1-12-81
Vol. 46 No. 7
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Monday
January 12, 1981

Highlights

2589 **Loan Program** USDA/FmHA amends regulation on insured Economic Emergency loans; comments by 3-13-81

2661 **Grant Programs** USDA/SEA announces it will accept statements of eligibility for funds to be distributed in fiscal year 1981 relating to Animal Health and Disease Research

2900 **Environmental Protection** USDA/FmHA proposes to amend regulations for implementing the National Environmental Policy Act; comments by 3-13-81 (Part III of this issue)

2962 **Prisoners** Justice/Prisons Bureau proposes rule for the management of inmates in Federal correctional institutions; comments by 3-16-81 (Part VI of this issue)

2590 **Aliens** Justice/INS clarifies language of existing rule to provide that certain immigrant aliens may use the Alien Registration Receipt Card in place of immigrant visas when returning to the United States; effective 2-10-81

2654 **Veterans** VA/DOD publishes proposal regarding resumption of contribution to funds upon reenlistment; comments by 2-11-81

CONTINUED INSIDE

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

Highlights

2591 **Small Businesses** SBA clarifies and sets forth procedural provisions applicable to SBA determinations of maximum size a business can be, and be eligible for SBA programs; effective 1-12-81

2596 **Electric Utilities** DOE/FERC publishes extension for applications for exemptions to 3-15-81 for report due 6-30-82 regarding information associated with the cost of providing electric service

2608 **Conflict of Interest** State establishes procedure for imposing administrative restrictions for violation of the post employment laws by former officers and employees of the Department of State, including Foreign Service; effective 1-1-81; comments by 2-11-81

2802 **Hazardous Waste** EPA amends regulations regarding standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities; effective 7-13-81; comments by 3-13-81 (Part II of this issue)

2893 **Hazardous Waste** EPA proposes to amend regulations relating to closure, tank, and waste pile standards for owners and operators of hazardous waste facilities; comments by 4-13-81 (Part II of this issue)

2956 **Electric Utilities** DOE/ERA issues rules implementing reporting of major electric utility system emergencies; effective 1-1-81 (Part V of this issue)

2597 **Imports** Treasury/Customs amends regulations regarding valuation of imported merchandise for customs purposes; effective 1-12-81

2613 **Railroads** DOT/FRA publishes regulations regarding formal rules of practice for passenger service; effective 1-12-81; comments by 2-26-81

Privacy Act Documents

2659 Agriculture Department
2672 Community Services Administration
2722 HHS/PHS
2766 VA

2767 **Sunshine Act Meetings**

Separate Parts of this Issue

2802 **Part II, EPA**
2900 **Part III, USDA/FmHA**
2934 **Part IV, EPA**
2956 **Part V, DOE/ERA**
2962 **Part VI, Justice/Prisons Bureau**
2967 **Part VII, DOT/FAA**

Contents

Federal Register
Vol. 46, No. 7
Monday, January 12, 1981

Agricultural Marketing Service
PROPOSED RULES
2622 Filberts grown in Oreg. and Wash

Agriculture Department
See also Agricultural Marketing Service; Commodity Credit Corporation; Farmers Home Administration; Forest Service; Science and Education Administration.
NOTICES
2659 Privacy Act; systems of records; annual publication

Air Force Department
NOTICES
Meetings:
2673 Scientific Advisory Board

Army Department
NOTICES
Meetings:
2673 Military personal property symposium

Arts and Humanities, National Foundation
NOTICES
Meetings:
2662 Humanities Panel

Bonneville Power Administration
NOTICES
Environmental statements; availability, etc.:
2674 Firm electric energy and system reserve energy from Federal Columbia River Power System; policy and allocation formula; energy conservation program requirements and guidelines; termination

Centers for Disease Control
See also National Institute for Occupational Safety and Health
NOTICES
Meetings:
2720 Immunization Practices Advisory Committee

Civil Aeronautics Board
NOTICES
2662 Certificates of public convenience and necessity and foreign air carrier permits
Hearings, etc.:
2662 Carrier selection case for New Bedford, Mass.; time change

Coast Guard
PROPOSED RULES
Drawbridge operations:
2652 Maryland
Great Lakes pilotage:
2656 Rates and services; inclusion of travel expenses in cancellation charges, etc.

Commerce Department
See Economic Development Administration; International Trade Administration; National Oceanic and Atmospheric Administration; National Telecommunications and Information Administration; Patent and Trademark Office.

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
2630 Sunflower seed; withdrawn

Community Services Administration
NOTICES
2672 Privacy Act; systems of records

Customs Service
RULES
Merchandise, classification and appraisement:
2597 Valuation for customs purposes
NOTICES
Authority delegations:
2765 Commissioner of Customs; order of succession
2766 Tariff reclassification of three-wheel all-terrain vehicles; proposed change of practice; inquiry; extension of time

Defense Department
See also Air Force Department; Army Department.
PROPOSED RULES
Veterans vocational rehabilitation and education:
2654 Post-Vietnam era veterans' educational assistance fund; resumption of contributions upon reenlistment
NOTICES
Committees; establishment, renewals, terminations, etc.:
2674 Military Personnel Testing Advisory Committee
Meetings:
2674 Electron Devices Advisory Group

Economic Development Administration
NOTICES
Import determination petitions:
2662 Union Shake Co. et al.

Economic Regulatory Administration
RULES
Oil; administrative procedures and sanctions:
2956 Electric power system permits and reports; major electric utility system emergencies
NOTICES
Consent orders:
2677 Lakeside/Crystal Refining Co.

Energy Department
See also Bonneville Power Administration; Economic Regulatory Administration; Energy Information Administration; Environment Office, Energy Department; Federal Energy Regulatory Commission.

NOTICES
Meetings:
2675-2677 National Petroleum Council (7 documents)

Energy Information Administration
NOTICES
Meetings:
2678 American Statistical Association Ad Hoc Committee on Energy Statistics

Environment Office, Energy Department
NOTICES
Meetings:
2678 Environmental Advisory Committee

Environmental Protection Agency
RULES
Hazardous waste:
2802 Standards for owners and operators of treatment, storage, and disposal facilities; consolidated permit regulations; interim final
PROPOSED RULES
Air quality surveillance, ambient; State and local air monitoring stations:
2655 Arkansas et al.
Hazardous waste:
2893 Interim status standards for owners and operators of treatment, storage, and disposal facilities; closure, tank, and waste pile standards
Water pollution; effluent guidelines for point source categories:
2934 Coil coating facilities
NOTICES
2718 Hazardous waste activities; notifications by generators, transporters, and facility owners and operators; report availability
Meetings:
2719 Science Advisory Board
Pesticide registration, cancellation, etc.:
2716 Tetra-sect powder and Beldene 310
Pesticides; experimental use permit applications:
2715 Elanco Products Co.
2715 Shell Chemical Co.
Toxic and hazardous substances control:
2709 Premanufacture notices; monthly status reports
2713, 2715, 2717 Premanufacture notices receipts (3 documents)

Equal Employment Opportunity Commission
NOTICES
2767 Meetings; Sunshine Act

Farmers Home Administration
RULES
2589 Economic emergency loans; clarification
PROPOSED RULES
2900 National Environmental Policy Act; implementation

Federal Aviation Administration
RULES
2967 Airspace regulations; annual compilation; correction
Airworthiness directives:
2594 Gates Learjet
2595 Transition areas
2596 VOR Federal airways, etc.; correction
PROPOSED RULES
2630 Transition areas
NOTICES
2762 Exemption petitions; summary and disposition
Meetings:
2762 Active beacon collision avoidance system (BCAS) conference

Federal Energy Regulatory Commission
RULES
Public Utility Regulatory Policies Act of 1978:
2596 Cost of service information collection; procedures and reporting requirements; exemption application filing time extension
NOTICES
Hearings, etc.:
2704 Alabama Power Co.
2706 Arizona Public Service Co.
2683 Aspen, Colo., et al.
2707 Bakersfield, Calif., et al.
2706 Carolina Power & Light Co.
2682 Central Louisiana Electric Co., Inc.
2682 Central Telephone & Utilities Corp. et al.
2684 Columbia Gas Transmission Corp.
2685 Connecticut Light & Power Co.
2685 Consumers Power Co.
2685 Continental Hydro Corp.
2686 El Paso Natural Gas Co.
2687 Exxon Co., U.S.A.
2687 Georgia Power Co.
2687 Getty Oil Co.
2688 Hartford Electric Light Co.
2688 Huntway Refining Co.
2688 Keystone Hydro Ltd.
2689 Michigan Consolidated Gas Co.
2689 Mississippi Power & Light Co.
2690-2694 Mitchell Energy Co., Inc. (6 documents)
2695 Natural Gas Pipeline Co. of America
2695-2697 Northern Natural Gas Co. (4 documents)
2708 Otter Tail Power Co.
2697 Panhandle Eastern Pipe Line Co.
2700, 2701 Panhandle Eastern Pipe Line Co. et al. (2 documents)
2708 Puget Sound Power & Light Co.
2683 Redding, Calif.
2707 Santa Clara, Calif.
2701 South Columbia Irrigation District et al.
2702 Southern Natural Gas Co.
2709 Southwestern Power Administration
2702, 2703 Texas Gas Transmission Corp. (3 documents)
2703 Transcontinental Gas Pipe Line Corp.
2698 Transwestern Pipeline Co.
2698 Union Carbide Corp. et al.
2709 Utah Power & Light Co.
2699 Valero Transmission Co.
2699, 2709 Vermont Electric Power Co., Inc. (2 documents)
2700 Virginia Electric & Power Co.
2767 Meetings; Sunshine Act
Natural gas companies:
2679 Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend

Federal Home Loan Bank Board
NOTICES
2768 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
2719 Universal Transcontinental Corp. et al.

Federal Railroad Administration
RULES
2613 Passenger service; practice rules

Forest Service
RULES
2611 Timber sales, national forest; export and substitution restrictions; correction

Geological Survey
NOTICES
Authority delegations:
2724 Conservation Managers et al.; OCS leasing activities, nondiscrimination against minority and women-owned business enterprises
Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
2724 Chevron U.S.A. Inc.

Health and Human Services Department
See Centers for Disease Control; Human Development Services Office; National Institute for Occupational Safety and Health; Public Health Service.

Heritage Conservation and Recreation Service
NOTICES
2725 National wild and scenic rivers system; State-administered rivers

Historic Preservation, Advisory Council
NOTICES
2659 Meetings

Human Development Services Office
NOTICES
Meetings:
2721 White House Conference on Aging Technical Committee (4 documents)

Immigration and Naturalization Service
RULES
Immigrants; documentary requirements; waivers:
2590 Alien registration receipt card use instead of immigrant visas when returning to U.S.; immigrant alien crewmen visa requirements exemption

Interior Department
See Geological Survey; Heritage Conservation and Recreation Service; Land Management Bureau.

International Trade Administration
NOTICES
Scientific articles; duty free entry:
2663 Beth Israel Hospital
2663 Massachusetts Institute of Technology
2664 National Institutes of Health
2664 Ramapo College of New Jersey
2665 University of Michigan et al.
Senior Executive Service:
2667 Bonus awards

Interstate Commerce Commission
NOTICES
Motor carriers:
2726 Finance applications
2726 Fuel costs recovery, expedited procedures
2727–2730 Permanent authority applications (3 documents)
2737 Temporary authority applications
2725 Practitioners' examination; proposed change in cycle
Railroad services abandonment:
2725 Baltimore & Ohio Railroad Co.
2737 Seaboard Coast Line Railroad Co.

Justice Department
See Immigration and Naturalization Service; Prisons Bureau.

Land Management Bureau
RULES
Public land orders:
2613 California; correction

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
2618 Seat belt assemblies; belt elongation requirements, exemption
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
2765 Dunlop Tire & Rubber Corp., uniform tire quality grading standards

National Institute For Occupational Safety and Health
NOTICES
Meetings:
2720 Inhalation toxicology and animal husbandry support services, and reducing stress in video display tasks

National Labor Relations Board
NOTICES
2768 Meetings; Sunshine Act

National Oceanic and Atmospheric Administration
NOTICES
Marine mammal permit applications, etc.:
2667 Kuljis, Barbara J.
2667 National Zoological Park
Meetings:
2668 Pacific Fishery Management Council

National Telecommunications and Information Administration
NOTICES
2668 Public telecommunications facilities and educational broadcasting facilities programs; permission for grantees to buy out or transfer Federal interest in funded equipment; policy statement

Patent and Trademark Office
RULES
Patent cases:
2611 Practice rules; computer program listings on microfiche

PROPOSED RULES
Patent cases:
2653 Correction of inventorship in patents and patent applications

Prisons Bureau
PROPOSED RULES
Inmate control, custody, care, treatment, and instruction:
2962 Classification and program review, library services, scholarship program, and special food or meals from outside sources

Public Health Service
NOTICES
2722 Privacy Act; systems of records

Science and Education Administration
NOTICES
Grants; availability, etc.:
2661 Animal health and disease research

Securities and Exchange Commission
PROPOSED RULES
2637 Securities; registration requirements, small offering exemptions
2631 Small Business Investment Incentive Act of 1980 on certain registration exemptions; advance notice

Small Business Administration
RULES
Small business size standards:
2591 Size determination procedures
NOTICES
Applications, etc.:
2762 Frontenac III Corp.
Senior Executive Service:
2762 Bonus award schedules

State Department
RULES
Ethics in Government:
2608 Post employment conflict of interest; interim rule

Tennessee Valley Authority
NOTICES
2768 Meetings; Sunshine Act

Textile Agreements Implementation Committee
NOTICES
Cotton textiles:
2672 Pakistan; correction

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Railroad Administration; National Highway Traffic Safety Administration.
RULES
Defense Production Act of 1950, voluntary agreements under section 708; standards and procedures; cross reference (Editorial note: This document appeared in the Federal Register for January 9, 1981.)

Treasury Department
See Customs Service.

Veterans Administration
PROPOSED RULES
Vocational rehabilitation and education:
2654 Post-Vietnam era veterans' educational assistance fund; resumption of contributions upon reenlistment
NOTICES
2766 Privacy Act; systems of records

MEETINGS ANNOUNCED IN THIS ISSUE

AGRICULTURE DEPARTMENT
Farmers Home Administration—
2900 Environmental Program, Washington, D.C., 2-19-81

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration—
2668 Pacific Fishery Management Council, Scientific and Statistical Committee, Groundfish Subpanel, Coos Bay, Oreg., 2-17, 2-18, and 2-19-81

DEFENSE DEPARTMENT
Air Force Department—
2673 USAF Scientific Advisory Board, Washington, D.C., 1-29 and 1-30-81
Army Department—
2673 Military Personal Property Symposium, Arlington, Va., 1-29-81
Office of the Secretary—
2674 DOD Advisory Group on Electron Devices, Tucson, Ariz., 2-5 and 2-6-81

ENERGY DEPARTMENT
2678 Energy Information Administration—American Statistical Association Ad Hoc Committee on Energy Statistics, Washington, D.C., 1-30-81
Environment Office—
2678 Environmental Advisory Committee, Clean Air Act Reauthorization Subcommittee, Washington, D.C., 1-28, 1-29 and 1-30-81
National Petroleum Council, Arctic Oil and Gas Resources Committee, Economics Task Group, Denver, Colo., 1-8-81
2675 National Petroleum Council, Arctic Oil and Gas Resources Committee, Production Engineering Task Group, San Francisco, Calif., 1-13-81
2675 National Petroleum Council, Arctic Oil and Gas Resources Committee, Production Engineering Task Group, Denver, Colo., 3-19-81
2675 National Petroleum Council, Arctic Oil and Gas Resources Committee, Transportation Task Group, Denver, Colo., 1-27-81
2677 National Petroleum Council, Environmental Conservation Committee, Air Quality Task Group, Washington, D.C., 2-17-81
2676 National Petroleum Council, Environmental Conservation Committee, Hazardous Waste Task Group, Chicago, Ill., 1-29-81
2676 National Petroleum Council, Environmental Conservation Committee, Synthetic Fuels Task Group, Washington, D.C., 1-30-81

2676 National Petroleum Council, Environmental Conservation Committee, Water Quality Task Group, Atlanta, Ga., 1-22-81

ENVIRONMENTAL PROTECTION AGENCY
2719 Science Advisory Board, Executive Committee, Washington, D.C., 1-28 and 1-29-81

HEALTH AND HUMAN SERVICES DEPARTMENT
Disease Control Center—
2720 Immunization Practices Advisory Committee, Atlanta, Ga., 1-26-81
2720 Inhalation Toxicology and Animal Husbandry Support Services, Cincinnati, Ohio, 1-22-81
Human Development Services Office—
2721 White House Conference on Aging, Technical Committee, Washington, D.C., 1-27-81
2721 White House Conference on Aging, Technical Committee, New Orleans, Louisiana, 1-15, 1-16, and 1-17-81
2721 White House Conference on Aging, Technical Committee, Dallas, Tex., 1-21-81

HISTORIC PRESERVATION ADVISORY COUNCIL
2659 Public Information meeting, Honolulu, Hawaii, 1-31-81

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES
2762 Humanities Panel, Washington, D.C., 1-27-81

TRANSPORTATION DEPARTMENT
Federal Aviation Administration—
2762 Active Beacon Collision Avoidance System Conference, Washington, D.C., 1-27 and 1-28-81

CHANGED MEETINGS

CIVIL AERONAUTICS BOARD
2662 Carrier Selection Case for New Bedford, Mass., Washington, D.C., 1-13-81 changed to 1-19-81

HEALTH AND HUMAN SERVICES DEPARTMENT
Human Development Services Office—
2721 White House Conference on Aging, Technical Committee, Hartford, Conn., 1-13-81 changed to 1-22-81

HEARING

COMMERCE DEPARTMENT
Patent and Trademark Office—
2653 Correction of inventorship, 3-6-81

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
1945 2589
Proposed Rules:
982 2622
1421 2630
1901 2900
1940 2900

8 CFR
211 2590

10 CFR
205 2956

13 CFR
121 2591

14 CFR
39 2594
71 (3 documents) 2595, 2596, 2967
73 2967
75 (2 documents) 2596, 2967
Proposed Rules:
71 2630

17 CFR
Proposed Rules:
230 (2 documents) 2631, 2637
239 2637

18 CFR
290 2596

19 CFR
152 2597

22 CFR
18 2608

28 CFR
Proposed Rules:
524 2962
544 2962
545 2962
547 2962

33 CFR
Proposed Rules:
117 2652

36 CFR
223 2611

37 CFR
1 2611
Proposed Rules:
1 2653

38 CFR
Proposed Rules:
21 2654

40 CFR
122 2802
264 2802
265 2802
Proposed Rules:
58 2655
264 2893
265 2893
465 2934

43 CFR
Public Land Orders:
5791 2613

46 CFR
Proposed Rules:
401 2656

49 CFR
201 2613
571 2618

Rules and Regulations

Federal Register
Vol. 46, No. 7
Monday, January 12, 1981

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1945

Economic Emergency Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation on insured Economic Emergency (EE) loans. This action is required to clarify the policies set forth in this regulation and to explicitly incorporate certain related policies concerning the use of EE loan funds. This action is intended to provide clarification in the authorized use of EE loan funds to pay delinquent installments owed on farm real estate purchase contracts, finance essential farm alcohol fuel and methane gas facilities and certain farm and home related operating expenses which were inadvertently omitted and to delete an inadvertently included requirement inserted when this regulation was recently amended and published in the Federal Register on May 27, 1980 (45 FR 35782).

