ 501.18 Prohibition.

State permit programs shall provide that no permit shall be issued when the Regional Administrator has objected in writing under 40 CFR 123.44.

§ 501.19 Sharing of information.

State sludge management programs shall comply with the requirements of 40 CFR 123.41.

§ 501.20 Receipt and use of Federal information.

State sludge management programs shall comply with 40 CFR 123.42.

§ 501.21 Program reporting to EPA.

The State Program Director shall prepare semi-annual and annual reports as detailed below and shall submit any reports required under this section to the Regional Administrator. These reports shall serve as the main vehicle for the State to report on the status of its sludge management program, update its inventory of sewage sludge generators and sludge disposal facilities, and provide information on incidents of noncompliance. The State Program Director shall submit these reports to the Regional Administrator according to a mutually agreed-upon schedule. The Semi-annual Sludge Violation Reports and Annual Reports specified below may be combined with other reports to EPA (e.g., existing NPDES or RCRA reporting systems) where appropriate.

(a) *Semi-annual reports.* Semi-annual Sludge Violation Reports (SSVRs) shall provide a tabular summary of the incidents of noncompliance which occurred in the previous six-month period by Class I sludge management facilities.

(1) At a minimum, the following occurrences must be reported under this section:

(i) Significant failure to comply with minimum Federal requirements for sludge use or disposal practices;

(ii) Significant failure to comply with permit conditions;

(iii) Failure to complete construction of essential elements of a sludge management facility or meet other key milestone dates specified in a permit;

(iv) Failure to provide required compliance monitoring reports or submission of reports that are so deficient as to cause misunderstanding and thus impede the review of the status of compliance;

(v) Significant noncompliance with other program requirements.

(2) The tabular summary will identify:

(i) The non-complying facilities by name and reference number;

(ii) The type of noncompliance, a brief description and date(s) of the event. (See list in paragraph (a)(1) of this section.) If records for a facility show noncompliance of more than one type under the sludge management program, the information should be combined into a single entry for each such facility;

(iii) The date(s) and a brief description of the action(s) taken to ensure timely and appropriate action to achieve compliance;

(iv) Status of the incident(s) of noncompliance with the date of resolution; and

(v) Any details which tend to explain or mitigate the incident(s) of noncompliance.

(b) *Annual report.* In addition to the information required by paragraph (a) of this section, the annual report shall include the following:

(1) Information to update the inventory of all sewage sludge generators and sewage sludge disposal facilities submitted with the program plan or in previous annual reports, including:

(i) Name and location,

(ii) NPDES, UIC, RCRA, Clean Air Act, and State permit number, if any,

(iii) Sludge management practice(s) used,

(iv) Identification of non-complying facilities, and

(v) Sludge production volume.

(2) A summary of the number and type of violations by sludge use and disposal practice over the past year for Class I sludge management facilities;

(3) A list of Class I sludge management facilities brought into compliance since the last annual report;

(4) Information on noncompliance of non-Class I Facilities which shall include:

(i) A tabular listing which identifies:

(A) The non-complying facility by name and reference number,

(B) The type of noncompliance (see list in paragraph (a)(1) of this section),

(C) How long the facility has been in noncompliance, and

(D) What steps are being taken to bring these facilities into compliance;

(ii) A summary of the number and type of violations by sludge use and disposal practice over the past year by non-Class I sludge management facilities;

(iii) A list of non-Class I facilities that have been brought into compliance since the last annual report; and

(5) A separate list of all facilities (along with any applicable permit numbers) that are six or more months behind in their schedules for achieving compliance.

(6) A summary of the results of periodic State compliance monitoring efforts to verify self-monitoring reports.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2040-0128)

Subpart C—Program Approval, Revision and Withdrawal

§ 501.31 Review and approval procedures.

(a) EPA shall approve or disapprove a State's application for approval of its State sludge management program within 90 days after receiving a complete program submission.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the 90-day review period will be deemed to have begun on the date of the completeness determination. If EPA finds that a State's submission is incomplete, the review period will not begin until all the necessary information is received by EPA.

(c) After determining that a State program submission is complete, EPA will publish notice of the State's application in the **Federal Register** and in enough of the largest newspapers in the State to attract statewide attention. EPA will mail notices to persons known to be interested in such matters, including all persons on appropriate State and EPA mailing lists and all treatment works treating domestic sewage listed on the inventory required by § 501.12(f) of this part. The notice will:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide opportunity for a public hearing within the State to be held no less than 30 days after notice is published in the **Federal Register** and indicate when and where the hearing is to be held, or how interested persons may request that a hearing be held if a hearing has not been scheduled. EPA shall hold a public hearing whenever the Regional Administrator finds, on the basis of requests, a significant degree of public interest in the State's application or that a public hearing might clarify one or more issues involved in the State's application.

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(d) Within 90 days after determining that the State has submitted a complete program, the Administrator shall approve or disapprove the program based on the requirements of this part and of the CWA and after taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains EPA's response to these comments.

(e) The State and EPA may extend the 90-day review period by mutual agreement.

(f) If the State's submission is materially changed during the 90-day review, either as a result of EPA's review or the State action, the official review period shall begin again upon receipt of the revised submission.

(g) Notice of program approval shall be published by EPA in the **Federal Register.**

(h) If the Administrator disapproves the State program he or she shall notify the State of the reasons for disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

§ 501.32 Procedures for revision of State programs.

(a) Any approved State program which requires revision to comply with amendments to federal regulations governing sewage sludge use or disposal (including revisions to this part) shall revise its program within one year after promulgation of applicable regulations, unless the State must amend or enact a statute in order to make the required revision, in which case such revision shall take place within 2 years.

(b) State sludge management programs shall follow the procedures for program revision set forth in 40 CFR 123.62.

§ 501.33 Criteria for withdrawal of State programs.

The criteria for withdrawal of sludge management programs shall be those set forth in 40 CFR 123.63.

§ 501.34 Procedures for withdrawal of State programs.

The procedures for withdrawal of sludge management programs shall be those set forth in 40 CFR 123.64.

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federal register

Tuesday
May 2, 1989

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Logging Operations; Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-048]

Logging Operations

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to issue employee safety requirements for all logging operations, regardless of the end use of the forest products (saw logs, veneer bolts, pulpwood, chips, etc.). This standard would replace existing standards in 29 CFR 1910.266 which apply only to pulpwood logging. The coverage is being expanded to provide safety protection to loggers in the portion of this very hazardous industry not covered by the existing standard. The proposed standard strengthens some provisions of the current standard, clarifies others, and eliminates provisions which are believed inappropriate or unnecessary. The proposed standard would address the unique hazards found in logging operations, and would supplement other general industry standards in 29 CFR Part 1910. The proposal would also require training of employees in this labor-intensive industry. OSHA expects that this standard would result in a significant decrease in the number of deaths and injuries occurring in this industry.

DATES: Comments on the proposed standard must be postmarked by July 31, 1989.

Requests for a hearing must be postmarked by July 31, 1989.

ADDRESS: Comments, information, and hearing requests should be sent to Docket Officer, Docket No. S-048, Occupational Safety and Health Administration, Room N3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Room N3637, U.S. Department of Labor, Washington, DC 20210, (202) 523-8148. This notice of proposed rulemaking has been prepared by Frank A. Smith, Jr., of the Directorate of Safety Standards Programs.

SUPPLEMENTARY INFORMATION:

I. Background

Logging operations fell trees and transport logs, chips or whole trees from stump to mills for processing. In a report requested by OSHA, the Bureau of Labor Statistics (BLS), has described United States logging operations as follows. (BLS Bulletin 2203, *Injuries in the Logging Industry*, June 1984) (Reference 1):

> Logging methods are generally similar in all regions of the country where trees are felled and converted into logs, although differences in terrain, type, and size of timber will dictate some variation in procedures. The tree is felled, usually with a chainsaw, branches are cut off (limbing), and the tree is measured and cut into manageable lengths (bucking). Logs are then transported (skidded or yarded) to central locations (landings) by one of several methods. Where the ground is relatively flat, logs are hooked to a tractor, known as a skidder, by steel cables and nooses called chokers, and dragged to the landing [tractor or cat logging] where further trimming and processing may be done. If terrain is very steep or rough, the logs may be transported by steel cables attached to a remote winching apparatus (called a yarder) via a system of cables, blocks, pulleys, and carriages [cable logging]. Logs are either partially suspended and dragged over the ground (high-lead yarding) or actually hoisted into the air and conveyed on overhead cables (sky-line yarding) to the landing. After logs are yarded, they are loaded, either manually or mechanically, onto trucks, railroad cars, or barges, or formed into logs rafts for transport to the sawmill.

OSHA agrees with the BLS analysis that logging methods are generally similar throughout the country with some variation in procedure dictated by differences in terrain, type and size of timber, as explained below. OSHA also believes that the logging methods and the inherent dangers posed by work in the woods, such as those caused by inclement weather, uneven terrain and isolation from health care facilities, present comparable and significant hazards to loggers across the nation. Nevertheless, current OSHA safety standards for logging specifically address only one segment of the logging industry—logging operations whose forest product ends up as pulp.

OSHA's current General Industry safety standards, 29 CFR Part 1910, were originally published on May 29, 1971, pursuant to section 6(a) of the Occupational Safety and Health Act (OSH Act), 29 U.S.C. 655(a), which directed OSHA to promulgate, during the two years following the Act's effective date, national consensus standards and established Federal standards without public comment or hearing. When these original OSHA standards were issued there was no national consensus standard or established Federal standard available that covered all types of logging. However, the American National Standards Institute (ANSI) had adopted a national consensus standard, ANSI 03.1–1971, "Safety Requirements for Pulpwood Logging," for the pulpwood logging industry only. This national consensus standard was primarily concerned with pulpwood logging in the states of North Dakota, Nebraska, Kansas, Oklahoma, Texas, and all states east of those five states where logging was undertaken. OSHA's pulpwood logging standard, 29 CFR 1910.266, adopted May 29, 1971, was developed from ANSI 03.1–1971. Since it was an industry-specific standard, it was placed in 29 CFR Part 1910, Subpart R, Special Industries. The remainder of the high hazard logging industry involved in logging other than pulpwood was not covered by a specific Federal standard.

After OSHA's adoption of the 1971 ANSI pulpwood logging standard, trade associations with interests in the logging of other forest products, such as sawlogs and veneer bolts, joined with ANSI to revise the consensus standard to include all logging within the United States. An expanded ANSI standard was approved May 19, 1977, as ANSI 03.1–1978, "Safety Requirements for Logging." That document adopted, virtually unchanged, most of the safety practices in the 1971 pulpwood logging safety standard, and now applied them to all logging operations throughout the nation.

The 1978 ANSI logging standard, however, was withdrawn by ANSI in 1984. The American Pulpwood Association (APA), which had acted as Secretariat for the 03 Committee during its deliberations on the 1971 and 1978 ANSI standards, was no longer interested in serving as Secretariat. The APA felt that the existing OSHA standard, 29 CFR 1910.266, was adequate for their membership. Because no other member of the committee wanted to take over the secretariat, and ANSI procedures require that action be taken to reaffirm, revise, or withdraw a standard no later than five years from the date of its publication, the standard was withdrawn. Currently no safety or health national consensus standard exists for the logging industry.

In July 1976, the National Institute for Occupational Safety and Health (NIOSH), published a criteria document, "Recommendations For An Occupational Standard For Logging From Felling To First Haul" applicable to all logging operations. The NIOSH document addressed the hazard

involved in felling, bucking, limbing, yarding and loading operations.

The NIOSH document emphasized safe work practices. It intended to protect workers against accidents and injuries by use of existing technology. It did not intend to inhibit flexibility in the way a task is performed nor restrict the development of safer techniques.

The NIOSH document differed from the present Federal pulpwood logging standard 29 CFR 1910.266, in the following ways:

(a) It included all logging operations such as those relating to sawlogs, veneer bolts, poles and pilings rather than being limited only to pulpwood operations.

(b) Training of employees was required.

(c) The recommended standard did not include provisions dealing with equipment protective devices, personnel transport, off-highway truck transport, chipping operations, or the construction and maintenance of roads, trails, and bridges.

(d) Pre-placement and periodic medical examinations were recommended.

OSHA's proposed standard for logging essentially adopts NIOSH's recommendations for expanded coverage of all logging, its emphasis on proper work practices and training and its elimination of regulatory language not peculiar to logging operations such as that involving construction of roads and bridges.

Six states have developed their own logging standards under the OSH Act State Plan procedure set forth in section 18 of the OSH Act, 29 U.S.C. 667, and in OSHA regulations, 29 CFR Part 1902. These states are Alaska, California, Hawaii, Michigan, Oregon and Washington. California, Hawaii and Michigan have adopted logging standards that uniformly cover all logging operations within their respective borders. Alaska has adopted a general logging safety standard including a specific section for pulpwood logging which is similar to OSHA's pulpwood logging standard. Washington and Oregon have adopted separate safety standards for nonpulpwood logging in addition to their general logging safety standards. Washington has adopted a pulpwood logging safety standard similar to that of OSHA in addition to the state's general logging safety standard.

In general, the standards of the five far western states contain a much higher level of detail and specification than either the 1978 ANSI standard or the current OSHA standard on pulpwood logging. They reflect the generally more dangerous nature of logging in those states because of rough terrain, large timber and isolated operations. OSHA used these standards as source documents during development of the proposal.

Approximately 37 percent of all loggers are covered by state plan state standards. Non-pulpwood loggers in the rest of the country remain unprotected by a federal or an OSHA approved state standard specifically covering loggers. OSHA proposes to issue safety standards covering all loggers regardless of the end use of the forest products they produce. OSHA believes that a standard similar to the 1978 ANSI standard may be preferable for national use, since many of its requirements were stated in performance language. This is in keeping with OSHA's belief that properly drafted performance standards can adequately address safety and health hazards, while detailed specification standards may needlessly impede technological advancement and employer innovation. A base level of safety would be provided for all logging operations on a National scale, and those State Plan states with more complicated or specialized local conditions could follow OSHA procedures to develop their own more comprehensive standards, as Michigan and the five far western states have done.

OSHA requests public comment on whether detailed OSHA regulations are more appropriate for all or part of the standard, or if the proposed performance approach is adequately protective on a national basis.

II. Hazards of the Logging Industry

Logging is one of the most dangerous occupations. By its physical nature it is a very difficult job with little room for error. Loggers are often dealing with the massive weight and irresistible momentum of falling, rolling, and sliding trees and logs. Logging operations are generally carried out in remote locations with limited accessibility, which vary in terrain from flat lands, wetlands, or gentle slopes to rugged mountains. As outdoor workers, loggers may be exposed to bitter cold, extreme heat, rain and snow. These factors, along with the use of the always potentially dangerous chain saw, have kept the logging industry consistently among the most hazardous in the country.

The following summaries of news reports from several states of logging accidents characterize the nature of the hazards in this industry:

1. A 42-year-old logger in Idaho died of massive injuries in a logging accident about 2:30 p.m. on December 19, 1986, after a fir tree fell on him when he was sawing another tree. After the logger failed to return home his employer returned to the logging site and found his body about 10 p.m. The proposal addresses this type of accident in § 1910.266(d), Training, and (e)(4) (i) and (ii), Work areas.

2. A 52-year-old logger was killed in Arkansas on April 28, 1987. A tree he had felled either lodged or struck another tree, then kicked back striking him in the chest. The logger was working alone when he was killed. The proposal addresses the causal factors pertinent to this accident in § 1910.266(d), Training, (e)(3), Environmental conditions, (e)(4), Work areas, and (g)(2), Manual felling.

3. A 30-year-old in Arkansas was killed on September 29, 1987, when a tree he had cut fell on him. The tree first fell into the limbs of another tree. A coworker said he would get a log skidder to pull the cut tree to the ground, but the logger decided to cut down the supporting tree instead. When he did so the first tree fell on him. The proposal addresses factors involved in this accident in § 1910.266(d), Training and (g), Tree harvesting.

4. A tree felled by a feller struck and killed a 44-year-old logger in South Carolina on January 2, 1985. The feller was cutting the tree and stopped to make some repairs to his chain saw. The feller reported that when he went back to the tree it had started to fall. The victim was standing in its path with his back to the tree. The proposal addresses the factors involved in this accident in § 1910.266(d), Training and (g), Tree harvesting.

5. On November 30, 1984, a 26-year-old Pennsylvania man working at a lumber company logging site was preparing to cut a log with a gasoline-powered chain saw. State police reported that the chain saw kicked back and cut him severely down through the left shoulder area. He was pronounced dead at the scene by the county deputy coroner. The proposal addresses the causes of this accident in § 1910.266(d), Training, and (e)(5), Chain saw operations.

6. On August 12, 1987, a 29-year-old North Carolina logger, working alone, was killed when a tree fell on him. He was apparently cutting one tree when another tree, lodged in it, fell on him. No one witnessed the accident. The proposal addresses the factors pertinent to this accident in § 1910.266(d), Training, (e)(3), Environmental conditions, and (g), Tree harvesting.

7. A 29-year-old California logger was trapped inside the crumpled cab of a log loading machine on September 25, 1985,

when the machine tipped over on a downslope. He was removed by firemen after 45 minutes, with minor injuries. The proposal addresses this accident situation in § 1910.266(d), Training, and (f), Equipment protective devices.

8. On September 17, 1984, a 32-year-old Montana man was killed driving a skidder when he hit a tree that was leaning towards him at a 45-degree angle. A representative of the Missoula County Sheriff's Department said the tree hit the logger in the head, killing him instantly. The proposal addresses the factors involved in this accident in § 1910.266(d), Training, (e)(3), Environmental conditions, and (f) Equipment protective devices.

9. A 62-year-old Idaho logger was seriously injured on January 8, 1985, when he was hit and pinned by a tree he was cutting down. The deputy who responded said the incident was a freak accident that occurs in cold weather. "When you're falling trees in the winter, you're working with some factors that aren't present the rest of the year when the trees are in their natural state," he said. The tree tipped back the wrong way, split due to its cold weather brittleness and then began to spin. He said that the logger could not tell which way it would fall and could not make a decision on which way to stand clear. The proposal addresses this accident scenario in § 1910.266(d), Training, and (g), Tree harvesting.

The Bureau of Labor Statistics Bulletin 2203, "Injuries in the Logging Industry" (Reference 1), reports the findings of a survey conducted by BLS during the short period April through June 1982, of 1,086 injured logging workers in the 12 states of Alaska, Arkansas, California, Kentucky, Maine, Montana, North Carolina, Oregon, Tennessee, Vermont, Virginia and Washington. The report describes logging operations and hazards as follows:

> At every step in the logging process, from felling the tree to transporting it to the mill, workers are subject to a variety of hazards from the environment, type of work, and equipment used. Weather conditions are often poor since logging may continue regardless of rain, snow, or excessive heat. Terrain may be steep or rocky and, inevitably, ground litter, such as deadwood, leaves, or vines presents obstacles that restrict worker freedom of movement. In addition, workers may encounter other hazards and nuisances such as snakes, stinging insects, poison ivy or poison oak.
>
> The trees themselves present hazards due to their weight and bulk. Improper cutting, defects in the wood, or unexpected gusts of wind can cause a tree to fall improperly. Moreover, once on the ground, logs may roll or shift without warning. The equipment loggers use can also pose hazards. Chain saws may kick back into the operator if the cut is not precise, if the blade is dull, or for a variety of other reasons. Skidding tractors often must be operated on uneven trails, increasing the risk of rollover, and overhead yarding systems have a variety of moving parts that may cause injury to the workers. Most logging work is physically demanding and operations are usually carried on as long as there is daylight or longer if floodlights are used.

BLS Bulletin 2203 illustrates the potential for injury in these logging activities by a brief description of the logging process itself and the attendant hazards, as follows:

> In felling a tree, the cutter must take into consideration weather conditions, especially wind; terrain and slope of the cutting site; the condition of the tree (particularly its lean) and trees surrounding it; and where the tree will ultimately fall. If any of the cuts required to fell the tree are made improperly, the tree may fall in the wrong place; snap off the stump (an occurrence known as barber-chairing), or become tangled in other trees on the way down. As the tree falls, limbs can break off or deadwood can be catapulted from the ground when the tree lands.
>
> After the tree is felled, most of the limbs must be removed before it can be transported from the cutting site. If the tree is large, it will be bucked into shorter, more manageable lengths. Both limbing and bucking are potentially hazardous since felled trees may be unstable and work often involves climbing over logs and cutting in awkward positions.
>
> Once trees are felled, limbed and bucked, they must be transported to the landing site. Logs are either attached to tractors for tractor skidding, or to cable systems for cable yarding. Workers known as choker setters slip a noose or choker around the log and fasten it. This, in turn, is hooked up to the tractor cable or cable yarding system. Choker setters are subject to many of the same hazards as fallers, limbers, and buckers; the primary dangers are shifting logs, falling wood, or unsafe footing. Skidder operators, on the other hand, must contend with narrow, often uneven, skid trails. The operator must guard against overturning the tractor, being struck by limbs from surrounding trees, or getting his turn of logs caught on obstructions.
>
> When logs reach the landing, they are unhooked from the yarding system. If tractor skidding is performed, the tractor operator may handle this task but if a cable yarding system is used, workers known as chasers unhook the logs. The wood is then stacked to await loading for transport to the mill.

As demonstrated in the previous discussion of nine accidents, these hazards are addressed in the proposal.

III. Accident Data

Accident data demonstrate the high level of danger to workers in the logging industry.

Since 1972 there has been a significant overall decrease in injury and illness rates among loggers nationwide, although the severity of accidents has increased slightly. BLS occupational injury and illness data for the years 1972 through 1986 (References 2 through 10, and 30), expressed as incidence rates per 100 full-time workers, have been compiled into Table 1 below. For comparison and to indicate the particularly hazardous nature of logging operations, Table 1 also includes incidence rates for the entire manufacturing sector, SIC 20–39, for 1981–1986. Table 1 shows significant improvement in injury and illness rates in logging during the period. There was a 41 percent reduction in total cases. Lost workday cases (non-fatal injuries or illness that result in days away from work, or days of restricted work activity, or both), were cut by 22 percent. Nonfatal cases without lost workdays were reduced 60 percent. However, the number of lost workdays per 100 full-time workers during the period shown in the Table has only improved by 5 percent. The lost workdays per 100 fulltime loggers was higher in 1985 than it was in the early 1970's, and averaged about 308 days for the period. This indicates that although the number of accidents has decreased, the severity of logging accidents has remained about the same.

TABLE 1.—OCCUPATIONAL INJURY AND ILLNESS INCIDENCE RATES PER 100 FULL-TIME WORKERS

Year	Total cases	Lost workday cases	Nonfatal without lost workdays	Lost workdays
Logging Camps and Logging Contractors, SIC 241				
1972	32.5	16.2	16.1	.....
1973	32.0	16.5	15.3	307.8
1974	29.2	15.8	13.3	296.2
1975	26.1	14.5	11.5	281.3
1976	25.1	14.0	10.9	287.1
1977	26.3	15.4	10.7	329.9
1978	25.9	15.6	10.2	316.2
1979	24.2	14.8	9.3	311.9
1980	22.7	13.9	8.6	338.9
1981	19.3	12.3	6.9	289.3
1982	20.4	12.9	7.3	303.5
1983	21.5	13.7	7.7	321.9
1984	21.7	13.9	7.7	320.1
1985	20.0	12.2	7.6	317.2
1986	19.1	12.6	6.4	293.0
Manufacturing, SIC 20 through 39				
1981	11.5	5.1	6.4	82.0
1982	10.2	4.4	5.8	75.0
1983	10.0	4.3	5.7	73.5
1984	10.6	4.7	5.9	77.9
1985	10.4	4.6	5.8	80.2
1986	10.6	4.7	5.9	85.2

California is one of the states that has been active in logging safety. The November 1982 issue of the "Work

Injuries and Illnesses in California, Quarterly" (Reference 11) contains a summary of fatalities in the California logging industry since 1950. The summary did not contain any nonfatal injury or illness data.

Over the decade of the 1950's, a total of 457 logging employees lost their lives in industrial accidents in California (an average of 45.7 per year). During the 1960's, the fatality count in logging was nearly cut in half to 235 deaths (an average of 23.5 per year). In the 1970's, total fatalities recorded in logging declined to 135 (an average of 13.5 per year), and a 70 percent reduction from the number of deaths recorded in the 1950's.

In both 1980 and 1981, the number of fatalities in California's logging industry hit new all-time lows. Six deaths were recorded in 1980; four deaths in 1981. This reflects, in part, the fact that the lumber industry in California had been hit hard by the slowdown in construction activity, which resulted in reduced employment from 6,100 workers in 1977 to 3,900 in 1982.

The California Quarterly attributes the decrease in logging fatalities in California over the 30-year period to two major factors: (1) Greater safety awareness; and (2) giant strides in technology in the industry, so that the equipment used today is safer and better designed. The publication also states that the years have also seen a shift from cat logging to cable logging. Cat logging is much more labor intensive, requiring far more employees on the ground and thus exposed to logging hazards. This shift to cable logging in the western part of the United States is an example of the industry making use of the equipment most appropriate for local operating conditions.

Unfortunately, in spite of the reduction in logger accidents, as demonstrated by the decreases in injury and illness rates, and by the California experience with regard to fatalities, logging remains among the most dangerous industries. BLS data indicate that the incidence rate of injuries and illness in 1986 was twice that of manufacturing in general, and the lost workdays (reflecting the severity of the injuries) were three times that of manufacturing (see Table 1). In fact, in 1986, the logging industry had the 32nd highest rate of injuries and illnesses per 100 full-time workers among all industries (19.1) (Reference 31). With regard to lost workday cases, disregarding cases where neither lost time nor restricted work activity resulted, logging ranked 8th worst among all industries (12.6), behind special product sawmills SIC 2429 (25.4), manufacturing of vitreous plumbing fixtures SIC 3261 (17.5), structural wood member manufacturing SIC 2439 (15.4), reclaimed rubber SIC 3030 (15.2), meat packing plants SIC 2011 (14.7), animal and marine fats and oils SIC 2077 (13.7), and prefabricated wood buildings SIC 2452 (13.2). Moreover, logging ranked 5th worst in lost workdays per 100 workers (293.0), behind water transportation services SIC 4460 (404.9), intercity highway transportation SIC 4130 (333.4), special product sawmills SIC 2429 (319.9), and reclaimed rubber SIC 3030 (304.9). Table 2 compares the logging industry's injury and illness incidence rates with those of the major industrial divisions.

TABLE 2.—OCCUPATIONAL INJURY AND ILLNESS INCIDENCE RATES PER 100 FULL-TIME WORKERS

[Comparison of Logging, SIC 241 to Major Industrial Divisions for 1986]

Industry	Total cases	Lost workday cases	Nonfatal cases without lost workdays	Lost workdays
Logging camps and contractors	19.1	12.6	6.4	293.0
Private sector	7.9	3.6	4.3	65.8
Agriculture, forestry and fishing	11.2	5.6	5.6	93.6
Mining	7.4	4.1	3.2	125.9
Construction	15.2	6.9	8.3	134.5
Manufacturing	10.6	4.7	5.9	85.2
Transportation and public utilities	8.2	4.8	3.4	102.1
Wholesale and retail trade	7.7	3.3	4.3	54.0
Finance, insurance and real estate	2.0	0.9	1.1	17.1
Service	5.3	2.5	2.7	43.0

However, even the BLS incidence rates underestimate the severity of logging accidents because fatalities are not included among lost workday cases and do not contribute to lost workday totals. Logging injuries are frequently of the most severe nature, many times resulting in death. Fatality data published by BLS do not provide the number of fatalities for the logging industry. However, data from OSHA's Management Information System—although not providing information for the country as a whole—do provide some indication of the number of fatalities. During 1983, there were 66 logging fatalities reported to OSHA from the 37 states in the reporting system at that time. This would be equivalent to 69 fatalities on a national basis. Based on a logging population of 81,000 for 1983, this would be a fatality incidence rate of 110 per 100,000 workers. In comparison, BLS fatality data indicate a fatality incidence rate for 1983 of 27.6 for the mining industry, 22.9 for construction, and only 4.8 for the private sector as a whole (Reference 9).

Several older studies analyzing the distribution of injuries among the various logging jobs and the operations or agents associated with injuries have been reviewed by OSHA and are included in the docket. The previously mentioned BLS Bulletin 2203 (Reference 1) is the most recently released study and it summarized the accident causes as follows:

> The survey revealed that one-half of these workers were injured while engaged in cutting operations such as felling trees, bucking logs, or removing limbs from felled trees. Injuries resulted equally from workers being struck or crushed by wood (logs, trees, etc.), and from slipping, tripping, or falling (24 percent each) while 20 percent of the injuries resulted from contact with chain saws. Almost three-fourths of those injured missed one or more days of work as a result of their accidents, while one-fifth were hospitalized an average of six nights.

It should be noted that the survey excluded injuries resulting in fatalities.

In an analysis of accidents by type of occupation, the report continued:

Nearly one-half the injured workers were employed in occupations that dealt almost exclusively with cutting timber or trimming logs * * *. These occupations were: chopper, cutter, saw operator, or saw hand; faller, faller-bucker, or bullbuck; logger; sawyer; and bucker, busheler, or woodsman.

Sixteen percent of the workers were in occupations associated with yarding operations at the landing site: chaser; hooker or hook-tender; rigging slinger; knot bumper; and stationary equipment operator. An equal proportion were classified either as choker setter or skidder operator, occupations involved in transporting logs away from the cutting site.

The report further characterized the accidents by activity at the time of accident:

Nearly one-quarter of the injuries were accounted for by workers felling trees, while those limbing and bucking accounted for 15 and 12 percent of the injuries respectively. Workers who were choker setting or hooking up "turns" (logs grouped and yarded together) experienced 14 percent of the injuries; workers engaged in tractor or cable skidding operations, nine percent of the injuries. The proportions of injuries resulting from chasing activities and loading or unloading were five percent each. Four percent of the injuries occurred to workers involved in rigging cable yarding systems (setting up skid cables, blocks and tackles, guylines, etc.).

The discussion in this section has shown that, although the number of logging accidents has decreased greatly since 1972, the accident rates for logging are very high and had increased in 1982, 1983 and 1984 before decreasing slightly again in 1985 and 1986. Although OSHA does not know the breakdown of all injuries between pulpwood or non-pulpwood logging, similar hazards exist in both. Of the thousand injured loggers BLS surveyed, 47% responded that they were engaged in non-pulpwood logging, 35% believed they were involved in pulpwood logging, and 17% did not know what type of wood they were harvesting. Therefore, OSHA believes that it is reasonable to propose a uniform national logging standard.

IV. Significant Risk and Basis for Proposal

The seriousness of the risk in the logging industry is demonstrated in sections II and III of this preamble. Section II describes the unusual and extreme physical hazards inherent to the working conditions of the employees in the industry. Table 1 in section III presents incidence rates per 100 full-time workers for SIC 241, Logging Camps and Logging Contractors, for each year from 1972 through 1986, and Table 2 lists comparative data for other industry sectors.

The significant risk to workers in the logging industry is characterized by the following conclusions from this analysis:

1. Workers in logging have a higher risk of injury than workers in most other industries.

2. If they are injured, loggers have a greater chance of losing workdays.

3. When they are injured, their injuries are much more serious and result in much more lost time than do the injuries of most other workers.

4. Workers in logging have a higher incidence of fatalities than workers in other industries.

In 1977 the leading states in logging employment (with 48 percent of the total) were Washington (15,400), Oregon (14,000), California (6,100) and Maine (4,300). By 1982 the employment pattern had shifted and the leading states (with 42 percent of the total) were Washington (11,900, down 3,500); Oregon (11,300, down 2,700); Georgia (5,400, up 1,600); and Alabama (5,000, up 1,200). (Reference 11). California (3,900 down 2,200), was no longer one of the leaders. Overall logging employment in the Pacific Coast states decreased 22% during this period. The South was the only region in the country to show an increase in logging employment (21%). This employment trend, resulting in the change from harvesting the Pacific Coast's old-growth timber to increased harvesting of third and fourth-growth pine forests in the south, means that an increasing proportion of logging employment is in states not covered by state logging standards. (As noted earlier, only Alaska (16th in 1982), California (7th), Hawaii (very small), Michigan (19th), Oregon (2nd) and Washington (1st) have OSHA approved state logging standards covering all loggers.)

OSHA believes that standards are part of an integrated approach to successful logging safety that includes training, cooperation between labor and management, continued advancement of technology in the industry, and constant development of safety awareness. This rulemaking proposes standards for logging safety which OSHA believes will protect worker safety and health in the logging industry to the extent possible.

V. Summary and Explanation of the Proposal

It is clear from the preceding discussion that the dangers of logging extract a high injury and death toll from loggers. Although the number of injuries have been declining as demonstrated in section III, the injury and death rates remain high.

The current OSHA standard § 1910.266 addresses only pulpwood logging. This proposed standard would provide protection for all loggers involved in harvesting, including loggers employed as part of a mill operation, regardless of the end use of the forest products (saw logs, veneer bolts, pulpwood, chips, etc.). This proposal fills the current gap in coverage by providing a basic level of protection for all loggers. OSHA proposes that the title of § 1910.266 be changed from "Pulpwood Logging" to "Logging Operations" in order to reflect the wider coverage of the proposed amendment.

Paragraph (a), "Scope." Proposed paragraph (a) outlines the scope of the standard as a specific standard for the logging industry covering numerous operations involved in the harvesting of timber or pulpwood. The scope has been expanded to add coverage for other than pulpwood logging.

Although the proposed standard does not specifically address the setup of cable yarding systems, several provisions of the proposed standard are applicable to cable yarding activities. Provisions proposed in § 1910.266(e)(6), "Stationary and mobile equipment;" § 1910.266(f), "Equipment protective devices—stationary and mobile equipment;" and § 1910.266(9)(6), "Skidding, forwarding and yarding," will protect employees from the vast majority of cable yarding hazards. State plan states in the far west that have the most significant cable logging activity have developed very detailed cable logging standards. In view of these circumstances, and since there is limited cable logging activity in the rest of the country, OSHA requests public comment on the need to issue more detailed cable yarding safety regulations.

Paragraph (b), "Application." Proposed paragraph (b)(1) reiterates the expanded coverage of this proposal. The coverage of all types of logging, including pulpwood harvesting as well as the logging of saw logs, veneer bolts and other forest products, is identified to clarify the expansion of the scope from pulpwood logging only.

Proposed paragraph (b)(2) explains that hazards and working conditions not specifically covered by this industry standard continue to be covered by the other applicable sections of Part 1910, the standards for general industry. Construction operations are covered by Part 1926. This paragraph is intended to clarify the use of Part 1910 and Part 1926 when § 1910.266 does not address the operation.

Paragraph (c), "Definitions." The proposed amendment contains definitions of terms used in logging. These definitions are from several sources, including the following: ANSI 03.1–1971 Pulpwood Logging; ANSI 03.1–1978 Logging, (withdrawn by ANSI in 1984); 29 CFR 1910.266; various state safety standards; and contacts with the U.S. Forest Service and other persons and organizations involved in logging.

Paragraph (d), "Training." OSHA has included training requirements in the proposal. Training is considered very important in logging accident prevention due to the highly labor intensive nature of the work and its strenuous physical demands. OSHA believes that many accidents in the woods are preventable through properly applied work practices. It is the employer's responsibility to ensure that work is accomplished in a safe manner through suitable training and supervision.

In (d)(1), OSHA would require training of new employees when hired, and current employees given job assignments which expose them to new hazards. The purpose of this requirement is to ensure that all employees understand the hazards to which they are exposed, and how to work safely in spite of those hazards. Every new employee, regardless of experience, would receive training before beginning work. Retraining would be required at least annually to keep safety awareness, knowledge and safe work practice at a high level.

As a minimum, training would include recognition of and preventive and protective measures for the hazards associated with the individual's work tasks, and general recognition and prevention of safety hazards in the logging industry. Although, actual training may vary depending upon the previous experience of the employees, before being permitted to begin their work, employees must first demonstrate to their employer their ability to perform their assignment safely.

In (d)(2), OSHA would require training of power tool operators, machine operators, and associated maintenance personnel. Before they perform their duties they would be required to demonstrate that they can do so safely. OSHA considers this training to be very important due to the potential hazards presented by chain saws, yarding machines and other harvesting equipment.

In (d)(3), OSHA would require that all workers inexperienced in a task be under the close guidance of a person experienced in the safe performance of the task being accomplished. OSHA wants to ensure that recently trained employees have close support until it is determined that they are sufficiently able to work in a safe manner.

Several State Plan states have adopted various training requirements in their logging standards. For example, Oregon has detailed training and supervision provisions that include requirements for a written training program, monthly safety meetings for all employees, and an accident investigation program (Oregon Admin. R. 437–80–015). Alaska requires monthly safety meetings to inform employees of the employer's safety policies and applicable Alaska occupational safety and health standards (Alaska Admin. Code Tit. 8, section 07.115(d)). California's standard, however, is not as detailed as Oregon's and Alaska's, only requiring employers to have "a reasonably effective accident prevention program" (Cal. Admin. Code Tit. 8, section 6250).

OSHA requests comment on the effectiveness and feasibility of the various training and supervision requirements in State Plan states' standards, and elsewhere, and whether they should be adopted as part of the Federal OSHA standard. Comments are also requested on the extent, frequency and types of current training programs.

Paragraph (e), "General requirements." In (e)(1), OSHA proposes requirements for clothing, personal protective equipment, and first aid. In subparagraphs (e)(1)(iv), (v), (vi) and (vii), the proposal explicitly states that requirements in the General Industry standards at 29 CFR Part 1910, Subparts I and G, governing the recognition and abatement of hazards to the head, eyes, face, extremities, respiratory system and the hearing of employees, are applicable to the logging industry. These are not new requirements. The logging industry is presently required to comply with the General Industry standards, and the pulpwood logging standard at § 1910.266(c)(1) (iii), (iv), (v) and (vi) references the same requirements. The explicit statements are intended to aid employers and employees in recognizing the need for, and proper selection of, personal protective equipment. The statements are not meant to imply that other applicable general industry or construction standards not explicitly mentioned in the proposed logging standard apply with any less force.

Other requirements are proposed in paragraph (e) as follows:

In (e)(1)(i), OSHA proposes the use of suitable heavy duty puncture resistant gloves when working with wire rope. The current OSHA pulpwood standard requires gloves when handling wire rope, but does not specify the type. OSHA proposes that the provision specifically address the hazard of laceration from wire rope. OSHA solicits information about the most appropriate types of gloves for handling wire rope in the logging industry.

In (e)(1)(ii), OSHA proposes that employees whose assigned duties require them to operate a chain saw wear ballistic nylon or equivalent protection covering each leg from the upper thigh to the boot top or shoe top. The current OSHA pulpwood logging standard does not contain this requirement. However, although this is a new regulatory requirement, both the 1971 ANSI pulpwood logging standard and the 1978 ANSI logging standard had recommended that chain saw operators wear ballistic nylon or equivalent leg protection. OSHA believes the lightweight material offers considerable protection to the operator from chain saw-induced leg injuries. OSHA is also of the opinion that if slightly reduced mobility results from the wearing of such leg protectors, such reduced mobility presents less risk of accidents than not wearing them when other provisions of this proposal are complied with. For example, mobility is not as important when fellers clear retreat paths prior to beginning their cut, and buckers either stand uphill from the log they are cutting or block it from rolling or swinging.

The proposal exempts, however, but does not prohibit, individuals working from bucket trucks, and in some instances climbers, from wearing the required leg protection when operating a chain saw. OSHA believes that in some instances the leg protection could interfere with climbers' ability to move safely within trees, posing a greater hazard. Chain saw operators working from a bucket truck would be adequately protected from injury by the bucket itself. OSHA solicits comment on the appropriateness of these exemptions.

In (e)(1)(iii), OSHA proposes a performance standard requiring employees to wear either safety boots or safety shoes (excluding low cut shoes), or heavy duty logging style boots with lug or calk soles, which are appropriate for the employee's job, the terrain, the timber type, and the weather conditions. What constitutes proper footwear for loggers is currently the subject of some debate in the industry. The OSHA pulpwood standard requires safety-toe footwear to be provided. The 1971 ANSI pulpwood safety standard had recommended, in addition to recommending safety footwear, that calks be used where applicable. The

1978 ANSI logging standard required that employees "wear safety boots, safety shoes or calk boots or other substantial footwear depending on the job, the terrain and timber." The 1978 ANSI 03.1 committee made known its belief in Appendix B to that standard that calks should be worn in most Western logging operations because of "conditions" existing there. OSHA solicits information concerning the effective use of protective footwear in logging operations.

In (e)(1)(viii), OSHA proposes a performance standard for first aid kits. The provision would require that sufficient numbers of adequately supplied first aid kits be provided at the worksite and on all crew vehicles. The kit requirements are not specific because of the wide variety of conditions and number of employees to be served at different worksites. The provision embodies the same requirements found in the current pulpwood standard. Non-pulpwood logging operators are presently required by the General Industry standards, 29 CFR 1910.151(b), to maintain readily available first aid supplies approved by a consulting physician in the absence of an infirmary, clinic or hospital in near proximity to the worksite.

In (e)(1)(ix), OSHA proposes to address the hazards posed by poisonous snakes in the woods. The proposal adopts the OSHA pulpwood logging standard's requirement that snake bite kits must be included with first aid equipment in areas where poisonous snakes may exist, except that alternative first aid treatment may be substituted on the documented recommendation of a physician or other authoritative source. The latter provision had been adopted in the 1978 ANSI logging standard.

In (e)(1)(x), OSHA proposes first aid training for all supervisors and fellers, and that at least one person with such training be in the area of operation. Such training is considered particularly important by OSHA because the severity of many logging injuries, often at very isolated work locations, requires quick and effective first aid. OSHA believes the need for training in first aid methods such as are prescribed by the American Red Cross, the Mine Safety and Health Administration, or an equivalent training program, is recognized in the industry. The 1978 ANSI logging standard required that at least one person in each area be trained in first aid by such organizations. The requirements in the several state standards are quite varied.

In (e)(2), OSHA proposes nine fairly routine provisions concerning safe use and care of hand tools and equipment. Each of these requirements is in the OSHA pulpwood logging standard. The 1978 ANSI logging standard also adopted these hand tool provisions. The provisions are intended to protect employees from hazards which are recognized throughout the industry. Hand tools such as wedges and cutting tools are extensively used in the logging industry. These provisions will protect employees from hazards such as those caused by dull tools, loose handles, and metal chips from mushroomed tool heads.

In (e)(3), OSHA addresses hazards associated with environmental conditions that cause significant danger to employees. The BLS Survey (Reference 1) found that environmental conditions specifically addressed in the proposed standard were contributing factors in 30 percent of the injuries at the worksite. It is the employer's responsibility to assure that employees are protected from these conditions.

In (e)(3)(i), OSHA proposes termination of work and movement of employees to safe places during electrical storms, periods of high winds or other weather conditions which may endanger personnel. The intent is to protect employees from lightning, falling trees and limbs, and other weather-induced hazards.

The OSHA pulpwood logging standard and the 1978 ANSI standard include nearly the same provision as proposed (e)(3)(i), however, those standards use the phrase "or unusual weather conditions." The word "unusual" has been deleted from the proposal because OSHA believes it might be misinterpreted. OSHA proposes that work terminate when weather conditions pose a danger to loggers, regardless of whether the condition is unusual for the region.

In (e)(3) (ii), (iii) and (iv), OSHA proposes several work practices to protect employees from the dangers presented by falling dead, broken or rotted trees and limbs; by falling loose bark on snags which are to be felled; and by falling snow and ice in trees. OSHA proposes that no work be allowed in the danger area until a hazard is dealt with, except for the purpose of making the area safe.

In (e)(4), OSHA addresses hazards related to the usual isolation of logging work areas, the possibility of the actions of one employee causing hazards for another, and hazards to employees caused by fire. Several of the fatal accidents described in Section II of this preamble demonstrate the hazards addressed in these provisions.

In (e)(4)(i), OSHA proposes that most employees work within visual or audible signal contact with another person, so that communication is possible in case of emergency. If this practice is not followed there is potential for a seriously injured employee to be without help for an extended period. Motor noise is not an acceptable signal. This paragraph would not apply to operators of motor vehicles, watchmen and other jobs which, by their nature, are single employee assignments. OSHA requests comments on this proposed requirement.

This paragraph clarifies existing provisions in the current OSHA pulpwood logging standard and is similar to provisions contained in the 1978 ANSI logging standard and several State Plan state standards.

In (e)(4)(ii), OSHA proposes that all employees be accounted for at the end of each work shift. The intent is to guard against injured workers being left alone in the woods. The current OSHA pulpwood logging standard requires accounting for workers at the end of the day. OSHA believes it is more appropriate for employers to account for workers at the end of their work shift since some logging operations use more than one shift of workers a day. The 1978 ANSI standard and the Oregon and Washington state standards require accounting at the end of each shift. (See Oregon Admin. R. 437–80–020 and Wash. Admin. Code R. 296–54–507(3).)

In (e)(4)(iii), OSHA proposes spacing and assignment of duties so that the actions of one employee do not endanger another. An example of the possible danger would be when a faller is assigned to fell a tree when other fallers, buckers or choker setters are nearby instead of scheduling such felling at a time when the other workers would not be endangered by falling wood. This type of accident is often noted in OSHA accident reports.

Although the OSHA pulpwood logging standard does not contain this provision, its precursor, the 1971 ANSI pulpwood standard; did so. The 1978 ANSI standard also required all logging employers to space employees and assign duties so that the actions of one employee would not create hazards for other personnel. OSHA believes that the adoption of this general performance oriented provision is necessary to ensure careful prior planning of logging operations, so that the various activities of the loggers do not endanger each other.

In (e)(4)(iv), OSHA proposes that portable fire extinguishers be provided where logging machines and vehicles are operated, as a precaution against

fire hazards created by machines, vehicles and fuel. Fire in the woods poses a significant danger to loggers who could be trapped in the fire area.

In (e)(4)(v), OSHA proposes that fuel must be stored and dispensed in accordance with the General Industry standard for hazardous materials, 29 CFR Part 1910, Subpart H. The non-pulpwood logging industry is already required to comply with the General Industry standard. The pulpwood logging standard contained similar requirements. The requirement is included in the logging standard to stress that employees must comply with what OSHA believes are important safety practices. The 1978 ANSI logging standard also contained requirements for safe storage and handling of fuel.

In (e)(5), OSHA proposes 13 requirements meant to protect chain saw operators from injury. The BLS survey (Reference 1) found that 20 percent of the injuries to loggers were caused by chain saws. Two-thirds of these accidents occurred when the saw kicked back. Most of the other injuries involving chain saws occurred when workers fell on their saws. Over three-fourths of those injured by chain saws were cutting with the saw when the injury occurred.

In recent years there have been many improvements in chain saw safety due to chainbrakes, bar tip guards, and bars and chains which reduce kickback. Protective chaps and pads of ballistic nylon or improved lightweight protective materials have further protected the operator. OSHA believes that proper use of improved chain saws and personal protective equipment; and compliance with the proposed work practices will greatly improve the safety record of chain saw operations. Based on the BLS survey, OSHA believes that many of the accidents are caused by fatigue, inattention, haste to produce, or a combination of these factors. OSHA believes that the 13 proposed requirements, when reinforced by the standard's training provisions in (d)(1), (2) and (3), will lead to a better understanding of the safety standards and a significant reduction in chain saw injuries.

OSHA requests information about any data which demonstrate the success or failure of particular safety devices, chain design, bar design and/or protective equipment in the improvement of operator safety. Several foreign countries have mandated use of chainbrakes. OSHA requests information about any data or studies evaluating the effectiveness of chainbrakes in achieving safer chainsaw operation in those countries.

Some substantive proposed changes to the chain saw provisions of the current OSHA standard are as follows:

In (e)(5)(iii), OSHA proposes the specific requirement that chain saws must be fueled not less than 20 feet (6 m) from an open flame or other potential source of ignition. The proposed requirement is the same as the requirement in ANSI 03.1–1978 and is more specific than the very general wording in the current OSHA § 1910.266(c)(5)(iii).

In (e)(5)(viii), OSHA proposes parameters governing the carrying of a running chain saw. BLS Bulletin 2203 (Reference 1) states that of 222 instances of injury by a chain saw, 28 were the result of falls, the second leading cause of chain saw injury after kickbacks. Since an employee walking on the job site has an increased chance of slipping or tripping and since falls onto a running chain saw lead to severe injuries, OSHA has proposed adoption of the 50-foot maximum carrying distance recommended in ANSI 03.1–1978 for the carrying of a running saw. OSHA proposes further restricting the distance a running saw may be carried if the terrain and other physical factors such as underbrush and slippery surfaces warrant such a precaution, as was required in ANSI 03.1–1978. OSHA believes that the current rule, permitting running chain saws to be carried from "tree to tree" inadequately addresses the hazard since the distance between trees (which varies from one work area to the next) bears little relationship to the factors influencing the hazard, such as the distance the saw is carried, the slope of the terrain, and the amount of ground cover and debris. OSHA believes that a running chain saw must never be carried more than fifty feet in the woods. The need for guidance in this area has been evident in questions and comments OSHA has received.

In (e)(5)(xiii), OSHA proposes deletion of the absolute requirement of the OSHA pulpwood logging standard that chain saw operators hold the saw with both hands during operation. The proposed standard requires that a firm grip be used; however, it recognizes that some cutting requires brief releases of one hand such as when a feller needs to place a wedge in the cut to keep it open. The 1978 ANSI standard recognizes the need for momentary release of one hand in some situations.

In (e)(6), OSHA proposes 18 requirements intended to protect personnel from hazards associated with stationary and mobile equipment such as mobile yarders, and mobile loaders. The large size, noise level and complexity of these machines all contribute to potential hazards to employees. All of the provisions are in the OSHA pulpwood logging standard. Minor changes in wording have been made to clarify some of the provisions. Substantive proposed changes to the current OSHA standard are discussed in the following paragraphs:

In (e)(6)(i), OSHA proposes continuing the pulpwood logging standard's requirement that an operator's manual or set of operating instructions be with each machine. Operators unsure or unaware of safe operating procedures pose hazards to themselves and co-workers. OSHA feels that having the material on the machine ensures its availability when needed.

In (e)(6)(ii), OSHA intends to prevent the accumulation of any material on walking and working surfaces which could lead to slipping and falling injuries or could ignite and cause a fire.

In (e)(6)(ix), OSHA proposes the installation and use of seatbelts on all tractors and mobile equipment having roll-over protection. The provision would allow an exception to seatbelt use in the rare situation that use of the seatbelt would add to the jeopardy of the operator due to conditions at a particular worksite. The State of Washington, for example, has a similar standard and exception. Washington State would allow exceptions to seat belt use when: (1) Working on or above some of the extremely steep slopes where logging activity does occur; (2) working or passing below steep slopes, particularly when other logging activity is occurring on or above the steep slope; and (3) jillpoke and sweeper hazards are present. The 1978 ANSI standard recommended that seatbelts be worn loosely fitting so that the operator had sufficient leeway to avoid a possible penetrating limb or branch. Additional public comment is invited on seatbelt use.

In (e)(6)(xiii), OSHA proposes prohibiting riders or observers at any time on loads or on machines, unless seating and protection are provided equivalent to that provided the operator. This machine rider and observer prohibition is a part of the OSHA pulpwood logging standard. OSHA requests comment and supporting information regarding whether the standard should contain an exception to this prohibition to allow an observer on the machine for training purposes only, and under what conditions.

In (e)(6)(xvi), (xvii) and (xviii), OSHA proposes certain requirements for operation and transit in the vicinity of electrical distribution and transmission lines. Similar provisions exist in the 1978

ANSI logging standard, the OSHA Construction Safety Standards, § 1926.550, and the OSHA General Industry Safety Standards, Part 1910, Subpart N.

In (e)(7), OSHA proposes continuation of the explosives handling and use requirements that have been included in § 1910.109 and referenced by current § 1910.266(c)(7) of the OSHA pulpwood logging standard. The extreme hazards to employees that exist wherever explosives are handled or used are well-known. The explicit statement is intended to aid employers and employees in recognizing the need for proper handling and use of explosives.

Paragraph (f), "Equipment protective devices—stationary and mobile equipment." In (f)(1), OSHA proposes 16 requirements concerning equipment protective structures. Operators of forestry equipment need protection from many hazards, including roll-over, falling trees, falling branches, rolling logs, snapping lines, whipping saplings and whipping branches. OSHA has based its proposed requirements on several sources, including the current OSHA § 1910.266, the 1978 ANSI 03.1 standard, and state safety standards.

In (f)(1)(i) and (ii), OSHA proposes that employers must equip, and maintain, roll-over protective structures (ROPS) on every tractor, skidder, front-end loader, scraper, grader, dozer and mechanical falling device, if placed in service after the effective date of the standard. OSHA proposes that the ROPS shall be installed, tested and maintained in accordance with the Society of Automotive Engineers recommended criteria set forth in SAE 1040c 1979.

The use of ROPS is not required in the current OSHA § 1910.266. However, the value of ROPS—required in OSHA Construction Safety Standards, 29 CFR Part 1926, Subpart W, and Agricultural Standards, 29 CFR Part 1928, Subpart C—has become well recognized as necessary protection for forestry equipment operators. Steep terrain, slippery or uneven ground, large loads, top-heavy equipment or loads, and other environmental conditions and work practices present a danger of logging equipment rollover. ROPS will reduce the possibility that operators will be crushed in the event their machine rolls over. ROPS use has become a common requirement in state logging standards.

In (f)(1)(iii), OSHA proposes that falling object protective structures (FOPS), be installed on all equipment which must have ROPS under (f)(1)(i) and, in addition, on swing yarders, log stackers and forklift trucks, if placed in service after the effective date of the standard. OSHA proposes that the FOPS be installed, tested and maintained in accordance with the Society of Automotive Engineers performance criteria published in SAE J231 JAN 81. This proposed requirement addresses hazards posed to equipment operators by falling trees and limbs, snapping winch lines and other falling objects. The proposed provision clarifies the requirements posed by § 1910.266(d)(2) of the current pulpwood logging standard.

OSHA has found that ROPS and FOPS are standard features on logging machines being manufactured at the present time. OSHA believes that many logging machines in current use, however, are not fitted with such safety features. OSHA requests comment on the costs to retrofit these older machines with ROPS and FOPS and whether it is feasible to do so.

In (f)(1)(iv), OSHA proposes that vehicles equipped with ROPS or FOPS as required in (i) or (iii) also comply with the Society of Automotive Engineers criteria on limitation on deflection, SAE J397b 1979. Deflection limits ensure that when ROPS/FOPS hit a hard surface they will retain their capability to withstand subsequent impacts.

The remaining proposed provisions of (f)(1) are contained in OSHA's pulpwood logging standard, in ANSI's 1978 logging standard, or both. Two newly proposed provisions which were in the 1978 ANSI standard are (f)(1)(xv) and (xvi). Proposed paragraph (xv) clarifies that transparent material, such as safety glass, that is used in equipment must be replaced when it is cracked or broken, or when vision is obscured due to scratches. Proposed paragraph (xvi) addresses the obvious hazards of breaking lines falling on workers operating equipment during high lead and skyline yarding operations by requiring sheds or roofs over such equipment to be sufficiently strong to withstand the force of such breaking lines. It is also noted that in (f)(1)(vii), OSHA proposes that the lower portion of the cab be completely enclosed with solid material, except at entrances, to prevent the operator from being injured by obstacles entering the cab. OSHA solicits information on whether the use of material that is not solid, such as wire mesh, can adequately provide this protection.