EFFECTIVE DATE: January 12, 1981. Comments due by March 13, 1981.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, FmHA, USDA, Room 6346-S, Washington DC 20250. All written comments made pursuant to this notice will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. William Krause, USDA, FmHA, Room 5344, South Agriculture Building, 14th and Independence Ave., SW., Washington DC 20250. Telephone (202) 447-6257.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under procedures established in Secretary's Memorandum No. 1955 to implement Executive Order 12044, and has been classified as "significant." OMB Circular A-95 regarding State and local clearing house review of Federal and Federally-assisted programs and projects is not applicable to this action. The Catalog of Federal Domestic Assistance Number is 10.428, Economic Emergency Loans.

The emergency nature of this action warrants publication of this final rule without completion of a Draft Impact Analysis. A Final Impact Statement on this action, as well as related action on insured economic emergency (EE) loans published May 27, 1980, (45 FR 35782) and guaranteed EE loans published November 18, 1980, (45 FR 76089), will be developed after public comments have been received. Information for this analysis, in addition to public comments, will be developed through the comprehensive study of the EE program mandated by Pub. L. 96-220 due in Congress March 31, 1981.

Mr. Alex P. Mercure, Under Secretary for Small Community and Rural Development, has determined that an emergency situation exists which warrants publication without opportunity for a prior public comment period. This determination was based on the urgent need to clarify issues necessary for proper implementation of Pub. L. 96-220 to assure that EE loan funds continue to be provided to farmers, ranchers, and aquaculture operators suffering economic stress due to the general lack of agricultural credit from private and cooperative agricultural credit sources. Post-publication comments have been solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the Federal Register as soon as possible. As indicated above, the Final Impact Statement for this action will also cover the related actions for both the insured and guaranteed portions of the EE program identified above.

The reporting and recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

The major changes to Subpart C of Part 1945 are as follows:

1. Section 1945.116 (a)(2)(iii) is amended to clarify that EE funds may be advanced to pay in full *only* that portion of a secured or unsecured debt representing an applicant's *annual* family living and farm production expenses.
2. Section 1945.116 (a)(9) is amended to clarify that EE loan funds may be used to pay other taxes due or about to become due in addition to delinquent real and personal property taxes.
3. Section 1945.116 (a)(10) is amended to clarify that EE loan funds may be used under certain conditions to pay a reasonable fee(s) for recordkeeping and related farm management service(s).
4. Section 1945.116 (b)(1) is amended to clarify that EE loan funds may be used to finance alcohol fuel and methane gas facilities when necessary to have a viable farming operation.
5. Section 1945.117 (a)(5) is amended to remove the inadvertently included requirement concerning "real estate title having to be conveyed to the applicant at least one year before the date of the EE loan application" and to explicitly state certain conditions that must be met when a farm real estate purchase contract(s) is involved.

Accordingly, Subpart C of Part 1945 is amended as follows:

PART 1945—EMERGENCY

Subpart C—Economic Emergency Loans

1. § 1945.102 is revised to read as follows:

§ 1945.102 Program objectives.

The objective of EE loans is to make adequate financial assistance available during the period authorized by Title II of Pub. L. 95-334, as amended, (authority expires September 30, 1981) in the form of loans insured or guaranteed by FmHA for bona fide farmers and ranchers who are primarily and directly engaged in agricultural production so that they may continue their farming or ranching operations during the economic emergency which has caused a lack of agricultural credit due to economic stress such as a general tightening of agricultural credit *or* an unfavorable relationship between production costs

and prices received for agricultural commodities. Supervisory assistance will be given in accordance with the provisions of Subpart B of Part 1924 of this Chapter. *It is the policy of FmHA to make insured EE loans only when guaranteed EE loans are not available through private and cooperative agricultural lenders.*

2. § 1945.116 (a)(2)(iii); (9) and (10); and (b)(1) are revised to read as follows:

§ 1945.116 Loan purposes.

* * * * *

(a) *Operating purposes.* * * *

(2) * * *

(iii) When *annual* credit advances were made for family living and/or farm production expenses, but also included funds for capital expenditures such as equipment, foundation livestock, and real estate purchases or improvements, *only* that portion advanced for *annual* family living and farm production expenses may be *fully* paid with EE loan funds. However, one year's interest and an amount not to exceed 20 percent of the appraised market value for the essential farm and home equipment and livestock under prior lien to the creditor(s), or 20 percent of the balance owed to the creditor(s) (whichever is the lesser) may be paid with EE loan funds.

* * * * *

(9) Payment of delinquent real and personal property taxes and other taxes such as income and social security taxes due or about to become due, and water or drainage charges or assessments.

(10) Payment of reasonable expenses incidental to obtaining, planning, making and closing the loan such as fees for legal, architectural, and technical services which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds also may be used to pay a reasonable fee(s) for recordkeeping and related farm management service(s), if necessary, to meet the objectives of the loan plus the borrower's share of Social Security taxes for labor hired by the borrower in connection with making the planned building or land improvements. However, loan funds are *not* to be used to pay fees charged applicants by agricultural management consultants and other professionals for preparation of EE loan dockets, including farm and home plans and other FmHA forms used in processing such loans.

* * * * *

(b) *Real estate purposes.* (1) Changing or reorganizing the farming operation so it will be an economically viable operating unit. Such purpose includes the contruction, improvement, alteration, repair, relocation, purchase or moving of essential either service buildings, facilities, and structures on the applicant's real estate necessary for reorganization of the operation, including the purchase and/or installation or augmentation and improvement of essential farmstead water and sewage systems, and other equipment or facilities necessary to the operation (including alcohol fuel and methane gas facilities, and equipment which utilizes wind or solar energy).

* * * * *

3. § 1945.117 (a)(5) is revised to read as follows:

§ 1945.117 Loan limitations and special provisions.

(a) *Limitations on use of loan funds.* * * *

(5) Installments owed on farm or home real estate debts will not be paid unless such real estate was purchased by the applicant at least one year before the date of the EE loan application. When a farm real estate Purchase Contract(s) is involved, the following conditions must be met and documented in the case file by the County Supervisor or loan approval official:

(i) The farm real estate Purchase Contract(s) must have been in effect for at least 12 months before the date of the EE loan application.

(ii) The terms of the farm real estate Purchase Contract(s) must be reasonable and in keeping with terms normally provided by sellers in the area. EE loan funds will *not* be used to pay an installment(s) owed on such a Purchase Contract(s) which contains terms too tight for the applicant/borrower to meet under normal conditions.

(iii) Such contract(s) must meet the real estate security requirements prescribed in § 1945.120 (b)(7) of this Subpart. In addition, it must be determined that such Purchase Contract(s) provides the applicant/borrower with comparable rights and benefits afforded by regular deeds and real estate security instruments.

* * * * *

Note.—This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

(7 U.S.C. 1989; 5 U.S.C. 301; Title II of Pub. L. 95-334, as amended by Pub. L. 96-220; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

Dated: December 12, 1980.

Alex P. Mercure,

Under Secretary for Small Community and Rural Development.

[FR Doc. 81-1009 Filed 1-9-81; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 211

Documentary Requirements: Immigrants, Waivers; Returning Immigrants and Crewmen

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule clarifies the language of the existing rule to provide that certain immigrant aliens may use the Alien Registration Receipt Card in place of immigrant visas when returning to the United States, and also corrects the text to exempt immigrant alien crewmen on board U.S. flagships from the visa requirements after voyages of more than one year.

EFFECTIVE DATE: February 10, 1981.

FOR FURTHER INFORMATION CONTACT:

For general information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536. Telephone: (202) 633-3048.

For specific information: F. P. Murphy, Deputy Assistant Commissioner, Inspections, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536. Telephone: (202) 633-3275.

SUPPLEMENTARY INFORMATION: This rule clarifies the language of 8 CFR 211.1(b)(1) to provide that immigrant aliens, returning to unrelinquished lawful permanent residences in the United States, may use their alien registration receipt cards in place of immigrant visas when entering the United States. The rule specifically includes civilian employees of the U.S. Government. The former rule was not explicit as to these alien principals, although their spouses and children were specifically mentioned. In addition to improving the readability of the rule, this revision also corrects an error in the former rule which limited the use of the alien registration receipt cards by alien crewmen to a period not exceeding one year. An alien crewman regularly serving aboard an aircraft or vessel of American registry who is returning after

a temporary absence abroad in connection with his/her duties is exempted from the visa requirement even though such absence exceeds one year.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking is unnecessary because this rule is interpretative and clarifies the former rule.

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

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

In § 211.1, paragraph (b)(1) is revised to read as follows:

§ 211.1 Visas.

* * * * *

(b) *Returning residents* (1) *Alien Registration Receipt Card (Form I-151 or I-551).* An Alien Registration Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad, *provided* such absence did not involve travel to, in, or through Iran and who is: (i) returning after a temporary absence abroad not exceeding one year; or (ii) an alien crewman regularly serving aboard an aircraft or vessel of American registry who is returning after a temporary absence abroad in connection with his/her duties in that occupation, notwithstanding travel to, in, or through Iran pursuant to his/her employment as a crewman; or (iii) a civilian employee of the U.S. Government returning from a foreign assignment pursuant to official orders; or (iv) a spouse or child of a civilian employee of the U.S. Government or a spouse or child of a member of the Armed Forces of the U.S., *provided* such spouse or child resided abroad while such member of the Armed Forces or such civilian employee was on overseas duty and is preceding or accompanying the member or employee or is following to join the member or employee within four months of the member's or employee's return to the U.S.

* * * * *

(Secs. 103 and 211; 8 U.S.C. 1103 and 1181)

Dated: January 6, 1981.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 81-937 Filed 1-9-81; 8:45 am]

BILLING CODE 4410-10-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

[Amdt. 38]

Size Determination Procedures

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The amendments set forth clarifying and procedural provisions applicable to SBA determinations of the maximum size a business can be and be eligible for SBA programs. The amendments are largely of an interpretive and technical nature reflecting existing SBA precedents and policies. The amendments also help implement size determination procedures relating to subcontracting assistance established by Pub. L. 95-507 and assistance to small business concerns pursuant to Section 8(a) of the Small Business Act.

These amendments (which refer to the present format of the size regulation), primarily relate to procedures for size protests and appeals in contrast to other recent proposed amendments to Part 121 (March 10, 1980; 45 FR 15442) which primarily involve basic changes in the size standards and in the economic theory of such standards. These amendments were published in proposed form in the Federal Register of April 22, 1980 (45 FR 26974). For the most part, they are being adopted as proposed with some minor clarifications.

EFFECTIVE DATE: January 13, 1981.

FOR FURTHER INFORMATION CONTACT: Stephen A. Klein, Office of General Law (202) 653-6762.

SUPPLEMENTARY INFORMATION: Particular areas covered in the proposed amendments include:

1. Joint venture definition and subcontracting affiliations.
2. Annual receipts applicable period regarding new concerns and affiliates.
3. Recertifications.
4. Size determinations to assist other agencies.
5. Multiple Award Schedule set asides.
6. Time as of which size status is determined for set aside procurements.
7. Time as of which size status is determined for Government property sale or lease purposes.
8. Subcontracting size determinations.
9. Formal size determinations on concerns for 8(a) assistance purposes.

Response to Comments

Comments were received from the National Aeronautics and Space Administration and from certain timber concerns. The NASA comments state that, to simplify size determinations and provide more certainty, the date of written self-certification of size eligibility by a bidder or offeror on Government procurements should be used in all cases as the determinative point in time regardless of when award is made. Conversely, the timber firm comments contend that it also is necessary to consider size status at time of award on Government set aside timber sales to prevent acquisition of a small bidder by a large firm between the time of bid and the time of award. (The SBA Size Regulations (121.3-2(a)(iv)) already treat merger agreements and options to acquire current control as constituting present power to control. Accordingly, evidence of any such arrangements at the time of bid and self-certification can be considered in an SBA size determination. The effect of these existing provisions would be significant in restraining the acquisitions envisaged by the timber firm comments.) The Regulation adopts the NASA recommendation and provides that for procurement and property sales purposes size is determined as of the date of written self-certification as part of a bid or offer.

A comment was received opposing the provision regarding timeliness of protests on multiple award schedule small business set asides. The comment contended it would result in repeated SBA size determinations on a concern over the life of a contract. The comment confuses the procedural question of timeliness of protest with the substantive question of the time as of when size eligibility is determined. Once a firm was determined by SBA to be small, the determination would be effective as to that award throughout the period under the contract.

Explanation of Amendments

These amendments relate to procedural, organizational and administrative matters in connection with SBA determinations on the small business size status of concerns under the various SBA size standards. They are largely of a clarifying and technical nature in areas where SBA experience on particular size determination cases indicates the desirability of general guidelines or modifications in existing rules. To a major extent these amendments reflect existing SBA policies or interpretations. A number of the amendments relate to size determinations in the Government procurement area.

SBA size determinations are made at the SBA field office in the region where the firm is located. Appeals of formal size determinations under Part 121 may be taken to the Size Appeals Board. The

SBA size standards are generally in terms of a number of employees or average annual receipts and include all concerns under common ownership or control in determining whether a company is within the particular size standard applicable to the size determination. Procurement size standards utilized may vary depending on the industry category which is the principal nature of a particular procurement for which the size determination is being made. Financial assistance size standards vary in terms of the primary industry of the concern and its affiliates.

The joint venture affiliate amendment indicates that, for SBA size determination purposes, joint ventures are temporary in nature (e.g., a single project) and may be in corporate or other legal form. Also, it is indicated that certain subcontracting relationships may give rise to a joint venture.

With respect to the annual receipts amendment, it should be noted that it indicates certain interpretive language which had been omitted from the Code of Federal Regulations. The matter covers inclusion of affiliate receipts and computation of average receipts of new concerns.

A provision is added noting that recertification is not required if an SBA adverse size determination is based solely on an ineligibility restricted to a particular procurement or sale. Also, it is noted that recertifications are generally appealable at that time to the Size Appeals Board only by the concern in question (i.e., in the case of an adverse size determination on an application for recertification).

The amendment on SBA size determinations to assist other agencies could have application to possible debarment proceedings by such other agencies when small business size status is an issue, and to small business size status under Government regulatory or assistance programs. It generally would apply if an agency utilizes the SBA size standards and requests an SBA size determination on the status of a particular concern. Agencies might refer to such SBA size standards in their regulations or written eligibility guidelines.

As respects size determinations on multiple award schedule small business set asides, the identity of offerors may not be disclosed until after award and the normal procedures on timeliness of protests would generally not be appropriate. Therefore, the amendment provides that a protest may be made at any time prior to the expiration of the contract period.

The amendment dealing with the time of size eligibility for procurement and property sales purposes is a codification of the present interpretation of the current regulations by the Size Appeals Board. It generally provides that size eligibility for award of a contract is determined as of bid/offer submission. This interpretation, adopted by the Board in a recent case, revised the Board's previous views in this area. Since this principle is currently being applied by the Board, it is preferable that this issue should be codified in the regulations.

The previous case law interpretation often determined size eligibility as of both the time of bid opening and the time of the Board's decision in cases where award had not yet been made. In such instances, size certifications by bidders and offerors could only be projections of intent. The present case law interpretation by the Board that the certification relates to the time it is made is codified in this final rule. Bidders/offerors will be able to accurately make this critical contractual certification and to make appropriate judgments in the operations of their business. The rule will assist SBA by facilitating a more equitable and expeditious handling of size protests and appeals.

The amendment for subcontracting size determinations is in response to the recommendation in the Conference Report on Pub. L. 95–507 (House of Representatives Report No. 95–1714) that SBA establish a procedure to review the eligibility of small subcontractors which have made written representations on their small business size status, when such written representations are challenged on those procurements which are required to have small business subcontracting plans. These size determinations relate to subcontracting under Section 8(d) of the Small Business Act (see Part 125 of the SBA Regulations, 13 CFR Part 125; see also Policy directive of the Office of Federal Procurement Policy, 45 FR 31028, May 9, 1980). Either the contracting officer or other affected party, including the concern making the written representation when its representation is rejected, can institute a size determination by SBA. When the subcontracting protest challenges the small business size of the concern, the SBA size determinations would be made under Part 121; if the protest challenges the firm as not owned and controlled by socially and economically disadvantaged individuals, the SBA determination regarding such status would be made under procedures to be adopted pursuant to Part 124 of the SBA Regulations.

The amendment relating to size determinations for the SBA 8(a) program indicates that Part 121 size procedures may be utilized when appropriate to assist the existing SBA 8(a) program eligibility determination procedures. The 8(a) regulations issued pursuant to Pub. L. 95–507 are set forth in Part 124 of the SBA Regulations (13 CFR Part 124). Also, special size treatment for divestiture agreements re 8(a) firms is deleted from the Size Regulation as no longer to be applicable under Pub. L. 95–507.

It is noted that Pub. L. 96–481, enacted October 21, 1980, prohibits SBA from rulemaking with respect to size standards until March 31, 1981. This prohibition relates to the general revision of its size standards which SBA proposed on March 10, 1980 (45 FR 15442). The legislative history (e.g., Senate Report No. 96–974, pp. 27–28; Congressional Record, September 26, 1980, p. S13691) indicates that the prohibition applies to the final promulgation of revised size standards and is designed to give the Congress and the SBA more time to study and review the size standards. Since the amendments herein are not size standards and set forth SBA procedures in size determinations on individual business concerns, it is SBA's view that the above-mentioned prohibition is not applicable to this rulemaking.

Dated: December 24, 1980.

William H. Mauk, Jr.,

Acting Administrator.

Therefore, pursuant to the authority of Section 5(b)(6) of the Small Business Act (15 U.S.C. 634), the Small Business Administration amends Part 121 of its Regulations (13 CFR Part 121) as follows:

§ 121.3–2 [Amended]

1. Section 121.3–2(a)(vii) (Control through contractual relationships) is amended by revising subparagraphs (A) and (C) to read as follows:

(a) * * *

(vii) Control through contractual relationships. (A) Definition of a joint venture for size determination purposes: A joint venture for size determination purposes is an association of persons and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business

generally. A joint venture is viewed as a business entity in determining power to control its management.