In (f)(2), OSHA proposes that steps, ladders, handholds, catwalks, or railings be provided where needed for mounting and maintenance purposes. This standard will protect against slips and falls by the operator or maintenance personnel. Although the OSHA pulpwood logging standard does not address this hazard, the 1971 ANSI standard did. The 1978 ANSI logging standard also had such a provision and, like the proposal, required access equipment to be provided in accordance with the Society of Automotive Engineers J185 standard.

In (f)(3), OSHA proposes that exposed moving elements such as shafts, pulleys, belts, conveyors, and gears be guarded in accordance with Part 1910, Subpart O. This provision is not new for the logging industry and provides basic protection from well-recognized hazards. Even though the necessity for machine guarding is not unique to the logging industry, the OSHA pulpwood logging standard has such a provision. In the proposed standard the provision is included as a reminder that general industry machine guarding requirements continue to apply to logging.

Paragraph (f)(4) of the proposal which is listed as "reserved," is intended to provide coverage of hazards related to the control of hazardous energy sources, usually referred to as "lockout/tagout." Logging operations are already included within the scope of OSHA's proposed generic lockout/tagout standard, which was published on April 29, 1988 (53 FR 15496). (A complete discussion of the reasons for the proposed lockout/tagout standard, together with a summary and explanation of the provisions of that proposal, is contained in the April 29 **Federal Register** notice, and is incorporated by reference into this preamble.) The Agency intends that the generic rule apply to logging operations, and is proposing to reference that rule in the final logging standard when both are issued as final rules. However, because the control of hazardous energy is an important consideration in logging operations, OSHA wishes to assure that the logging standard contains the kind of lockout/tagout coverage provided by the generic standard, even if the final. logging standard is issued before the generic lockout/tagout standard. Accordingly, OSHA is reserving paragraph (f)(4) for use, if necessary, to incorporate the proposed generic lockout/tagout provisions directly into the logging standard. If the rulemaking on the generic standard is not completed before the logging standard becomes a final rule, OSHA intends to place the proposed lockout/tagout procedures from the generic rule within the text of the final logging standard. These procedures would be removed from the logging standard when the generic lockout/tagout standard is published. At that time, the generic rule would cover logging as part of its overall coverage of

general industry. OSHA invites comments and data on the applicablity of the proposed generic lockout/tagout standard to logging operations.

In (f)(5), OSHA proposes three basic requirements for use of guylines. Many different hazardous situations are presented in the use of guylines. Great care is necessary in their use to prevent guyline or anchor failure due to the imposed load. The first two requirements, paragraphs (f)(5)(i) and (f)(5)(ii), are also in the current OSHA pulpwood standard. In the third, (f)(5)(iii), OSHA has rewritten the regulation concerning guyline anchors for clarity and to allow the use of standing trees as anchors when the trees are tied back to other anchors, and where there is no danger that any part of the tree will enter the work area in case of failure.

In (f)(6), OSHA proposes that stability, boom reliability, and inspection procedures for truck and crawler mounted rigid boom cranes and yarders be in accordance with American National Standards Institute standards ANSI B30.2–1983 and ANSI B30.5–1982—the most up-to-date nationally recognized voluntary safety standards for these machines. Both the OSHA pulpwood standard and general industry standards require compliance with older ANSI standards for crane and derrick stability and reliability criteria.

In (f)(7), OSHA proposes four provisions concerning exhaust pipes to protect employees from the hazards of noise, hot gases, hot surfaces, and fires caused by sparks in the exhaust. The wording has been expanded from the current rule's simple requirement that mufflers provided by the manufacturer or their equivalent shall be in place at all times the machine is in operation.

In (f)(8), OSHA proposes four provisions governing brakes. The terrain often encountered in logging makes proper brakes an especially important safety consideration. Brake provisions are included in state standards and the ANSI 03.1–1978 standard.

In (f)(8)(i), OSHA proposes a performance standard requiring that brakes hold a machine and its maximum intended load on the grades over which it is being operated.

In (f)(8)(ii), OSHA would require a secondary braking system which will work in any direction of travel and is not dependent on engine operation.

In (f)(8)(iii), OSHA proposes that the braking system be kept in good repair. The intent of this regulation is to maintain the effectiveness of the braking system by increasing awareness of the importance of brake maintenance and repair.

In (f)(8)(iv), OSHA would require a parking brake or a locking device to hold the service brakes in the applied position.

Paragraph (g), Tree harvesting. In this paragraph OSHA proposes numerous provisions intended to protect employees from hazards during the entire tree harvesting sequence.

In (g)(1), OSHA proposes nine provisions intended to protect employees from hazards generally related to felling activities. According to the BLS Survey, 23 percent of the injuries take place during the felling operation.

In (g)(1)(i), OSHA proposes assignment of work areas at a separation distance of at least twice the height of the trees being felled. Similar requirements exist in state standards and the 1978 ANSI standard. It is OSHA's intent to protect employees from misdirected trees, additional trees knocked down inadvertently, and/or falling dislodged portions of trees. OSHA also proposes a greater distance between work areas on slopes because of increased difficulty in directional felling and the added danger of being struck by a rolling or sliding felled tree.

In (g)(1)(ii), OSHA proposes a new requirement that skidders and prehaulers not be operated in the immediate felling area while manual felling activity is in progress. OSHA is concerned that the activity of these machines could expose the fellers to hazards by dislodging trees or portions of trees, and the felling activity could endanger the machine operators.

In (g)(1)(iii), OSHA proposes the marking and grounding of lodged trees using mechanical or other safe techniques before any work is continued within two tree lengths. It is OSHA's intent to protect employees from hazards caused by the unpredictable stability of a lodged tree. Such a tree could suddenly fall and cause other trees and branches to fall.

In (g)(1)(iv), OSHA proposes that other employees not approach a feller closer than twice the height of trees being felled until the feller has acknowledged that it is safe to do so. Because of the noise involved, other employees are likely to be well aware of felling activity while the feller often may not be aware of approaching employees. OSHA believes that the safest procedure is for other employees to wait until they can get the feller's attention and approval.

In (g)(1)(v), OSHA proposes a new requirement that employees remain clear of any mechanical felling operation. OSHA believes that employees walking or working near a mechanical feller are in danger because the operator often does not know of their approach. The employees are exposed to the hazard presented by the operating machine and the usual hazards of falling trees and branches.

In (g)(1)(vi), OSHA proposes a general requirement that trees shall not be felled in a manner that would endanger any person, or strike any line (including power lines), or fall on equipment. A similar provision was included in ANSI 03.1–1978.

In (g)(1)(vii), OSHA proposes that because of the hazards presented by power lines, the power company shall be notified immediately if a tree does make contact with any power line, and all personnel shall remain clear of the area until the power company advises that conditions are safe.

In (g)(1)(viii), OSHA proposes that felling activity on sloping terrain be kept uphill from, or on the same level as, previously felled trees. It is OSHA's intent to protect the fellers from sliding and rolling of the trees felled previously.

In (g)(1)(ix), OSHA proposes a new requirement that fellers consult with their immediate supervisor before beginning to cut when the felling activity itself is unsually hazardous. This general performance-oriented provision addresses particularly hazardous felling, such as when trees are very large, or when their lean, location or structure make it difficult and dangerous to fell the tree in the desired direction. OSHA believes the increased consultation and supervision will minimize the hazards to loggers.

In (g)(2), OSHA proposes six requirements intended to protect employees engaged in manual felling. Proposed changes to the current pulpwood logging standard follow.

In (g)(2)(i), OSHA proposes continuing the pulpwood standard's requirement that fellers plan, and clear as necessary, a retreat path before cutting is started. In addition, OSHA proposes the requirement that, where the terrain and tree growth make it feasible, the retreat path shall extend back and diagonally to the rear of the expected falling line. This additional requirement was included in ANSI 03.1–1978.

In (g)(2)(iii), OSHA proposes that undercuts be required, and that they be of the necessary size to guide the falling tree in the desired direction of fall, with a minimum possibility of splitting. It is OSHA's intent to protect the feller from the hazards of a poorly directed or split tree. Performance wording is used because of the many different conditions that can exist. ANSI 03.1–1978 adopted such language.

In (g)(2)(iv), OSHA proposes that a backcut allow for sufficient hinge wood to guide the tree and prevent it from prematurely slipping or twisting off the stump. OSHA's intent is to protect the feller from the hazard of a misdirected tree. ANSI 03.1–1978 adopted this provision.

In (g)(2)(v), OSHA proposes that the backcut be above the horizontal cut of the undercut. It is OSHA's intent to protect the feller from a kickback of the falling tree from the stump, which generally would be more likely to occur if the backcut was lower. Performance wording is used because of the many different conditions that can exist. ANSI 03.1–1978 adopted such language.

In (g)(2)(vi), OSHA proposes to require chain saws to be either at idle or shut off before a feller starts his retreat. OSHA believes that idling the saw is at least as effective in preventing serious injuries from chain saw lacerations as complete engine stoppage because the chain is not being driven.

In (g)(3), OSHA proposes four requirements concerned with the hazards of the bucking operation. The BLS Survey demonstrated that 12 percent of the logging injuries occurred while bucking. The proposed requirements address the hazards presented by log movement on slopes, by spring poles and trees under stress, by windthrown timber and by yarded trees. The provision addressing windthrown timber has been added to the standard because its unplanned lie multiplies the dangers presented to buckers by rolling and shifting trees. Unstable root wads present additional hazards when cut away from the fallen trees.

The only other proposed change to the current OSHA standard's bucking provisions concerns the location and placement of trees yarded to a bucking site. The proposal clarifies that the yarded trees must be safely located, such as being far enough from other operations so as not to be endangered by them, and that the trees shall be placed in an orderly manner so that they are stable when worked on.

In (g)(4), OSHA proposes precautions to protect employees performing limbing operations from the hazards of cutting spring poles and limbs under stress. There is danger to the employee due to the release of the stress when a limb is cut.

In (g)(5), OSHA proposes requirements to protect employees from the hazards of mechanical debarking and delimbing operations. The hazards are those normally associated with moving parts and with flying materials such as chips, bark, and limbs.

In (g)(6), OSHA proposes 11 requirements to protect employees from the hazards of skidding, forwarding and yarding. Several provisions in the current pulpwood logging standard are not included in this proposal because OSHA believes they are outdated or unnecessarily rigid. Proposed changes to current provisions are described below.

In (g)(6)(ii), OSHA proposes that while hooking or unhooking chokers, workers choose the safest approach route which is the up-hill side or end of the log unless it is not feasible to do so or unless the log is securely blocked to prevent rolling or swinging. Choker setters and chasers (those who unhook chokers), are subject to many of the same hazards as fallers, limbers, and buckers; the primary dangers being shifting logs, falling wood, and unsafe footing. The BLS Survey found that choker setting or hooking up a "turn" of logs comprised the third most dangerous logging operation, accounting for 14 percent of the injuries. Another five percent of the injuries surveyed were attributed to workers unhooking choker cables.

In (g)(6)(iv), OSHA proposes to amend the current pulpwood logging standard's rigid requirement that yarding equipment be positioned during winching so that the winch line is in alignment with the long axis of the machine. OSHA recognizes that exact alignment is not always possible in the woods. OSHA proposes that the winch line must be as near in alignment with the long axis of the machine as possible, unless the machine is designed to be used under other conditions of alignment.

In (g)(6)(vi), OSHA proposes that yarding lines not be moved unless the signal to do so is clearly understood. A method of confirming the signal when in doubt is included. OSHA believes that this communication is very important. The unexpected movement of yarding lines can subject employees to being caught in or struck by the lines, carriages, or chokers and/or logs. Similar requirements are found in state standards and the ANSI 03.1–1978 consensus standard.

In (g)(6)(vii), OSHA proposes the examination of spar trees for defects such as rot or splits which may weaken the tree and make it unsuitable for rigging. Similar requirements appear in state standards and in the ANSI 03.1–1978 national consensus standard.

In (g)(6)(viii), OSHA proposes that unstable trees and spars be guyed for stability. Similar requirements appear in state standards and in the ANSI 03.1–1978 national consensus standard. The requirement does not apply to yarding equipment which is designed for guyless operation.

In (g)(6)(xi), OSHA proposes basic requirements for towed equipment, such as skid pans, pallets, arches, and trailers, to ensure safe turning and control of the equipment. Unnecessary elementary design requirements in the current standard such as requiring yarders to have the ability to securely retain towed equipment have been dropped. Requirements concerning the use of animals to tow have been dropped since animals are seldom used for this purpose today.

In (g)(7), OSHA proposes four requirements intended to protect employees during transportation.

In (g)(7)(i), OSHA proposes that all drivers have a valid operator's license for the class of vehicle being operated. OSHA believes that compliance with this requirement would ensure that the operator has met the necessary qualifications and has operated in a manner responsible enough to maintain his or her license.

In (g)(7)(ii), OSHA proposes that flammable liquids not be transported in driver compartments nor in occupied passenger compartments. Flammable liquids present the hazards of fire and explosion, and would be particularly dangerous for employees in these compartments. ANSI 03.1–1978 also required that flammable liquids be transported outside these compartments.

In (g)(7)(iii) OSHA proposes to continue the current requirement that all seats in personnel carriers be securely fastened to the vehicle.

In (g)(7)(iv), OSHA proposes to add the requirement that mounting steps and handholds be provided on personnel transport vehicles to address the obvious hazards presented by slips and falls from this equipment. A similar requirement appeared in ANSI 03.1–1978.

In (g)(7)(v) OSHA proposes a new requirement that personnel transportation vehicles have seat belts for drivers and that drivers shall use them. Seat belts will help prevent injuries to drivers involved in vehicle accidents. In addition, seat belts will help prevent accidents by keeping the driver firmly planted in his seat during travel to and from logging operations on roads that are often steep, narrow, and rough.

In (g)(8), OSHA proposes the basic requirements that truck drivers ensure that load binders are tight before moving the load, and that they check and tighten the binders as necessary while in transit. OSHA believes that, while the initial tightening of the binder

may secure the load, travel motion, particularly off highway, may cause the load to work loose and result in somewhat slack binding. The checking and tightening will help prevent truck accidents. A similar requirement was revoked from the OSHA pulpwood standard in 1978 (43 FR 49571, October 24, 1978), because it was mistakenly believed to be for the general protection of the public. However, OSHA has received several comments supporting the requirement as providing protection for drivers. A similar provision was also in ANSI 03.1–1978.

In (g)(9), OSHA proposes eight requirements intended to protect employees involved in loading and unloading operations. The requirements are based on those in various state logging standards—ANSI 03.1–1971, ANSI 03.1–1978, and the current provisions of § 1910.266. In the proposal, the separate manual loading and machine loading requirements of the current § 1910.266 have been replaced by combined loading and unloading requirements. Changes and additions to the current OSHA pulpwood logging standard are discussed in the following paragraphs.

In (g)(9)(iii), OSHA proposes that drivers not remain in the truck cab during loading or unloading unless the employer demonstrates that the drivers presence in the cab is necessary as part of the loading and unloading process and the cab and associated guards offer adequate protection from logs shifting or falling onto the cab. This provides for the driver's safety during the log handling operation. The 1978 ANSI standard had a similar provision.

In (g)(9)(iv), OSHA proposes that logs and bolts be placed on transport vehicles so that they can be properly secured. It is OSHA's intent to protect employees from the hazards of loads which may move because of improper securing caused by haphazard loading.

In (g)(9)(vi), OSHA proposes that stakes and chocks which are used for tripping shall be constructed in such a manner that the tripping mechanism that releases the stakes or chocks is activated on the side of the load opposite the release. This is intended to protect employees from the hazards presented by sudden log movement upon release by isolating the employee from moving logs.

In (g)(9)(vii), OSHA proposes that a sufficient number of binders be left in place over each peak log to secure all logs until after the unloading lines or other equivalent protection are in place. This requirement is intended to protect employees from sudden movement of the load.

In (g)(9)(viii), OSHA proposes that binders be released only from the side on which the unloader operates, except when released by remote control devices, or when the person making a release is protected by racks or stanchions or other equivalent means. This requirement is intended to ensure that the person making the release is in a safe location and is not endangered by movement of the load.

In (g)(10), OSHA proposes that piles and decks be located and constructed so as to provide a safe working area around them. OSHA believes that a well planned and implemented work area can prevent the occurrence of many accidents.

In (g)(11), OSHA proposes three requirements for chippers in order to keep employees away from the dangerous moving drums, discs, knives and blower blades. The moving chipper mechanism presents significant hazards, and employees need protection from contact with the mechanism. The only proposed requirement not contained in the current rule is a lockout provision which is added to ensure that employees do not get caught in the infeed when they must work on that mechanism. A similar requirement appears in ANSI 03.1–1978.

In (g)(12), OSHA proposes new requirements concerning signaling and signal equipment. Such requirements are found in ANSI 03.1–1978 and are common in state standards.

In (g)(12)(i), OSHA proposes that hand or audible signals be utilized whenever excessive noise, distance, restricted visibility, or other factors prevent clear understanding of normal voice communciation between employees. Local or regionally recognized signals may be used. OSHA believes that any attempt to replace local or regionally recognized signals with a national system which is not locally recognized could lead to confusion and endanger employees.

In (g)(12)(ii), OSHA proposes that, except in emergencies, only designated persons shall give signals. OSHA believes that any other practice could also cause confusion and endanger employees.

Roads and Trails. Provisions of the current pulpwood logging standard which specifically apply to the construction of roads and trails, § 1910.266(e)(15)–(19), have not been included in the proposed standard. Similar provisions were not continued in ANSI 03.1–1978 when it was published as a revision which expanded ANSI 03.1–1971 to include all logging. OSHA Construction Standards would apply to the road and trail building process. Provisions in the current pulpwood logging standard such as those covering trees and snags which may fall onto roads and trails are covered elsewhere in the proposed standard. Road and trail characteristics are also subject to a wide variety of state and local controls; and regulations of other Federal agencies such as the U.S. Forest Service which render additional specific OSHA regulations unnecessary.

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VII. Regulatory Impact Assessment

A Preliminary Regulatory Impact Assessment (PRIA) has been prepared by OSHA in compliance with Executive Order 12291 and the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.). The data for this assessment were provided by a February 1986 report by Centaur Associates, Inc., entitled, "Economic Impact Study of the Logging Industry." All estimates in this PRIA are in 1985 dollars. The complete OSHA PRIA is available for inspection and copying at the OSHA Docket Office, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210.

Affected Industries and Workers

For purposes of analysis, the U.S. was divided in four relevant geographical regions—the North, the South, the Rocky Mountains, and the Pacific Coast. The proposed rule will affect approximately 11,700 establishments and 69,000 loggers. This is somewhat of an underestimate for reasons explained in detail in the PRIA. (About 6,200 establishments and 41,600 workers are covered under the current OSHA pulpwood standard and the six state-plan-state logging standards.) These affected workers include fellers and buckers, who cut the trees; skidder yarder operators, choker setters, and chasers, who are responsible for delivering a felled tree to the side of a road; and loader operators and truck drivers, who load the trees onto trucks for transport to a mill. Although all stages of logging present hazards to workers, the loggers most at risk are those who work out in the open, rather than those who operate mechanical harvesting equipment and are protected by enclosed cabs.

Assessment of the Nonregulatory Environment

The private market fails to provide an adequate level of safety for loggers. The number and severity of accidents related to this industry is high. Tort liability rarely applies in these accidents and the Workers' Compensation system suffers from several defects that seriously reduce its effectiveness in providing incentives for logging firms to create safe work places. OSHA, therefore, believes the proposed standard is the best mechanism to reduce risk in a manner optimal to society.

Technological Feasibility

The proposed work practices and training provisions, as well as personal protective equipment and protective devices on equipment, are feasible. Many establishments in the logging industry are currently providing the training and personal protective equipment, and are operating under the same work practices, as those required by the proposed standard. OSHA has determined that numerous firms of all sizes are already in compliance with most of the provisions of the proposed standard, and, therefore, the promulgation of this expanded and revised standard is technologically feasible.

Costs of Compliance

The costs of compliance for the proposed standard can be separated into two components. Baseline I represents current industry practices and is used for estimating the cost of coming into compliance with current standards (i.e., the current OSHA pulpwood standard or the six state logging standards). This amount is $1.3 million per year and is incurred by establishments in the six state-plan-states with logging standards and by the pulpwood logging establishments in the remaining 44 states and jurisdictions subject only to the OSHA pulpwood standard. Baseline II assumes compliance with the current standards and is used to measure the additional cost to affected firms to comply with the proposed OSHA standard. This cost is $2.6 million per year and is incurred to a greater or lesser extent by all U.S. logging firms, including those nonpulpwood logging firms not currently covered by a standard. The total cost (Baseline I plus Baseline II) is $3.9 million per year in 1985 dollars and represents the cost for all firms to comply fully with the proposed standard.

These costs are annual amounts in 1985 dollars. Personal protective equipment accounts for 71 percent of the total cost. Training and providing operators' manuals and written procedures for disabling hazardous energy lockout/tagout account for 20 percent, 2 percent, and 7 percent, respectively. The cost associated with requiring lockout/tagout procedures in the logging industry has already been included in the preliminary Regulatory Impact Analysis for the generic rule proposed for all general industry on April 29, 1988 (53 FR 15496). This cost is also provided here because OSHA intends to include the proposed generic lockout/tagout provisions in the final logging standard if necessary, i.e.; if the logging standard is issued before the generic rule is promulgated.

Benefits

Injury rates in the logging industry are high. In 1986, there were 18.9 injuries per 100 workers in logging versus 7.7 injuries per 100 workers for the entire private sector and an injury incident rate of 10.2 per 100 workers for manufacturing as a whole. Lost workday rates are especially high, indicating that most logging accidents are severe. There were approximately 89 fatalities, 8,374 lost

workday cases, and 4,231 non-lost workday cases in the logging industry in 1986.

Logging is inherently dangerous because of treacherous work conditions not controllable by work practices or the use of personal protective equipment. The proposed standard, however, is expected to significantly mitigate and reduce the historically high incidence of death and injury due to treacherous terrain, unexpected and quickly changing weather conditions, the natural diversity of trees that are being felled, and the innumerable situations, where even a momentary lapse of concentration can produce crippling injuries and death.

The estimated benefits of full compliance with the current standards are an annual reduction of 10 fatalities, 955 lost workday cases, and 482 non-lost workday cases. Compliance with the proposed standard is expected to reduce accidents further, thereby resulting in first-year reductions of 8 fatalities, 571 lost workday cases, and 288 non-lost workday cases. Because of the expected increasing effectiveness of the training provisions, it is estimated that in the fifth year the proposal will result in a reduction of 14 fatalities, 1,073 lost workday injuries, and 542 nonlost workday injuries. This reduction can be attributed to the requirements for recurrent training of workers, the wearing of seatbelts when operating mobile equipment and the use of ballistic nylon protection for chain saw operators. Based solely on the fatalities avoided, this would translate into a cost per fatality avoided of $130,000 for coming into compliance with the existing standard and $186,000 per additional fatality avoided by the proposed standard upon full effectiveness of the training provision.

Economic Impact of the Proposed Standard

The projected economic impact of the proposed standard is small. The cost of full compliance with the proposed standard represents only 0.05 percent of the 1986 value of shipments for this industry. These costs represent a relatively insignificant amount of total shipments. An influx of Canadian softwood has caused lower lumber prices and reduced timber production in the past several years. However, the Canadian Government recently imposed a 15 percent export tax on Canadian lumber. This is expected to have a positive effect on the price of lumber in the U.S.

Some firms will bear more of the compliance costs than others. The annual cost per firm ranges from $27 in California, where firms are at a high level of compliance with their own state standard, to $452 in the South.

Based on these estimates, OSHA has concluded that the economic impact of the proposed standard would not threaten the stability or profitability of the logging industry or of any firm within the industry.

VIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, the Assistant Secretary had made a preliminary assessment of the impact of the proposed rule on small entities. The estimated compliance costs for small firms (in this case, those employing fewer than 20 workers) will be relatively higher than the cost for large firms (those employing more than 20 workers). As compliance costs for all firms covered under the proposed standard, however, would be very small compared with net income, the Agency does not anticipate a significant impact on small firms.

IX. International Trade

Based on its economic analysis, OSHA has determined that neither the Gross National Product (GNP), the level of international trade, the price of consumer goods, nor the level of employment would be significantly affected.

X. Environmental Impact Assessment—Finding of No Significant Impact

The proposed revisions have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) the regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and the Department of Labor's (DOL's) NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed provisions focus on training, work practices, personal protective equipment, and protective devices on equipment in order to reduce worker fatalities and injuries. In general, these provisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. The proposed revisions are considered excluded actions under Subpart B, Section 11.10 of the DOL NEPA regulations.

XI. Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), and the regulations issued pursuant thereto (5 CFR Part 1320), OSHA certifies that it has submitted the information collection requirements contained in this proposed revision to its current standards to the Office of Management and Budget (OMB) for review under section 3504(h) of that Act. Comments on these information collection requirements may be submitted by interested parties to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer of the Occupational Safety and Health Administration, 726 Jackson Place, NW., Washington, DC 20503. OSHA requests that copies of such comments also be submitted to the OSHA rulemaking docket, at the address set forth below.

XII. Public Reporting Burden

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1218-AA52), Washington, DC 20503.

XIII. Federalism

This proposed standard has been reviewed in accordance with Executive Order 12612, 52 FR 41685 (October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and

their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The Federally proposed logging standard is drafted so that loggers in every State would be protected by general, performance-oriented standards. To the extent that there are State or regional peculiarities caused by the types of timber to be logged, the terrain, the climate or other factors, States with occupational safety and health plans approved under section 18 of the OSH Act would be able to develop their own State standards to deal with any special problems. Moreover, the performance nature of this proposed standard, of and by itself, allows for flexibility by States and loggers to provide as much safety as possible using varying methods consonant with conditions in each State.

In short, there is a clear national problem related to occupational safety and health in the logging industry. While the individual States, if all acted, might be able collectively to deal with the safety problems involved, most have not elected to do so in the seventeen years since the enactment of the OSH Act. Those States which have elected to participate under section 18 of the OSH Act would not be preempted by this proposed regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard. State comments are invited on this proposal and will be fully considered prior to promulgation of a final rule.

XIV. State Plan Standards

The 25 States with their own OSHA approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final standard. These States are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States.

XV. Public Participation

Interested persons are requested to submit written data, views and arguments concerning this proposal. These comments must be postmarked by July 31, 1989, and submitted in quadruplicate to the Docket Officer, Docket No. S–048, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Written submissions should identify the specific provisions of the proposal which are addressed, and specific recommendations are encouraged on each issue.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Additionally, under section 6(b)(3) of the OSHA Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objection must include the name and address of the objector;

2. The objections must be postmarked by July 31, 1989.

3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;

4. Each objection must be separately stated and numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person requests a public hearing.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

List of Subjects in 29 CFR Part 1910

Chain saw, Forestry, Harvesting, Incorporation by reference, Logging, Occupational safety and health, Pulpwood timber, Safety, Training.

Authority

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to section 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend § 1910.266 of 29 CFR Part 1910 as set forth below.

Signed at Washington, DC, this 25th day of April 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

PART 1910—[AMENDED]

1. The authority citation for Subpart R of Part 1910 would be revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.274 and 1910.275 also issued under 29 CFR Part 1911.

2. It is proposed to revise § 1910.266 to read as follows:

§ 1910.266 Logging operations.

(a) *Scope.* This standard establishes safety practices for logging operations, including the operations of felling, bucking, yarding, skidding, loading, unloading, prehauling, limbing, marking and other operations associated with the preparation and movement of timber or pulpwood from the stump to the point of delivery, including in-woods transportation.

(b) *Application.* (1) This standard applies to all types of logging, including pulpwood harvesting and the logging of saw logs, bolts and other forest products.

(2) Hazards and working conditions not specifically covered by this standard are covered by other applicable sections of Part 1910 or by Part 1926 for construction work.

(c) *Definitions.*

Arch. An open-framed trailer or built-in framework used to suspend the leading ends of logs skidded by a tractor.

Back cut (felling cut). Usually the final cut in a felling operation, normally made on the opposite side from, and above, the undercut.

Ballistic nylon. A fabric of high tensile properties designed to provide protection from lacerations.

Binder (wrapper). A chain or wire rope tightened around logs on a truck to prevent the load from spilling.

Bolt. A segment sawed or split from a log, or any short log, such as a pulpwood bolt.

Buck. To cut a felled tree, log or bolt into sections.

Butt. The base of a tree stem.

Chock. A block, often wedge shaped, for preventing movement; e.g., of a log from rolling, a wheel from turning.

Choker. A length of wire rope or chain from which a loop or noose can be formed at one end to be used to secure trees or sections of trees for skidding or yarding.

Deadman. A completely buried anchor; often a log.

Debark. The action of removing bark from trees or sections of trees.

Deck. A stack of logs or, used as a verb, to stack logs.

Fairlead. A device that consists of blocks or rollers arranged to permit reeling in a wire rope from any direction.

Faller (feller). A logger who fells timber.

Fell (fall). To cut down trees.

Forward (prehaul). The hauling of forest products by off-the-road vehicles, non-highway transport, or other movement prior to highway or rail movement, where the product travels clear of the ground.

Grade. See "slope."

Grapple. A hinged set of jaws capable of being opened and closed, used to grip logs during skidding, yarding, or loading.

Guarded. Enclosed or protected by a cover, shield, rail or other device, or by location, so as to prevent injury.

Guyline. A line used to stay or support spar trees, booms, etc.

Hydraulic knuckle boom loader. A machine equipped with a hydraulic lifting boom with one or more pivoted joints permitting variations of lifting and reaching capabilities.

Landing. Any place where logs are laid after being yarded, while awaiting loading.

Limb. To cut branches off trees or logs.

Lodged tree (hung tree). A tree leaning against another tree or object which prevents it from falling to the ground.

Maximum load. Gross load for which a system is designed.

Mobile equipment. That kind of equipment which includes mobility as part of its work function.

Prehaul. See "forward."

Root wad. The ball of roots which extends above ground level when a tree is pushed over by winds or other means.

Saw log. A log suitable in size and grade for producing sawn timber.

Skidding. Yarding bolts, logs or trees by pulling or towing across the terrain.

Slope (grade). Slope is measured in percent, and is defined as the increase or decrease in height over the horizontal distance measure, e.g., a height of 20 feet (6 m) over a horizontal distance of 100 feet (30 m) is expressed as a 20 percent slope.

Snag. Any dead standing tree or portion thereof remaining standing.

Spar tree. A standing or raised tree which has had its limbs and top removed, used as a mast or support for blocks through which wire ropes operate to yard logs or tree lengths. A portable, metal tower is commonly used in lieu of a spar tree.

Spring pole. A section of tree, sapling, limb, etc., which is under stress due to its physical relationship to other materials.

Undercut. A notch cut in the tree to guide the tree in the direction of felling and to prevent splitting or kickback.

Wedge. A V-shaped piece of wood, plastic, or other material used to direct tree fall or to keep the saw from binding in the cut.

Widow maker. An over-hanging limb or section of tree which could become dislodged and drop to the ground. (See lodged tree.)

Winching. Winding a cable or rope onto a spool or drum.

Yarding. The act or process of conveying logs to a landing.

(d) *Training.* (1) The employer shall ensure that employees are provided training at the time of their initial assignment, prior to starting work; at least annually thereafter, and whenever changes in job assignment will expose them to new or additional hazards. Employees shall be trained in at least the following and shall demonstrate the ability to perform their tasks safely:

(i) Recognition of safety hazards associated with their individual work tasks and the preventive and protective measures to deal with such hazards; and

(ii) General recognition and prevention of safety hazards in the logging industry.

(2) In addition, all power tool operators, machine operators and associated maintenance personnel shall be trained in the safe use or maintenance of any machinery, equipment, or tools that they may be required to operate or maintain. Before performing their duties they shall demonstrate their ability to do so safely. They shall be trained to understand and follow the manufacturer's instructions.

(3) All new and inexperienced employees and current employees unfamiliar with a new assignment shall be under the close guidance of a person experienced in the task being done until it is determined that those employees are able to work in a safe manner.

(4) First aid training shall be conducted in accordance with paragraph (e)(1)(x) of this section.

(e) *General requirements*—(1) *Clothing, personal protective equipment, and first aid.* (i) Suitable heavy-duty puncture-resistant gloves shall be provided and worn when working with wire rope.

(ii) Employees whose assigned duties require them to operate a chain saw shall be provided with, and shall wear ballistic nylon or equivalent protection covering each leg from upper thigh to boot top or shoe top, except when working as a climber if a greater hazard is posed by wearing the leg protection or when working from a bucket truck.

(iii) Employees shall be provided with, and shall wear either safety boots or safety shoes (excluding low cut shoes) in accordance with Part 1910, Subpart I, or heavy duty logging style boots with lug or calk soles, which are appropriate for the employee's job, the terrain, the timber type and weather conditions.

(iv) Safety helmets shall be provided and worn in accordance with Part 1910, Subpart I.

(v) Eye or face protection shall be provided and worn in accordance with Part 1910, Subpart I. Logger-type mesh screens may be used when they offer comparable protection.

(vi) Respiratory protection shall be provided and used in accordance with Part 1910, Subpart I.

(vii) Employees shall be protected against occupational noise exposure in accordance with Part 1910, Subpart G.

(viii) Sufficient numbers of adequately supplied first aid kits shall be provided at the work site and on all crew vehicles.

(ix) Snake bite kits shall be a part of the regular first aid equipment in all areas where poisonous snakes may be encountered, unless alternative first aid treatment for snake bites, based on documented recommendations from a physician or other authoritative source is used.

(x) All supervisors and all fellers shall be adequately trained in first aid methods as prescribed by the American Red Cross, the Mine Safety and Health

Administration, or an equivalent training program. In addition, at least one person in the operating area shall have this training.

(2) *Hand tools.* (i) Each employer shall be responsible for the safe condition of tools and equipment used by employees, including tools and equipment which may be furnished by employees.

(ii) Handles shall be sound, tight-fitting, properly shaped, and free of splinters and sharp edges.

(iii) Impact tools such as wedges shall be dressed to remove any mushrooming.

(iv) Cutting tools shall be kept sharp and properly shaped.

(v) Tools shall be used only for purposes for which they were designed.

(vi) Tools and equipment transported in a vehicle shall be secured to prevent their contact with employees.

(vii) Proper storage facilities shall be provided for hand tools.

(viii) Tools shall be stored in the provided location when not needed at a work site.

(ix) Tools shall be checked during use for continued serviceability. Any tools that no longer meet the requirements of this paragraph shall be repaired or removed from use.

(3) *Environmental conditions.* (i) All work shall terminate and employees shall move to a place of safety during electrical storms, periods of high winds or other weather conditions which may be dangerous to personnel.

(ii) Hazardous dead, broken or rotted trees or limbs shall be felled, removed or avoided. Until a hazard is removed, no work shall be done in the danger areas except for the purpose of making it safe.

(iii) Snags shall be carefully checked for dangerous bark before they are felled. Accessible loose bark shall be removed before felling.

(iv) Trees shall be checked for hazardous snow or ice. When a hazard exists and cannot be avoided, no work shall be done in the danger areas except for the purpose of making it safe.

(4) *Work areas.* (i) No employee shall work in a position or location that is not within visual or audible signal contact with another person who can render assistance in case of emergency. (Motor noise is not acceptable as a signal.) (This paragraph does not apply to operators of motor vehicles, watchmen and other jobs which, by their nature, are single employee assignments.)

(ii) All employees shall be accounted for at the end of each work shift.

(iii) Employees shall be spaced and duties organized such that the actions of one employee will not create hazards for other personnel.

(iv) Portable fire extinguishers meeting the requirements of Part 1910, Subpart L, shall be provided at locations where machines and vehicles are operated.

(v) Fuel shall be stored and dispensed in accordance with Part 1910, Subpart H.

(5) *Chain saw operations.* (i) Chain saws shall be frequently inspected to ensure that all handles and guards are in place and tight; that all controls function properly; that the cutting chain is properly adjusted; that the muffler is operative; and that chainbrakes and all other manufacturer's safety features remain operational.

(ii) Chain saws shall be operated and adjusted in accordance with the manufacturer's instructions.

(iii) Chain saws shall be fueled at least 20 feet (6 m) from an open flame or other potential source of ignition.

(iv) Chain saws shall be started at least 10 feet (3 m) away from the fueling area.

(v) Chain saws shall be started on the ground or where otherwise firmly supported.

(vi) Chain saw operators shall be certain of footing before starting to cut, and shall clear away brush which might interfere with cutting or with the retreat path.

(vii) Chain saw fuel shall not be used for starting fires or as a cleaning solvent.

(viii) Chain saws shall be shut off or the chain brake engaged when carried for a distance greater than 50 feet (15.2 m), or for lesser distances when the terrain and other physical factors such as underbrush and slippery surfaces make the carrying of a running saw for such distances hazardous.

(ix) Chain saws shall be carried in a manner which will avoid operator contact with the cutting chain and muffler.

(x) Chain saws shall not be used to cut directly overhead or at a distance that would require the operator to relinquish a firm grip on the saw or to assume an off-balance position of insecure footing.

(xi) Gasoline-powered chain saws shall be equipped with a continuous pressure throttle control system that will shut off the power to the saw chain after the pressure is released.

(xii) Chain saws shall be kept properly adjusted so that the saw chain will not be driven after the throttle control is released.

(xiii) During operation chain saws shall be firmly held with thumbs and fingers encircling the handles. Two hands shall be used unless a greater hazard is posed by keeping both hands on the saw.

(6) *Stationary and mobile equipment.* (i) There shall be an operator's manual or a set of operating instructions with each machine. It shall describe operation, maintenance and safe practices. Operators and maintenance personnel shall at a minimum comply with the operator's manual or operating instructions.

(ii) Walking and working surfaces shall be kept free of any material which might contribute to slipping and falling, and shall be kept free of flammable waste and debris.

(iii) Steel decks of machines and other machine work stations shall have safety tread or other slip-resistant material.

(iv) Equipment engines shall be shut down during fueling, servicing, and repairs except where operation is necessary for adjustment.

(v) Equipment shall be inspected for malfunctions and defects before use, and those malfunctions and defects which might affect its safe operation shall be corrected.

(vi) The operator shall determine that no personnel are endangered before starting or moving equipment.

(vii) Equipment shall be started and operated only from the operator's station, or as otherwise recommended by the manufacturer.

(viii) Equipment controls shall be checked to assure proper function and response before the working cycle is started.

(ix) Seatbelts shall be installed in accordance with Society of Automotive Engineers SAE J386 APR 80, "Seatbelts for Construction Machines," which is incorporated by reference, on all tractors and mobile equipment having roll-over protection or in accordance with a design by a Professional Engineer which offers equivalent employee protection. Seatbelts shall be used unless the equipment operator and the person in charge of the jobsite have reasonable cause to believe that safety of the operator is jeopardized by wearing a seatbelt.

(x) Stability limitations of equipment shall not be exceeded.

(xi) Equipment shall be operated at such distance from other equipment and personnel that operation will not present a hazard to employee safety.

(xii) Elevated equipment components and loads shall not be moved or held over personnel.

(xiii) Riders or observers shall not be permitted on loads at any time, nor on machines unless seating and protection are provided equivalent to that provided to the operator.

(xiv) Brake locks shall be applied, and moving elements such as blades, buckets, and shears, shall be lowered to the ground (grounded) before shutting down the engine. Where applicable,

hydraulic and pneumatic storage devices shall be discharged after engine shut-down.

(xv) Equipment transported from one job location to another shall be transported on a vehicle of sufficient rated capacity, and shall be secured in such a manner as not to endanger personnel.

(xvi) When equipment is operated in the vicinity of electrical distribution and transmission lines rated 50 kV. or below, minimum clearance between the lines and any part of the equipment or load shall be 10 feet (3 m). If the voltage is unknown, it shall be assumed to be more than 50 kv.

(xvii) When equipment is being operated, minimum clearance between electrical lines and any part of the equipment or load for lines rated over 50 kV., shall be 10 feet (3 m) plus 0.4 inch (1 cm) for each one kV. over 50 kV., or twice the length of the line insulator, but never less than 10 feet (3 m).

(xviii) When equipment is in transit, with no load and boom lowered, the minimum clearance between electrical lines and any part of the equipment shall be a minimum of four feet (1.2 m) for voltages less than 50 kV.; 10 feet (3 m) for voltages over 50 kV., up to and including 345 kV.; and 16 feet (4.9 m) for voltages up to and including 750 kV. If the voltage is unknown, it shall be assumed to be more than 345 KV.

(7) *Explosives.* (i) Only trained and experienced personnel shall handle or use explosives.

(ii) Handling and use of explosives shall be accomplished in accordance with Part 1910, Subpart H.

(f) *Equipment protective devices—stationary and mobile equipment*—(1) *Protective structures.* (i) Every tractor, skidder, front-end loader, scraper, grader, dozer, and mechanical felling device, such as tree shears and feller-bunchers, placed in service after [the effective date of this standard] shall be equipped with a roll-over protective structure (ROPS). Such structures shall be installed, tested, and maintained in accordance with Society of Automotive Engineers SAE 1040c 1979, "Performance Criteria for Rollover Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines," which is incorporated by reference.

(ii) The ROPS shall be maintained in a manner that will preserve its original strength.

(iii) Every tractor, skidder, front-end loader, swing yarder, log stacker, forklift truck, scraper, grader, dozer, and mechanical falling device placed in service after [the effective date of this standard] shall be equipped with a falling object protective structure (FOPS). Such structures shall be installed, tested and maintained in accordance with Society of Automotive Engineers SAE J231 JAN81, "Minimum Performance Criteria for Falling Object Protective Structures (FOPS)," which is incorporated by reference.

(iv) Vehicles equipped with ROPS or FOPS in accordance with paragraph (f)(1)(i) or (f)(1)(iii) of this section shall also comply with Society of Automotive Engineers SAE J397b 1979, "Deflection Limiting Volume-ROPS/FOPS Laboratory Evaluation," which is incorporated by reference.

(v) The protective structure shall be of adequate size so as not to impair the operator's movements.

(vi) The overhead covering shall be of solid material and shall extend the full width of the canopy.

(vii) The lower portion of the cab shall be completely enclosed, except at entrances, with solid material to prevent the operator from being injured by obstacles entering the cab.

(viii) The upper rear portion of the cab shall be fully enclosed with open mesh material with openings of such a size as to reject the entrance of an object larger than 1¾ inch (4.45 cm) in diameter or material offering equivalent protection. It shall allow maximum visibility to the rear.

(ix) Open mesh or material offering equivalent protection shall be extended forward as far as possible from the rear corners of the cab sides so as to give the maximum protection against obstacles, branches, etc., entering the cab area.

(x) Deflectors shall be installed ahead of the operator to deflect whipping saplings and branches. They shall be located so as not to impede vision, or getting in or out of the compartment.

(xi) The entrance opening of the canopy shall be 52 inches (1.3 m) or more in vertical height. There shall be a second means of egress.

(xii) Where transparent material is used it shall be safety glass or shall provide equivalent protection.

(xiii) A metal screen shall also be used where transparent material alone does not provide adequate operator protection.

(xiv) Transparent material shall be kept clear to assure adequate visibility.

(xv) Cracked, broken or excessively scratched transparent material that obscures vision or constitutes a hazard shall be replaced.

(xvi) Sheds or roofs of sufficient strength to afford adequate protection in case of breaking lines shall be provided on or over all yarding machines operating on high lead and skyline operations.

(2) *Machine access.* (i) Steps, ladders, handholds, catwalks, or railings shall be provided where necessary for mounting and maintenance purposes.

(ii) Such access systems installed after [the effective date of this standard] shall comply with Society of Automotive Engineers SAE J185 JUN81, "Access Systems for Off-Road Machines," which is incorporated by reference or in accordance with a design by a Professional Engineer which offers equivalent employee protection.

(3) *Guarding.* Guarding shall be provided for exposed moving elements such as shafts, pulleys, belts, conveyors, and gears in accordance with Part 1910, Subpart O.

(4) *Control of hazardous energy sources (Lockout/tagout).* [Reserved]

(5) *Guylines.* (i) Guylines shall be arranged in such a manner that stresses will be distributed on no less than two guylines, unless the equipment is specifically designed and manufactured to use one or less.

(ii) Attachment points for guylines shall be carefully chosen for position and load-bearing capability.

(iii) Guyline anchors shall be installed so that their holding power exceeds the breaking strength of the yarding system's maximum load carrying capacities. Notched stumps, deadmen, or items of equivalent holding power shall be used for anchors. Stumps of questionable holding power shall be tied back to another anchor. Standing trees used as anchors shall be far enough from the work area so that no part of such trees will enter the work area in case of failure. Standing trees used as anchors shall be tied back to other anchors.

(6) *Stability and reliability.* Stability, boom reliability, and inspection procedures for truck and crawler mounted rigid boom cranes and for other yarders shall be in accordance with American National Standards Institute Standards ANSI B30.2–1983, "Safety Code for Cranes, Derricks and Hoists—Overhead and Gantry Cranes" or ANSI B30.5–1982, "Safety Code for Cranes, Derricks and Hoists—Crawler, Locomotive and Truck Cranes," as applicable and which are both incorporated by reference.

(7) *Exhaust pipes.* (i) Exhaust pipes shall be located or designed to direct the exhaust gases away from the operator.

(ii) Exhaust pipes shall be mounted or guarded to protect employees from accidental contact.

(iii) Exhaust pipes shall be equipped with spark arrestors.

(iv) Mufflers provided by the manufacturer, or their equivalent, shall

be in place at all times the machine is in operation.

(8) *Brakes.* (i) Brakes shall be sufficient to hold a machine and its maximum intended load on the grades over which it is being operated.

(ii) A secondary braking system shall be provided. It shall be effective whether or not the engine is running, and regardless of the direction of travel.

(iii) The braking system shall be kept in good repair.

(iv) A parking brake, or a locking device to hold the service brakes in the applied position, shall be provided.

(g) *Tree harvesting*—(1) *Felling, general.* (i) Work areas shall be assigned so that a tree cannot fall into an adjacent occupied work area. The distance shall be at least twice the height of the trees being felled. A greater distance between work areas shall be provided on slopes and shall be based on but not limited to, the degree of slope, the density of the growth, the height of the trees, and the soil structure.

(ii) Skidders and prehaulers shall not be operated in the immediate felling area (twice the height of trees being felled) while manual felling activity is in progress.

(iii) Lodged trees shall be marked and lowered to the ground using mechanical or other safe techniques before any work is continued within two tree lengths of the lodged tree.

(iv) Employees shall not approach a feller closer than twice the height of trees being felled until the feller has acknowledged that it is safe to do so.

(v) Employees shall remain clear of any mechanical felling operation.

(vi) Trees shall not be felled in a manner which could endanger any person, or strike any rope, cable or line (including power lines) or equipment.

(vii) The power company shall be notified immediately if a tree does make contact with any power line, and all personnel shall remain clear of the area until the power company advises that conditions are safe.

(viii) In sloping terrain, felling activity shall be kept uphill from, or on the same level as, previously felled trees.

(ix) The immediate supervisor shall be consulted when conditions appear unusually hazardous so as to require his or her decision before commencing the cut.

(2) *Manual felling.* (i) A retreat path shall be planned, and cleared as necessary, before the cut is started. Where feasible, the retreat path shall extend back and diagonally to the rear of the expected felling line.

(ii) Snags, dead limbs, the lean of tree to be cut, wind conditions, locations of the trees, and other hazards shall be appraised and proper precautions exercised before the cut is started.

(iii) Undercuts are required, and shall be of a size to guide tree fall in the intended direction and to minimize the possibility of splitting.

(iv) A backcut is required, and shall allow for sufficient hinge wood to guide the tree and prevent it from prematurely slipping or twisting off the stump.

(v) The backcut shall be above the level of the horizontal cut of the undercut.

(vi) The saw shall be at idle or shut off before the feller starts his retreat.

(3) *Bucking.* (i) Bucking on slopes where there is danger of log movement shall be from the uphill side unless the log is securely blocked from rolling or swinging.

(ii) When spring poles and trees under stress are cut, employees shall be in the clear when the stress is released.

(iii) Precautions shall be taken in windthrown timber to prevent a root wad or butt cut from striking an employee.

(iv) Trees yarded for bucking shall be safely located and placed in an orderly manner so that they are stable when worked on.

(4) *Limbing.* When spring poles and limbs under stress are cut employees shall be in the clear when the stress is released.

(5) *Mechanical debarking and delimbing.* Guarding shall be provided to protect employees from flying wood chunks, logs, chips, bark, limbs and other material and to prevent the worker from contacting moving machine parts.

(6) *Skidding, forwarding and yarding.* (i) Only designated, trained operators shall operate the machines.

(ii) Workers shall hook and unhook chokers from the uphill side or end of the log where feasible, unless the log is securely blocked to prevent rolling or swinging.

(iii) Chokers shall be positioned near the end of the log or tree length.

(iv) Equipment shall be positioned during winching so that the winch line is as near in alignment as possible with the long axis of the machine, unless the machine is designed to be used under other conditions of alignment.

(v) Logs shall not be moved until all personnel are in the clear.

(vi) Yarding lines shall not be moved unless the signal to do so is clearly understood. When in doubt, the yarder operator shall repeat the signal as understood and receive a confirming signal before moving any line.

(vii) Spar trees shall be carefully examined for defects before being rigged.

(viii) Unstable trees and spars shall be guyed to ensure stability. Logging equipment not specifically designed for guyless operations, shall be guyed to ensure stability.

(ix) Loads shall not exceed the rated weight capacity of pallets and trailers.

(x) The vehicle and load shall be operated with safe clearance from all obstructions.

(xi) Towed equipment, such as skid pans, pallets, arches, and trailers shall be attached to the vehicle in a manner which will allow a full 90 degree turn; prevent overrunning of the towing vehicle; and assure the operator is always in control of the towed equipment.

(7) *Personnel transport.* (i) The employer shall ensure that all drivers have a valid operator's license for the class of vehicle being operated.

(ii) Flammable liquids shall not be transported in driver compartments nor in occupied passenger compartments of personnel carriers. Containers for flammable liquids being transported shall meet the requirements of Part 1910, Subpart H.

(iii) Seats shall be securely fastened.

(iv) Mounting steps and handholds shall be provided.

(v) A seat belt shall be provided for and used by the operator.

(8) *Truck transport.* Truck drivers shall ensure that load binders are tight before moving the load. While en route, load binders shall be checked to ensure they remain secure by stopping the vehicle, dismounting, checking the load binders and tightening them as needed.

(9) *Loading and unloading.* (i) Transport vehicles shall be positioned to provide adequate working clearance between the vehicle and the pile or deck of forest products.

(ii) Only the loading or unloading machine operator and necessary personnel shall be in the work area.

(iii) Except when the employer demonstrates that it is necessary as part of the loading or unloading process, operators of trucks having forest products loaded or unloaded shall not remain in the truck cab. In such cases where the operator must remain in the truck cab, the design and structure of the truck cab and associated guards shall provide adequate operator protection.

(iv) Logs and bolts shall be placed on transport vehicles in an orderly manner so that they can be properly secured.

(v) The load shall be positioned for balance and to prevent slippage or loss throughout the handling sequence.

(vi) Stakes and chocks which are used for tripping shall be constructed in such

manner that the tripping mechanism that releases the stakes or chocks is activated on the side of the load opposite the release.

(vii) A sufficient number of binders shall be left in place over each peak log to secure all logs until after the unloading lines or other equivalent protection are in place. Stakes of sufficient strength to withstand the forces of shifting logs, shall be considered equivalent protection when logs are not loaded higher than the stakes.

(viii) Binders shall be released only from the side on which the unloading machine operates, except when released by remote control devices, or when the person making a release is protected by racks, stanchions or other equivalent means capable of withstanding the force of the logs should they move.

(10) *Storage.* Piles and decks shall be located far enough from other operations so as not to be endangered by them and constructed in an orderly manner to lie stable and to provide workers with enough room to safely move and work in the area.

(11) *Chipping (in-woods locations).* (i) Chipper access covers or doors shall not be opened until the drum or disc is at a complete stop.

(ii) Infeed and discharge ports shall be guarded to prevent contact with the disc, knives, or blower blades.

(iii) Chippers shall be shut down and locked out before employees work in the infeed.

(12) *Signaling and signal equipment.* (i) Hand or audible signals such as whistles, horns, and radios, shall be utilized wherever excessive noise, distance, restricted visibility, or other factors prevent clear understanding of normal voice communications between employees. Local or regionally recognized signals may be used.

(ii) Except in emergencies, only designated persons shall give signals.

[FR Doc. 89–10322 Filed 5–1–89; 8:45 am]

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Tuesday
May 2, 1989

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 173 and 178

Rear Bumpers on Cargo Tank Trucks; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173 and 178

[Docket No. HM-183B; Amdt. Nos. 173-210, 178-92]
RIN 2137-AB34

Rear Bumpers on Cargo Tank Trucks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is providing a period of 36 months to allow rear bumpers or rear-end tank protection devices to be installed on cargo tank trucks (power units; commonly called bob-tails), which are operated in combination with cargo tank full trailers. Cargo tank trucks operated separately must be equipped with a rear bumper or rear-end tank protection device as prescribed in § 178.340-8(b) of the Hazardous Materials Regulations (HMR)(49 CFR Parts 171 through 199), as amended in this final rule.

This action is being taken to provide operators of these cargo tank trucks reasonable time to bring their units into compliance with the HMR. There may be approximately 3500 affected units, which are being operated primarily in the Western states in deliveries of gasoline, fuel oil and other petroleum distillate products. The intended effect of this action is to bring these cargo tank trucks into compliance with the HMR while minimizing economic impact to motor carriers, the petroleum distillate industry, and the public in the affected geographical areas.

EFFECTIVE DATE: July 1, 1989. However, compliance with the regulations as amended herein is authorized immediately.

FOR FURTHER INFORMATION CONTACT:

Hattie L. Mitchell, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590, telephone (202) 366-4488; or,

Richard H. Singer, Office of Motor Carrier Safety Field Operations, Federal Highway Administration, U.S. Department of Transportation, Washington, DC 20590, telephone (202) 366-2994.

SUPPLEMENTARY INFORMATION:

I. Background

On August 8, 1986, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (51 FR 28605) under Docket HM-183B, Notice No. 86-6, which proposed to allow a 36-month period for cargo tank trucks manufactured without the required rear bumpers to be brought into compliance with the HMR. Additionally, responses were solicited on several questions regarding the incremental costs of installing rear bumpers on cargo tank trucks, the need for additional markings on non-conforming cargo tank trucks, the grandfathering of existing non-conforming units, the relationship (if any) of the length of the tow bar to rear-end collisions, and frequencies of operating cargo tank trucks without a cargo tank full trailer.