* * * * *

(C) Joint venture—procurement and property sale assistance. Concerns bidding on a particular procurement or property sale as joint venturers are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, an ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor. A joint venture affiliation finding is limited to particular contracts unless the SBA size determination finds general affiliation as between the parties.

* * * * *

2. Section 121.3–2(b) (Definition of annual receipts) is amended by adding the following at the end thereof:

* * * * *

(b) * * * If a concern has been in business less than a year, its annual receipts for the purpose of a size standard based on 1 year's receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. If a concern has been in business less than 3 years, its average annual receipts for the purpose of a size standard based on 3 years' receipts shall be computed by determining its average weekly receipts for the period in which it has been in business, and multiplying such figure by 52. If a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's annual receipts to include the affiliate's receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are not included even if such a concern had been an affiliate during a portion of the applicable accounting period.

* * * * *

§ 121.3–4 [Amended]

3. Section 121.3–4(d) (regarding recertifications) is amended by adding the following new paragraphs at the end thereof:

* * * * *

(d) * * *

(1) Recertification shall not be required nor will the prohibition against future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation due to a joint venture (e.g., ostensible subcontracting) limited to a particular Government procurement or property sale, or is based solely on an ineligible nonmanufacturer size determination on a particular Government procurement.

(2) If SBA makes a size determination denying an application for recertification, such adverse size determination may be appealed to the Size Appeals Board. Recertifications have future effect only and, except as to timber sales size determinations, are not appealable to the Board by other than the concern in question (however, the concern's later self-certification on subsequent set-aside procurements or property sales may be protested in the usual manner).

4. Section 121.3–4 (regarding size determinations) is amended by adding the following new paragraph (e) at the end thereof:

* * * * *

(e) Size determinations for compliance purposes. Upon request by other Government agencies, SBA size determinations under Part 121 may be made to assist in the enforcement or administration of regulations or contracts, as well as in connection with award of contracts or granting of assistance. SBA size determinations are findings on the size status of a concern (including its affiliates) as of a definite time and regarding a specific applicable SBA size standard, and do not rule on compliance, contractual or administrative matters which are handled by the other agencies.

§ 121.3–5 [Amended]

5. Section 121.3–5 (regarding protests) is amended by adding the following new paragraph (e) at the end thereof:

* * * * *

(e) Multiple Award Schedules. Protests will be deemed timely if received by SBA at any time prior to the expiration of the contract period (including renewals) on a multiple award schedule procurement set aside for small business.

§ 121.3–8 [Amended]

6. Section 121.3–8 (definition of small business for Government procurement) is amended by adding the following new sentence as the second sentence thereof:

* * * The size status of a concern (including its affiliates) is determined as of the date of written self-certification as a small business as part of a concern's submission of a bid or offer.* * *

§ 121.3–9 [Amended]

7. Section 121.3–9 (definition of small business for sale or lease of Government property) is amended by adding the following new sentence as the second sentence thereof:

* * * The size status of a concern (including its affiliates) is determined as of the date of written self-certification as a small business as part of a concern's submission of a bid or offer.* * *

§ 121.3–12 [Amended]

8. Section 121.3–12 (definition of small business Government subcontractors) is amended by adding a new paragraph (c) as follows:

* * * * *

(c) The contracting officer or other affected party in connection with small business subcontracting requirements, pursuant to section 8(d) of the Small Business Act, may protest a written representation of small business status, or the refusal to accept such written representation, of a concern offering as a subcontractor on a particular procurement. The protest and related information shall be referred to the SBA Regional Office in which the concern has its principal office and a size determination shall be made under this Part 121.

§ 121.3–2 [Amended]

9. (a) Sec. 121.3–2(a) is amended by deleting the third and fourth sentences thereof.

(b) A new § 121.3–17 is added to Part 121 of the SBA Regulations to read as follows:

§ 121.3–17 Formal size determinations on concerns for 8(a) assistance.

(a) As set forth in subsection (b) hereof, SBA may make formal size determinations under this Part 121 to assist in eligibility findings of concerns under Part 124 (8(a) assistance). Eligibility for 8(a) assistance is determined by the SBA Associate Administrator for Minority Small Business and Capital Ownership Development. Such eligibility is determined with reference to the 8(a) program in general and not with reference to award of particular 8(a) procurements. The size standards of Part 121 are utilized as related to the primary industry classification of the 8(a) concern.

(b) The Associate Administrator for Minority Small Business and Capital Ownership Development (AAMSB–COD) or a Regional Administrator may refer a case of 8(a) size eligibility to the regional office where the concern is located for a size determination under Part 121 (which is appealable by either party to the Size Appeals Board). Size determinations under Part 121 on initial

entry into the 8(a) program or on program completion or termination are advisory to the ASMSB-COD; and/or to the Administrative Law Judge in 8(a) proceedings under Part 124.

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BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-CE-39-AD; Amendment 39-4015]

Airworthiness Directives; Gates Learjet 23, 24, 25, 28 and 29 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), AD 80-26-02, applicable to Gates Learjet 23, 24, 25, 28 and 29 series airplanes that have an FC-110 autopilot system installed and codifies the corresponding emergency AD letter dated December 11, 1980, into the Federal Register. This AD requires, prior to further flight, deactivation of the FC-110 autopilot pitch axis and requires the crew to observe appropriate Airplane Flight Manual (AFM) limitations for an inoperative autopilot and emergency procedures for pitch axis malfunction. The AD further requires on or before April 1, 1981, modification of the airplane by requiring (1) replacement of the existing pitch axis servo and capstan with a D.C. torquer, (2) inspection of the autopilot trim coupler board to assure that the proper transistors are installed and (3) incorporation of a trim monitor preflight test switch. Upon accomplishment of these three requirements, and an addition to the AFM describing the function and use of the trim monitor, the autopilot pitch axis may be reactivated. These actions are necessary to reduce the hazard created by a possible pitch axis malfunction, which, if not detected, could result in a hazardous flight attitude.

EFFECTIVE DATE: January 15, 1981, to all persons except those to whom it has already been made effective by airmail letter from the FAA dated December 11, 1980. Compliance: As prescribed in the body of the AD.

ADDRESSES: Gates Learjet Corporation, Airplane Modification Kits No. AMK 80-3, Change 4, and AMK 80-16B, Change 2 referenced in this AD, may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277; Telephone (316) 942-2000. A copy of the Airplane Modification Kit documents are also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106; and Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Larry Malir, ACE-213, Aircraft Certification Program, FAA, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942-4281.

SUPPLEMENTARY INFORMATION: The horizontal stabilizer on Gates Learjet aircraft is positioned by either of the following three systems: secondary pitch trim, primary pitch trim and autopilot. The primary pitch trim system is directly operated by the pilot or the copilot by means of a control wheel mounted. switch and the secondary pitch trim system by means of a pedestal mounted switch. The secondary pitch trim is also operated by the autopilot's trim circuits during autopilot operation. In the event of an actual axis malfunction which would cause a trim runaway in a nose-up direction, the malfunction could force the airplane into heavy stall buffet and, if not immediately corrected, can result in the flameout of both engines. A Learjet Model 25, Serial No. 25-010, was recently involved in a nose-up pitch malfunction which caused the flameout of both engines. After considerable loss of altitude, the crew completed a safe recovery and landing. During the investigation of that incident, the autopilot pitch axis servo was found to have a defective magnetic drive clutch. The servo installed on the aircraft was equipped with a magnetic powder clutch which is suspected to have become coagulated and caused the clutch to jam. The jammed clutch caused the elevator to be displaced and the autopilot continuously retrimmed the horizontal stabilizer causing the nose-up condition. Further evaluation of this incident and review of the service history on the Gates Learjet 23, 24, 25, 28 and 29 series airplanes revealed that certain malfunctions of the autopilot system could result in a hazardous flight attitude. Consequently, the FAA determined, in the interest of safety, to issue AD 80-22-10 requiring that the autopilot pitch axis be deactivated to reduce hazards created by a possible malfunction in that axis. Since the FAA determined that this was an unsafe condition that may exist in other airplanes of the same type design and an emergency condition existed, immediate corrective action was required and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by AD 80-22-10 by airmail letter dated October 24, 1980, and became effective as to these individuals upon receipt of that letter. Specifically, AD 80-22-10 required the FC-110 autopilot pitch axis be deactivated and compel the crew to observe appropriate Airplane Flight Manual (AFM) limitations for an inoperative autopilot and emergency procedures for pitch axis malfunction. The AD further required on or before January 1, 1981, modification of the airplane by requiring (1) replacement of the existing pitch axis servo and capstan with a D.C. torquer, (2) inspection of the autopilot trim coupler board to assure that the proper transistors are installed, and (3) incorporation of a trim monitor preflight test switch. Upon accomplishment of these three requirements, and an addition to the AFM describing the function and use of the trim monitor, the autopilot pitch axis may be reactivated. The service centers that were approved to perform the modification were restricted to only those listed in AD 80-22-10.

Subsequent to the issuance of AD 80-22-10, the manufacturer revised Airplane Modification Kits AMK 80-3 and AMK 80-16. AMK 80-3 referred to in paragraph B)1.b) of this AD has been revised to include Change 4. This change incorporates a revised Jet Electronics and Technology, Inc. (J.E.T.) Service Bulletin, a Parts Required List clarification, and footnotes to the kit instructions. AMK 80-16 referenced in paragraph B)1.a) and b) of the AD has been reidentified as AMK 80-16B, Change 2. Revision B added a relay assembly to the trim preflight test circuitry and Change 2 specified an operational check of the Autopilot Pitch Trim System plus parts list changes. The temporary Airplane Flight Manual referenced in paragraph B)2 of the AD bears the date of October 21, 1980. This date is incorrect. It should reflect the date of October 22, 1980. Numerous operators and other interested persons have objected to the compliance date of January 1, 1981, referenced in paragraph B) of the AD. The basis for these objections is the insufficiency of time and work facilities for the nine service centers listed in the AD to accomplish the required modifications. The FAA has investigated the situation and has verified the accuracy of these objections. Consequently, the compliance time is being extended to

April 1, 1981. Concurrently, six additional service centers are being added that are authorized to accomplish the modifications. This action will prevent an undue hardship which would be caused if operators are forced to terminate operations because of service center workload and will not adversely compromise the safe operation of unmodified airplanes.

Since the condition described herein is likely to exist or develop in other aircraft of the same type design, an emergency AD is being issued, superseding AD 80-22-10. This new AD 80-26-02 will reiterate the substance of AD 80-22-10 and, at the same time, incorporate the changes mentioned herein. The superseding AD will not require repetition of those requirements previously accomplished by AD 80-22-10.

This AD is being published in the Federal Register as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the letter notification.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive.

Gates Learjet: Applies to 23, 24, 25, 28 and 29 series airplanes certificated in all categories.

Compliance: Required as indicated, unless previously accomplished in accordance with AD 80-22-10.

(A) Before further flight:

1. Deactivate the pitch function of the FC-110 Automatic Flight Control System (AFCS) or Automatic Flight Control Stability System (AFC/SS), as indicated below, by pulling the AFCS Pitch DC Circuit Breaker to the off position, banding it to prevent use of this function and checking to assure this function is the only deactivated circuit or control:

Series	Serial No.	Location
23	003 thru 014	Pilot's Switch Panel.
	015 thru 099	Pilot's Sub Panel.
24	100 thru 139 (except 131, 132 & 134).	Pilot's Sub Panel.
	131, 132 & 134	Pilot's circuit breaker panel.
	140 thru 229	Autopilot computer rack (under pilot's seat).
	230 and up	Pilot's circuit breaker panel.
25	003 thru 069 (except 032).	Autopilot computer rack (under pilot's seat).
	032	Pilot's Sub Panel.
	070 and up	Pilot's circuit breaker panel.
28	001 and up	Pilot's circuit breaker panel.
29	001 and up	Pilot's circuit breaker panel.

2. Install a locally fabricated placard on or near the autopilot control head in clear view of the crew, using letters at least 3/32 inch high, which reads:

AUTOPILOT PITCH AXIS INOPERATIVE

OBSERVE APPROPRIATE AFM AIRSPEED LIMITATIONS FOR INOPERATIVE AUTOPILOT

and operate the airplane in accordance with this placard.

3. Insert in the appropriate section of the existing Airplane Flight Manual (AFM) the FAA approved temporary Airplane Flight Manual Change dated October 22, 1980, pertaining to emergency procedures for pitch axis malfunction.

(B) On or before April 1, 1981, accomplish all of the following at a Gates Learjet authorized service center holding appropriate FAA repair station ratings (see attached list):

1. Visually inspect the elevator control system to assure that Pitch Axis Servo (D.C. Torquer), P/N 6600163-( ) is installed.

(a) If installed, modify the airplane by incorporating autopilot pitch trim monitor test switch in accordance with Gates Learjet Airplane Modification Kit AMK 80-16B, Change 2.

(b) If not installed, modify the airplane by replacing the pitch servo actuator and capstan and incorporating autopilot pitch trim monitor test switch in accordance with Gates Learjet Airplane Modification Kits AMK 80-3, Change 4, and AMK 80-16B, Change 2, respectively.

2. Insert in the appropriate sections of the existing Airplane Flight Manual (AFM) the FAA approved temporary Airplane Flight Manual changes dated October 22, 1980, for autopilot trim monitor.

(C) When paragraph B of this AD has been accomplished, the requirements of paragraphs (A) 1. and 2. of this AD are no longer applicable.

(D) Airplanes may be flown in accordance with FAR 21.197 to a location where the requirements of this AD can be accomplished provided the autopilot is not operative during that flight.

(E) Any equivalent method of compliance with this AD must be approved by the Chief, Aircraft Certification Program, FAA, Central Region, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209.

This AD supersedes AD 80-22-10.

This amendment becomes effective on January 15, 1981, to all persons except those to whom it has already been made effective by an airmail letter from the FAA dated December 11, 1980, and is identified as AD 80-26-02.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the FAA, Office of the Regional Counsel, Room 1558, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 30, 1980.

John E. Shaw,

Acting Director, Central Region.

Gates Learjet Customer Service Centers

Airesearch Aviation Company, 221 Smithtown Avenue, Ronkonkoma, Long Island, NY 11779

Airesearch Aviation Company, 17250 Chanute Road, Box 60218, Houston, TX 77205

Airesearch Aviation Company, 4150 Donald Douglas Drive, Long Beach, CA 90809

Combs Gates Denver, Hangar 7, Stapleton International Airport, Denver, CO 80207

Combs Gates Indianapolis, Indianapolis Airport, Indianapolis, IN 46241

Duncan Aviation, Inc., Box 81887, Lincoln, NE 68501

Executive Jet Aviation, Inc., Port Columbus Airport, Columbus, OH 43219

Gates Learjet Corporation, Customer Service, Box 11186, Tucson, AZ 85734

Gates Learjet Corporation, Customer Service, Wichita Mid-Continent Airport, Box 7707, Wichita, KS 67277

Dee Howard Company, P.O. Box 17300, International Airport, San Antonio, TX 78217

Jet Fleet Corporation, 8605 Lemmon Avenue, Dallas, TX 75209

Northern Air Service, Inc., Kent County Airport, Grand Rapids, MI 49508

ERA Helicopters, Inc., P.O. Box 762, Anchorage, Alaska 99510

Jet East, Inc., 7363 Cedar Springs, Dallas, TX 75235

Corporate Jet Aviation, Inc., 1951 Airport Road, DeKalb Peachtree Airport, Atlanta, GA 30341

[FR Doc. 81-895 Filed 1-9-81; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ARM-17]

Establishment of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a 700' transition area at Holyoke, Colorado to provide controlled airspace for aircraft executing the new nondirectional radio beacon (NBD) standard instrument approach procedure developed for the Holyoke Municipal Airport, Holyoke, Colorado.

EFFECTIVE DATE: 0901 GMT, February 19, 1981.

FOR FURTHER INFORMATION CONTACT:

Pruett B. Helm, Operations, Procedures and Airspace Branch, Air Traffic Division, ARM-500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

History

On Thursday, November 20, 1980, the FAA published for comment a proposal to establish a 700' transition area at Holyoke, Colorado (45 FR 76692). The only comments received as a result of this circular expressed no objections.

Drafting Information

The principal authors of this document are Pruett B. Helm, Operations, Procedures and Airspace Branch, Air Traffic Division, and Daniel J. Peterson, Office of Regional Counsel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 GMT, February 19, 1981, as follows:

Holyoke, Colorado

That airspace extending upward from 700' above the surface within an 8.5 mile radius of the Holyoke Municipal Airport (latitude 40°34'40" N., longitude 102°16'30" W.) and within 3 miles each side of the 012° and 158° bearings from the Heginbotham NDB (latitude 40°34'53" N., longitude 102°16'40" W.) extending from the 8.5 mile radius area to 11.5 miles north-northwest and south-southeast of the Heginbotham NDB.

(Sec. 307(a) Federal Aviation Act of 1958 as amended (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.69))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Aurora, Colorado on December 30, 1980.

George P. Hunter,

Acting Director.

[FR Doc. 81-746 Filed 1-9-81; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 80-AGL-23]

Facility Name Change; Minneapolis, Minn.

Correction

In FR Doc. 80-40262 appearing at page 85441 in the issue for Monday, December 29, 1980, make the following corrections:

(1) On page 85441, in the second column, paragraph "V-13", the second line "radials is" should be corrected to read "radials and".

(2) Also on page 85441, in the second column, paragraph "V-97", the second line "and 'Gopher, Minn.' " should be corrected to read "and 'to Gopher, Minn.' ".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 290

[Docket No. RM79-6]

Procedures Governing the Collection and Reporting of Information Associated With the Cost of Providing Electric Service

Issued December 24, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Reporting requirement; extension of time.

SUMMARY: Part 290 of the Commission's Federal Energy Regulatory Commission's (Commission) regulations concern the collection of the cost of service information required under section 133 of the Public Utility Regulatory Policies Act of 1978. Section 290.601(a) requires utilities filing an application for an exemption from the June 30, 1982 report to file for such exemption by December 31, 1980. This order extends that deadline to assure that utilities have adequate opportunity to submit such applications for exemptions as may be justified.

DATE: Applications for exemptions extended to March 15, 1981 for the report due June 30, 1982.

ADDRESS: File applications with Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION:

Order Granting Blanket Extension of Time

Part 290 of the Commission's regulations, implementing Section 133 of the Public Utility Regulatory Policies Act of 1979, contains exemption provisions at 290.601 which state, in pertinent part:

(a) *Application.* A utility may apply for an exemption from all or part of the requirements set forth in this part by filing an application with the Commission no less than 18 months prior to the time the information would otherwise be required, and by November 1, 1979, for the 1980 filing.

Under this provision, December 31, 1980 would be the required filing date for applications for exemption applicable to the reporting of information that is due on or before June 30, 1982.

A number of applications for exemption, applicable to the November 1, 1980 reporting date, were received after the November 1, 1979 date specified in the regulations. Primarily in consideration of the fact that the regulations were new, having been issued on September 28, 1979, the Staff did not seek strict enforcement of the deadline. The regulations have now been in place long enough for utilities to be able to make such determinations as may be necessary to support applications for exemption related to future filings. Therefore, in the future, the Commission and the Staff will require that such applications be filed on or before the stated deadline to receive full consideration.

The next such deadline called for by the regulations, December 31, 1980, is close at hand. In order to assure that covered utilities have adequate opportunity to prepare and submit such applications for exemption as may be justified, the Commission will extend the time for filing such applications from December 31, 1980 to March 15, 1981. This extension of time is granted to all utilities covered under the regulations.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1025 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 152

[T.D. 81-7]

Valuation of Imported Merchandise for Customs Purposes

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to enable the Customs Service ("Customs") to implement and administer the provisions of Title II of Pub. L. 96-39, the "Trade Agreements Act of 1979", relating to the valuation of imported merchandise for customs purposes.

The more significant changes are:

1. To eliminate section 402a, Tariff Act of 1930, as amended (19 U.S.C. 1402), the basis for appraising "Final List" articles.
2. To eliminate the "American Selling Price" basis for valuation.
3. To provide the following five bases—one primary and four secondary—for determining customs value:
   a. Transaction value of the imported merchandise (the primary basis);
   b. Transaction value of identical merchandise;
   c. Transaction value of similar merchandise;
   d. Deductive value; and
   e. Computed value.
4. To provide that if Customs rejects the transaction value resulting in an increase in duties, the importer will be notified of the rejection, receive an explanation of the action, and be given 20 days in which to reply if in disagreement.
5. To provide that Customs, upon written request, shall furnish an importer with a written explanation of how the customs value of the imported merchandise was determined.
6. To provide that information submitted by an importer, buyer, or producer regarding the valuation of merchandise will not be rejected on the basis of the accounting method used to prepare the information if the preparation was in accordance with "generally accepted accounting principles."

The amendments are considered to be significant.

EFFECTIVE DATE: January 12, 1981.

FOR FURTHER INFORMATION CONTACT: Thomas Lobred (202-566-2938) or Richard Rosettie (202-566-2790), Office of Commercial Operations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96-39 (93 Stat. 144), the "Trade Agreements Act of 1979", approved July 26, 1979 (the "Act"), incorporates into U.S. law the trade agreements negotiated by the United States in the Tokyo Round of Multilateral Trade Negotiations (MTN) and transmitted to the Congress by the President on June 19, 1979.

Title II of the Act, "Customs Valuation", implements the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade ("the Agreement") relating to customs valuation. Title II makes significant changes in the laws administered by Customs relating to the valuation of imported merchandise.

The United States has entered into a supplementary agreement ("protocol") on customs valuation which would eliminate one of the tests under the Agreement, and Title II, by which related parties can establish an acceptable transaction value, *i.e.*, the use of the transaction value from unrelated parties' sales of identical goods from third countries (section 152.103(j)(2)(i)(C) of the NPRM). The legislation required to approve and implement the protocol to the trade agreement relating to customs valuation, Pub. L. 96-490, was enacted by the Congress and signed into law on December 2, 1980. In addition, the determination necessary for acceptance of the customs valuation agreement and the protocol to that agreement has been made by the United States Trade Representative and published in the **Federal Register** on December 24, 1980 (45 FR 85239). Accordingly, the aforementioned test has been deleted and other conforming changes have been made in the document.

Effective Dates of Title II

Presidential Proclamation No. 4768, of June 28, 1980, declares that the effective date for the provisions of Title II, except those relating to certain rubber footwear, is July 1, 1980. The amendments made by section 223(b) of the Act relating to certain rubber footwear will become effective on July 1, 1981.

Implementation of Title II, the "new value law," will neither repeal nor amend automatically sections 402 and 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402), with regard to merchandise exported to the United States before the respective effective dates. The new value law will be applicable to merchandise exported to the United States on or after the applicable effective date, and the value will be determined in accordance with section 402, Tariff Act of 1930, as amended by section 201 of the Act.

However, the "old value law", sections 402 and 402a, Tariff Act of 1930, as amended, will apply to merchandise exported to the United States before the applicable effective date. This would include merchandise in a Customs bonded warehouse, in a foreign-trade zone, or in international transit to the United States before the applicable effective date. Accordingly, sections 10.18 and 10.19, Customs Regulations (19 CFR 10.18, 10.19), relating to the valuation of assembled articles and the elements involved in determining constructed value or cost of production for articles imported under item 807.00, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), will be applicable only if the articles were exported to the United States before July 1, 1980.

Notice of Proposed Rulemaking ("NPRM")

Because of the necessity to continue to administer the "old value law" for an indefinite period while it also implements the "new value law", Customs published a NPRM in the **Federal Register** on March 31, 1980 (45 FR 20912). That document proposed to amend Part 152, Customs Regulations (19 CFR Part 152), concerning the classification and appraisement of merchandise to provide for a new subpart relating to the "new value law" while retaining the regulations relating to the "old value law."

The preamble of that NPRM provided a detailed description of the specific changes in the valuation provisions administered by Customs and the background and purpose of the proposed regulations amendments and should be read in conjunction with this document.

The NPRM invited interested persons to submit comments on the amendments on or before May 30, 1980. As discussed below, consideration of the numerous comments received and further review of Title II have resulted in a number of changes to the proposed amendments.

Discussion of Comments

The following is a section-by-section analysis of the comments received, presented in ascending numerical order:

1. *Section 152.101(c) Importer's option.*—Customs specifically solicited comments on this section relating to the importer's requesting the application of computed value before deductive value

at the time the entry summary is filed. Many of the commenters responded to this issue, and all but one favored a time other than that of filing the entry summary (*e.g.*, 20 days after filing the entry summary), to make the importer's election of the application of computed before deductive value.

Customs agrees that this is an important and legitimate concern. In order to provide the public the full benefit of this election, Customs considered a variety of proposals in addition to those specifically identified by commenters. Unfortunately, the only certain time which would be known to both Customs and the public other than the date of filing the entry summary is the date of liquidation. The date of liquidation usually is so remote from the importation of the merchandise and documentation of the entry as to be unacceptable.

However, Customs wishes to advise the public that if subsequent events or submissions demonstrate that this time frame creates a burden or establishes a pattern of importers being deprived of the statutory election, Customs would endeavor to make the appropriate modifications. In the interim, Customs will consider any workable suggestions from the public.

2. *Section 152.101(d) Explanation to importer.*—A number of commenters suggested that the time period proposed for an importer to request an explanation of the valuation of the merchandise, (*i.e.*, within 90 days from the date of liquidation of the entry), should be extended to permit the timely filing of a protest.

In this regard, the Statement of Administrative Action relating to Customs valuation, submitted to and approved by Congress along with the Act, and the proposed regulations make clear that this explanation to the importer is separate from any present administrative procedures of Customs. This result is consistent with the overall design of Title II of the Act that appraisement be the result of consultation between the importer and Customs. As it was envisioned that such consultation would facilitate the determination of appraisements, there was no intent, nor any need, to tie the furnishing of a written explanation to the importer with the formal protest procedure set forth in Part 174, Customs Regulations (19 CFR Part 174). Consequently, to make it clear that this procedure is not tied to the period for filing a protest, the time period has been adopted as proposed. It should be noted that the vast majority of persons who might file a protest would have previously been informed under proposed section 152.103(m) of the grounds for rejection of transaction value.

In addition, several commenters suggested that section 152.101(d) be reworded to emphasize more strongly the confidentiality of information Customs receives from the public. Customs thinks that the last sentence in the proposed section makes the point adequately, as does present Part 103, Customs Regulations (19 CFR Part 103).

3. *Section 152.102(a) Assist.*—Some commenters requested that the definition of "assist" contain the limitation that research and development costs for tools, molds, etc., undertaken in the United States not be dutiable.

As this suggestion is contrary to both the Statement of Administrative Action and the Act, we have no authority to adopt it.

4. *Section 152.102(b) Commission.*—A number of commenters pointed out that Customs treatment of buying and selling commissions was not only confusing but contrary to the language of the Act.

While the language contained in the proposed regulation is consistent with the Act, Customs believes that the point raised is valid. Therefore, section 152.102(b) has been revised by deleting all reference to "buying commission," a term not mentioned in the Act, and substituting the following definition of "selling commission": "Selling commission" means any commission paid to the seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller.

5. *Section 152.102(c) Generally accepted accounting principles.*—Several commenters recommended that the section indicate that the concept of "generally accepted accounting principles" is not limited to those principles practiced in the United States.

Customs agrees, and a phrase has been added to subparagraph (2) of the definition to include that recommendation.

6. *Section 152.102(e) Packing costs.*—Several commenters wanted the section to specify that the cost of containers and other instruments of international traffic is not included in packing costs.

As that concept is not a new element created by the Act, and is currently stated in the Statement of Administrative Action, Customs has adopted that suggestion.

7. *Section 152.102(g) Related persons.*—One of the commenters suggested that Customs change the term "partners" in the section to the phrase "legally recognized partners in business."

The language contained in proposed section 152.102(g) is taken from the Act. Further, Customs thinks that the term "partners" means the same under United States law as the phrase "legally recognized partners in business." Accordingly, the requested change has not been adopted.

8. *Section 152.103(a)(2) Indirect payment.*—Several commenters suggested breaking this section into two paragraphs to illustrate a dichotomy between advertising which is not considered an indirect payment (an exception) as opposed to indirect payments in general.

The section is meant to discuss indirect payments generally, and to emphasize that advertising undertaken by the buyer is not considered to be an indirect payment. Customs does not think another paragraph with a heading of "advertising" would lend more emphasis to the declaratory statement made, and has not adopted the suggestion.

9. *Section 152.103(a)(3) Assembled merchandise.*—In response to many comments seeking specific clarification of this section, three examples have been added which should be helpful in illustrating the meaning of the section.

10. *Section 152.102(a)(4) Rebate.*—Several commenters pointed out that this section appeared to restrict Customs treatment of defective merchandise.

Customs has no such intent, and defective merchandise still will be accorded treatment under the provisions of section 158.12, Customs Regulations (19 CFR 158.12), relating to merchandise partially damaged at the time of importation.

Several commenters also suggested that the second example appearing after this section include the correct answer in numerical form. This suggestion has been adopted and the example modified accordingly.

11. *"New" section 152.103(a)(5) Foreign inland freight.*—Based upon comments received concerning the dutiability of foreign inland freight, a new section has been added to state that foreign inland freight charges will be dutiable to the extent they are included in the price actually paid or payable for the imported merchandise.

12. *Section 152.103(e) Apportionment.*—A commenter suggested that Customs modify the interpretative note following this section to reflect "generally accepted accounting principles."

As this suggestion has merit, the interpretative note has been modified to reflect that the correctness of any numerical figure the importer asks

Customs to apportion will be used as long as that figure is in accordance with "generally accepted accounting principles."

13. *Section 152.103(f) Royalties or license fees.*—It was requested that Customs expand this section to include the language of the House Report relating to royalties.

The language in this section tracks that contained in the Statement of Administrative Action. The explanatory language contained in the House Report would be very difficult to transform into regulation and, in definitive terms, would add little or nothing over that set forth in section 152.103(f). Accordingly, Customs has not adopted the request.

Several commenters suggested deletion of the word "unrelated" which appears in the example following this section, as unnecessary.

Although Customs agrees that it is not required in all cases that the buyer be unrelated to the seller, it would be a relevant factor in some cases. Therefore, the language of that example has not been modified.

14. *Section 152.103(l)(1) Validation of transaction.*—Several commenters noted that the example following the interpretative notes in this section was confusing. To avoid any possible confusion, appropriate modifications have been made.

15. *Section 152.103(1)(2)(i) Test values.*—A commenter suggested that the word "are" in the second sentence of the section should be changed to "include" to correspond to the language in the Statement of Administration Action. Customs agrees and has made the appropriate change.

16. *Section 152.103(m) Rejection of transaction value.*—Many commenters suggested extending the time period provided in the proposed section so that an importer would have more than 20 days to respond to the district director if in disagreement with Customs grounds for rejecting transaction value as the basis of appraisement for the imported merchandise.

The time period proposed is the same as that now provided in section 152.2, Customs Regulations (19 CFR 152.2), relating to notification to importers of increased duties. Long experience with section 152.2 has demonstrated that this time frame works. Additionally, Customs would point out that several avenues exist for presentation of conflicting views to Headquarters for resolution.

17. *Section 152.105(c)(3) Prices; "further processing".*—Many commenters responded to Customs specific request for comments on the time of the importer's election of the "further processing method" of price appraisal under deductive value. The commenters unanimously urged a time period for the election considerably later than that of the time of filing the entry summary with Customs.

For the same reasons given in the discussion of the importer's option provided in § 152.101(c), Customs is unable to make the requested change.

However, Customs wishes to advise the public that if subsequent events or submissions demonstrate that this time frame creates a burden or establishes a pattern of importers being deprived of the statutory election, Customs would endeavor to make the appropriate modifications. In the interim, Customs will consider any workable suggestions from the public.

One commenter wanted Customs to define the term "further processing" for purposes of this section. As there is no intent on Customs part to establish any other than the ordinary commercial meaning of that term, it would not be appropriate to delineate a precise meaning within the valuation context alone. Moreover, any consideration of the applicability of this section will be determined on a case-by-case basis.

18. *Section 152.107 Value if other values cannot be determined or used.*—A commenter suggested that this section contain an additional paragraph stating that the time for consideration of the appraisal under deductive value of a price applicable to merchandise which has undergone "further processing" could be extended beyond the 180 days specified in the proposal. It was suggested that the paragraph could be similar to that proposed in section 152.107(c) concerning the flexible administration of the "90 days" sales requirement for merchandise sold in the condition as imported but not sold at or about the date of the appraised merchandise.

Customs cannot adopt the suggestion because (1) the three paragraphs in the proposed section are taken from the provisions of the Valuation Code acceded to by the United States and forming the basis for Title II of the Act (there being no provision for flexible administration of the 180 day period), and (2) because of the 1 year limit for liquidation of entries, any extension of the 6 month period would lead to predictable difficulties for both Customs and importers.

Additional Comments

One commenter suggested that all procedural requirements to implement the provisions of Title II be placed in a separate section of the regulations.

Customs thinks this suggestion has merit; however, it was felt that the spirit of the law, that is, closer cooperation between Customs and the importing community, would be accommodated better if procedural requirements were interspersed among the substantive provisions wherever possible.

Several commenters requested that, in cases where either deductive or computed value is applicable because no identical or similar merchandise exists, Customs always accept the importer's cost figures without considering, where appropriate, goods of the same class or kind.

Customs cannot accept this request because it is contrary to the language of the Act.

Several commenters expressed concern about the effect of the proposed regulations on existing §§ 10.18 and 10.19, Customs Regulations (19 CFR 10.18, 10.19), relating to the valuation of assembled articles and the elements involved in determining constructed value or cost of production under the "old value law".

Customs has included a statement in the portion of this document designated Effective Dates of Title II to clarify that those sections will apply only to appraisement of merchandise exported to the United States before July 1, 1980, the general effective date of the Act.

Two commenters noted that it is very expensive and time-consuming to require the keeping and furnishing of assist data on duty-free merchandise specifically for Customs purposes when such information has no practical use under the Act.

Customs agrees that maintenance of records relating to dutiable assists which are then not applicable to clearly duty-free merchandise, could be burdensome, and the need for maintenance of those records will be scrutinized by Customs on a case-by-case basis.

Finally, Customs notes that a number of comments received were outside the scope of the proposed regulation, that is, they were not concerned with customs valuation. Therefore, it would not be appropriate to deal with them in the context of this document. Included in this group would be those comments concerning the Special Customs Invoice (CF 5515) and matters of tariff

classification, *e.g.*, comments addressing the classification of intangibles such as software and other intellectual properties, classification under item 807.00, TSUS, and the use of tariff classification breakdowns to determine "same class or kind".

Editorial Changes

Upon its own review, Customs has made other nonsubstantive changes in the proposed amendments. Those changes, in addition to the correction of typographical errors and other minor editorial corrections, are listed below by affected section:

1. Section 152.101(d) has been revised by adding the word "after" to the first sentence, immediately following the phrase "within 90 days," and striking the word "of" preceding "liquidation".

2. Section 152.103(a)(4) has been modified by adding an example for clarification relating to cash discounts.

3. Section 152.103(d)(2), Example 1, is too broad in scope. Customs has modified the answer to that example to cover situations in which design work undertaken in the United States is part of the price actually paid or payable for the imported merchandise, and as such, is dutiable. In that circumstance, those charges are dutiable because there is no authority in the Act for a deduction from the price actually paid or payable.

4. Section 152.103(f) has been revised by adding the phrase "to a third party" after the word "buyer" in the last sentence of the section. This change is consistent with the Statement of Administrative Action and was omitted from the proposal inadvertently.

Inapplicability of Delayed Effective Date Provision

Because these final amendments, having been subject to notice and public procedure requirements, implement the valuation provisions of Pub. L. 96–39, the "Trade Agreements Act of 1979", which provisions generally became effective July 1, 1980, it is found that the good cause exists, under 5 U.S.C. 553(d)(3), to dispense with a delayed effective date.

Drafting Information

The principal author of this document was Todd J. Schneider, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendment to the Regulations

To reflect these changes, Part 152, Customs Regulations (19 CFR Part 152), is amended as set forth below.

R. E. Chasen,
Commissioner of Customs.

Approved: December 12, 1980.
Richard J. Davis,
Assistant Secretary of the Treasury.

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

1. Part 152 is amended by adding a new § 152.20 to read as follows:

§ 152.20 Effective date.

The value for appraisement of merchandise exported to the United States before July 1, 1980, or, for articles classified in item 700.60, Tariff Schedules of the United States (19 U.S.C. 1202), before July 1, 1981, will be determined in accordance with this subpart.

2. Part 152 is amended by adding a new Subpart E, "Valuation of Merchandise," to read as follows:

Subpart E—Valuation of Merchandise

Sec.
152.100 Interpretative notes.
152.101 Basis of appraisement.
152.102 Definitions.
152.103 Transaction value.
152.104 Transaction value of identical merchandise and similar merchandise.
152.105 Deductive value.
152.106 Computed value.
152.107 Value if other values cannot be determined or used.
152.108 Unacceptable bases of appraisement.

Authority: R.S. 251, as amended (19 U.S.C. 66); sec. 624, 46 Stat. 759 (19 U.S.C. 1624); and Title II, Pub. L. 96–39, 93 Stat. 194 (July 26, 1979).

Subpart E—Valuation of Merchandise

§ 152.100 Interpretative notes.