Eleven comments were received in response to the NPRM. Most industry representatives disagreed with the proposal to require that cargo tank trucks be equipped with a rear bumper, when operated in combination with a cargo tank full trailer. Reasons offered to support not requiring rear bumpers included installation costs, loss of payload capacity due to the added bumper weight, and a satisfactory safety record indicating an absence of any serious safety problem for these units. Commenters stated, however, that should DOT require rear bumpers, existing cargo tank trucks manufactured without rear bumpers should be grandfathered to allow their continued use when operated in combination with a cargo tank full trailer. Additionally, they suggested that operation of these grandfathered units, without the full trailer, be allowed when they are being taken to a repair or maintenance facility. Two State agencies expressed support for the 36-month compliance period and a provision allowing the operation of a cargo tank truck, without a rear bumper, to a repair or maintenance facility. In addition, they recommended that the provisions be extended to include other DOT specification cargo tank trucks which are used in other than petroleum distillates service.

Few commenters took exception to requiring the installation of rear bumpers on units which are operated without cargo tank full trailers, with the exception of when a cargo tank truck is being taken to a repair or maintenance facility. They stated that these cargo tank trucks are rarely operated without the cargo tank full trailer attached.

Another commenter objected to the proposed 36-month compliance period as being "irresponsible," and requested the immediate enforcement of the rear bumper requirement. The commenter stated that enforcement is a necessity, especially when the transportation of hazardous materials is involved.

In response to the question raised in the NPRM concerning the method of certification of cargo tanks manufactured without rear bumpers, three commenters stated that the existing regulations in § 178.340-10(a)(2) adequately address the requirement that a manufacturer must indicate specification shortages on the manufacturer's certificate. In addition, one commenter stated the cargo tank metal certification plate could be marked "without bumper." This notation would indicate that the cargo tank truck complies with the specification requirements only when it is operated in combination with a trailer or when it is equipped with a rear bumper complying with § 178.340-8(b).

Four commenters provided information on incremental costs to install rear bumpers. Cost estimates for the installation of a rear bumper ranged from a low of $400 per vehicle to a high of $1800. When other incidental costs associated with the installation of a rear bumper were included, such as transportation to and from the repair facility and loss of service of the cargo tank truck during the installation period, costs were estimated to be between $1800 to $2690 per vehicle. Additionally, commenters stated that a loss of product load would be incurred due to the added bumper weight, which would be between 100 to 500 pounds.

One commenter specifically addressed the question on the effect the tow bar length may have on safety. The commenter stated that the tow bar length is determined by the distance between the truck and trailer axles needed to meet bridge weight distribution requirements The commenter further stated that under normal highway conditions the steering angle seldom exceeds 15 degrees. Thus, the length of the tow bar does not result in significant exposure of the cargo tank truck to a rear-end collision.

II. Discussion

As stated in the NPRM, § 178.340-8(b) has been in effect since December 1967, and similar bumper requirements have been in effect for previously manufactured specification cargo tanks since the early 1940's. Section 178.340-8(b) requires that all cargo tanks must be protected by the use of a rear bumper. However, a large number of cargo tank trucks used in combination with cargo tank full trailers have been manufactured without rear bumpers. The number of units manufactured without rear bumpers is estimated to be about 3,500. These combination units are used primarily for the transportation of

gasoline, fuel oil and other petroleum distillate products.

The NPRM issued under HM–183B was initiated following comments received under a separate regulatory action published on September 17, 1985 (50 FR 37766), under Docket Nos. HM–183, 183A. In the NPRM issued under HM–183, 183A, RSPA denied several petitions for rulemaking that had requested that rear-end tank protection be required only on the rearmost unit of a "double" cargo tank motor vehicle configuration Commenters responding to the denial in HM–183, 183A stated that if immediate compliance is required, the economic impact of removing all affected cargo tank trucks from service would impose a burden on affected motor carriers and on the public in those geographical areas.

RSPA and the Federal Highway Administration's (FHWA) Office of Motor Carriers have given full consideration to all comments and relevant factors in the development of this final rule. We believe that a rear bumper or other cargo tank protection device is a necessary safety requirement. There are indications that these "double" combinations are at times disconnected and the cargo tank motor vehicle is operated singly in order to make a delivery. Further, there is the possibility that with some tow bar lengths of up to 16 feet, an automobile (i.e. compact, subcompact, or even a mid-size) could strike the rear of the cargo tank truck, even when operated in combination with a full cargo tank trailer.

However, we do acknowledge that immediate enforcement of the rear bumper requirement may impose a burden on affected motor carriers by requiring the removal of all affected vehicles from service at the same time, and on the general public by interrupting the delivery of petroleum distillate in the affected geographical areas. Because of the potential burden, we are allowing a 36-month time period for cargo tank operators to bring their units into compliance. By allowing this time period, little, if any, interruption of petroleum product delivery should occur. This should also provide motor carriers with sufficient time to bring their fleets into compliance on a periodic basis, such as during routine maintenance or repair operations.

We are allowing the requirement for rear-end tank protection to be met by the use of a rear bumper as prescribed in existing § 178.340–8(b) or by a rear-end tank protection device, that was proposed in HM–183, 183A (50 FR 37800, September 17, 1985; 50 FR 49866, December 5, 1985). Under current § 178.340–8(b) and as adopted in § 178.340–8(b)(1) herein, the rear bumper serves two functions. First, as required by § 178.340–8, the bumper must protect the cargo tank and any tank component that may retain lading from damage as a result of a collision with another vehicle or with a structure during backing. Second, as required by 49 CFR 393.86, the bumper serves as a rear-end under-ride protection device to protect occupants of any vehicle that may collide with the rear-end of the cargo tank. Under § 178.340–8(b)(2), as adopted herein, the rear-end tank protection device may be separate from the rear-end under-ride protection device. However, in the latter situation, the manufacturer must still satisfy the requirements in § 393.86 to provide under-ride protection.

In the September 17 notice, RSPA proposed that a "rear-end tank protection device must be of a width and height adequate to protect the cargo tank * * * from damage that would result in loss of lading." Commenters responding to the proposal requested that the width and height of the rear-end tank protection device be defined. They argued that in the absence of any dimensional information, any damage resulting in a loss of lading would constitute noncompliance with the rear-end tank protection requirements on the part of the manufacturer. By prescribing a performance standard, RSPA intended to allow a degree of flexibility in the design of the rear-end tank protection device. However, we recognize the difficulty in designing a rear-end tank protection device that takes into account all possible accident scenarios which could result in a loss of lading.

Therefore, in the December 5, 1985 notice, RSPA proposed: "The rear-end tank protection device must have a horizontal dimension at least equal to that of the cargo tank and a vertical dimension of at least 8 inches, and located at a height so as to minimize damage to the cargo tank, and its valves, fittings, or piping which could result in a possible loss of lading." Most commenters to the rear-end tank protection device requirement requested that the final rule incorporate the dimensions currently specified in § 393.86 for rear bumpers instead of the proposed requirements. As was discussed at the various public meetings held during the comment period, we believe the rear-end tank protection device must be positioned to provide the greatest degree of protection for the tank, piping, and fittings the device is designed to protect. The most appropriate location for the device might not be within the dimensions specified in § 393.86 for the height of the rear bumper. Therefore, the dimensions contained in § 393.86, with the exception of that for the height, are specified in § 178.340–8(b) in this final rule. The height of the device may not be more than 60 inches from the ground with the vehicle empty, as compared with a height of not more than 30 inches for the rear-end under-ride device. The height requirement of the device has been changed in order to allow the rear-end protection device to be closer to the piping or fittings it is designed to protect. This rule permits a rear-end protection device which is notched, indented or has separated sections; prescribes the maximum transverse distance from the widest part of the motor vehicle at the rear to the device; and clarifies the fact that this kind of device is allowed only when the product piping at the rear of the cargo tank is equipped with a sacrificial device, such as a shear section, outboard of a shut-off valve. We believe these changes will offer persons, who prefer to have the rear-end under-ride device separate from the rear-end tank protection device, more flexibility in the design of the rear-end tank protection device and flexibility in positioning this device in a manner where it will offer the best protection to the tank and any piping or fitting. Accordingly, in addition to clarifying the requirements for the device, we have provided a range of alternative locations for the rear-end tank protection device.

The 36-month compliance period being granted in this final rule applies only to those units that are operated in "double" combinations. However, a cargo tank truck, without a cargo tank full trailer attached, may be taken to a repair facility to be equipped with the required rear bumper or tank protection device. Any other operation of the cargo tank truck without a rear bumper or rear-end tank protection device remains a violation of the HMR and subject to enforcement actions. We also are limiting the provision to cargo tank trucks used to transport gasoline and other petroleum distillates. We received no request from industry representatives to extend the provision to include other kinds of hazardous materials.

III. Administrative Notices

Executive Order 12291

RSPA has determined that this final rule (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); and (3) does not require an environmental impact

statement under the National Environmental Policy Act (40 U.S.C. 4321 et seg.). A regulatory evaluation is available for review. in the docket.

Impact on Small Businesses

Commenters estimated that this regulation will effect no more than 3500 vehicles, at costs ranging from $400 to $1800 per vehicle. Based on these estimates, I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Executive Order 12612

I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism") and have determined it has no substantial direct effects on the States, on the Federal-State relationship or the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications, as defined in Executive Order 12612, and therefore no Federalism Assessment has been prepared.

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Motor vehicles, Packaging and containers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, Parts 173 and 178 are amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1 The authority citation for Part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

2. In § 173.33. paragraph (a)(2) is added to read as follows:

§ 173.33 Qualification, maintenance and use of cargo tanks.

(a) * * *

(2) Notwithstanding the requirements in paragraph (b) of this section, the requirement in § 178.340–8 of this chapter for a rear bumper or rear-end tank protection device on MC–300, MC–301, MC–302, MC–305, and MC–306 cargo tanks does not apply to a cargo tank truck (power unit) until July 1, 1992, if the cargo tank truck—

(i) Was manufactured before July 1, 1989;

(ii) Is used to transport gasoline or any other petroleum distillate product; and

(iii) Is operated in combination with a cargo tank full trailer. However, an empty cargo tank truck, without a cargo tank full trailer attached, may be operated without the required rear bumper or rear-end tank protection device on a one-time basis while being transported to a repair facility for installation of a rear bumper or rear-end protection device.

* * * * *

PART 178—SHIPPING CONTAINER SPECIFICATIONS

3. The authority citation for Part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, unless otherwise noted.

4. In § 178.340–8, paragraph (b) is revised to read as follows:

§ 178.340–8 Accident damage protection.

* * * * *

(b) *Rear-end Protection.* Each cargo tank shall be provided with a rear accident damage protection device to protect the tank and piping in the event of a rear-end collision and reduce the likelihood of damage which could result in the loss of lading. The rear-end protection device must be in the form of a rear bumper or rear-end tank protection device meeting the following:

(1) *Rear bumper.* (i) The bumper shall be located at least 6 inches to the rear of any vehicle component used for loading or unloading or that may contain lading while the vehicle is in transit.

(ii) The dimensions of the bumper shall conform to § 393.86 of this title.

(iii) The structure of the bumper shall be designed to withstand, without leakage of lading, the impact of the vehicle with rated payload, at a deceleration of 2 "g" using a safety factor of two based on the ultimate strength of the bumper material. Such impact shall be considered uniformly distributed and applied horizontally (parallel to the ground) from any direction at an angle not exceeding 30 degrees to the longitudinal axis of the vehicle.

(2) *Rear-end tank protection device.* (Nothing in this paragraph shall be construed to relieve a manufacturer of responsibility for complying with the requirements of § 393.86 of this title.)

(i) The inboard surface of the rear-end tank protection device shall be located at least 6 inches to the rear of any vehicle component used for loading or unloading or that may contain lading while the vehicle is in transit. in order to prevent the device from applying force upon the cargo tank or tank components in the event of an accident.

(ii) The dimensions of the rear-end tank protection device shall conform to the following:

(A) The bottom surface of the rear-end protection device must be at least 4 inches below the lower surface of any valve, fitting, or piping at the rear of the tank and not more than 60 inches from the ground with the vehicle empty.

(B) The maximum width of a notch, indentation, or separation between sections of a rear-end tank protection device may not exceed 24 inches. A notched, indented, or separated rear-end protection device may be used only when the piping at the rear of the tank is equipped with a sacrificial device outboard of a shutoff valve. (A sacrificial device is an element, such as a shear section, designed to fail under load in order to prevent damage to any lading retention part or device. The device must break under strain at no more than 70 percent of the strength of the weakest piping element between the tank and the sacrificial device. Operation of the sacrificial device must leave the remaining piping and its attachment to the tank intact and capable of retaining lading.)

(C) The widest part of the motor vehicle at the rear may not extend more than 18 inches beyond the outermost ends of the device or (if separated) devices on either side of the vehicle.

(iii) The structure of the rear-end tank protection device and its attachment to the vehicle must be designed to withstand, without leakage of lading, the impact of the cargo tank motor vehicle at rated payload, at a deceleration of 2 "g" using a safety factor of two based on the ultimate strength of the materials used. Such impact shall be considered uniformly distributed and applied horizontally (parallel to the ground) from any direction at an angle not to exceed 30 degrees to the longitudinal axis of the vehicle.

* * * * *

Issued in Washington, DC, on April 21, 1989, under the authority delegated in 49 CFR Part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc 89–10439 Filed 5–1–89; 8:45 am]

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federal register

Tuesday
May 2, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Installation of Crashworthy Fuselage Fuel Tanks and Fuel Lines; Advance Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 25890; Notice No. 89-11]

RIN 2120-AC87

Installation of Crashworthy Fuselage Fuel Tanks and Fuel Lines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This preliminary action is to determine the feasibility of installing, in all air carrier aircraft, crashworthy fuselage fuel tanks and fuselage fuel lines which are rupture resistant and which disconnect and seal in the event of an accident. The FAA is issuing this advance notice pursuant to Section 9(a) of the Aviation Safety Research Act of 1988. This notice solicits public participation in identifying and selecting a regulatory course of action by inviting interested persons to submit specific comments and arguments concerning the proposed regulatory action.

DATES: Comments must be received on or before October 30, 1989.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No.25890 , 800 Independence Avenue SW., Washington, DC 20591, or delivered in duplicate to: Room 915G, 800 Independence Avenue SW., Washington DC. Comments must be marked: Docket No. 25890. Comments may be inspected in Room 915G on weekdays, except Federal holidays, between. 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. James Walker, Airframe and Propulsion Branch (ANM-112), Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2116.

SUPPLEMENTARY INFORMATION:

Comments Invited

This Advance Notice of Proposed Rulemaking (ANPRM) is being issued under the FAA's policy for early public participation in rulemaking proceedings. An ANPRM is issued when it is found that reasonable outside inquiry is needed to identify and select a tentative or alternative course of action, or where it would be helpful to invite public participation in identifying and selecting a course of action.

Interested persons are invited to participate in these preliminary rulemaking procedures by submitting written data, views, or arguments. Commenters should identify the regulatory docket or notice number and submit comments in duplicate to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Comments are invited relating to the environmental, energy, or economic impact that might result from adopting these proposals. 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 concerned with this action will be filed in the docket. If it is determined to be in the public interest to proceed with rulemaking after considering the available data and comments received in response to this notice, a Notice of Proposed Rulemaking (NPRM) will be issued. 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. 25890." The postcard will be dated, time stamped, and returned to the commenter.

Availability of ANPRM

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this ANPRM. Persons interested in being placed on a mailing list for future ANPRMs or NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Improving the probability that occupants can safely evacuate an airplane following a survivable accident has been a continuing goal of the FAA. The probability that occupants can safely evacuate the airplane is governed primarily by two considerations. The first consideration is the time interval from the time the airplane comes to rest until a fire or explosion within the cabin makes survival virtually impossible. The second is the rapidity with which occupants can egress. The FAA recently adopted new standards for the flammability of seat cushions (Amendments 25-59, 29-23 and 121-184, 49 FR 43188; October 26, 1984) and other large-surface interior components, such as sidewalls and ceilings (Amendments 25-61 and 121-189, 51 FR 26206; July 21, 1986). These new standards will provide occupants more time in which to egress by delaying the spread of fire through the cabin. Amendments 25-58 and 121-183 (49 FR 43182; October 26, 1984) were also adopted to require floor proximity emergency escape path markings which enable occupants to evacuate the airplane more rapidly. Other new standards are also being developed to enhance the safe evacuation of occupants.

Because a typical post-crash fire originates with rupture of the fuel tanks and subsequent ignition of large quantities of spilled fuel, the FAA has also considered means to improve the probability of safe evacuation by eliminating or reducing the spillage and ignition of fuel. In 1964, the FAA considered adopting standards for crash-resistant fuel tanks, self-closing breakaway fuel line fittings, and engine ignition suppression systems for transport category airplanes. It was found, however, that insufficient technical information existed at that time to provide a basis for developing regulatory standards. Subsequently, the FAA considered other means to mitigate the post-crash fire and explosion hazard, such as fuel tank inerting and suppression systems. In response to a recommendation made in 1971 by the National Transportation Safety Board (NTSB) and a subsequent petition for rulemaking made in 1972 by the Aviation Consumer Action Project (ACAP), the FAA issued Notice 74-16 (39 FR 12260; April 4, 1974) proposing to require the installation of means to prevent fuel system explosion. As a result of the comments made in response to Notice 74-16, the FAA determined that such means would have little or no effect in reducing post-crash

fire and explosion hazards when fuel is spilled from damaged tanks. It was also concluded in a 1977 public hearing that crash-resistant, wing-mounted fuel tanks would not be effective in view of the wing damage and separations that had occurred in several impact-survivable accidents. As a result of the information gained from the public hearing, the FAA withdrew Notice 74–16 in 1978 and established the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee to evaluate possible means to improve survivability in the post-crash event.

The SAFER Committee assessed various schemes for reducing post-crash fire hazards, including the use of breakaway fittings. As a result of their recommendations, rulemaking concerning new standards for transport category airplanes concerning fuel tank vent protection, shutoff of the engine fuel supply at the fuel tank in the event of a crash landing, and upgraded emergency landing design requirements is in process. Advance Notice of Proposed Rulemaking (ANPRM) 84–17 (49 FR 38078; September 26, 1984) was issued to obtain additional information in those areas. The FAA currently is considering issuing an NPRM on this matter.

In separate rulemaking, the FAA proposed to require strengthened fuel tank access panels on transport category airplanes to preclude loss of fuel (Notice 88–10; 53 FR 18256; May 23, 1988). A final rule based on Notice 88–10 will be considered.

The use of anti-misting fuels appeared promising at first as a means of reducing the possibility of post-crash fire. Research and development tests have since shown that such fuels are ineffective in reducing the threat of fire and explosion and are impractical for use in air carrier operations. Unless there are future developments in such fuels which would make them effective and practical, the FAA would not propose any rulemaking in that regard.

Although crashworthy fuel tanks were not considered effective with respect to the wing fuel tanks of transport category airplanes, the FAA is conducting a research and development program with fuselage-mounted fuel tanks to evaluate possible fuel containment design criteria and to determine whether new or revised design standards are necessary.

In regard to general aviation airplanes, the FAA completed a research and development program in 1978. In that program, full-scale tests were completed with twin-engine airplanes equipped with crash-resistant bladder cells in the wing fuel tanks and breakaway fittings on the filler and vent fittings. Those tests demonstrated that crash-resistant fuel cells and breakaway fittings could reduce post crash fires in such airplanes. As a result of this testing and NTSB recommendations, the FAA is proposing to require these design features for small airplanes, including commuter category airplanes. In that regard, the FAA currently is considering issuing an NPRM on this matter.

The success of crash-resistant fuel systems in rotorcraft operated by the U.S. Army has prompted the FAA to review and consider similar installations for civil rotorcraft. As a result, an NPRM will be considered in which new standards for improved crash-resistance of the fuel systems in civil rotorcraft will be proposed.

In regard to possible further action, the FAA has recently completed a study pertaining to aircraft designs and equipment which would further minimize the incidence of post-crash fires or explosions. The results of that study will be contained in a report which will describe the feasibility of possible improvements for transport category airplanes, general aviation airplanes and rotorcraft.

Congress recently enacted House Resolution HR 4686, "Aviation Safety Research Act of 1988," which was signed by the President on November 3, 1988 (Pub. L. 100–591). Section 9(a) of the Act requires the Administrator of the FAA to issue an ANPRM within 90 days following the date of enactment to determine the feasibility of installing in all air carrier aircraft crashworthy fuselage fuel tanks and fuselage fuel lines which are rupture-resistant and which disconnect and seal in the event of an accident. Such action is intended to ensure greater safety to passengers of air carriers and to reduce the incidence of post-crash fires. In light of ongoing rulemaking for small airplanes and rotorcraft, the requirement to issue an ANPRM is considered to apply to transport category airplanes and the operators of such airplanes.

Request for Information

Before initiating further rulemaking, the FAA must determine the feasibility and the effectiveness of installing crashworthy fuselage fuel tanks in transport category airplanes and fuselage fuel lines in such airplanes which are rupture resistant and which disconnect and seal in the event of an accident. The FAA therefore requests comments in that regard from the public, including the aviation industry, airplane manufacturers (both domestic and foreign) and any other interested persons. This information may include technical and economic data and information, arguments pro or con concerning the need for new standards, and any other information deemed pertinent.

The modern commercial transport category airplane requires maximum safety; however, new protective features must be justified by an increased level of safety with a minimum of added complexity, weight and operational constraints. Estimates of probable costs and benefits derived from installing crashworthy fuel tanks and fuel lines are important and are necessary for initiation of any further rulemaking actions.

The FAA is particularly interested in comments regarding the following specific questions:

1. What criteria should be developed and used to define a crash-resistant fuel system (tanks and fuel lines)?

2. As has been suggested, would the criteria of Military Specification MIL–T–27422B Tank, Crash-resistant, Aircraft, dated February 24, 1970, including Amendment 1, dated April 13, 1971, Type II, non-self-sealing, Class A flexible cell construction, be a suitable standard?

3. Is it feasible, both from technological and economical standpoints, to design and install crash-resistant fuel systems?

4. Would such systems be effective in preventing or reducing post-crash fires?

5. Are there any possible hazardous side effects which might result from the installation of such systems?

6. In regard to applicability, what should be the scope of the new standards, for example:

a. An amendment to Part 25 which would apply only to transport category airplanes for which an application for type certificate is made after the effective date of the amendment;

b. Amendments to Parts 121 and 135, which would require all airplanes manufactured after a specified date to meet the new standards regardless of the date of application for type certificate if they are operated under the provisions of the latter Parts by air carrier, air taxi or commercial operators;

c. Amendments to Parts 121 and 135 which would require existing airplanes to be modified to meet the new standards, if they are operated by air carrier, air taxi, or commercial operators regardless of the date of application for type certificate or the date of manufacture; or

d. All of the above?

7. Is there a minimum tank volume below which the standards need not apply?

8. In regard to tank location, should the standards apply only to fuselage-mounted fuel tanks, or should they apply to tanks located in other areas, such as the vertical fin or stabilizer, as well?

9. In regard to the scope of airplane applicability, should any airplanes be excluded due to their age, size, or other considerations?

10. How many labor hours would be required to install such tanks and lines, and what is the typical labor rate?

11. What are the weight penalties, if any, which might result from compliance with new fuel system standards?

12. Are tank and line components which would comply with such new standards available, or will they be available on a timely basis?

13. What would be the expected service life of the various components of crashworthy fuel tanks and fuel lines?

14. What would be the earliest date by which airplanes in service could be modified to comply with such fuel system standards?

15. What are the cost estimates relative to:

a. The design, manufacture and installation of crash-resistant fuel tanks and fuel lines with frangible or breakaway couplings and fittings for future airplane designs;

b. The design, manufacture and installation of such tanks and lines in other newly manufactured airplanes;

c. The design, manufacture and installation of such tanks and lines in airplanes which are already manufactured and in service;

d. Lost revenue, if any, while airplanes are being modified to meet new standards;

e. Any reduction in aircraft range due to the installation of crashworthy fuel tanks;

f. Any weight penalties resulting from the installation of such tanks and lines;

g. Maintenance and routine replacement of components in service; and

h. The total annual cost of compliance with such standards?

16. What are the potential benefits which might be realized due to the installation of such tanks and lines?

17. Are there possible alternate means to achieve the objectives of installing such tanks and lines which might be less costly?

Regulatory Evaluation

An important consideration in the FAA regulatory process is the examination of the benefits and costs of rulemaking action. Agencies of the Federal government are required by Executive Order 12291 to adopt only those regulatory programs in which the potential benefits to society outweigh the potential costs to society.

The objective of this ANPRM is to determine the feasibility of installing in all air carrier aircraft crashworthy fuselage fuel tanks and fuselage fuel lines which are rupture resistant and which disconnect and seal in the event of an accident. No specific standards or methods of meeting those very general goals have been identified or proposed at this time.

If it is determined that existing fuel tanks and fuel line technology can be utilized to produce a significant increase in passenger safety, the cost of meeting those general goals would be relatively low. On the other hand, it may be determined that it is impossible to design fuel tanks and fuel line fittings which would produce a significant increase in passenger safety with the large volumes of fuel required for transport category airplanes. Because of this current uncertainty as to the feasibility of regulatory action, it is impossible for the FAA to prepare a meaningful regulatory evaluation at this time.

The additional information which the FAA would need to prepare a regulatory evaluation for any specific standards is reflected in the questions posed above under the heading "Request for Information." Any further action which is based on information received in response to this ANPRM, and which contains specific proposed action, will, of course, be accompanied by a thorough regulatory evaluation.

Conclusion

This ANPRM seeks information from interested persons, including manufacturers and users of transport category airplanes and components, the general public, both foreign and domestic, and foreign airworthiness authorities in determining the feasibility for installing a crash-resistant fuel system and new airworthiness standards. Preliminary evaluation indicates that this document is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Information is being requested and no economic or regulatory impact is imposed on any person by this action. A full regulatory evaluation will be prepared if further rulemaking is warranted based on comments received as a result of this notice.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

Issued in Washington, DC, on April 26, 1989.

M.C. Beard,

Director, Aircraft Certification Service.

[FR Doc. 89-10497 Filed 4-27-89; 2:17 pm]

BILLING CODE 4910-13-M

federal register

Tuesday
May 2, 1989

Part VI

Department of the Interior

Minerals Management Service

Proposed 1991 Lease Sales in the Gulf of Mexico OCS Region; Call for Information and Nominations; Notice of Intent to Prepare an Environmental Impact Statement

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Proposed 1991 Lease Sales in the
Gulf of Mexico OCS Region
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of the Call

The purpose of the Call is to gather information with regard to Outer Continental Shelf (OCS) Lease Sale 131 in the Central Gulf of Mexico (CGOM), tentatively scheduled for March 1991; OCS Lease Sale 135 in the Western Gulf of Mexico (WGOM), tentatively scheduled for August 1991; and OCS Lease Sale 137 in the Eastern Gulf of Mexico (EGOM), tentatively scheduled for November 1991.

Information and nominations on leasing, exploration, and development and production within the three sale areas are sought from all interested parties. This initial information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act (43 U.S.C. 1331-1356) and regulations (30 CFR 256). This Call does not indicate a preliminary decision to lease in the areas described below.

Description of Area

The general area of this Call covers the entire Gulf of Mexico between approximately 82° W. longitude on the east and approximately 97° W. longitude on the west and extends from the seaward boundary of the Submerged Lands Act (SLA) grant seaward to the provisional maritime boundary between the United States and Mexico and the maritime boundary between the United States and Cuba. The southern portion of the easterly boundary extends north at approximately 83° W. longitude to the seaward boundary of the SLA grant offshore Florida, excluding the area known as the Florida Straits (see attached map). The entire Call area is offshore the States of Texas, Louisiana, Mississippi, Alabama, and Florida. This area is divided into three planning areas which are outlined on the attached map.