The interpretative notes set forth in this subpart have been derived from information contained in the Statement of Administrative Action relating to customs valuation, submitted to and approved by Congress along with the Trade Agreements Act of 1979 (Pub. L. 96–39), and will have the force and effect of regulations issued under this subpart.

§ 152.101 Basis of appraisement.

(a) *Effective date.* The value for appraisement of merchandise exported to the United States on or after July 1, 1980, or, for articles classified under item 700.60, Tariff Schedules of the United States (19 U.S.C. 1202), on or after July 1, 1981, will be determined in accordance with section 402, Tariff Act of 1930 (19 U.S.C. 1401a), as amended by section 201, Trade Agreements Act of 1979.

(b) *Methods.* Imported merchandise will be appraised on the basis, and in the order, of the following:

(1) The transaction value provided for in § 152.103;

(2) The transaction value of identical merchandise provided for in § 152.104, if the transaction value cannot be determined, or can be determined but cannot be used because of the limitations provided for in § 152.103(j);

(3) The transaction value of similar merchandise provided for in § 152.104, if the transaction value of identical merchandise cannot be determined;

(4) The deductive value provided for in § 152.105, if the transaction value of similar merchandise cannot be determined;

(5) The computed value provided for in § 152.106, if the deductive value cannot be determined; or

(6) The value provided for in § 152.107, if the computed value cannot be determined.

(c) *Importer's option.* The importer may request the application of the computed value method before the deductive value method. The request must be made at the time the entry summary for the merchandise is filed with the district director (see § 141.0a(b) of this chapter). If the importer makes the request, but the value of the imported merchandise cannot be determined using the computed value method, the merchandise will be appraised using the deductive value method if it is possible to do so. If the deductive value cannot be determined, the appraised value will be determined as provided for in § 152.107.

(d) *Explanation to importer.* Upon receipt of a written request from the importer within 90 days after liquidation, the district director shall provide a reasonable and concise written explanation of how the value of the imported merchandise was determined. The explanation will apply only to the imported merchandise being appraised and will not serve as authority with respect to the valuation of importations of any other merchandise at the same or a different port of entry. This procedure is for informational purposes only, and will not affect or replace the protest or administrative ruling procedures contained in Parts 174 and 177, respectively, of this chapter, or any other Customs procedures. Under this procedure, Customs will not be required to release any information not otherwise subject to disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or any other statute (see Part 103 of this chapter).

§ 152.102 Definitions.

As used in this subpart, the following terms will have the meanings indicated:

(a) *Assist.* (1) "Assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(2) No service or work to which subparagraph (1)(iv) of this paragraph applies will be treated as an assist if the service or work—

(i) Is performed by an individual domiciled within the United States;

(ii) Is performed by that individual while acting as an employee or agent of the buyer of the imported merchandise; and

(iii) Is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(3) The following apply in determining the value of assists described in subparagraph (1)(iv) of this paragraph—

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value added outside the United States.

(iii) If the assist was purchased or leased by the buyer from an unrelated person, the value of the assist is the cost of the purchase or of the lease.

(b) *Commission.* "Selling commission" means any commission paid to the seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller.

(c) *Generally accepted accounting principles.* (1) "Generally accepted accounting principles" refers to any generally recognized consensus or substantial authoritative support regarding—

(i) Which economic resources and obligations should be recorded as assets and liabilities;

(ii) Which changes in assets and liabilities should be recorded;

(iii) How the assets and liabilities and changes in them should be measured;

(iv) What information should be disclosed and how it should be disclosed; and

(v) Which financial statements should be prepared.

(2) The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the imported merchandise is sought to be established, and the relevant country for the point in contention.

(3) Information submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by Customs because of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles.

(d) *Identical merchandise.* "Identical merchandise" means merchandise identical in all respects to, and produced in the same country and by the same person as, the merchandise being appraised. If identical merchandise cannot be found (or for purposes of related buyer and seller transactions (see § 152.103(j)(2)(i)(A)), regardless of whether identical merchandise can be found), merchandise identical in all respects to, and produced in the same country as, but not produced by the same person as, the merchandise being appraised, may be treated as "identical merchandise". "Identical merchandise" does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or sale for export to the United States of the merchandise, and is not an assist because undertaken within the United States.

(e) *Packing costs.* "Packing costs" means the cost of all containers (exclusive of instruments of international traffic) and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(f) *Price actually paid or payable.* "Price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any charges, costs, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(g) *Related persons.* "Related persons" means: (1) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(2) Any officer or director of an organization, and that organization.

(3) An officer or director of an organization and an officer or director of another organization, if each individual also is an officer or director in the other organization.

(4) Partners.

(5) Employer and employee.

(6) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization, and that organization.

(7) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(h) *Same class or kind.* "Merchandise of the same class or kind" means merchandise (including, but not limited to, identical merchandise and similar merchandise) within a group or range of merchandise produced by a particular industry or industry sector.

(i) *Similar merchandise.* "Similar merchandise" means merchandise produced in the same country and by the same person as the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised. If similar merchandise cannot be found (or for purposes of related buyer and seller transactions (see § 152.103(j)(2)(i)(A)), regardless of whether similar merchandise can be found), merchandise produced in the same country as, but not produced by the same person as, the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised, may be treated as "similar merchandise". "Similar merchandise" does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise, and is not an assist because undertaken within the United States.

(j) *Sufficient information.* "Sufficient information" means information that establishes the accuracy of:

(1) Any amount—

(i) added under § 152.103(b) to the price actually paid or payable;

(ii) deducted under § 152.105(d) as profit or general expenses or value from further processing, or

(iii) added under § 152.106(b) as profit or general expenses; or

(2) Any difference taken into account under § 152.103(j)(2)(iv); or

(3) Any adjustment made under § 152.104(d).

(k) *Unit price in greatest aggregate quantity.* "Unit price at which merchandise is sold in the greatest aggregate quantity" means the unit price at which the "merchandise concerned" is sold to unrelated persons at the first commercial level after importation (in cases to which § 152.105(c)(1) and (2) apply), or after further processing (in cases to which § 151.105(c)(3) applies), at which the sales take place in a total volume greater than the total volume sold at any other unit price and sufficient to establish the unit price.

§ 152.103 Transaction value.

(a) *Price actually paid or payable*—(1) *General.* In determining transaction value, the price actually paid or payable will be considered without regard to its method of derivation. It may be the result of discounts, increases, or negotiations, or may be arrived at by the application of a formula, such as the price in effect on the date of export in the London Commodity Market. The word "payable" refers to a situation in which the price has been agreed upon, but actual payment has not been made at the time of importation. Payment may be made by letters of credit or negotiable instruments and may be made directly or indirectly.

Example 1. In a transaction with foreign Company X, a U.S. firm pays Company X $10,000 for a shipment of meat products, packed ready for shipment to the United States. No selling commission, assist, royalty, or license fee is involved. Company X is not related to the U.S. purchaser and imposes no condition or limitation on the buyer.

The customs value of the imported meat products is $10,000—the transaction value of the imported merchandise.

Example 2. A foreign shipper sold merchandise at $100 per unit to a U.S. importer. Subsequently, the foreign shipper increased its price to $110 per unit. The merchandise was exported after the effective date of the price increase. The invoice price of $100 was the price originally agreed upon and the price the U.S. importer actually paid for the merchandise.

How should the merchandise be appraised?

Actual transaction value of $100 per unit based on the price actually paid or payable.

Example 3. A foreign shipper sells to U.S. wholesalers at one price and to U.S. retailers at a higher price. The shipment undergoing appraisement is a shipment to a U.S. retailer. There are continuing shipments of identical and similar merchandise to U.S. wholesalers.

How should the merchandise be appraised?

Actual transaction value based on the price actually paid or payable by the retailer.

Example 4. Company X in the United States pay $2,000 to Y Toy Factory abroad for a shipment of toys. The $2,000 consists of $1,850 for the toys and $150 for ocean freight and insurance. Y Toy Factory would have charged Company X $2,200 for the toys; however, because Y owed Company X $350, Y charged only $1,850 for the toys. What is the transaction value?

The transaction value of the imported merchandise is $2,200, that is, the sum of the $1,850 plus the $350 indirect payment. Because the transaction value excludes C.I.F. charges, the $150 ocean freight and insurance charge is excluded.

Example 5. A seller offers merchandise at $100, less a 2% discount for cash. A buyer remits $98 cash, taking advantage of the cash discount.

The transaction value is $98, the price actually paid or payable.

(2) *Indirect payment.* An indirect payment would include the settlement by the buyer, in whole or in part, of a debt owed by the seller, or where the buyer receives a price reduction on a current importation as a means of settling a debt owed him by the seller. Activities such as advertising, undertaken by the buyer on his own account, other than those for which an adjustment is provided in § 152.103(b), will not be considered an indirect payment to the seller though they may benefit the seller. The costs of those activities will not be added to the price actually paid or payable in determining the customs value of the imported merchandise.

(3) *Assembled merchandise.* The price actually paid or payable may represent an amount for the assembly of imported merchandise in which the seller has no interest other than as the assembler. The price actually paid or payable in that case will be calculated by the addition of the value of the components and required adjustments to form the basis for the transaction value.

Example 1. The importer previously has supplied an unrelated foreign assembler with fabricated components ready for assembly having a value or cost at the assembler's plant of $1.00 per unit. The importer pays the assembler 50¢ per unit for the assembly. The transaction value for the assembled unit is $1.50.

Example 2. Same facts as Example 1 above except the U.S. importer furnishes to the foreign assembler a tooling assist consisting of a tool acquired by the importer at $1,000. The transportation expenses to the foreign assembler's plant for the tooling assist equal $100. The transaction value for the assembled unit would be $1.50 per unit plus a *pro rata* share of the tooling assist valued at $1,100.

(4) *Rebate.* Any rebate of, or other decrease in, the price actually paid or payable made or otherwise effected between the buyer and seller after the date of importation of the merchandise will be disregarded in determining the transaction value under §152.103(b).

(5) *Foreign inland freight.* If the price actually paid or payable by the buyer to the seller for the imported merchandise does not include a foreign inland freight charge (an ex-factory price), the foreign inland freight charge will not be added to the price if paid to a unrelated seller. In those situations where the price actually paid or payable for imported merchandise included a charge for foreign inland freight, that charge will be part of the transaction value to the extent it is included in that price.

(b) *Additions to price actually paid or payable.* (1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

(i) The packing costs incurred by the buyer with respect to the imported merchandise;

(ii)Any selling commission incurred by the buyer with respect to the imported merchandise;

(iii) The value, apportioned as appropriate, of any assist;

(iv) Any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(v) The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

(2) The price actually paid or payable for imported merchandise will be increased by the amounts attributable to the items (and no others) described in paragraphs (b)(1) (i) through (v) of this section to the extent that each amount is not otherwise included within the price actually paid or payable, and is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in this section, the transaction value will be treated as one that cannot be determined.

(3) *Interpretative note.* A royalty is paid on the basis of the price in a sale in the United States of a gallon of a particular product imported by the pound and transformed into a solution after importation. If the royalty is based partially on the imported merchandise and partially on other factors which have nothing to do with the imported merchandise (such as if the imported

merchandise is mixed with domestic ingredients and is no longer separately identifiable, or if the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported merchandise and can be readily quantified, an addition to the price actually paid or payable will be made.

(c) *Sufficiency of information.* Additions to the price actually paid or payable will be made only if there is sufficient information to establish the accuracy of the additions and the extent to which they are not included in the price.

(d) *Assist.* If the value of an assist is to be added to the price actually paid or payable, or to be used as a component of computed value, the district director shall determine the value of the assist and apportion that value to the price of the imported merchandise in the following manner:

(1) If the assist consist of materials, components, parts, or similar items incorporated in the imported merchandise, or items consumed in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be the cost of its production. In either case, the value of the assist would include transportation costs to the place of production.

(2) If the assist consists of tools, dies, molds, or similar items used in the production of the imported merchandise, acquired by the buyer from an unrelated seller,the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be cost of its production. If the assist has been used previously by the buyer, regardless of whether it had been acquired or produced by him, the original cost of acquisition or production would be adjusted downward to reflect its use before its value could be determined. If the assist were leased by the buyer from an unrelated seller, the value of the assist would be the cost of the lease. In either case, the value of the assist would include transportation costs to the place of production. Repairs or modifications to an assist may increase its value.

Example 1. A U.S. importer supplied detailed designs to the foreign producer. These designs were necessary to manufacture the merchandise. The U.S. importer bought the designs from an engineering company in the U.S. for submission to his foreign supplier.

Should the appraised value of the merchandise include the value of the assist?

No, design work undertaken in the U.S. may not be added to the price actually paid or payable.

Example 2. A U.S. importer supplied molds free of charge to the foreign shipper. The molds were necessary to manufacture merchandise for the U.S. importer. The U.S. importer had some of the molds manufactured by a U.S. company and others manufactured in a third country.

Should the appraised value of the merchandise include the value of the molds?

Yes. If is an addition required to be made to transaction value.

(e) *Apportionment.* (1) The apportionment of the value of assists to imported merchandise will be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. The method of apportionment actually accepted by Customs will depend upon the documentation submitted by the importer. If the entire anticipated production using the assist is for exportation to the United States, the total value may be apportioned over (i) the first shipment, if the importer wishes to pay duty on the entire value at once, (ii) the number of units produced up to the time of the first shipment, or (iii) the entire anticipated production. In addition to these three methods, the importer may request some other method of apportionment in accordance with generally accepted accounting principles. If the anticipated production is only partially for exportation to the United States, or if the assist is used in several countries, the method of apportionment will depend upon the documentation submitted by the importer.

(2) *Interpretative note.* An importer provides the producer with a mold to be used in the production of the imported merchandise and contracts to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request Customs to apportion the value of the mold over 1,000, 4,000, 10,000 units, or any other figure which is in accordance with generally accepted accounting principles.

(f) *Royalties or license fees.* Royalties or license fees for patents covering processes to manufacture the imported merchandise generally will be dutiable. Royalties or license fees paid to third parties for use, in the United States, of copyrights and trademarks related to the imported merchandise generally will be considered selling expenses of the buyer and not dutiable. The dutiable status of royalties or license fees paid by the buyer will be determined in each case and will depend on (1) whether the buyer was required to pay them as a condition of sale of the merchandise for exportation to the United States, and (2) to whom and under what circumstances they were paid. Payments made by the buyer to a third party for the right to distribute or resell the imported merchandise will not be added to the price actually paid or payable for the imported merchandise if the payments are not a condition of the sale of the merchandise for exportation to the United States.

Example. A foreign producer sold merchandise to an unrelated U.S. importer. The U.S. importer pays a royalty to an unrelated third party for the right to manufacture and sell a product made in part from the imported merchandise. The royalty is based on the selling price of the further-manufactured product in the U.S.

Is the license fee part of the appraised value? No. The license fee is not a condition of the sale of the imported merchandise for export to the U.S.

(g) *Proceeds of subsequent resale.* Additions to the price actually paid or payable will be made for the value of any part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrues directly or indirectly to the seller. Dividends or other payments from the buyer to the seller which do not relate directly to the imported merchandise will not be added to the price actually paid or payable. Whether any addition would be made will depend on the facts of the particular case.

Example. A buyer contracts to import a new product. Not knowing whether the product ultimately will sell in the United States, the buyer agrees to pay the seller initially $1 per unit with an additional $1 per unit to be paid upon the sale of each unit in the United States. Assuming the resale price in the United States can be determined in a reasonable period of time, the transaction value of each unit would be $2. Otherwise, the transaction value could not be determined for want of sufficient information.

(h) *Right to reproduce.* Charges for the right to reproduce the imported merchandise in the United States will not be added to the price actually paid or payable. The right to reproduce denotes that an idea or an original work is incorporated in, or reflected by, the imported merchandise, and the right is reserved to reproduce that idea or work in other merchandise by using the imported merchandise. The concept of the right to reproduce relates only to the following classes of merchandise: originals or copies of artistic or scientific works; originals or copies of

models and industrial drawings; model machines and prototypes; and plant and animal species.

Example. The importer purchases a painting. By purchasing the painting, the owner possesses the right to resell, lease, or otherwise place it on display. Absent an agreement to the contrary, he does not possess the right to reproduce copies of the painting. Fees paid for the right to reproduce the painting would not be dutiable.

(i) *Exclusions from transaction value.* The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (b) of this section:

(1) Any reasonable cost or charge that is incurred for—

(i) The construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) The transportation of the merchandise after its importation.

(2) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the United States ordinarily are liable.

Example. A foreign shipper sells a piece of equipment to a U.S. buyer. The total contract price for the equipment includes technical assistance in the U.S. The equipment cannot be purchased without the technical assistance, but the contract provides a breakdown of costs.

Should the appraised value include the technical assistance? No, transaction value does not include any reasonable costs for construction, erection, assembly, maintenance of, or technical assistance, for the imported merchandise after its importation into the U.S., the cost of which can be accurately identified as being separate from the price actually paid or payable for the merchandise to which they relate.

(j) *Limitations on use of transaction value.*—(1) *In general.* The transaction value of imported merchandise will be the appraised value only if—

(i) There are no restrictions on the disposition or use of the imported merchandise by the buyer, other than restrictions which are imposed or required by law, limit the geographical area in which the merchandise may be resold, or do not affect substantially the value of the merchandise;

(ii) The sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined;

(iii) No part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made under paragraph (b)(1)(v) of this section; and

(iv) The buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable.

(2) *Related person transactions.* (i) The transaction value between a related buyer and seller is acceptable if an examination of the circumstances of sale indicates that their relationship did not influence the price actually paid or payable, or if the transaction value of the imported merchandise closely approximates—

(A) The transaction value of identical merchandise; or of similar merchandise, in sales to unrelated buyers in the United States; or

(B) The deductive value or computed value of identical merchandise, or of similar merchandise; and

(C) Each value referred to in paragraph (j)(2)(i) (A) and (B) of this section that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise.

(ii) In applying the values used for comparison, differences with respect to the sales involved will be taken into account if based on sufficient information supplied by the buyer or otherwise available to Customs and if the differences relate to—

(A) Commercial levels;

(B) Quantity levels;

(C) The costs, commissions, values, fees, and proceeds described in paragraph (b) of this section; and

(D) The costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(k) *Restrictions and conditions on sale.* (1) A restriction placed on the buyer of imported merchandise that does not affect substantially its value will not prevent transaction value from being accepted as the appraised value.

(i) *Interpretative note.* A seller requires a buyer of automobiles not to sell or exhibit them before a fixed date that represents the beginning of a model year.

(2) The transaction value will not be accepted as the appraised value if the sale of, or the price actually paid or payable for, the merchandise is subject to a condition or consideration for which a value cannot be determined.

(i) *Interpretative note 1.* The seller establishes the price of the imported merchandise on condition that the buyer also will buy other merchandise in specified quantities.

(ii) *Interpretative note 2.* The price of the imported merchandise is dependent upon the price or prices at which the buyer of the merchandise sells other merchandise to the seller of the merchandise.

(iii) *Interpretative note 3.* The price of the imported merchandise is established on the basis of a form of payment extraneous to the merchandise, such as where the merchandise is to be further processed by the buyer, and has been provided by the seller on condition that he will receive a specified quantity of the finished merchandise.

(l) *Related buyer and seller.*—(1) *Validation of transaction.* The district director shall not disregard a transaction value solely because the buyer and seller are related. There will be related person transactions in which validation of the transaction value, using the procedures contained in § 152.103(j)(2), may not be necessary.

(i) *Interpretative note 1.* Customs may have previously examined the relationship or may already have sufficient detailed information concerning the buyer and seller to be satisfied that the relationship did not influence the price actually paid or payable. In such case, if Customs has no doubts about the acceptability of the price, the price will be accepted without requesting further information from the importer. If Customs does have doubts about the acceptability of the price and is unable to accept the transaction value without further inquiry, the importer will be given an opportunity to supply such further detailed information as may be necessary to enable Customs to examine the circumstances of the sale. In this context, Customs will examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at in order to determine whether the relationship influenced the price.

(ii) *Interpretative note 2.* If it is shown that the buyer and seller, although related, buy from and sell to each other as if they were not related, this will demonstrate that the price has not been influenced by the relationship, and the transaction value will be accepted. If the price has been settled in a manner consistent with the normal pricing practices of the industry in question, or with the way the seller settles prices for sales to buyers who are not related to him, this will demonstrate that the price

has not been influenced by the relationship.

(iii) *Interpretative note 3.* If it is shown that the price is adequate to ensure recovery of all costs plus a profit which is equivalent to the firm's overall profit realized over a representative period of time (e.g., on an annual basis), in sales of merchandise of the same class or kind, this would demonstrate that the price has not been influenced.

Example. A foreign seller sells merchandise to a related U.S. importer. The foreign seller does not sell identical merchandise or similar merchandise to any unrelated parties. The transaction between the foreign seller and the U.S. importer is determined by Customs to be unaffected by the relationship.

How should the merchandise be appraised?

Transaction value based on the price actually paid or payable. A transaction value between a related buyer and seller is acceptable if the relationship did not affect the price actually paid or payable. This is so even if similar merchandise is being sold at a higher price, which includes a higher percentage for profit and general expenses.

(2) *Test values.* (i) The importer or the buyer may demonstrate that the transaction value in a related person transaction is acceptable by showing that the value "closely approximates" any one of the test values provided in § 152.103(j)(2)(i). The factors that will be examined to determine if the transaction value closely approximates a test value include:

(A) The nature of the imported merchandise and the industry,

(B) The season in which the merchandise is imported,

(C) Whether the difference in value is commercially significant, and

(D) Whether the difference in value is attributable to internal transport costs in the country of exportation.

(ii) Because these factors may vary, Customs will not be able to apply a uniform standard, such as a fixed percentage, in each case. A small difference in value in a case involving one type of imported merchandise may be unacceptable, although a large difference in a case involving another type may be acceptable, in determining if the transaction value closely approximates any of the test values. Customs will be consistent in determining if one value "closely approximates" another value. The same approach will be taken if Customs considers a transaction value that is higher than any of the enumerated test values as will be taken if the transaction value is lower than any of the test values.

Example. In applying any of the test values, if the transaction value in the sale under consideration is rejected because 95 does not closely approximate 100, then a transaction value for the sale of the same merchandise at 105 occurring at or about the same time likewise would have to be rejected. Similarly, if 103 were considered to closely approximate 100, a transaction value of 97 likewise would closely approximate 100.

(iii) If one of the test values provided in § 152.103(j)(2)(i) has been found to be appropriate, the district director shall not seek to determine if the relationship between the buyer and seller influenced the price. If the district director already has sufficient information to be satisfied, without further detailed inquiries, that one of the test values is appropriate, he shall not require the importer to demonstrate that the test value is appropriate.

(m) *Rejection of transaction value.* When Customs has grounds for rejecting the transaction value declared by an importer and that rejection increases the duty liability, the district director shall inform the importer of the grounds for the rejection. The importer will be afforded 20 days to respond in writing to the district director if in disagreement. This procedure will not affect or replace the administrative ruling procedures contained in Part 177 of this chapter, or any other Customs procedures.

§ 152.104 Transaction value of identical merchandise and similar merchandise.

(a) *General.* The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value under § 152.103 but adjusted under paragraph (e) of this section) of imported merchandise that is—

(1) With respect to the merchandise being appraised, either identical merchandise, or similar merchandise; and

(2) Exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(b) *Identical merchandise.* Minor differences in appearance will not preclude otherwise conforming merchandise from being considered "identical". See § 152.102(d).

(c) *Similar merchandise.* The quality of the merchandise, its reputation, and the existence of a trademark will be factors considered to determine whether mechandise is "similar". See § 152.102(i).

(d) *Commercial level and quantity.* Transaction values determined under this section will be based on sales of identical merchandise, or similar merchandise, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise, or similar merchandise, at either a different commercial level or in different quantities, or both, will be used, but adjusted to take account of that difference. Any adjustment made under this section will be based on "sufficient information". See section 152.102(j). If in applying this section to any merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, the merchandise will be appraised on the basis of the lower or lowest of those values.

(e) *Adjustments.* (1) Adjustments for identical merchandise, or similar merchandise, because of different commercial levels or quantities, or both, whether leading to an increase or decrease in the value, will be made only on the basis of sufficient information; e.g., valid price lists containing prices referring to different levels or quantities.

(2) *Interpretative note.* If the imported merchandise being valued consists of a shipment of 10 units and the only identical imported merchandise for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions for transaction value of identical or similar merchandise is not appropriate.

§ 152.105 Deductive value.

(a) *Merchandise concerned.* For the purposes of deductive value, "merchandise concerned" means the merchandise being appraised, identical merchandise, or similar merchandise.

(b) *Merchandise of the same class of kind.* For the purposes of deductive value, "merchandise of the same class or kind" includes merchandise imported from the same country as well as other countries as the merchandise being appraised.

(c) *Prices.* The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (d) of this section) is appropriate depending upon

when and in what condition the merchandise concerned is sold in the United States:

(1) If the merchandise concened is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(2) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(3) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This provision will apply to appraisement of merchandise only if the importer so elects at the time of filing the entry summary.

(d) *Deductions from price.* The price determined under paragraph (c) of this section will be reduced by an amount equal to—

(1) Any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation as the merchandise concerned;

(2) The actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(3) The usual costs and associated costs of transportation and insurance incurred with respect to shipments of the merchandise concerned from the place of importation to the place of delivery in the United States, if those costs are not included as a general expense under paragraph (d)(1) of this section;

(4) The customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the United States ordinarily are liable; and

(5) But only in the case of price determined under paragraph (c)(3) of this section, the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to the cost of that processing.

(e) *Profit and general expenses; special rules.* (1) The deduction made for profit and general expenses (taken as a whole) will be based upon the importer's profit and general expenses, unless the profit and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind from all countries, in which case the deduction will be based on the usual profit and general expenses reflected in those sales, as determined from sufficient information. Any State or local tax imposed on the importer with respect to the sale of imported merchandise will be treated as a general expense.

(2) In determining deductions for commissions and usual profit and general expenses, sales in the United States of the narrowest group or range of imported merchandise of the same class or kind, including the merchandise being appraised, for which sufficient information can be provided, will be examined.

(f) *Packing costs.* The price determined under paragraph (c) of this section will be increased, but only to the extent that the costs are not otherwise included, by an amount equal to the packing costs incurred by the importer or the buyer with respect to the merchandise concerned.

(g) *Assists.* For purposes of determining deductive value, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned will be disregarded.

(h) *Unit price in greatest aggregate quantity.* The unit price will be established after a sufficient number of units have been sold to an unrelated person. The unit price to be used when the units have been sold in different quantities will be that at which the total volume sold is greater than the total volume sold at any other unit price.

(1) *Interpretative note 1.* Merchandise is sold to an unrelated person from a price list which grants favorable unit prices for purchases made in larger quantities:

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1–10 units	$100	10 sales of 5 units	65
		5 sales of 3 units	
11–25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units	80
		1 sale of 50 units	

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is $90.

(2) *Interpretative note 2.* Two sales to unrelated persons occur: in the first sale, 500 units are sold at a price of $95 each; in the second sale, 400 units are sold at a price of $90 each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is $95.

(3) *Interpretative note 3.* Various quantities are sold to unrelated persons at various prices:

(a) *Sales*

Sale quantity	Unit price
40 units	$100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) *Totals*

Total quantity sold	Unit price
65	$90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is $90.

(i) *Further processing.*—(1) *Quantified data.* If merchandise has undergone further processing after its importation into the United States and the importer elects the method specified in paragraph (c)(3) of this section, deductions made for the value added by that processing will be based on objective and quantifiable data relating to the cost of the work performed. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis for the deduction. That deduction also will reflect amounts for spoilage, waste, or scrap derived from the further processing.

(2) *Loss of identity.* If the imported merchandise loses its identity as a result of further processing, the method specified in paragraph (c)(3) of this section will not be applicable unless the value added by the processing can be determined accurately without unreasonable difficulty for either importers or Customs. If the imported merchandise maintains its identity but forms a minor element of the merchandise sold in the United States, the use of paragraph (c)(3) of this section will be unjustified. The district director shall review each case involving these issues on its merits.

Example. A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated person. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the U.S. within 180 days of the date of importation. No assists from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed.

How should the merchandise be appraised?

The merchandise should be appraised under deductive value with allowances for profit and general expenses, freight and insurance, duties and taxes, and the cost of processing.

§ 152.106 Computed value.

(a) *Elements.* The computed value of imported merchandise is the sum of—

(1) The cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(2) An amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class of kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(3) Any assist, if its value is not included under paragraph (a) (1) or (2) of this section; and

(4) The packing costs.

(b) *Special rules.* (1) The cost or value of materials under paragraph (a)(1) of this section will not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used.

(2) The amount for profit and general expenses under paragraph (a)(2) of this section will be based upon the producer's profit and general expenses, unless the producer's profit and general expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States. In that case, the amount under paragraph (a)(2) of this section will be based on the usual profit and general expenses of such producers in those sales, as determined from "sufficient information". See § 152.102(j).

(c) *Profit and general expenses.* The amount for profit and general expenses will be taken as a whole. If the producer's profit figure is low and general expenses high, those figures taken together nevertheless may be consistent with those usually reflected in sales of imported merchandise of the same class or kind.

(1) *Interpretative note 1.* A product is introduced into the United States, and the producer accepts either no profit or a low profit to offset the high general expenses required to introduce the product into this market. If the producer can demonstrate that there is a low profit on sales of the imported merchandise because of peculiar commercial circumstances, the actual profit figures will be accepted provided the producer has valid commercial reasons to justify them and his pricing policy reflects the usual pricing policies in the industry.

(2) *Interpretative note 2.* Producers have been forced to lower prices temporarily because of an unforseeable drop in demand, or they sell merchandise to complement a range of merchandise being produced in the United States and accept a low profit to maintain competitiveness. If the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of merchandise of the same class or kind as the merchandise being valued which are made in the country of exportation for export to the United States, the amount for profit and general expenses will be based upon reliable and quantifiable information other than that supplied by or on behalf of the producer of the merchandise.

(d) *Assists and packing costs.* Computed value also will include an amount equal to the apportioned value of any assists used in the production of the imported merchandise and the packing costs for the imported merchandise. The value of any engineering, development, artwork, design work, and plans and sketches undertaken in the United States will be included in computed value only to the extent that their value has been charged to the producer. Depending on the producer's method of accounting, the value of assists may be included (duplicated) in the producer's cost of materials, fabrication, and other processing, or in the general expenses. If duplication occurs, a separate amount for the value of the assists will not be added to the other elements as it is not intended that any component of computed value be included twice.

(e) *Merchandise of same class or kind.* Sales for export to the United States of the narrowest group or range of imported merchandise, including the merchandise being appraised, will be examined to determine usual profit and general expenses. For the purpose of computed value, merchandise of the same class or kind must be from the same country as the merchandise being appraised.

Example. A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated persons. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the U.S. within 180 days of the date of importation. No assists from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed. The U.S. importer has requested that the shipment be appraised under computed value. The profit and general expenses figure for the same class or kind of merchandise in the country of exportation for export to the U.S. is known.

How should the merchandise be appraised?

The merchandise should be appraised under computed value, using the company's profit and general expenses if not inconsistent with those usually reflected in sales of merchandise of the same class or kind.

(f) *Availability of information.* (1) It will be presumed that the computed value of the imported merchandise cannot be determined if—

(i) The importer is unable to provide required computed value information within a reasonable time, and/or

(ii) The foreign producer refuses to provide, or is legally prevented from providing, that information.

(2) If information other than that supplied by or on behalf of the producer is used to determine computed value, the district director shall inform the importer, upon written request, of

(i) The source of the information,

(ii) The data used, and

(iii) The calculation based upon the specified data

if not contrary to domestic law regarding disclosure of information. See also § 152.101(d).

§ 152.107 Value if other values cannot be determined or used.

(a) *Reasonable adjustments.* If the value of imported merchandise cannot be determined or otherwise used for the purposes of this subpart, the imported merchandise will be appraised on the basis of a value derived from the methods set forth in § 152.103 through 152.106, reasonably adjusted to the extent necessary to arrive at a value. Only information available in the United States will be used.

(b) *Identical merchandise or similar merchandise.* The requirement that identical merchandise, or similar merchandise, should be exported at or about the same time of exportation as the merchandise being appraised may be interpreted flexibly. Identical merchandise, or similar merchandise, produced in any country other than the country of exportation or production of the merchandise being appraised may be the basis for customs valuation. Customs values of identical merchandise, or similar merchandise, already determined on the basis of deductive value or computed value may be used.

(c) *Deductive value.* The "90 days" requirement for the sale of merchandise referred to in § 152.105(c) may be administered flexibly.

§ 152.108 Unacceptable bases of appraisement.

For the purposes of this subpart, imported merchandise may not be appraised on the basis of—

(1) The selling price in the United States of merchandise produced in the United States;

(2) A system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(3) The price of merchandise in the domestic market of the country of exportation;

(4) A cost of production, other than a value determined under § 152.106 for merchandise that is identical merchandise, or similar merchandise, to the merchandise being appraised;

(5) The price of merchandise for export to a country other than the United States;

(6) Minimum values for appraisement;

(7) Arbitrary of fictitous values.

(R.S. 251, 46 Stat. 759, Title II, Pub. L. 96–39, 93 Stat. 194 (19 U.S.C. 66, 402, 1624))

[FR Doc. 81-915 Filed 1-9-81; 8:45 am]
BILLING CODE 4810-22-M

DEPARTMENT OF STATE

22 CFR Part 18

[Dept. Reg. 108.799]

Regulations Concerning Post Employment; Conflict of Interest

AGENCY: Department of State.

ACTION: Interim rule.

SUMMARY: The interim rule implements the application of Title V of the Ethics in Government Act of 1978 by establishing the procedure for imposing administrative restrictions for violation of the post employment laws by former officers and employees of the Department of State, including the Foreign Service.

DATES: The effective date of the regulation will be January 1, 1981, but comments will be considered for possible amendments to the regulation.

Written comments must be received on or before February 11, 1981.

ADDRESS: Comments should be addressed to the Assistant Legal Adviser for Management, Department of State, Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT: Mr. K. E. Malmborg, Assistant Legal Adviser—(202) 632–2350.

SUPPLEMENTARY INFORMATION: Title V of the Ethics in Government Act of 1978 amended 18 U.S.C. 207, which prohibits certain post employment activities of former Government employees.

Subsection (j) of 18 U.S.C. 207 as amended, provides that if the head of a department finds that a former officer or employee of the department violated 18 U.S.C. 207(a), (b) or (c), he or she may prohibit that person from appearing before that department, or from communicating with that department with the intent to influence, on behalf of any other person (except the United States) for a period not to exceed five years, or take other appropriate disciplinary action. Subsection (j) also requires that the former officer or employee be given notice and opportunity for a hearing. Accordingly, departments and agencies, in consultation with the Director of the Office of Government Ethics, are required to establish procedures for implementing that responsibility by January 1, 1980. The Office of Government Ethics published interim regulations to implement 18 U.S.C. 207 in the Federal Register on April 3, 1979 (44 FR 19974 (1979)).

The interim rule implements 18 U.S.C 207(j) for the Department of State. It applies by reference, the substantive provisions of the regulations published by the Office of Government Ethics. The regulations will be enforced by the Director General of the Foreign Service and Director of Personnel.

The sanctions available may affect a former employee's eligibility to conduct business before the entire Department of State. It has been determined that the interim regulation does not meet the Department of State criteria for a significant regulation.

In consideration of the foregoing, after consultation with the Office of Government Ethics, Subchapter B of 22 CFR is amended by adding a new Part 18 to read as follows:

PART 18—REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

Subpart A—General Provisions

Sec.
18.1 Scope.
18.2 Definitions.
18.3 Director General.
18.4 Records.

Subpart B—Applicable Rules

18.5 Interpretative standards; advisory opinions.

Subpart C—Administrative Enforcement Proceedings

18.6 Authority to prohibit appearances.
18.7 Report of violation by a former employee.
18.8 Institution of proceeding.
18.9 Contents of complaint.
18.10 Service of complaint and other papers.
18.11 Answer.
18.12 Motions and requests.
18.13 Representation.
18.14 Hearing examiner.
18.15 Hearings.
18.16 Evidence.
18.17 Depositions.
18.18 Proposed findings and conclusions.
18.19 Decision of the hearing examiner.
18.20 Appeal to the Board of Appellate Review.
18.21 Decision of the Board of Appellate Review.
18.22 Notice of disciplinary action.

Authority: (18 U.S.C. 207, as amended, 92 Stat. 1864).

Subpart A—General Provisions

§ 18.1 Scope

This part contains rules governing disciplinary action against a former officer or employee of the Department of State, including the Foreign Service, because of a violation of the post employment conflict of interest prohibitions. Such disciplinary action may include prohibition from practice before the Department of State and any component thereof as defined in this part.

§ 18.2 Definitions.

For the purpose of this part—

(a) The term "Department" means the Department of State and includes the Foreign Service.

(b) The term "Director General" means the Director General of the Foreign Service and Director of Personnel.

(c) The term "practice" means any informal or formal appearance before, or, with the intent to influence, any oral or written communication to the Department on a pending matter of business on behalf of any other person (except the United States).

§ 18.3 Director General.