The CGOM Planning Area is bounded on the east by approximately 88° W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28° N. latitude, thence east to approximately 92° W. longitude, thence south to the provisional maritime boundary with Mexico which constitutes the southern boundary of the area. The northern part of the area is bounded by seaward boundary of the SLA grant offshore Louisiana, Mississippi, and Alabama.

The WGOM Planning Area is bounded on the west and north by the seaward boundary of the SLA grant offshore Texas and on the east by the CGOM Planning Area. The area extends south to the provisional maritime boundary with Mexico. The entire area is offshore Texas and in deeper water, offshore Louisiana. The area available for nominations and comments at this time excludes two Flower Garden blocks deferred in the current 5-year leasing program.

The EGOM Planning Area is bounded on the east and north by the seaward boundary of the SLA grant offshore Alabama and Florida and on the west by the CGOM Planning Area. The area extends south from approximately 87°45' W. longitude to approximately 29° N. latitude, thence west to approximately 87°54' W. longitude, thence south to the U.S.-Cuba maritime boundary, thence southeasterly following the maritime boundary to approximately 83° W. longitude, thence north to the seaward boundary of the SLA grant offshore Florida. The area has existing deferrals identified in the 5-year leasing program. The area south of 26° N. latitude and east of 86° W. longitude is also deferred.

A large-scale Call map depicting each area on a block-by-block basis is available without charge from:

Minerals Management Service
Public Information Unit
1201 Elmwood Park Boulevard
New Orleans, Louisiana 70123-2394
(504) 736-2519

Areas Deferred from this Call

In the High Island Area, East Addition, South Extension, dated October, 19, 1981 (Flower Gardens), Block A-375 and Block A-398 (WGOM); the area approximately 20-30 miles seaward of the western coastline of Florida, extending from the Apalachicola/Cape San Blas area on the north to 26° W. longitude (EGOM); 23 blocks in the Florida Middle Ground Area (EGOM); and the area south of 26° N. latitude and east of 86° W. longitude are deferred from this Call. The attached map delineates these deferred areas.

Instructions on Call

Indications of interest and comments must be received no later than 45 days following publication of this document in the

Federal Register in envelopes labeled "Nominations for Proposed 1991 Lease Sales in the Gulf of Mexico" or "Comments on the Call for Information and Nominations for Proposed 1991 Lease Sales in the Gulf of Mexico."

The standard Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated above under "Description of Area."

A standard Call for Information Map specific to this event delineates the Call area and shows the area identified by the Minerals Management Service (MMS) as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have included in proposed OCS Lease Sales 131, 135, and 137.

Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call for Information Map. Interest should be shown by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 [high], 2 [medium], 3 [low]). We encourage respondents to be specific in indicating blocks by priority, as blanket nominations on large areas are not useful in providing information pertinent to analysis of industry interest. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3. Respondents may also submit a detailed list of whole and partial blocks nominated (by Official Protraction Diagram designations) to ensure correct interpretation of their nominations. Specific questions may be directed to the Chief, Leasing and Adjudication Section, at (504) 736-2765. Official Protraction Diagrams and Leasing Maps can be purchased for $2 each from the Public Information Unit, reference address and phone number above.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological and socioeconomic conditions or conflicts, or other information which might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and State Coastal Management Programs (CMP). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information Map.

Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and potential-use conflicts will be used in the analysis of environmental conditions in and near the Call area. Together, these two considerations will allow a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. Third, the comments collected will be used to initiate the scoping process for the Environmental Impact Statement (EIS) and analyze alternatives to the proposed action. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. Fifth, comments may be used to point out potential conflicts between offshore oil and gas activities and a State CMP. The Notice of Intent to Prepare an EIS, which includes a description of the scoping process, is located later in this document.

Existing Information

An extensive environmental studies program has been underway in this area since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies can be obtained from the Public Information Unit, at the address stated under Description of Area. The reports may also be ordered, for a fee, directly from the National Technical Information Service by calling (703) 487-4650 or writing U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico OCS Region, at the address stated under Description of Area, or by telephone at (504) 736-2896.

Summary Reports and Indices and technical and geological reports are also available for review at the MMS Gulf of Mexico OCS Region (see address under Description of Area). Copies of the Gulf of Mexico OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Herndon, VA. 22070.

Tentative Schedule

Final delineation of the areas for possible leasing will be made

at a later date only after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and the OCS Lands Act, as amended.

The following is a list of tentative milestone dates that will precede this sale.

EGOM Sale 137	CGOM Sale 131	WGOM Sale 135
Comments due on the Call June 1989	June 1989	June 1989
NOI Comments Due (Scoping) June 1989	June 1989	June 1989
Area Identification August 1989	August 1989	August 1989
Draft EIS published March 1990	March 1990	March 1990
Public Hearings held on Draft EIS April 1990	April 1990	April 1990
Final EIS published August 1990	August 1990	August 1990
Proposed Notice of Sale announced June 1991	October 1990	March 1991
Governor's comments due on Proposed Notice August 1991	December 1990	May 1991
Final Notice of Sale published October 1991	January 1991	July 1991
Sale Date November 1991	March 1991	August 1991

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulation (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposals known as Sale 131 in the CGOM, Sale 135 in the WGOM, and Sale 137 in the EGOM, off the States of Texas, Louisiana, Mississippi, Alabama, and Florida. The Notice of Intent also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties have the opportunity to aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal which may be considered include delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives which should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated under "Description of Area" above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the Proposed 1991 Lease Sales in the Gulf of Mexico." Comments are due no later than 45 days from the publication of this Notice. Informal scoping meetings will be held, as needed, for the purpose of obtaining additional comments and information regarding the scope of the EIS.

Director, Minerals Management Service

Thomas Gernhofer

Approved:

Deputy Assistant Secretary - Land and Minerals Management

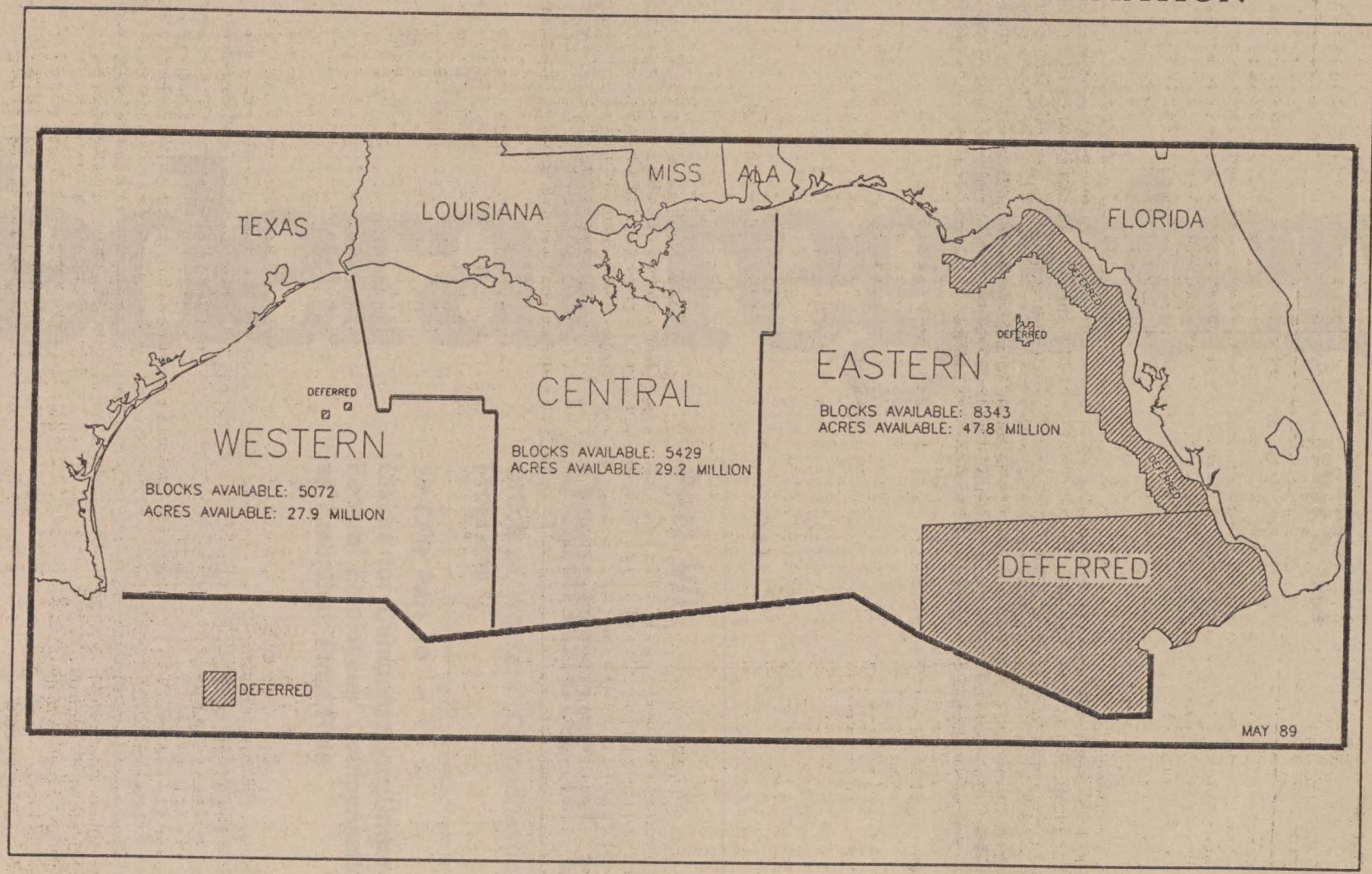
Michael A. Poling

4/24/89

Date:

UNITED STATES DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

GOM LEASE OFFERING - 1991 CALL FOR INFORMATION



[FR Doc. 89–10475 Filed 5–1–89; 8:45 am]
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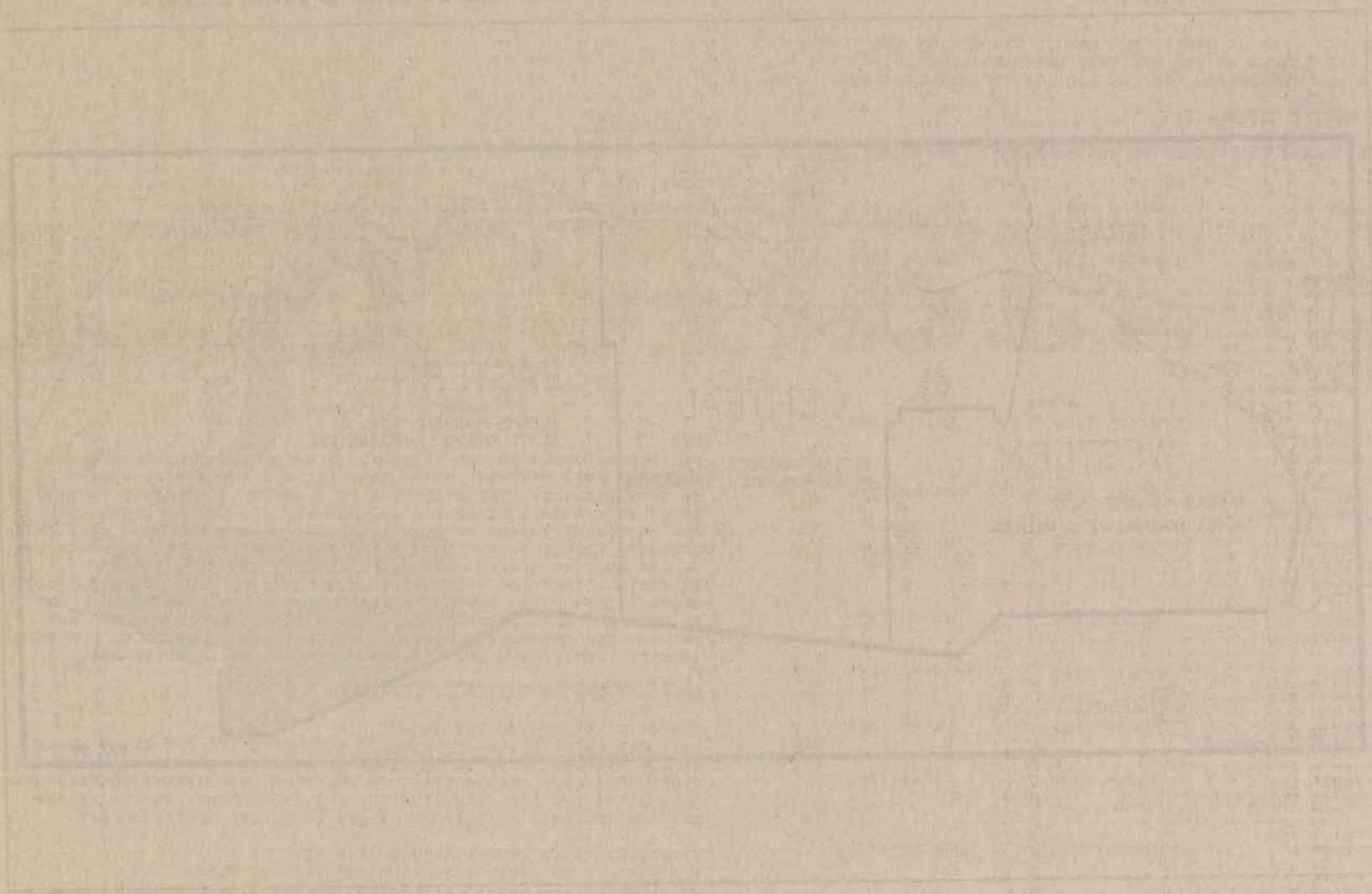

federal register

Tuesday
May 2, 1989

Part VII

Department of Labor

Office of Workers' Compensation Programs

20 CFR Part 10

Claims for Compensation Under the Federal Employees' Compensation Act, as Amended; Final Rule

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

Claims for Compensation Under the Federal Employees' Compensation Act, As Amended

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Final rule.

SUMMARY: The Office of Workers' Compensation Programs is correcting three non-substantive errors in its regulations governing the administration of the Federal Employees' Compensation Act (FECA), which provides benefits to Federal employees injured or killed in the performance of duty. These errors were caused by inadvertence.

EFFECTIVE DATE: May 2, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S-3229, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 523-7552.

SUPPLEMENTARY INFORMATION: The Office of Workers' Compensation Programs is correcting three non-substantive errors in its regulations governing the administration of the Federal Employees' Compensation Act (FECA), which provides benefits to Federal employees injured or killed in the performance of duty. These errors, which all arose when revisions to the regulations were published on April 1, 1987, were as follows: (1) A previous version of § 10.125 was inadvertently retained and is therefore being eliminated at this time. Most of the material in this section is found in current § 10.128, while the remainder is found in current § 10.311(c); (2) A previous version of § 10.126 was inadvertently retained and is therefore being eliminated at this time. The material in this section is found in current § 10.128; (3) In § 10.122, the seventh sentence refers to Form CA-7 where in fact Form CA-8 is the intended reference.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on these amendments to the regulation. Such comment is unnecessary because the Department had previously announced its intention to correct the errors addressed by this rule.

Effective Date

The Department has determined, pursuant to 5 U.S.C. 553(d)(3), that good cause exists for waiving the customary requirement to delay the effective date of a final rule for 30 days following its publication. Waiver of this requirement will serve the public interest by allowing for prompt publication of the corrections noted.

Executive Order 12291

The Department has determined that this rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse 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. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96-354, Stat. 1165, 5 U.S.C. 601 *et seq.*, pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2). In any event, the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information collection requirement in this rule has been approved by the Office of Management and Budget under control number 1215-0103. The correction action does not require the collection of additional information, and additional approval of the Office of Management and Budget is not required.

List of Subjects in 20 CFR Part 10

Claims, Government employees, Workers' compensation.

Accordingly, 20 CFR Part 10 is amended as set forth below.

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEE'S, COMPENSATION ACT, AS AMENDED

1. The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 301; Reorg. Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8145, 8149; Secretary's Order 6-84, 49 FR 32473; Employment Standards Order 78-1, 43 FR 51469.

2. Section 10.122 is amended by revising the seventh sentence to read as follows:

§ 10.122 Claim for continuing compensation for disability.

* * * Form CA-20a is attached to Form CA-8 for this purpose. * * *

§ 10.125 [Removed]

3. The second version of § 10.125, entitled *"Termination of right to compensation for death"*, is removed. This section appears on page 25 of the April 1, 1988 edition of 20 CFR Parts 1-399.

§ 10.126 [Removed]

4. The second version of § 10.126, entitled *"Change in status of beneficiaries affecting compensation for death"*, is removed. This section appears on page 26 of the April 1, 1988 edition of 20 CFR Parts 1-399.

Signed at Washington, DC this 26th day of April 1989.

Elizabeth Dole,

Secretary of Labor.

Alan McMillan,

Acting Assistant Secretary for Employment Standards.

Lawrence W. Rogers,

Director, Office of Workers' Compensation Programs.

[FR Doc. 89-10488 Filed 5-1-89; 8:45 am]

BILLING CODE 4510-27-M

federal register

Tuesday
May 2, 189

Part VIII

Environmental Protection Agency

40 CFR Part 268
Land Disposal Restrictions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[SWH-FRL-3565-5]

Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the no land disposal treatment standards for the first third scheduled wastes which are found in 40 CFR 268.43. The no land disposal standard will not apply to nonwastewater forms of these wastes disposed before August 17, 1988, or generated in the course of treating wastewater forms of the waste. EPA is amending the current no land disposal standards because they result in no legal means of disposal for wastes requiring a disposal outlet. The Agency is also amending the schedule in 40 CFR 268.12 to indicate that nonwastewater forms of these wastes that are derived from historically managed waste residues, and residues from treating wastewater forms of these wastes, will not be prohibited from land disposal until May 8, 1990.

EFFECTIVE DATE: May 2, 1989.

ADDRESS: The OSW docket is located at the following address, and is open from 9:30 to 3:30, Monday through Friday, excluding Federal holidays: EPA RCRA Docket (M-2427) (OS-305), 401 M Street SW., Washington, DC 20460.

The public must make an appointment by calling (202) 475-9327 to review docket materials. Refer to Docket number F-89-NLDF-FFFFF when making appointments to review any background documentation for this rulemaking. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page. Copies of not easily obtainable references are available for viewing and copying only in the OSW docket.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (toll-free) or (202) 382-3000 in the Washington, DC metropolitan area. For technical information contact Steven Silverman, Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7706.

SUPPLEMENTARY INFORMATION:

I. Background

In the final regulation prohibiting land disposal of hazardous wastes in the first third of the schedule, and establishing treatment standards for those wastes, EPA established a treatment standard of "no land disposal" for a number of hazardous wastes. See § 268.43, standards for hazardous wastes K004, K008, K015, K021, K025, K036, K044, K045, K047, K061, K069, K083, and K100 (nonwastewaters) (53 FR 31221 (August 17, 1988)). These standards are premised on the waste no longer being generated, being treatable or recyclable without leaving a residue, or not possessing a particular property (for example, reactivity) at the time of disposal.

EPA was informed after promulgation of the final rule that although these wastes are not currently being generated by manufacturing processes, they may be generated in the form of residues deriving from the historic management of these wastes. For example, a landfill containing hazardous waste K021, when exposed to water, could generate leachate. The leachate would carry the waste code K021 (wastewater form), and when it was treated would generate a nonwastewater with code K021. The Agency's premise of no generation which underlies the no land disposal standard would not hold for this type of treatment residue.

EPA solicited comment on whether any of these wastes were still generated, see *e.g.*, 53 FR 17587 (May 17, 1988), and did not promulgate no land disposal standards when commenters supplied information that the waste (including derived-from forms of the waste) still was generated. See *e.g.*, 53 FR 31195 (August 17, 1988). It thus would have been preferable had the Agency been furnished with the information on these specific waste codes during the rulemaking (although commenters did allude generally to potential problems arising from residues from historic waste management practices). Notwithstanding, more recent information indicates that landfills can contain these wastes and thus that nonwastewater forms of the waste ultimately can be generated. The no land disposal treatment standard precludes disposal of these wastes, regardless of how much treatment they receive. EPA would not have applied the standard to these wastes had it known of their existence.

Because the facts on which the final no land disposal standards were premised no longer apply, EPA has decided to amend the final rule so that the no land disposal standard will not apply to nonwastewater forms of these wastes that either were disposed before the August 17, 1988 final rule or that are generated in the course of treating wastewater forms of the waste (such as leachate or ground water that is contaminated with leachate). See 54 FR at 1073 (January 11, 1989) where the Agency proposed to adopt the same approach for wastes in the second third of the schedule. We are also amending the schedule in § 268.12 to indicate that these nonwastewater forms of the waste, as well as wastewater treatment residues that are nonwastewaters, will be prohibited from land disposal no later than the third prohibitions date (May 8, 1990).

EPA is consequently amending § 268.43 to qualify the no land disposal treatment standards to make it clear that the standards apply to nonwastewaters generated by the process described in the waste listing description contained in §§ 261.31 and 261.32 and disposed after August 17, 1988. (If such nonwastewaters were treated, nonwastewater treatment residues would remain subject to the no land disposal standard, although EPA believes this is a situation that occurs exceedingly sporadically.)

There are a number of waste codes where the no land disposal standard was premised on some factor other than lack of generation. We discuss below how EPA is classifying these wastes.

The Agency notes that it is not amending the no land disposal standards for hazardous wastes K044, K045, and K047. These wastes are listed for exhibiting the characteristic of reactivity, and the no land disposal standard is premised on that characteristic being removed before the waste is disposed. See 53 FR 31158 (August 17, 1988). EPA sees no reason that this premise would not also remain true for reactive residues from remedial actions carrying these waste codes (if any).

EPA also is not amending the no land disposal standard for wastewater treatment sludges from treating wastewater forms of waste K061. To the extent such sludges contain over 15% zinc, they would be required to be recycled by smelting. If these sludges (if any) do contain 15% zinc, they certainly should be recyclable. See generally 53 FR 31162-63 (August 17, 1988). In any case, since this standard does not become effective until August, 1990 (and so has no present effect), EPA sees no reason to take immediate action regarding the treatment standard.

EPA is amending the no land disposal standard for nonwastewater forms of waste K069 that were disposed before

August 17, 1988. Waste K069 is another waste for which the no land disposal standard can be achieved by recycling, due to high lead concentrations in the waste. However, the Agency is aware that soils contaminated with K069 are being generated as a result of closures and corrective actions. Concentrations of K069 in these contaminated soils are expected to be too low to be amenable to recycling. These contaminated soils should be treated and disposed in an environmentally sound manner, and continued application of the no land disposal standard will preclude that. EPA is thus rescheduling treatment standards for nonwastewater forms of K069 disposed before August 17, 1988.

EPA is also modifying the rule to reschedule treatment standards for nonwastewater forms of K069 derived from treating K069 wastewaters. These sludges (if any) might not be amenable to recycling. For example, sludge derived from treating multi-source leachate carrying the wastecode K069 (among other codes) would be unlikely to be readily recyclable. Accordingly, EPA is rescheduling this subgroup of wastes in order to develop a different treatment standard.

Finally, EPA is rescheduling the no land disposal standards for nonwastewater forms of wastes K015 and K083. EPA based the no land disposal standard on no ash being generated when the wastes are incinerated. It now appears that waste K015 will generate ash when incinerated, and that waste K083 is normally likely to. EPA thus is rescheduling these two waste codes to develop standards based on proper operation of incineration technology.

II. Immediately Effective Final Rule

The Agency is promulgating today's rule as an immediately effective final regulation because we believe that good cause exists to make the rule immediately effective. The current no land disposal treatment standard results in no legal means of disposal for wastes generated from treating historically disposed wastewater forms of the waste such as leachate. Such leachate must be collected and managed as a result of state and federal regulations, as well as corrective action and similar types of orders. This necessary collection process is thwarted if there is no ultimate means of disposing of the wastes that are generated in the process. The same problem could occur with respect to nonwastewaters generated by remedial actions. The situation in fact appeared serious enough for a motions panel from the District of Columbia Circuit Court of Appeals to grant a stay of applicability of the first third final rule to leachate and anything derived therefrom (order of August 18, 1988 as modified by order of September 23). Since such stays are based on many of the same criteria that underlie a good cause finding, EPA is reinforced in its view that circumstances here warrant the step of an immediately effective final rule.

III. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. Because this section is deregulatory in nature, with negligible economic impact, no economic analysis was conducted.

Since EPA does not expect that the amendments promulgated here will have an annual effect on the economy of $100 million or more, result in a measurable increase in cost or prices, or have an adverse impact on the ability of U.S.-based enterprises to compete in either domestic or foreign markets, these amendments are not considered to constitute a major action. As such, a Regulatory Impact Analysis is not required.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The hazardous wastes listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency received no comments that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

V. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. section 3501 *et seq.*

List of Subjects in 40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

Date: April 24, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart B—Schedule for Land Disposal Prohibition and Establishment of Treatment Standards

1. Section 268.12 is amended by adding paragraphs (f), (g) and (h) to read as follows:

§ 268.12 Identification of wastes to be evaluated by May 8, 1990.

* * * * *

(f) Nonwastewater forms of wastes listed in § 268.10 that were originally disposed before August 17, 1988 and for which EPA has promulgated "no land disposal" as the treatment standard (§ 268.43, Table CCW, No Land Disposal Subtable). This provision does not apply to waste codes K044, K045, K047, and K061 (high zinc subcategory).

(g) Nonwastewater forms of wastes listed in § 268.10 for which EPA has promulgated "no land disposal" as the treatment standard (§ 268.43, Table CCW, No Land Disposal Subtable) that are generated in the course of treating wastewater forms of the wastes. This provision does not apply to waste codes K044, K045, K047, and K061 (high zinc subcategory).

(h) Nonwastewater forms of waste codes K015 and K083.

Subpart D—Treatment Standards

3. In § 268.43 paragraph (a) Table CCW is amended by revising the no land disposal subtable to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

* * * * *

No Land Disposal for:

K004 Nonwastewater forms of these wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

K008 Nonwastewater forms of these wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

K021 Nonwastewater forms of these wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

K025 Nonwastewater forms of these wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

K036 Nonwastewater forms of these wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

K044 (Based on Reactivity)

K045 (Based on Reactivity)

K047 (Based on Reactivity)

K060 Nonwastewater forms of these wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

K061 Nonwastewaters—High Zinc Subcategory (greater than or equal to 15% total zinc) (Based on Recycling): effective 8/8/90

K069 Non-Calcium Sulfate Subcategory—Nonwastewater forms of these wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on Recycling)

K100 Nonwastewater forms of those wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

[FR Doc. 89-10471 Filed 5-1-89; 8:45 am]

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Tuesday
May 2, 1989

Part IX

Department of Education

34 CFR Parts 757 and 758

Fund for the Improvement and Reform of Schools and Teaching; Final Regulation and Notices

DEPARTMENT OF EDUCATION

34 CFR Parts 757 and 758

Fund for the Improvement and Reform of Schools and Teaching

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the Fund for the Improvement and Reform of Schools and Teaching. These regulations implement the programs as authorized in the Fund for the Improvement and Reform of Schools and Teaching Act (Act), Part B of Title III of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. The regulations implement two new discretionary grant programs established by the Act.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Daniel Schecter, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524, Telephone: 357–6496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) will award discretionary grants for two kinds of projects. Schools and Teachers projects must be designed to improve educational opportunities for, and the performance of, elementary and secondary school teachers and students. Family-School Partnership projects must be designed to increase the involvement of families in the improvement of the educational achievement of their children in preschool, elementary, and secondary schools.

On November 3, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (53 FR 44578). The following minor changes were made in the final regulations after the review of the NPRM.

The language in § 757.4 (d) and (i) has been revised by adding the phrase "other educational personnel." The language of § 758.21(d) has been changed by adding "(4) Improving the educational achievement of children."

The number of points for the selection criteria in § 757.21 (b), (d) and (f) and § 758.21 (b), (d) and (f), plan of operation, educational value, and evaluation plan, has been revised.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 27 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12991

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 757 and 758

Education, Educational research, Grant programs—education, Reporting and recordkeeping requirements.

Dated: April 12, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance numbers: 84.211, 84.212, Fund for the Improvement and Reform of Schools and Teaching)

The Secretary amends Title 34 of the Code of Federal Regulations by adding new Parts 757 and 758 to read as follows:

PART 757—FIRST: SCHOOLS AND TEACHERS PROGRAM

Subpart A—General

Sec.

757.1 What is the FIRST: Schools and Teachers Program?
757.2 What types of projects may the Secretary support under this program?
757.3 Who is eligible for an award?
757.4 What activities may the Secretary fund?
757.5 What priorities may the Secretary establish?
757.6 What regulations apply?
757.7 What definitions apply?

Subpart B—How Does One Apply for an Award?

757.10 What are the procedures for SEA review?

Subpart C—How Does the Secretary Make an Award?

757.20 How does the Secretary evaluate an application?
757.21 What selection criteria does the Secretary use?
757.22 What additional factors does the Secretary consider in making new awards?
757.23 Under what circumstances does the Secretary consider an unsolicited application?

Subpart D—What Conditions Must Be Met After an Award?

757.30 How must funds be used under Schools and Teachers projects?
757.31 What indirect costs are allowed for a School-Level project?
757.32 How does the Secretary limit the use of grant funds?

Authority: 20 U.S.C. 4811–4812, unless otherwise noted.

Subpart A—General

§ 757.1 What is the FIRST: Schools and Teachers Program?

Under the FIRST: Schools and Teachers Program, the Secretary supports activities designed to improve educational opportunities for, and the performance of, elementary and secondary school students and teachers.

(Authority: 20 U.S.C. 4811)

§ 757.2 What types of projects may the Secretary support under this program?

(a) The Secretary may support the following types of projects under this program:

(1) Schools and Teachers projects designed to improve educational opportunities for, and the performance of, elementary and secondary school students and teachers.

(2) School-Level projects, a type of Schools and Teacher project, conducted at an individual school or a consortium of schools, under the direction of a full-time teacher or administrator.

(b) If a proposed project could be funded under the Family-School Partnership Program (34 CFR Part 755), the Secretary may decline to consider the application under the Schools and Teachers Program and instead consider it under the Family-School Partnership Program.

(Authority: 20 U.S.C. 4811)

§ 757.3 Who is eligible for an award?

(a) State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), nonprofit organizations, individual public or private schools, consortia of individual schools, and consortia of these schools and institutions may apply for a Schools and Teachers project.

(b) An LEA, acting as the fiscal agent for a full-time teacher or administrator, may apply for a School-Level project described in § 757.2(a)(2).

(Authority: 20 U.S.C. 4811, 4812)

§ 757.4 What activities may the Secretary fund?

The Secretary may fund projects that are designed to improve educational opportunities for, and the performance of, elementary and secondary school students and teachers through one or more of the following activities:

(a) Helping educationally disadvantaged or at risk children to meet higher educational standards.

(b) Providing incentives for improved performance.

(c) Strengthening school leadership and teaching.

(d) Promoting closer ties among school teachers, administrators, other educational personnel, families, and the local community.

(e) Providing opportunities for teacher enrichment and other means to improve the professional status of teachers.

(f) Refocusing priorities and reallocating existing human and financial resources to serve children better.

(g) Establishing closer ties between local schools and an institution of higher education to increase educational achievement.

(h) Increasing the number and quality of minority teachers.

(i) Providing entry-year assistance to new teachers, administrators and other educational personnel.

(j) Improving the teacher certification process, especially for schools, school districts, and States facing serious shortages of teachers.

(k) Teaching students to be responsible for their school environment by involving them in the care and maintenance of their classrooms, and promoting individual responsibility and involvement in civic activities.

(Authority: 20 U.S.C. 4811)

§ 757.5 What priorities may the Secretary establish?

(a) The Secretary may select as priorities one or more of the activities listed in § 757.4 or combinations of these activities.

(b) The Secretary gives competitive preference to a proposed project that meets one or more of the following priorities:

(1) Benefits students or schools with below-average academic performance.

(2) Leads to increased access of all students to a high quality education.

(3) Develops or implements a system for providing incentives to schools, administrators, teachers, students, or others to make measurable progress toward specific goals of improved educational performance.

(c) The Secretary establishes an absolute priority each year by setting aside at least 25 percent of the funds appropriated for FIRST for School-Level projects described in 757.2(a)(2).

(Authority: 20 U.S.C. 4811, 4812)

(See the Education Department General Administrative Requirements (EDGAR) at 34 CFR 75.105 for a description of how the different types of priorities are implemented).

§ 757.6 What regulations apply?

The following regulations apply to the Schools and Teachers Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations, (except for the definition of "equipment" in 34 CFR 77.1), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 757.

(Authority: 20 U.S.C. 4811–4812)

§ 757.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Equipment
Facilities
Grantee
Local educational agency (LEA)
Nonprofit
Project
Private
Public
Secretary
State educational agency (SEA)

(b) *Other definitions*: The following definitions also apply to this part:

"Act" means the Fund for the Improvement and Reform of Schools and Teaching Act, Part B, Title III of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.

"At-risk students" means students who, because of learning deficiencies, lack of school readiness, limited English proficiency, poverty, educational or economic disadvantage, or physical or emotional handicapping conditions face greater risk of low educational achievement and have greater potential of becoming school dropouts.

"Capital equipment" means "equipment" as defined in 34 CFR 77.1.

"FIRST" means the Fund for the Improvement and Reform of Schools and Teaching.

"Full-time teacher" means a teacher who taught full-time in the school year preceding the school year in which a School-Level project under § 757.2(a)(2) would operate.

"Goals" means increased graduation rates, reduced dropout rates, increased attendance rates, increased student achievement, other goals of improved educational performance or reduced rates of juvenile delinquency or vandalism.

"Incentives" means financial rewards, regulatory waivers, open enrollment among schools, grants to schools for innovative projects or other rewards for

meeting specific goals of educational improvement.

"Institution of higher education" or IHE means an institution of high education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

"Regulatory waiver" means the authorization by a State or local government of an exception to its regulations, provided that the regulatory waiver does not constitute a waiver of Federal regulations.

"School" means an elementary or secondary school legally authorized by a State to provide elementary or secondary education in the State.

(Authority: 20 U.S.C. 4811, 4843)

Subpart B—How Does One Apply for an Award?

§ 757.10 What are the procedures for SEA review?

(a) Each application for a grant under this part (other than an application from an SEA) must be forwarded to the appropriate SEA for review.

(b) The Secretary considers comments by the SEA if the comments are received within 30 calendar days of the closing date for the competition.

(Authority: 20 U.S.C. 4812)

Subpart C—How Does the Secretary Make an Award?

§ 757.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 757.21.

(b) The Secretary awards up to 100 points for the criteria in § 757.21.

(c) The maximum possible score for each criterion is indicated in parenthesis.

(d) The Secretary awards up to 25 additional points to an application that addresses one or more of the priorities in § 757.5(b).

(Authority: 20 U.S.C. 4811, 4812)

§ 757.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need for the project.* (15 points) The Secretary reviews each application to determine the magnitude of the need for the proposed project, including the magnitude of the need to improve the performance of students or teachers, or both.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the design of the proposed project and the applicant's plan for carrying it out, including the extent to which the proposed project is likely to improve teaching and learning at the school level.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine the qualifications of personnel referred to in paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(d) *Educational value.* (20 points) The Secretary reviews each application to determine the educational value of the proposed project, including the extent to which the proposed project would address goals such as—

(1) Strengthening the content of instruction;

(2) Ensuring disadvantaged students equal opportunity for high quality education;

(3) Improving school climate and establishing high standards and the expectation of achievement;

(4) Building a staff of outstanding teachers and principals; or

(5) Instituting accountability for the results of educational activity.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objective of the project; and

(3) The applicant has plans to continue the project after the grant has ended.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and will produce data that are quantifiable.

(g) *National significance.* (15 points) The Secretary reviews each application to determine the national significance of the project, including—

(1) The likely impact of the proposed project;

(2) The magnitude of the expected outcomes; and

(3) The potential transferability of the proposed project to other settings with the likelihood of accomplishing similar results.

(Authority: 20 U.S.C. 4811, 4812)

(Approved by the Office of Management and Budget under Control Number 1850-0629)

§ 757.22 What additional factors does the Secretary consider in making new awards?

In determining the order of selection under EDGAR 75.217(d) for new awards under the Schools and Teachers Program, the Secretary considers, in addition to the criteria in § 757.22, the extent to which funding an application would contribute to—

(a) The diversity of projects funded under a particular competition or under this program; and

(b) The geographical distribution of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 4811, 4812, 4831)

§ 757.23 Under what circumstances does the Secretary consider an unsolicited application?

(a)(1) At any time during a fiscal year, the Secretary may accept and consider for funding unsolicited applications for projects that—

(i) Are designed to carry out one or more of the activities in § 757.4; and

(ii) Do not meet any of the absolute priorities established under any competitions for the FIRST: Schools and Teachers Program announced in the Federal Register for that fiscal year.

(2) In a fiscal year in which the Secretary does not establish absolute priorities, the Secretary does not consider unsolicited applications for funding.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the Federal Register.

(c) Notwithstanding 34 CFR 75.105(b)(1), the Secretary may award up to 25 points to applicants that meet one or more of the priorities in § 757.5(b) without publishing a notice in the Federal Register.

(d) The Secretary evaluates an unsolicited application for funding in

accordance with the procedures described in § 757.20.

(Authority: 20 U.S.C. 4811, 4812)

Subpart D—What Conditions Must Be Met After an Award?

§ 757.30 How must funds be used under Schools and Teachers projects?

(a) A grantee shall use funds awarded under this program to supplement but not supplant other resources available to the grantee.

(b) For a School-Level project under § 757.2(a)(2), a grantee shall use funds awarded under this program for activities at the individual school or consortium of schools participating in the project.

(Authority: 20 U.S.C. 4812, 4841)

§ 757.31 What indirect costs are allowed for a School-Level project?

Notwithstanding 34 CFR 80.22, for a School-Level project described in § 757.2(a)(2), indirect costs may not exceed the greater of 2 percent of the direct costs or the actual indirect costs that the grantee can demonstrate are incurred for activities at the individual school or consortium of schools participating in the project.

(Authority: 20 U.S.C. 4841)

§ 757.32 How does the Secretary limit the use of grant funds?

The Secretary may restrict the amount of funds made available for capital equipment purchases to a certain percentage of the total grant for a project.

(Authority: 20 U.S.C. 4041)

PART 758—FIRST: FAMILY-SCHOOL PARTNERSHIP PROGRAM

Subpart A—General

Sec.

758.1 What is the FIRST: Family-School Level Partnership Program?
758.2 Who is eligible for an award?
758.3 How may private schools participate in Family-School Level Partnership projects?
758.4 What activities may the Secretary fund?
758.5 What priorities may the Secretary establish?
758.6 What regulations apply?
758.7 What definitions apply?

Subpart B—How Does One Apply for an Award? [Reserved]

Subpart C—How does the Secretary Make an Award?

Sec.

758.20 How does the Secretary evaluate an application?
758.21 What selection criteria does the Secretary use?
758.22 What additional factors does the Secretary consider in making new awards?
758.23 Under what circumstances does the Secretary consider an unsolicited application?

Subpart D—What Conditions Must Be Met After an Award?

Sec.

758.30 How must funds be used under Family-School Partnership projects?
758.31 How does the Secretary limit the use of grant funds?

Authority: 20 20 U.S.C. 4821–4823, unless otherwise noted.

Subpart A—General

§ 758.1 What is the FIRST: Family-School Partnership Program?

Under the FIRST: Family-School Partnership Program, the Secretary awards demonstration grants for developing family-school partnerships to increase the involvement of families in improving the educational achievement of their children at the preschool, elementary, and secondary education levels.

(Authority: 20 U.S.C. 4821)

§ 758.2 Who is eligible for an award?

An LEA that is eligible to receive a grant under Chapter 1 of Title I of the Elementary and Secondary Act of 1965, as amended, may apply for a Family-School Partnership Program award. (See 34 CFR Part 200 for the regulations governing eligibility of an LEA to participate in the Chapter 1 Program.)

(Authority: 20 U.S.C. 4822)

§ 758.3 How may private schools participate in Family-School Partnership projects?

A grantee may provide, consistent with the number of children enrolled in public and private elementary and secondary schools located in the grantee's school district, for the participation of private elementary and secondary school teachers, students, and students' families in the activities of a project funded under this program.

(Authority: 20 U.S.C. 4823)

§ 758.4 What activities may the Secretary fund?

The Secretary may fund demonstration projects to develop and carry out innovative family-school partnership activities designed to do one or more of the following:

(a) Support the effort of families, through training and other means, to work with children in the home both to attain the instructional objectives of the schools and instill positive attitudes toward education.

(b) Train teachers and other educational personnel involved in the applicant LEA's Chapter 1 program to work effectively as educational partners with the families of Chapter 1 students.

(c) Train families, teachers, and other educational personnel in the LEA's schools to build an educational partnership between home and school.

(d) Provide training for families on the family's educational responsibilities.

(e) Evaulate how well families involvement activities of the LEA's schools are working, what barriers exist to greater participation, and what steps need to be taken to expand participation in such family involvement activities.

(f) Develop new school procedures and practices to meet the changing demographic characteristics and needs of families of school-age children.

(g) Develop modifications of school procedures and practices necessary to encourage the involvement of parents of special groups of students, including minority, disadvantaged, gifted and talented students, and students with handicaps.

(h) Hire, train, and use educational personnel to coordinate family involvement activities and to foster communication among families, educators, and students.

(i) Develop or purchase educational materials to reinforce school learning at home and assist in implementing other home-based education activities that reinforce and extend classroom instruction and student motivation.

(j) Secure technical assistance, including training, to design and carry out family involvement programs.

(Authority: 20 U.S.C. 4823)

§ 758.5 What priorities may the Secretary establish?

(a) The Secretary may select as priorities one or more of the activities listed in §758.4, or combinations of these activities.

(b) The Secretary may limit a priority to a specified instructional level, such as preschool, elementary, or secondary.

(Authority: 20 U.S.C. 4823)

§ 758.6 What regulations apply?

The following regulations apply to the Family-School Partnership Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations),

(except for the definition of "equipment" in 34 CFR 77.1), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 758.

(Authority: 20 U.S.C. 4821–4823)

§ 758.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Equipment
Facilities
Grantee
Local educational agency (LEA)
Nonprofit
Project
Private
Public
Secretary
State educational agency (SEA)

(b) *Other definitions:* The following definitions also apply to this part:

"Act" means the Fund for the Improvement and Reform of Schools and Teaching Act, Part B, Title III of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.

"Capital equipment" means "equipment" as defined in 34 CFR 77.1.

"FIRST" means the Fund for the Improvement and Reform of Schools and Teaching.

(Authority: 20 U.S.C. 4821–4823, 4843)

Subpart B—How Does One Apply for an Award? [Reserved]

Subpart C—How Does the Secretry Make an Award?

§ 758.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application according to the criteria in § 758.21.

(b) The Secretary awards up to 100 points for the criteria in § 758.21.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 4821–4823)

§ 758.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need for the project.* (15 points) The Secretary reviews each application to determine the magnitude of the need for the project, including the magnitude of the need for improving edcucational achievement among the students whom the proposed project is designed to benefit.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the design of the proposed project and the applicant's plans for carrying it out, including the extent to which the project is likely to increase the involvement of families in the education of their children.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant as part of its nondiscriminatory employment practices will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) to determine the qualifications of personnel referred to in paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(d) *Educational value.* (20 points) The Secretary reviews each application to determine the educational value of the proposed project, including the extent to which the proposed project would address goals such as—

(1) Ensuring disadvantaged students equal opportunity for high quality education;

(2) Establishing an environment and expectation of achievement for those students;

(3) Fostering accountability among teachers, students, and families for the results of educational activity; and

(4) Improving the educational achievement of students.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant plans to continue the project after the grant has ended.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and will produce data that are quantifiable.

(g) *National significance.* (15 points) The Secretary reviews each application to determine the national significance of the proposed project, including:

(1) The likely impact of the proposed project;

(2) The magnitude of the expected outcomes; and

(3) The potential transferability of the proposed project to other settings with the likelihood of accomplishing similar results.

(Authority: 20 U.S.C. 4821–4823)

(Approved by the Office of Management and Budget under Control Number 1850–0629)

§ 758.22 What additional factors does the Secretary consider in making new awards?

In determining the order of selection under EDGAR § 75.217(d) for new awards under the Family-School Partnership Program, the Secretary considers, in addition to the selection criteria in § 758.21, the extent to which funding an application would contribute to—

(a) The diversity of projects funded under a particular competition or under this program; and

(b) The geographical balance of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 4821–4823)

§ 758.23 Under what circumstances does the Secretary consider an unsolicited application?

(a)(1) At any time during a fiscal year, the Secretary may accept and consider for funding unsolicited applications for projects that—

(i) Are designed to carry out one or more of the activities in § 758.4; and

(ii) Do not meet any of the absolute priorities established under any competitions for the FIRST: Family-School Partnership Program announced in the Federal Register for that fiscal year.

(2) In a fiscal year in which the Secretary does not establish absolute priorities, the Secretary does not consider unsolicited applications for funding.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretaty may fund an unsolicited application without publishing an application notice in the **Federal Register.**

(c) The Secretary evaluates an unsolicited application for funding in accordance with the procedures described in § 758.20.

(Authority: 20 U.S.C. 4821–4823)

Subpart D—What Conditions Must Be Met After an Award?

§ 758.30 How must funds be used under Family-School Partnership projects?

A grantee shall use funds awarded under this program to supplement but not supplant other resources available to the grantee.

(Authority: 20 U.S.C. 4841)

§ 758.31 How does the Secretary limit the use of grant funds?

The Secretary may restrict the amount of funds made available for capital equipment purchases to a certain percentage of the total grant for a project.

(Authority: 20 U.S.C. 4841)

Note.—The following appendix will not appear in the Code of Federal Regulations.

Appendix—Analysis of Comments and Responses

In response to the Secretary's invitation in the NPRM, twenty-seven parties submitted comments on the proposed regulations. An analysis of the comments follows:

Schools and Teachers Program

(Section 57.3) Who is eligible for an award?

Comments: The Secretary received three letters concerning eligibility for awards under the Schools and Teachers Program.

One commenter asked whether proprietary private schools are eligible for awards, or if eligibility is restricted to nonprofit private schools.

Another commenter asked whether Bureau of Indian Affairs (BIA) schools would be eligible for funding.

A third commenter asked if the following entities are eligible to apply for funding: American Samoa, Guam, Commonwealth of the Northern Marianas, Republic of the Marshall Islands, the Federated States of Micronesia, and the Trust Territory of the Pacific.

Discussion: Proprietary schools are eligible to apply for funding under this program. Neither the Act nor the regulations restricts eligibility to nonprofit private schools.

BIA schools operated by the Department of the Interior are not eligible for grants under this program. The Department of Education is generally prohibited from making grants to other Federal agencies. However, BIA schools that are not operated by Interior but receive a portion of their funding from Interior are eligible for funding under this program.

The statute and the regulations provide that eligible parties are State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), nonprofit organizations, individual public or private schools, consortia of individual schools, and consortia of these schools and institutions. These types of agencies, organizations, and institutions located in American Samoa, Guam, the Commonwealth of the Northern Marianas, and the remaining Trust Territory of the Pacific, are eligible to apply for funding under these programs provided they meet the appropriate definitions in the regulations. However, under section 105(i)(2) of the Compact of Free Association Act of 1985 (Pub. L. 99–239), the Federated States of Micronesia and the Marshall Islands are eligible for assistance only under Federal education programs providing assistance to them as of January 1, 1985. The FIRST Program was authorized on April 28, 1988. Therefore, agencies, organizations, and institutions of these entities are not eligible to apply for funding under this program.

Changes: None.

(Section 757.4) What activities may the Secretary fund?

Comments: The Secretary received many comments recommending various activities or projects for funding under the Schools and Teachers Program.

In addition, two commenters asked that pupil services personnel or school social workers be included as eligible participants under activities (d) and (i) of § 757.4.

Discussion: the activities listed in § 757.4 of the regulations are based on the list of activities authorized by section 3211(a) of the Act. Given their comprehensive nature, these activities will support a wide variety of projects, including most of the types of projects suggested by the commenters.

The Secretary agrees that pupil services personnel and school social workers are among the educational personnel that are eligible participants in the activities listed in § 757.4 (d) and (i).

Changes: Section 757.4 (d) and (i), has been amended to include "other educational personnel" as eligible participants.

(Section 757.4) What activities may the Secretary fund? and (§ 757.32) How does the Secretary limit the use of grant funds?

Comments: Several commenters expressed concern that the regulations might permit a private, church-related school to use grant funds for purposes prohibited by the First Amendment.

Discussion: Section 3211(a) of the Act authorizes awards to individual private schools without restricting eligibility to nonsectarian private schools and the regulations are consistent with the statutory eligibility provisions. Furthermore, Federal grant awards to religious institutions for secular purposes have been upheld as being facially constitutional. *See Bowen v. Kendrick,* 108 S. Ct. 2562 (1988). As part of its normal review process, the Department will review all applications under this program to ensure that they meet all applicable legal requirements and that funds will be used only for allowable purposes.

Changes: None.

(Section 757.5) What priorities may the Secretary establish?

Comments: The Secretary received several comments suggesting various priorities in addition to those already included in the regulations.

Discussion: The priorities in the regulations are those found in section 3211(b) of the Act. Furthermore, the Secretary may establish additional priorities for specific competitions in accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105.

Changes: None.

(Section 757.7) What definitions apply?

Comments: The Secretary received two letters concerning definitions for the FIRST: Schools and Teachers Program. One commenter suggested that the definition of "at risk students" include the "children of adult high school parents and adult high school students."

Another commenter suggested that a definition of "school-level" be included in the regulations to clarify the types of eligible projects.

Discussion: The definition of "at risk students" for the purposes of the FIRST Program is included in section 3243 of the Act. While the definition of "at risk

students" makes no specific reference to the "children of adult high school parents and adult high school students," it does include educationally disadvantaged students. Under the Schools and Teachers Program, "children of adult high school parents and adult high school students" who are elementary or secondary students and considered to be educationally disadvantaged would be included under the definition of "at risk."

School-level projects described in § 757.2(a)(2) are based on the requirements for school-level projects in section 3212(a)(2) of the Act. The Secretary does not believe it is necessary to provide an additional definition of school-level projects.

Changes: None.

(Section 757.10) What are the procedures for State educational agency (SEA) review?

Comments: The Secretary received four letters on § 757.10, requesting clarification of the procedures for SEA review of proposals submitted under the Schools and Teachers Program. One commenter suggested that this section be revised to indicate more clearly the means by which SEAs may request the opportunity to review applications by requiring the Secretary to notify each SEA individually of its prerogative in this matter.

Other commenters expressed concern that under § 757.10 funds awarded under the Schools and Teachers Program would be distributed through SEAs, rather than directly to the applicants.

Another commenter inquired whether SEA approved of an application was necessary in order to receive funding or if SEAs merely received a copy of the proposal.

Another commenter expressed concern that SEAs would have the right to review applications submitted by private schools and suggested that private schools be exempt from this provision.

Discussion: Section 3212(b) of the Act states that each application for a grant under the Schools and Teachers Program shall be forwarded to the appropriate SEA for review and comment, if the SEA requests the opportunity for review. The Act does not provide for any exceptions to this requirement.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact the Single Point of Contact for each State and follow the procedure established in those States under the Executive Order. The name and address of each State Single Point of Contact was published in the **Federal Register** on November 18, 1987 (52 FR 44330–44340).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Funds awarded under the Schools and Teachers Program will be distributed by the Department directly to the applicants. Funding under the Schools and Teachers Program is not contingent upon SEA approval, nor will the SEA review process in any way delay the Department's consideration of an application.

Changes: None.

(Section 757.21) What selection criteria does the Secretary use?

Comments: The Secretary received three comments concerning the criteria for evaluating applications under the Schools and Teachers Program. One commenter questioned the number of points assigned to the plan of operation criterion, arguing that assigning 20 points to this criterion has the effect of requiring applicants to discuss specific strategies and solutions in their applications, and thus precluding planning activities from which strategies for education reform would emerge.

The commenter also expressed concern that applicants for school-level projects may have difficulty in addressing the national significance criterion, especially the transferability of their project, and suggested that school-level applicants be asked to focus on the project's probability of improving education at the individual school instead.

Another commenter recommended that the number of points assigned to the national significance criterion be reduced from 15 to 5 and that the educational value criterion be increased from 25 to 35 points.

Discussion: The Act authorizes the Secretary to make grants to improve educational opportunities for, and the performance of, elementary and secondary schools and teachers. Specific information about how a project will be carried out is important to determining how well it addresses the purposes of the Act and how likely it is to be effective, both important determinations in making responsible decisions about the award of Federal funds. Applicants that propose only planning activities will need to demonstrate how such activities are directed at improving teaching and learning, i.e., the performance of teachers and students at the school level. Such activities are not precluded.

Section 3231(e) of the Act requires the Department to consider the potential transferability to other settings in reviewing proposals for both school-level and other Schools and Teachers projects. The Secretary does not believe that applicants for school-level projects should necessarily have difficulty addressing this aspect of the selection criteria. One of the ways to promote transferability of a project is to ensure that the specific conditions of its implementation and outcomes are adequately documented. Supporting projects that have the potential for replication means that more students could ultimately benefit from the expenditure of these funds.

The national significance criterion incorporates three factors—proposed impact, expected outcomes, and potential transferability to other settings—which section 3231(e) of the Act requires the Department to consider in reviewing applications for funding. In light of their intended importance in funding decisions, the points assigned to the National Significance criterion do not seem excessive.

Changes: None.

(Sections 757.23 and 758.23) Under what circumstances does the Secretary consider an unsolicited application?

Comment: One commenter expressed concern that under the regulations the Secretary would have the authority to fund unsolicited proposals under §§ 757.23 and 758.23 without first publishing any applicable priorities or criteria in the **Federal Register**. The commenter suggested that §§ 757.23(b) and 758.23 be revised to state that ". . . the Secretary may fund an unsolicited application only after jointly developing priorities with the FIRST Board and publishing such priorities in the **Federal Register**."

Discussion: The regulations provide that the Secretary may only accept and consider unsolicited applications for funding in a fiscal year in which absolute priorities have been established, and that only unsolicited applications that do not meet any of the absolute priorities established under any competitions for FIRST for that fiscal year may be accepted and considered for funding. The advice of the FIRST Board will be considered by the Secretary in establishing priorities for the Schools and Teachers Program and the Family-School Partnership Program.

Unsolicited applications are evaluated against the same criteria in §§ 757.21 and 758.21 used to evaluate other applications for funding under the FIRST Program. In addition, like other applications, unsolicited applications must meet the purposes of the authorizing statute in order to be considered for funding.

Change: None.

Family-School Partnership Program

(Section 758.2) Who is eligible for an award?

Comments: A commenter recommended that school districts not eligible for funding under Chapter I of Title I of the Elementary and Secondary Education Act of 1965, as amended, be eligible to receive a grant under the Family-School Partnership Program.