The Director General shall institute and provide for the conduct of disciplinary proceedings involving former employees of the Department as authorized by 18 U.S.C. 207(j), and perform such other duties as are necessary or appropriate to carry out his/her functions under this part.

§ 18.4 Records.

The roster of all persons prohibited from practice before the Department shall be available to public inspection at the Office of Director General. Other records may be disclosed upon specific request, in accordance with appropriate disclosure regulations of the Department.

Subpart B—Applicable Rules

§ 18.5 Interpretative standards; advisory opinions.

(a) A determination that a former officer or employee of the Department violated 18 U.S.C. 207(a), (b) or (c) will be made in conformance with the standards established in the interpretative regulations promulgated, either in interim or final form by the Office of Government Ethics and published at 5 CFR Part 737.

(b) Former officers and employees of the Department wanting to know whether a proposed course of conduct would be in conformity with the Act or the interpretive regulations thereunder may contact the Assistant Legal Adviser for Management to request an advisory opinion.

Subpart C—Administrative Enforcement Proceedings

§ 18.6 Authority to prohibit appearances.

Pursuant to 18 U.S.C 207(j), if the Director General finds, after notice and opportunity for a hearing, that a former officer or employee of the Department has violated 18 U.S.C. 207(a), (b) or (c), the Director General in his/her discretion may prohibit that person from engaging in practice before the Department for a period not to exceed five years, or may take other appropriate disciplinary action.

§ 18.7 Report of violation by a former employee.

(a) If an officer or employee of the Department has reason to believe that a former officer or employee of the Department has violated any provision of this part, or if any such officer or employee receives information to that effect, he/she shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Director General. If any other person has information of such violations, he/she may make a report thereof to the Director General or to any officer or employee of the Department.

(b) The Director General shall coordinate proceedings under this part with the Department of Justice in cases where it initiates criminal prosecution.

§ 18.8 Institution of proceeding.

Whenever the Director General determines that there is sufficient reason to believe that any former officer or employee of the Department has violated 18 U.S.C. 207(a), (b) or (c), he/she may institute an administrative disciplinary proceeding. The proceeding may be for that person's suspension from practice before the Department or for some lesser penalty. The proceeding shall be instituted by a complaint which names the respondent and is signed by the Director General and filed in his/her office. Except in cases of willfulness, or where time, the nature of the proceeding; or the public interest does not permit, a proceeding will not be instituted under this section until facts or conduct which may warrant such action have been called to the attention of the proposed respondent in writing and he/she has been accorded the opportunity to provide his/her position on the matter.

§ 18.9 Contents of complaint.

A complaint shall plainly and concisely describe the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against him/her so that the respondent is able to prepare a defense. Written notification shall be given of the place and of the time within which the respondent shall file his/her answer, which time shall not be less than 15 days from the date of service of the complaint. Notice shall be given that a decision by default may be rendered against the respondent in the event he/she fails to file an answer.

§ 18.10 Service of complaint and other papers.

(a) Complaint. The complaint or a copy thereof may be served upon the respondent by certified mail; by delivering it to the respondent or his/her attorney or agent of record either in person; or by leaving it at the office or place of business of the respondent, attorney or agent; in any other manner which has been agreed to by the respondent; or by first-class mail in case of a person resident abroad.

(b) Service of papers other than complaint. Any paper other than the complaint may be served upon a respondent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the Director General, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service.

(c) Whenever the filing of a paper is required or permitted in connection with a proceeding, and the place of filing is not specified by this subpart or by rule or order of the hearing examiner, the paper shall be filed with the Director General, Department of State, Washington, D.C. 20520. All papers shall be filed in duplicate.

§ 18.11 Answer.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the Director General. The answer shall be filed in duplicate with the Director General.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director General shall constitute a waiver of hearing, and the Director General may make his/her decision by default without a hearing or further procedure.

§ 18.12 Motions and requests.

Motions and requests, including requests to intervene, may be filed with the Director General.

§ 18.13 Representation.

A respondent or proposed respondent may appear in person or he/she may be represented by counsel or other representative. The Director General may be represented by an attorney or other employee of the Department.

§ 18.14 Hearing examiner

(a) After an answer is filed, if the Director General decides to continue the administrative disciplinary proceedings, he/she shall appoint a hearing examiner to conduct those proceedings under this part.

(b) *Authorities.* Among other powers, the hearing examiner shall have authority, in connection with any proceeding assigned or referred to him/her, to do the following:

(1) Take evidence under appropriate formalities;

(2) Make rulings upon motions and requests;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial decisions.

§ 18.15 Hearings.

Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be closed unless an open hearing is requested by the respondent, except that if classified information or protected information of third parties is likely to be adduced at the hearing, it will remain closed. If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him/her, he/she shall be deemed to have waived the right to a hearing and the hearing examiner may make a decision against the absent party by default.

§ 18.16 Evidence.

The rules of evidence prevailing in courts of law and equity are not controlling in hearings under this part. However, the hearing examiner shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

§ 18.17 Depositions.

Depositions for use at a hearing may, with the consent of the parties in writing or the written approval of the hearing examiner, be taken by either the Director General or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories. There shall be at least 10 days written notice to the other party. The requirement of a 10-day written notice may be waived by the parties in writing. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

§ 18.18 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the hearing examiner, prior to making his/her decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

§ 18.19 Decision of the hearing examiner.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the hearing examiner shall make the initial decision. The decision shall include

(a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and

(b) an order of suspension from practice before the Department or other appropriate disciplinary action, or an order of dismissal of the complaint. The hearing examiner shall file the decision with the Director General and shall transmit a copy thereof to the respondent or his/her attorney of record. A party adversely affected by the decision shall be given notice of his or her right to appeal to the Board of Appellate Review (Part 7 of this Chapter) within 30 days from the date of the hearing examiner's decision.

§ 18.20 Appeal to the Board of Appellate Review.

Within 30 days from the date of the hearing examiner's decision, either party may appeal to the Board of Appellate Review. The appeal shall be taken by filing notice of appeal, in triplicate, with the Board of Appellate Review, which shall state with particularity exceptions to the decision of the hearing examiner and reasons for such exceptions. If an appeal is by the Director General, he/she shall transmit a copy thereof to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief, in triplicate, with the Board of Appellate Review. If the reply brief is filed by the Director General, he/she shall transmit a copy of it to the respondent. The Director General shall transmit the entire case record to the Board of Appellate Review within 30 days after an appeal has been taken.

§ 18.21 Decision of the Board of Appellate Review.

The Board of Appellate Review shall decide the appeal on the basis of the record. The decision of the Board shall be final, and not subject to further administrative review. Copies of the Board's decision shall be forwarded promptly to the parties by the Board.

§ 18.22 Notice of disciplinary action.

Upon the issuance of a final order suspending a former officer or employee from practice before the Department, the Director General shall give notice thereof to appropriate officers and employees of the Department. Officers and employees of the Department shall refuse to participate in any appearance by such former officer or employee or to accept any communication which constitutes the prohibited practice before the Department during the period of suspension. The Director General shall take other appropriate disciplinary action as may be required by the final order.

Dated: December 3, 1980.

Robert H. Miller,

Acting Under Secretary of State for Management.

[FR Doc. 81-1100 Filed 1-9-81; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

National Forest Timber Sales; Export and Substitution Restrictions; Correction

AGENCY: Forest Service, USDA.

ACTION: Correction to final rule.

SUMMARY: Revised regulations regarding the export of timber from National Forest System lands and the use of such timber in substitution for private timber which is exported by the purchaser were published in the Federal Register on December 5, 1980, (45 FR 80526). This document sets forth corrections to that regulation to make it conform to the proposed rule. No substantive changes are made.

EFFECTIVE DATE: February 3, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. George M. Leonard, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, (202) 447-4051.

1. Section 223.10(a)(4) and (b)(1) and (2) are revised to read as follows:

§ 223.10 Timber export and substitution restrictions.

(a) * * *

(4) Substitution means the purchase of unprocessed timber from National Forest System lands to be used as replacement for unprocessed timber from private lands which is exported by the purchaser. Substitution occurs when (i) a person increases purchases of National Forest timber in any Calendar year more than 10 percent above their historic level and in the same calendar year exports unprocessed timber from private land in the tributary area; or (ii) a person increases exports of unprocessed timber from private land in any tributary area more than 10 percent above their historic level in any calendar year while they have National Forest timber under contract.

* * * * *

(b) Unprocessed timber from National Forest System lands west of the 100th Meridian in the contiguous 48 States may not (1) be exported from the United States; (2) be used in substitution for unprocessed timber from private lands which is exported by the purchaser;

* * * * *

Bob Bergland

Secretary.

January 6, 1981.

[FR Doc. 81-1015 Filed 1-9-81; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

Rules of Practice in Patent Cases; Deposit of Computer Program Listings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: Rules of practice are amended to provide special procedures for presentation of computer program listings in the form of microfiche in patent applications. Use of microfiche is desirable in view of the number of computer program listings being submitted as part of the disclosure in patent applications. Such listings are often several hundred pages in length. By filing and publishing such computer program listings on microfiche rather than on paper, substantial cost savings can result to the applicants, the public, and the Patent and Trademark Office.

DATES: Sections 1.77 and 1.96 effective January 12, 1981. Section 1.21 effective March 13, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Louis O. Maassel by telephone at (703) 557-3070 or, for details of the specifications, Mr. J. Kent Hughes at (703) 557-0410, or by mail marked to their attention addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: This notice changes two rules and adds a new rule to provide suitable procedures for presenting computer program listings where such listings are submitted with applications for patent to fulfill the disclosure requirements of 35 U.S.C 112.

Classification

This amendment of Part I of Title 37 CFR is deemed significant under procedures established by the Department of Commerce pursuant to Executive Order 12044.

Regulatory Analysis

The Patent and Trademark Office has reviewed the amendment and determined that it will have no potential major economic consequences requiring the preparation of a regulatory analysis under Executive Order 12044.

Background

The notice of proposed rulemaking was published in the Federal Register of June 15, 1977 at 42 FR 30522 and in the Official Gazette of July 5, 1977 at 960 O.G. 2. An oral hearing was held on September 13, 1977.

A computer program listing, as used in these rules, means the printout that lists, in proper sequence, the instructions, routines, and other contents of a program for a computer. The listing may be either in machine or machine-independent (object or source) programming language which will cause a computer to perform a desired task, such as solving a problem, regulating the flow of work in a computer, or controlling or monitoring events. The general description of the computer program listing will appear in the specification while computer program listing may appear either directly or as a microfiche as appendix to the specification and be incorporated into the specification by reference.

Discussion of the Background and Major Issues Involved

The provisions of 37 CFR 1.52 and 1.84 for submitting specifications and drawings on paper have been found suitable for most patent applications. However, when lengthy computer program listings must be disclosed in a patent application in order to provide a complete disclosure, use of paper copies can become burdensome.

The cost of printing long computer programs in patent documents is also very expensive to the Patent and Trademark Office. Likewise, the issue fee, which must be paid by the applicant, is based on the number of pages and may be correspondingly high.

In the past, all disclosures part of a patent application were presented on paper with the exception of micro-organisms. Under new section 1.96, several different methods for submitting computer program listings, including the use of microfiche are set forth.

Relatively short computer program listings (10 pages or less) will be submitted on paper and be printed as part of the patent. If the computer program listing is 10 or more pages in length, it may be submitted on either paper or microfiche, although microfiche is preferred.

Copies of publicly available computer program listings will be available from the Patent and Trademark Office at a cost of one dollar per microfiche or on paper at a cost of 30 cents per page. These costs represent the estimated costs to the Office of furnishing the copies.

Response to Public Comments Received

Nine individuals and organizations submitted written comments relating to the proposed rule change. Two additional individuals asked for clarification of certain points at the oral hearing.

All of the suggestions relating to clarification of the rules were adopted.

The proposal to accept microfiche for 10 or less pages of listing was not adopted since such listings cause no serious printing or cost problems. It is not considered to be cost effective to prepare and maintain a microfiche on so few pages.

The suggestion to permit lined paper was not adopted since high-quality reproduction procedures used would pick up such lines.

A number of proposals were directed to permitting listings to be filed on other forms of microfilm and machine readable material. Such proposals were not adopted at this time in view of the difficulty to the public and the office of reading and reproducing such material on a single machine.

The mandatory use of microfiche for listings over 50 pages has been deleted since such a mandatory requirement would conflict with the Patent Cooperation Treaty requirements.

Other Information

The micrographic standards referred to in section 1.96(b)(2) may be obtained from either the National Micrographic Association, 8719 Colesville Road, Silver Spring, Maryland, 20910 or the American National Standards Institute, 1430 Broadway, New York, New York 10018.

Amendment of Regulations

For the reasons set out in the preamble and under the authority given to the Commissioner of Patents and Trademarks by 35 USC §§ 6 and 41, Part 1 of Title 37 CFR is amended as set forth below.

1. Section 1.21 is amended by adding a new paragraph (1) to read as follows:

§ 1.21 Patent and miscellaneous fees and charges

* * * * *

(l) The fee for obtaining a microfiche copy of an available microfiche, per microfiche $1.00

* * * * *

2. Section 1.77 is amended by revising paragraph (c) to read as follows:

§ 1.77 Arrangement of application

* * * * *

(c)(1) Cross-reference to related applications, if any.

(2) Reference to a "microfiche appendix" if any. (See Section 1.96(b)). The total number of microfiche and total number of frames should be specified.

* * * * *

3. A new Section 1.96 is added and reads as follows:

§ 1.96 Submission of computer program listings.

Descriptions of the operation and general content of computer program listings should appear in the description portion of the specification. A computer program listing for the purpose of these rules is defined as a print-out that lists in appropriate sequence the instructions, routines, and other contents of a program for a computer. The program listing may be either in machine or machine-independent (object or source) language which will cause a computer to perform a desired procedure or task such as solve a problem, regulate the flow of work in a computer, or control or monitor events. Computer program listings may be submitted in patent applications in the following forms:

(a) *Material which will be printed in the patent.* If the computer program listing is contained on 10 printout pages or less, it must be submitted either as drawings or as part of the specification.

(1) *Drawings.* The listing may be submitted in the manner and complying with the requirements for drawings as provided in Section 1.84. At least one figure numeral is required on each sheet of drawing.

(2) *Specification.* (i) The listing may be submitted as part of the specification in accordance with the provisions of Section 1.52, at the end of the description but before the claims.

(ii) The listing may be submitted as part of the specification in the form of computer printout sheets (commonly 14 by 11 inches in size) for use as "camera ready copy" when a patent is subsequently printed. Such computer printout sheets must be original copies from the computer with dark solid black letters not less than 0.21 cm high, on white, unshaded and unlined paper, the printing on each sheet must be limited to an area 9 inches high by 13 inches wide, and the sheets should be submitted in a protective cover. When printed in patents, such computer printout sheets will appear at the end of the description but before the claims and will usually be reduced about ½ in size with two printout sheets being printed as one patent specification page. Any amendments must be made by way of submission of a substitute sheet if the copy is to be used for camera ready copy.

(b) *As an appendix which will not be printed.* If a computer program listing printout is 11 or more pages long, applicants may submit such listing in the form of microfiche, referred to in the specification (see § 1.77 (c)(2)). Such microfiche filed with a patent application is to be referred to as a "microfiche appendix." The "microfiche appendix" will not be part of the printed patent. Reference in the application to the "microfiche appendix" should be made at the beginning of the specification at the location indicated in § 1.77(c)(2). Any amendments thereto must be made by way of revised microfiche. All computer program listings submitted on paper will be printed as part of the patent.

(1) *Availability of appendix.* Such computer program listings on microfiche will be available to the public for inspection, and paper or microfiche copies thereof will be separately available for purchase, after a patent based on such an application is granted or the application is otherwise made publicly available.

(2) *Submission requirements.* Computer-generated information submitted as an appendix to an application for patent shall be in the form of microfiche in accordance with the standards set forth in the following American National (ANSI) or National Micrographics Association (NMA) Standards (Note: As new editions of these standards are published, the latest shall apply):

ANSI PH 1.28–1976—Specifications for Photographic Film for Archival Records, Silver-Gelatin-Type, on Cellulose Ester Base.

ANSI PH 1.41—1976 Specifications for Photographic Film for Archival Records, Silver-Gelatin Type, on Polyester Base.

NMA–MS1 (1971) Quality Standards for Computer Output Microfilm.

ANS1/NMA MS2 (1978) Format and Coding Standards for Computer Output Microfilm.

NMA MS5 (ANSI PH 5.9–1975) Microfiche of Documents.

ANSI PH 2.19 (1959)—Diffuse Transmission Density.

except as modified or clarified below:

(i) Either Computer-Output-Microfilm (COM) output or copies of photographed paper copy may be submitted. In the former case, NMA standards MS1 and MS2 apply; in the latter case, standard MS5 applies.

(ii) Film submitted shall be first generation (camera film) negative appearing microfiche (with emulsion on the back side of the film when viewed with the images right reading).

(iii) Reduction ratio of microfiche submitted should be 24:1 or a similar ratio where variation from said ratio is required in order to fit the documents into the image area of the microfiche format used.

(iv) Film submitted shall have a thickness of at least .005 inches (0.13 mm) and not more than .009 inches (0.23 mm) for either cellulose acetate base or polyester base type.

(v) Both microfiche formats A1 (98 frames, 14 columns x 7 rows) and A3 (63 frames, 9 columns x 7 rows) which are described in NMA standard MS2 (A1 is also described in MS5) are acceptable for use in preparation of microfiche submitted.

(vi) At least the left-most 1/3 (50 mm x 12 mm) of the header or title area of each microfiche submitted shall be clear or positive appearing so that the Patent and Trademark Office can apply serial number and filing date thereto in an eye-readable form. The middle portion of the header shall be used by applicant to apply an eye-readable application identification such as the title and/or the first inventor's name. The attorney's docket number may be included. The final right-hand portion of the microfiche shall contain sequence information for the microfiche, such as 1 of 4, 2 of 4, etc.

(vii) Additional requirements which apply specifically to microfiche of filmed paper copy:

(A) The first frame of each microfiche submitted shall contain a standard test target which contains five NBS Microcopy Resolution Test Charts (No. 1010A), one in the center and one in each corner. See illustration on page 2 of NMA Recommended Practice MS104, Inspection and Quality Control of First Generation Silver Halide Microfilm. See also paragraph 7 of NMA–MS5.

(B) The second frame of each microfiche submitted must contain a fully descriptive title and the inventor's name as filed.

(C) The pages or lines appearing on the microfiche frames should be consecutively numbered.

(D) Pagination of the microfiche frames shall be from left to right and from top to bottom.

(E) At a reduction of 24:1 resolution of the original microfilm shall be at least 120 lines per mm (5.0 target) so that reproduction copies may be expected to comply with provisions of paragraph 7.1.4. of NMA Standard MS5.