Discussion: Section 3222 of the Act provides that only local educational agencies eligible to receive a grant under Chapter 1 of Title I of the Elementary and Secondary Act of 1965, as amended, may receive an award under the Family-School Partnership Program.

Changes: None.

(Section 758.4) What activities may the Secretary fund?

Comments: The Secretary received two comments suggesting additional activities that should be included in § 758.4.

One commenter suggested that under activity (f), language be included to provide for the evening care of children whose parents are involved in counseling services, but who are unable to make provisions for child care.

Another commenter recommended that language be added to the regulations specifically providing for the involvement of pupil services personnel and school social workers in Family-School Partnership projects.

Discussion: The activities included in § 758.4 of the regulations are those authorized by section 3223 of the Act. Given their comprehensive nature, these activities will support a wide variety of projects, including most types of projects suggested by the commenters.

With regard to allowing funds awarded under the Family-School Partnership Program to be used for child care, section 3223(b)(1) of the Act allows funding to be used for reasonable and necessary expenditures associated with the attendance of parents or guardians at training sessions for the family on the family's educational responsibilities. This would include using funds for the care of children of parents atttending such training sessions if the applicant demonstrates that providing such care is reasonable and necessary to the project.

The regulations provide that "other educational personnel" may participate in many of the activities funded under the Family-School Partnership Program. Pupil services personnel and school social workers are among the other school officials involved in the educational process who would be considered "other educational personnel."

Changes: None.

(Section 758.5) What priorities may the Secretary establish?

Comment: The Secretary received one letter regarding the priorities that may be established for this program. The commenter expressed concern that the flexibility and consistency of the Family-School Partnership Program would be hindered if grant competitions were limited to specific instructional levels, such as preschool, elementary or secondary.

Discussion: The Secretary does not agree that allowing the Department to limit given grant competitions to specific instructional levels will hinder the flexibility and consistency of the Family-School Partnership Program. It could, in fact, produce the opposite result. For example, if it is found that the majority of the proposals funded during a given fiscal year involve the elementary and secondary levels, the subsequent year the Secretary could limit the competition to projects involving the preschool level, thus achieving a better overall balance.

Change: None.

(Section 758.21) What selection criteria does the Secretary use?

Comments: The Secretary received two comments concerning the selection criteria for evaluating applications submitted under the Family-School Partnership Program. One commenter recommended that under the need for the project criterion, language be included to indicate that, in addition to reviewing applications to determine the magnitude of the need for improving educational achievement among students the proposed project is designed to benefit, the Secretary should review applications to determine the magnitude of the needs of families for services and activities to increase their involvement in their children's education.

Another commenter suggested that the educational value criterion be revised to require applicants to discuss the specific goals and objectives of their projects in improving the ties between schools, families, and local communities and how the improvement of these items will result in increased educational achievement of students at the preschool, elementary and secondary levels.

Discussion: The need for the project criterion asks for an assessment of the need for the project. The need for services or activities to facilitate family involvement does speak to the need for the project. The criterion specifically mentions the achievement needs of students to give advantage to projects designed to get the families of low-achieving students involved in helping their children do better in school. The Secretary believes this is consistent with statutory intent.

According to section 3221(b) of the Act, the purpose of the Family-School Partnership Program is to improve the educational achievement of children through increased family involvement. Section 3222 provides that only Chapter 1 eligible school districts may participate in the program. The Secretary views the improvement of the educational achievement of students as the primary goal of the Family-School Partnership Program.

Given the emphasis of the program on improving the educational achievement of students, the Secretary agrees that the educational value criterion should consider the extent to which the project addresses that goal.

Changes: The educational value criterion has been revised to include consideration of the extent to which the project will improve the educational achievement of students.

(Section 758.22) What additional factors does the Secretary consider in making new awards?

Comments: The Secretary received one comment suggesting that in order to ensure the diversity of projects under the Family-School Partnership Program, at least one project be funded for each activity.

Discussion: The Secretary believes that creating such a restriction may unnecessarily limit his ability to fund the most promising proposals to increase the involvement of parents and improve the educational achievement of students.

Change: None.

[FR Doc. 89-10593 Filed 5-1-89; 8:45 am]
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DEPARTMENT OF EDUCATION

[CFDA No: 84.211A]

Invitation of Applications for New Awards Under the Fund for the Improvement and Reform of Schools and Teaching (FIRST): Schools and Teachers Program for Fiscal Year 1989

Purpose of Program: To provide assistance to State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), nonprofit organizations, individual public or private schools, consortia of individual schools, and consortia of these schools and institutions to conduct Schools and Teachers projects that improve educational opportunities for, and the performance of, elementary and secondary school students and teachers.

Deadline for Transmittal of Applications: June 16, 1989.

Deadline for Intergovernmental Review: July 31, 1989.

Applications Available: May 10, 1989.

Available Funds: For School-Level projects, at least $1,482,000. For other Schools and Teachers projects, approximately $2,320,000.

Estimated Range of Awards: For School-Level projects, from $5,000 to $125,000. For other Schools and Teachers projects, from $50,000 to $250,000.

Estimated Number of Awards: 25 School-Level awards; 15 other Schools and Teachers awards.

Project Period: Up to 36 months.

Budget Period: 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80 and 85; and (b) The regulations for this program in 34 CFR Part 757, as published in this issue of the Federal Register.

Priorities:

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 757.5(c), the Secretary gives an absolute preference to applications that meet the following priority:

• The Secretary reserves 25 percent of the funds appropriated for FIRST, $1,482,000, for applications for School-Level projects conducted at an individual school or consortium of schools under the direction of a full-time teacher or administrator.

With these reserved funds, the Secretary funds only applications that meet this absolute priority.

The remaining funds appropriated for the FIRST: Schools and Teachers Program will be used to fund other schools and teachers projects.

The following competitive and invitational priorities apply to both School-Level projects and other Schools and Teachers projects.

Competitive Preference: The Secretary gives preference to applications that meet one or more of the following priorities:

• Benefits students or schools with below-average academic performance;

• Leads to increased access to all students to a high quality education; and

• Develops or implements a system for providing incentives to schools, administrators, teachers, students or others to make measurable progress toward specific goals of improved educational performance.

Under 34 CFR 75.105(c)(2)(i), 34 CFR 757.5(b), and 757.20(d) for both School-Level projects and other Schools and Teachers projects, the Secretary awards up to 25 points to an application that meets one or more of the competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program (34 CFR 757.21)

Invitational Priorities: For both School-Level projects and other Schools and Teachers projects, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities:

• Promote increased achievement by disadvantaged students through such strategies as expanding parents' and students' choice of education options, enriching the curriculum, and decentralizing decision-making and management at the school building level;

• Create incentives for improved performance by increasing accountability at all levels of the education system. Projects may, for example, develop procedures for intervening in failing school systems and provide differential rewards—financial and non-financial—to schools and school systems that achieve gains in test scores, dropout rates, and other performance indicators;

• Promote opportunities for upgrading the knowledge and skills of current teachers, and for providing entry year assistance to new teachers;

• Improve the teacher training and certification process by enabling outstanding teachers who lack traditional teacher training credentials to teach and by strengthening existing teacher preparation programs; and

• Broaden the pool of persons eligible to serve as principals and other administrators, and provide entry year assistance to new administrators.

In addition, the Secretary encourages applications that demonstrate the applicant's financial commitment to the proposed project and that show evidence of plans to continue the project after the grant ends.

However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

For Applications or Information Contact: Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue NW., Room 522, Washington, DC 20208–5524. Telephone (202) 357–6496.

Program Authority: 20 U.S.C. 4811–4812.

Dated: April 28, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvements.

[FR Doc. 89–10594 Filed 5–1–89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.212A]

Invitation of Applications for New Awards Under the Fund for the Improvement and Reform of Schools and Teaching (FIRST): Family-School Partnership Program for Fiscal Year 1989

Purpose of Program: To provide assistance to local educational agencies (LEAs) eligible to receive a grant under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, to conduct family-school partnership projects that increase the involvement of families in improving the educational achievement of their children at the preschool, elementary, and secondary education levels.

Deadline for Transmittal of Applications: June 16, 1989.

Deadline for Intergovernmental Review: July 31, 1989.

Applications Available: May 10, 1989.

Available Funds: $1,976,000.

Estimated Range of Awards: From $50,000 to $200,000.

Estimated Number of Awards: 20 awards.

Project Period: Up to 36 months.

Budget Period: 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, and 85; and (b) The regulations for this program in 34 CFR Part 758, as published in this issue of the Federal Register.

For Applications or Information Contact: Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524. Telephone (202) 357–6496.

Program Authority: 20 U.S.C. 4821–4823.

Dated: April 28, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–10595 Filed 5–1–89; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
May 2, 1989

Part X

Department of the Treasury

Fiscal Service

Offering of United States Savings Bonds, Series E and EE; Notice

DEPARTMENT OF THE TREASURY

Fiscal Service

[Department of the Treasury Circulars No. 653, 10th Revision; Public Debt Series No. 3-67, 2nd Revision; and No. 1-80, 2nd Revision]

Offering of United States Savings Bonds, Series E and EE

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This Notice is being published to announce the Secretary of the Treasury's decision to grant a ten-year extension of maturity dates, with interest, for Series EE bonds bearing issue dates from May 1, 1981, through October 1, 1981. These bonds would otherwise reach maturity and cease to accrue interest during the period May 1, 1989, through October 1, 1989. In addition, the Notice provides information that the market-based yield calculations for Series E/EE savings bonds have been refined to eliminate the possibility of negative interest accruals.

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dean A. Adams, Assistant Chief Counsel, Bureau of the Public Debt, Parkersburg, West Virginia 26106-1328. [304] 420-6505.

SUPPLEMENTARY INFORMATION: The Secretary of the Treasury has announced that Series EE savings bonds with issue dates of May 1, 1981, through October 1, 1981, will be granted a ten-year extension of their maturity dates, with interest. The term "extended maturity period" refers to the ten-year period during which outstanding savings bonds will continue to accrue interest after the end of their original maturity period. To take advantage of the extension, owners of bonds with issue dates of May 1, 1981, through October 1, 1981, need only to continue to hold their bonds. The policy of extending savings bond maturities is sound, not only because bonds offer an excellent means for long-term savings, but also because they provide a cost-effective source for Federal Government borrowing. The decision to extend the maturity dates of Series EE bonds, as noted above, does not apply to any other savings bonds or notes.

In order to eliminate the possibility of negative accruals, the current method of computing the market-based yields will be changed for Series EE bonds issued on or after May 1, 1989, and for Series E and EE bonds entering new extended maturity periods on or after that date. Under the new method, the yields will be rounded to one-hundredth of one percent, rather than to a quarter of one percent.

Amendments of the offering circulars for United States Savings Bonds, Series E and EE, reflecting the changes described in this Notice and containing new tables of redemption values, will be published shortly.

Dated: April 28, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-10647 Filed 5-1-89; 9:19 am]

BILLING CODE 4810-35-M

federal register

Tuesday
May 2, 1989

Part XI

Nuclear Waste Technical Review Board

Meeting

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Notice is hereby given that a meeting of the Nuclear Waste Technical Review Board's Panel on Risk and Performance Analysis will be held on Tuesday, May 16, 1989, from 10:00 a.m.–4:00 p.m., and on Wednesday, May 17, 1989, from 10:00 a.m.–2:30 p.m. in room 6E–069 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

The purpose of the meeting is to obtain information which the Panel has requested from the Department of Energy (DOE). DOE will brief the Panel on the performance assessment program of the Office of Civilian Radioactive Waste Management. The public is permitted to attend these meetings only as observers. The meetings will be transcribed and procedures to obtain transcripts will be provided at the meeting. To ensure that adequate facilities are provided for public attendance, persons planning to attend should contact William Sprecher on (202) 586–8889 by 5:00 p.m. (e.s.t.), Friday, May 12, 1989. The Forrestal Building is a secured building and prior arrangements will need to be made for attendance by the public.

Further information on these meetings can be obtained from William Sprecher, Department of Energy (RW–422), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8889.

Date: May 1, 1989.

Dennis G. Condie,

Acting Administrative Officer, Nuclear Waste Technical Review Board.

[FR Doc. 89–10658 Filed 5–1–89; 10:27 am]

BILLING CODE 6820–AM–M

federal register

Tuesday
May 2, 1989

Part XII

The President

Proclamations 5961–5965

Executive Orders 12677 and 12678

Federal Register
Vol. 54, No. 83
Tuesday, May 2, 1989

Presidential Documents

Title 3—

The President

Proclamation 5961 of April 28, 1989

National Arbor Day, 1989

By the President of the United States of America

A Proclamation

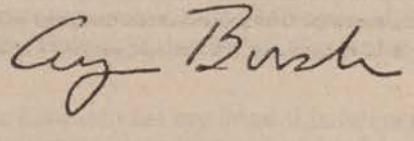
When Arbor Day was first observed in Nebraska 117 years ago, it demonstrated the important role that trees play in our daily lives. The occasion called Americans' attention to the fact that our heavy use of wood for fuel, lumber, and other products was depleting our Nation's trees at an alarming rate.

Arbor Day inspired many Americans to join efforts to protect this precious resource—and all areas of our environment—for the sake of future generations. Today, Americans continue to cultivate trees with the same sense of stewardship. During the past 8 years, we have planted increasing numbers of them, culminating in last year's record acreage of trees planted in a single year.

National Arbor Day reminds us of the importance of planting and caring for the trees in our neighborhoods and countryside, but it also serves a larger purpose. Arbor Day provides an opportunity for all Americans to learn more about the vital function that trees—everywhere from our national forests to tropical mangrove swamps—have in the global ecosystem. It invites us to study how we can best protect them from desertification and overdevelopment in many areas of the world. National Arbor Day is also a time for us to recognize the many volunteers across the United States who participate in reforestation and habitat restoration projects. These volunteers have helped to transform hundreds of acres of reduced forest into thriving woodlands.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 28, 1989, as National Arbor Day and call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-10685
Filed 5-1-89; 11:11 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5962 of April 28, 1989

Loyalty Day, 1989

By the President of the United States of America

A Proclamation

True patriotism requires more than civic pride; it also requires constant loyalty to the principles upon which our country was founded. On the 1st of May each year, we Americans observe "Loyalty Day"—an occasion for reaffirming our allegiance to the United States and our devotion to the ideals of liberty and self-government.

Loyalty Day reminds us that freedom and democratic government are principles worthy of our lasting fidelity. Noting that it was not only their right but also their duty to oppose despotism, our Nation's founders boldly declared America's freedom and independence. "For the support of this Declaration," they avowed, ". . . we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor." Despite the great risks and sacrifices they would surely face, the Founders knew that securing the God-given rights and freedom of the American people warranted such a solemn promise.

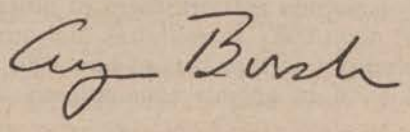
Generations of Americans since then have expressed the same selfless devotion to the cause of freedom. Although they were cruelly tested by the horrors of war, our Nation's veterans—and those servicemen and women who were killed in the line of duty—demonstrated exceptional devotion to their country. Those who wear our Nation's uniform today, and all those public officials who honor their solemn pledge to uphold and defend our Constitution, also give loyal service to our Nation.

Loyalty Day gives all Americans an opportunity to reaffirm their allegiance to the United States. On this occasion, we rededicate ourselves to the ideal of liberty and justice for all—a timeless ideal worthy of our abiding faith and fealty.

To foster loyalty and love of country, the Congress, by joint resolution approved July 18, 1958 (72 Stat. 369; 36 U.S.C. 162), has designated May 1 of each year as "Loyalty Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 1, 1989, as Loyalty Day, and I call upon all Americans and patriotic, civic, fraternal, and educational organizations to observe that day with appropriate ceremonies. I also call upon all Government officials to display the flag of the United States on all Government buildings and grounds on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc-89-10686
Filed 5-1-89; 11:12 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5963 of April 28, 1989

Bicentennial Celebration of the Inauguration of George Washington

By the President of the United States of America

A Proclamation

In the annals of every great nation, there are leaders whose legacy will endure through the ages. George Washington was one such leader.

As President, George Washington led our fledgling Nation through its first, and perhaps most difficult years by remaining faithful to the principles upon which it was founded. In so doing, he set standards that every President since has hoped to emulate. On April 30, 1989, we commemorate the bicentennial anniversary of his inauguration.

Revered for his leadership during the Revolutionary War, Washington was elected to office by a unanimous vote in 1788. He dutifully answered the call to serve his country as President even though it required a great personal sacrifice. He had served his country loyally for many years—first as a soldier, then as a statesman—and had looked forward to retirement at his beloved home, Mount Vernon. Nevertheless he was also thoroughly aware of the young Nation's vulnerability. Thus, the man who had helped the United States to gain independence from Great Britain now agreed to help give it a firm footing.

George Washington neither sought nor desired political power. His love was liberty, and his trust was in the American people. Washington believed that the American people were not only entitled to a system of self-government, but were also capable of keeping it. He also firmly believed that the form of democratic government he and the other Founding Fathers had conceived was both just and effective. "The Constitution," Washington avowed, "is the guide which I can never abandon."

On April 30, 1789, George Washington was inaugurated before a jubilant crowd at Federal Hall in New York City. After taking the oath of office, the new President kissed the Bible and the crowd thunderously voiced its approval. Joining this chorus in celebration were the exultant peals of the city's church bells.

By Senate Joint Resolution 92, the Congress has requested the President to issue a proclamation acknowledging the celebration of the bicentennial of President Washington's inauguration.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim April 30, 1989, as a day to celebrate the bicentennial of the inauguration of George Washington, and I join the Congress in inviting houses of worship to celebrate this anniversary by ringing bells or undertaking other appropriate activities at 12:00 noon (eastern daylight savings time) on April 30, 1989, and to continue, as a tribute to the first President of this Nation, such simultaneous ringing of bells for two full minutes.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George Bush

[FR Doc. 89-10687
Filed 5-1-89; 11:13 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5964 of April 28, 1989

National Drinking Water Week, 1989

By the President of the United States of America

A Proclamation

All living things depend on water. As a Nation, we have been blessed with abundant quantities of fresh water to quench our thirst and to nourish our fields. Because it is so easy to turn on the tap and obtain gallons of fresh drinking water every day, many of us often take that great blessing for granted. However, behind each gallon, behind each drop, are the combined efforts of scientists, engineers, legislators, water plant operators, and regulatory officials. These individuals are responsible for keeping our precious drinking water available, affordable, and, above all, safe.

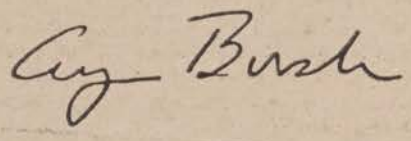
The Federal Safe Drinking Water Act of 1974 provides a framework for preserving and improving our Nation's drinking water. This statute has been instrumental in eliminating the most acute public health problems—such as outbreaks of cholera and typhoid—caused by contaminated drinking water. The 1986 Amendments to the Act call for new and more stringent standards to help guard against some of the less serious hazards that still threaten the Nation's tap water. In the coming years, these new standards will require changes in the design and operation of water treatment works in virtually every community in the United States—changes that will strengthen the safeguards protecting America's drinking water.

Our Nation must continue to identify and respond to the hazards that potentially threaten its water supply. Protecting our drinking water at its source will require an ongoing effort on the part of consumers, scientists, and civic leaders alike.

In recognition of drinking water's importance, the Congress, by Senate Joint Resolution 60, has designated May 1 through May 7, 1989, as "National Drinking Water Week" and has authorized and requested the President to issue a proclamation in observance of that occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 1 through May 7, 1989, as National Drinking Water Week. I call upon the people of the United States and government officials to observe this week with appropriate programs, ceremonies, and activities, in order to enhance public awareness of the benefits of drinking water and the importance of keeping it safe.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-10688
Filed 5-1-89; 11:14 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5965 of April 28, 1989

National Society of the Sons of the American Revolution Centennial Day, 1989

By the President of the United States of America

A Proclamation

Our country's Founding Fathers were dedicated not only to securing America's independence, but also to establishing a free and democratic system of government for the new nation. Thanks to the faith and fortitude of our ancestors, freedom has flowered on our shores and has brought us a legacy of liberty and opportunity.

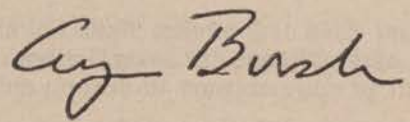
Some of our ancestors faced hardships that we shall never know in order to win and preserve our precious freedom. From the battles of Lexington and Concord to the Saratoga and Yorktown campaigns, soldiers in the Revolutionary War faced the dangers of enemy attacks, as well as threats of hunger, disease, and exposure to severe weather. We can never forget how George Washington's troops suffered from lack of food and warm clothing during the long winter at Valley Forge. The selfless spirit and great love of country that carried our Revolutionary War heroes to victory still beat true in the hearts of the American people.

The National Society of the Sons of the American Revolution was established on April 30, 1889, to perpetuate the spirit and memory of the brave individuals who won our Nation's independence and defended the cause of liberty and self-government during the Revolutionary War. Activities in support of this goal help us to remember the tremendous debt we owe to them.

The Congress, by Senate Joint Resolution 84, has designated April 30, 1989, as "National Society of the Sons of the American Revolution Centennial Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim April 30, 1989, as National Society of the Sons of the American Revolution Centennial Day, and I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-10689
Filed 5-1-89; 11:15 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12677 of April 28, 1989

Historically Black Colleges and Universities

By the authority vested in me as President by the Constitution and laws of the United States of America, in order to advance the development of human potential, to strengthen the capacity of historically Black colleges and universities to provide quality education, and to increase opportunities to participate in and benefit from Federal programs, it is hereby ordered as follows:

Section 1. There shall be established in the Department of Education, an Advisory Commission, the President's Board of Advisors on Historically Black Colleges and Universities. The members of the Board shall be appointed by the President. The Secretary of Education, with the advice of the Board of Advisors, shall supervise the annual development of a Federal program designed to achieve an increase in the participation by historically Black colleges and universities in federally sponsored programs. The Board of Advisors will also provide advice on how to increase the private sector role in strengthening historically Black colleges and universities. Particular emphasis shall be given to facilitating technical, planning, and development advice to historically Black colleges and universities, with the goal of ensuring the long-term viability of these institutions.

Sec. 2. The Board of Advisors shall include appropriate representatives of historically Black colleges and universities, of other institutions of higher education, of business and finance, of private foundations, and of secondary education.

Sec. 3. The White House Initiative on Historically Black Colleges and Universities, housed in the Department of Education, shall provide the staff, resources, and assistance for the Board of Advisors on Historically Black Colleges and Universities; shall assist the Secretary of Education in the role of liaison between the Executive branch and historically Black colleges and universities; and shall serve the Secretary of Education in carrying out his responsibilities under this order.

Sec. 4. Each Executive department and those Executive agencies designated by the Secretary of Education shall establish an annual plan to increase the ability of historically Black colleges and universities to participate in federally sponsored programs. These plans shall describe measurable objectives for proposed agency actions to fulfill this order and shall be submitted at such time and in such form as the Secretary of Education shall designate. In consultation with participating Executive agencies, the Secretary of Education shall review these plans and develop an integrated Annual Federal Plan for Assistance to Historically Black Colleges and Universities for consideration by the President.

Sec. 5. The Secretary of Education shall ensure that each president of a historically Black college or university is given the opportunity to comment on the proposed Annual Federal Plan prior to its consideration by the President.

Sec. 6. Each participating agency shall submit to the Secretary of Education a midyear progress report and at the end of the year an Annual Performance Report that shall specify agency performance against its measurable objectives.

Sec. 7. Every third year, the Secretary of Education shall oversee a special review by every designated Executive department and agency of its programs

to determine the extent to which historically Black colleges and universities are given an equal opportunity to participate in federally sponsored programs. This review will examine unintended regulatory barriers, determine the adequacy of announcements of program opportunities of interest to these institutions, and identify ways of eliminating inequalities and disadvantages.

Sec. 8. The Board of Advisors, working through the White House Initiative, shall provide advice on how historically Black colleges and universities can achieve greater financial security through the use of improved business, accounting, management, and development techniques. To the maximum extent possible, the Board of Advisors shall enlist the resources and experience of the private sector in providing the assistance. To this end, historically Black colleges and universities shall be given high priority within the White House Office of National Service.

Sec. 9. The White House Office of National Service, along with other Federal offices, shall work to encourage the private sector to assist historically Black colleges and universities through increased use of such devices and activities as: (1) private sector matching funds to support increased endowments, (2) private sector task forces for institutions in need of assistance, and (3) private sector expertise to facilitate the development of more effective ways to manage finances, improve information management, strengthen faculties, and improve course offerings. These steps will be taken with the goals of enhancing the career prospects of their graduates and increasing the number of those with careers in science and technology.

Sec. 10. In all its endeavors the Board of Advisors shall emphasize ways to support the long-term development plans of each historically Black college and university. The Secretary of Education, with the advice of the Board of Advisors, shall develop alternative sources of faculty talent, particularly in the fields of science and technology, including faculty exchanges and referrals from other institutions of higher education, private sector retirees, Federal employees and retirees, and emeritus faculty members at other institutions of higher education.

Sec. 11. The Director of the Office of Personnel Management, in consultation with the Secretary of Education and the Secretary of Labor, shall develop a program to improve recruitment and participation of graduates and undergraduate students of historically Black colleges and universities in part-time and summer positions in the Federal Government.

Sec. 12. Each year the Board of Advisors shall report to the President on the progress achieved in enhancing the role and capabilities of historically Black colleges and universities, including an Annual Performance Report on Executive Agency Actions to Assist Historically Black Colleges and Universities that appraises agency actions during the preceding year. The Secretary of Education shall disseminate the annual report to appropriate members of the Executive branch and make every effort to ensure that findings of the Board of Advisors are taken into account in the policies and actions of every Executive agency, including any appropriate recommendations for improving the Federal response directed by this order.

Sec. 13. Participating Executive agencies shall submit their annual plans to the Secretary of Education not later than January 15 of each year. The Annual Federal Plans for Assistance to Historically Black Colleges and Universities developed by the Secretary of Education shall be ready for consideration by the President not later than April 30 of each year.

Sec. 14. The Secretary of Education is directed to establish an Advisory Commission entitled the President's Board of Advisors on Historically Black Colleges and Universities. Notwithstanding the provisions of any other Executive order, the responsibilities of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), which are applicable to the Advisory Commission to be established by this order, shall be performed by

the Secretary of Education, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 15. Executive Order No. 12320 of September 15, 1981, is revoked.

George Bush

THE WHITE HOUSE,
April 28, 1989.

[FR Doc. 89-10690
Filed 5-1-89; 11:16 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of Apr. 28 on signing Executive Order 12677, see the *Weekly Compilation of Presidential Documents* (vol. 25, no. 17).

Presidential Documents

Executive Order 12678 of April 28, 1989

Level IV of the Executive Schedule

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 5317 of title 5 of the United States Code, and in order to place an additional position in and to remove obsolete positions from level IV of the Executive Schedule, section 1–101 of Executive Order No. 12154, as amended, is hereby further amended by removing the positions identified as sections 1–101 "(d)" through "(h)" from the order and relettering the remaining sections 1–101 "(i)" and "(j)", sections 1–101 "(d)" and "(e)", respectively, and adding at the end the following new subsection:

"(f) Comptroller of the Department of Defense."

The placements made by this order shall take effect immediately.

George Bush

THE WHITE HOUSE,
April 28, 1989.

[FR Doc. 89–10691
Filed 5–1–89; 11:17 am]
Billing code 3195–01–M

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Federal Register

Vol. 54, No. 83

Tuesday, May 2, 1989

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