(F) Background density of negative appearing camera master microfiche of filmed paper documents shall be within the range 0.9 to 1.2 and line density should be no greater than 0.08. The density shall be visual diffuse density as measured using the method described in ANSI Standard PH 2.19.

(G) An index, when included, should appear in the last frame (lower right hand corner when data is right-reading) of each microfiche. See NMA–MS5, paragraph 6.6.

(viii) Microfiche generated by Computer Output Microfilm (COM).

(A) Background density of negative-appearing COM-generated camera master microfiche shall be within the range of 1.5 to 2.0 and line density should be no greater than 0.2. The density shall be visual diffuse density as described in ANSI PH 2.19.

(B) The first frame of each microfiche submitted should contain a resolution test frame in conformance with NMA standard MS1.

(C) The second frame of each microfiche submitted must contain a fully descriptive title and the inventor's name as filed.

(D) The pages or lines appearing on the microfiche frames should be consecutively numbered.

(E) It is preferred that pagination of the microfiche frames be from left to right and top to bottom but the alternative, i.e., from top to bottom and from left to right, is also acceptable.

(F) An index, when included, should appear on the last frame (lower right hand corner when data is right reading) of each microfiche.

(G) Amendment of microfiche must be made by way of replacement microfiche.

Dated: December 19, 1980.

Sidney A. Diamond,

Commissioner of Patents and Trademarks.

Dated: December 30, 1980.

Approved:

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 81-1012 Filed 1-9-81; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5791

[LA-0155887]

California; Partial Revocation of Reclamation Withdrawals

Correction

In FR Doc. 80-39804, published at page 84788, in the issue of Tuesday, December 23, 1980, in the third column, the tenth line from the bottom of the page, the first entry now reading "NE½" should read "NE¼".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 201

[Docket No. AMRP-2, Notice 1]

Formal Rules of Practice for Passenger Service; Addition of New Part

AGENCY: Federal Railroad Administration ("FRA"), DOT.

ACTION: Final rule.

SUMMARY: Subsections 402(f) and 402(h) of the Rail Passenger Service Act (45 U.S.C. 562 (f) and (h), "the Act"), require the Secretary of Transportation ("the Secretary") to make findings and issue orders concerning passenger service operation by the National Railroad Passenger Corporation ("Amtrak") in conjunction with railroad facilities owned by private railroad companies and regional transportation agencies (collectively, "the railroads"). The Secretary's duties under these sections include consideration of accelerated speed proposals and proposals for operation of additional trains by Amtrak, including such matters as whether such accelerated speeds are unsafe or otherwise impracticable, the nature and extent of improvements to track, signal systems, and other facilities that would be required to make such accelerated speeds safe and practicable, and whether the operation of additional trains would unduly impair the freight operations of the railroad involved. The Secretary has delegated these duties to the Federal Railroad Administrator ("the Administrator"), and the new part sets forth procedures by which the Administrator shall discharge such duties.

DATES: This rule is effective on January 12, 1981. Written comments must be received before February 26, 1981. Comments received after that date will be considered so far as possible without incurring additional expense or delay.

ADDRESS: Written comments should identify the docket and notice numbers and be submitted in triplicate to: Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590. Persons desiring notification that their written comments have been received by FRA shall submit a stamped, self-addressed postcard with the comments. FRA will indicate on the postcard the date on which the comments were

received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours (8:30 a.m.—5 p.m.) in Room 5101 of the Nassif Building, 400 7th Street, S.W., Washington, D.C. 20590,

FOR FURTHER INFORMATION CONTACT: Gregory B. McBride, Office of the Chief Counsel, RCC-50, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590, 202-472-5438.

SUPPLEMENTARY INFORMATION: In order to provide national rail passenger service, Amtrak has entered into numerous agreements with the railroads for the operation of passenger trains and for the use of railroad facilities. Various sections of the Act authorize the Secretary to act when Amtrak and a contracting railroad are unable to agree on modification of preference rights (402(e)), accelerated speeds (402(f)), additional passenger trains (402(h)), and disposal of railroad facilities (406). These rules pertain to the Secretary's duties under subsections 402(f) and 402(h) of the Act.

Section 10(2) of the Amtrak Improvement Act of 1973 (Pub. L. 93-146) added subsection (f) to section 402 of the Act. Subsection 402(f) concerns the maximum speeds at which trains may be operated by or on behalf of Amtrak. If a railroad refuses to permit accelerated speeds, Amtrak may apply to the Secretary for an order requiring the railroad to permit those speeds. In addition to examining the safety and practicability of such speeds, the Secretary shall also make findings with respect to the nature and extent of railroad facility improvements necessary to make the accelerated speeds safe and practicable. After a hearing, the Secretary shall issue an order fixing maximum speeds for Amtrak trains on just and reasonable terms and conditions.

Section 216 of the Passenger Railroad Rebuilding Act of 1980 (Pub. L. 96-254) added subsection (h) to section 402 of the Act. Subsection 402(h) concerns the mandatory operation of additional trains for Amtrak by a railroad with which Amtrak is unable to obtain a satisfactory voluntary agreement for this purpose. The Secretary may, after a hearing on the record, order the railroad to permit or provide the requested operation of additional trains on schedules based upon legally permissible operating times. The hearing includes consideration of whether an order would unduly impair freight operations by the railroad, and the burden is on the railroad opposing the additional passenger trains to demonstrate that the requested operation would impair freight operations. The Secretary is also required to give consideration to the statutory goal that Amtrak shall implement schedules that will attain a system-wide average speed of at least 55 miles per hour which can be adhered to with a high degree of reliability and passenger comfort.

Under 49 CFR 1.49(1), the Secretary has delegated the duties under subsections 402 (f) and (h) to the Administrator. The Administrator proposes to execute these duties under this new part. The first paragraph of the part provides a general statement of authority. The second paragraph incorporates by reference the definitions of the preceding part. The third paragraph sets forth the scope of the regulations. The fourth paragraph sets out procedures for applying for a hearing. The fifth paragraph provides for publication of notices of hearings. The sixth paragraph provides for notification by interested persons. The seventh paragraph sets out the qualifications and powers of the hearing officer. The eighth paragraph requires direct testimony to be in writing. The ninth paragraph lists the address to which affidavits and exhibits shall be sent. The tenth paragraph provides for inspection and copying of documents. The eleventh paragraph prohibits ex parte communications. The twelfth paragraph provides for prehearing conferences. The thirteenth paragraph describes the final hearing agenda. The fourteenth paragraph provides for cancellation of hearings. The fifteenth paragraph provides for rebuttal testimony to be submitted after the prehearing conference. The sixteenth paragraph provides for waiver of hearing rights for failure to notify the Administrator as required. The seventeenth paragraph provides for the conduct of the hearing. The eighteenth paragraph prescribes rules for direct testimony. The nineteenth paragraph prescribes rules for cross-examination. The twentieth paragraph provides for oral and written arguments. The twenty-first paragraph provides for the hearing officer's actions after the hearing. The twenty-second paragraph provides for the final decision by the Administrator on the issue and for publication of the decision in the **Federal Register.**

Since this regulation involves agency practice, the rule-making procedures of 5 U.S.C. 553 do not apply. Instead, FRA has determined that this regulation is a non-significant regulation under the criteria stipulated by DOT In its Regulatory Policies and Procedures (44 FR 11034) implementing Executive Order 12044. Since the proposed application and hearing procedures are relatively simple and straight forward and involve only a one-time process rather than a continuing reporting requirement, the economic impact on potential applicants and the railroad industry would be minimal. Therefore, FRA has concluded that a full regulatory evaluation of this proposed amendment is inappropriate. In addition, FRA has determined that, under DOT's Regulatory Policies and Procedures, this is an emergency regulation. Because of short-term statutory deadlines, a pending application must be acted on in the very near future; therefore, these regulations are issued as final regulations effective on the date of publication. They may be changed, however, in light of written comments.

FRA has evaluated this document and determined that it does not have any special impact on small business.

In consideration of the foregoing, Chapter II of Title 49 of the Code of Federal Regulations is amended by adding a new Part 201, Formal Rules of Practice for Passenger Service, to read as set forth below.

Issued in Washington, D.C. on December 24, 1980

John M. Sullivan,

Administrator.

PART 201—FORMAL RULES OF PRACTICE FOR PASSENGER SERVICE

Sec.
201.1 General.
201.3 Definitions.
201.4 Scope of regulations.
201.5 Applications.
201.6 Notice of hearing.
201.7 Notification by interested persons.
201.8 Presiding officer.
201.9 Direct testimony submitted as written documents.
201.10 Mailing address.
201.11 Inspection and coping of documents.
201.12 Ex parte communications.
201.13 Prehearing conference.
201.14 Final agenda of the hearing.
201.15 Determination to cancel the hearing.
201.16 Rebuttal testimony and new issues of fact in final agenda.
201.17 Waiver of right to participate.
201.18 Conduct of the hearing.
201.19 Direct testimony.
201.20 Cross-examination.
201.21 Oral and written arguments.
201.22 Recommended decision, certification of the transcript, and submission of comments on the recommended decision.
201.23 Administrator's decision.

Authority: Secs. 402(f) and (h) of Pub. L. 91-518, 84 Stat. 1327, as amended by sec. 10(2) of Pub. L. 93-146, 87 Stat. 548 and sec. 216 of Pub. L 96-254, 94 Stat. 418 (45 U.S.C. 562 (f) and (h)); sec. 1.49 of Title 49, Code of Federal Regulations.

§ 201.1 General.

This part prescribes procedures under which applications will be received and heard and by which rules and orders will be issued under subsections 402(f) and (h) of the Rail Passenger Service Act (45 U.S.C. 562 (f) and (h)).

§ 201.3 Definitions.

(a) The definitions set forth in § 200.3 shall apply to this part.

(b) The following definitions shall also apply to this part:

(1) "Party" means—

(i) The Administrator or his representative; or

(ii) A person who has notified the Administrator by specified dates of his or her intent to participate in the hearing pursuant to §§ 201.7 and 201.16(b).

(2) "Witness" means any person who submits written direct testimony on an application to the Secretary under this part. A person may be both a party and a witness.

§ 201.4 Scope of Regulations.

The procedural regulations in this part govern the practice and procedure in hearings held under subsections 402(f) and (h) of the Act. These hearings will be governed by the provisions of 5 U.S.C. section 556 and section 557 of the Administrative Procedure Act. The regulations shall be construed to secure the just, speedy, and inexpensive determination of all issues raised with respect to any proposal to increase speeds or to add trains pursuant to subsections 402(f) and (h) of the Act with full protection for the rights of all persons affected thereby.

§ 201.5 Applications.

(a) Each application and objection under this part shall be submitted in writing to: Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590.

(b) Any procedural issues arising from the submission or consideration of applications under this part, such as timeliness and adequacy, shall be heard and decided by the presiding officer appointed under § 201.8.

(c) In accordance with subsection 402(f) of the Act, Amtrak may apply to the Administrator for an order requiring a railroad to permit accelerated speeds by Amtrak trains. Each application shall:

(1) List by endpoints the routes for which Amtrak desires such acceleration;

(2) Not list routes of more than one railroad;

(3) Indicate by route and train the maximum speeds for Amtrak trains permitted by the railroad and the maximum speeds desired by Amtrak;

(4) Indicate for each route listed the track classification as specified in FRA track safety standards (49 CFR Part 213); and

(5) Explain why the maximum speeds Amtrak desires are safe and practicable, or what track, signal system, or other facility improvements would make such speeds safe and practicable.

(d) In accordance with subsection 402(h) of the Act, Amtrak may apply to the Administrator for an order to require a railroad to permit or provide the operation of additional passenger trains on its rail lines. Each application shall:

(1) List the railroad, the endpoints of the proposed additional train or trains, and the proposed schedule for such additional train or trains, and

(2) Describe and give the background of all prior efforts and negotiations to obtain a satisfactory voluntary agreement with the railroad for the operation of the proposed additional train or trains.

(e) In addition to the data provided with their applications, applicants shall furnish the Administrator with any other information that the Administrator finds necessary in order to make the determinations required by the Act.

(f) Each applicant shall promptly notify, by registered or certified mail, any party affected by any application, whether Amtrak or a railroad, of the submission of each application under this part, and shall provide a copy of the application with such notice. An official United States Postal Service return receipt from the registered or certified mailing constitutes prima facie evidence of notice.

§ 201.6 Notice of hearing.

(a) A notice of hearing on an application shall be published in the Federal Register.

(b) The notice shall state:

(1) The nature of the hearing;

(2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;

(3) The legal authority under which the hearing is to be held;

(4) Issues of fact which may be involved in the hearing;

(5) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied;

(6) The place(s) where records and submitted direct testimony will be kept for public inspection;

(7) The final date for filing a notice of intent to participate in the hearing;

(8) The final date for submission of direct testimony on the application, and the number of copies required;

(9) The docket number assigned to the case, which shall be used in all subsequent proceedings; and

(10) The place and date of the prehearing conference.

§ 201.7 Notification by interested persons.

Any person desiring to participate as a party shall notify the Administrator, by registered or certified mail, on or before the date specified in the notice.

§ 201.8 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to § 201.6, the Administrator shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this part, shall have power to:

(1) Change the time and place of the hearing and adjourn the hearing;

(2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the Federal Register a final hearing agenda;

(3) Rule upon motions, requests, and admissibility of direct testimony;

(4) Administer oaths and affirmations, question witnesses, and direct witnesses to testify;

(5) Modify or waive any rule (after notice) upon determining that no party will be prejudiced;

(6) Receive written comments and hear oral agruments;

(7) Render a recommended decision; and

(8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or his inability to act, the Administrator may assign to a successor the powers and duties of the original presiding officer without abatement of the proceeding unless otherwise ordered by the Administrator.

(d) The presiding officer may upon his own motion withdraw as presiding officer in a proceeding if he deems himself to be disqualified.

(e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. Upon the filing by an interested person in good faith of a timely and sufficient affidavit alleging the presiding officer's personal

bias, malice, conflict of interest, or other basis which might result in prejudice to a party, the hearing shall recess. The Administrator shall immediately act upon such allegation as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 201.9 Direct testimony submitted as written documents.

(a) Unless otherwise specified, all direct testimony, including accompanying exhibits, shall be submitted to the presiding officer in writing no later than the dates specified in the notice of the hearing, the final hearing agenda, or within 15 days after the conclusion of the prehearing conference, as the case may be. All direct testimony shall be in affidavit form, and exhibits constituting part of such testimony, referred to in the affidavit and made a part thereof, shall be attached to the affidavit. Direct testimony submitted with exhibits shall state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the relevance of the exhibit to the issues published in the **Federal Register**.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state his relationship to the party;

(2) Facts that are relevant and material; and

(3) Any proposed issues of fact not stated in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(c) Ten copies of all direct testimony shall be submitted unless the notice of the hearing specifies otherwise.

(d) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

(e) Contemporaneous with the publication of the notice of hearing, Amtrak's direct testimony in support of its application shall be available for public inspection as specified in the notice of hearing. Amtrak may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

§ 201.10 Mailing address.

Unless otherwise specified in the notice of hearing, all direct testimony shall be addressed to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590. All affidavits and exhibits shall be clearly marked with the docket number of the proceeding.

§ 201.11 Inspection and copying of documents.

(a) If confidential financial information is not involved, any document in a file pertaining to any hearing authorized by this part or any document forming part of the record of such a hearing may be inspected or copied in the Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590, unless the file is in the care and custody of the presiding officer in which case he shall notify the parties as to where and when the record may be inspected.

(b) If confidential financial information is involved, the presiding officer, at his discretion, upon the request of any party, may deny the public inspection and copying of such information.

§ 201.12 Ex parte communications.

(a) After notice of a hearing is published in the **Federal Register**, all communications, whether oral or written, involving any substantive or procedural issue and directed either to the presiding officer or to the Administrator, without reference to these rules of procedure, shall be deemed ex parte communications and shall not be considered part of the record for decision. A record of oral ex parte communications shall be made by the persons contacted. All written ex parte communications shall be available for public viewing at the places(s) specified in the notice of hearing.

(b) The presiding officer shall not consult any person or party on any fact in issue or on the merits of the matter unless notice and opportunity is given for all parties to participate.

§ 201.13 Prehearing conference.

(a) After an examination of all the direct testimony submitted, the presiding officer shall make a preliminary determination of issues of fact to be addressed at the hearing.

(b) The presiding officer's preliminary determination shall be made available at the place or places provided in the notice of the hearing at least five days before the prehearing conference is held.

(c) The purpose of the prehearing conference shall be to enable the presiding officer to determine, on the basis of the direct testimony submitted and prehearing discussions:

(1) Whether the presiding officer's preliminary determination of issues of fact for the hearing has omitted or misconstrued any significant issues, and

(2) The nature of the interest of each party and which parties' interests are adverse.

(d) Only parties may participate in the prehearing conference. A party may appear in person or be represented by counsel.

(e) Parties who do not appear at the prehearing conference shall be bound by the conference's determinations.

§ 201.14 Final agenda of the hearing.

(a) After the prehearing conference, the presiding officer shall prepare a final agenda which shall be published in the **Federal Register** within ten days after the conclusion of the conference. A copy of the final agenda shall be mailed to all parties.

(b) The final agenda shall list: (1) All the issues the hearing shall address, the order in which those issues shall be presented, and the direct testimony submitted on those issues; and (2) a final date for submission of direct testimony on issues of fact not included in the notice of hearing if such issues are presented. The final agenda may also specify a final date for submission of direct testimony to rebut testimony previously submitted during the time specified in the notice of the hearing.

(c) The presiding officer shall publish with the final agenda a list of witnesses who may appear at the hearing, a list of parties, the nature of the interest of each party, and which parties' interests are adverse on the issues presented.

§ 201.15 Determination to cancel the hearing.

(a) If the presiding officer concludes that no issues of fact are presented by the direct testimony submitted, he shall publish such conclusion in the **Federal Register** with a notice that a hearing shall not be held. The notice shall set forth a date for filing written comments on the proposed recommended decision. Written comments may include proposed findings and conclusions, arguments, or briefs.

(b) A person need not be a party to submit written comments.

(c) Promptly after expiration of the period for receiving written comments, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the testimony, exhibits, and written comments submitted. He shall transfer to the Administrator his recommended decision, the record, and a certificate stating that the record contains all the written direct testimony and comments

submitted. The Administrator shall then make a final decision in accordance with these regulations.

§ 201.16 Rebuttal testimony and new issues of fact in final agenda.

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the final agenda.

(b) If the final agenda presents issues not included in the notice of the hearing published pursuant to § 201.6,

(1) Any person interested in participating at the hearing on such issues presented shall notify the Administrator by certified mail of an intent to participate not later than ten days after publication of the final agenda. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless he previously notified the Administrator pursuant to § 201.7, and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the final agenda. Such direct testimony will comply with the requirements of § 201.9.

§ 201.17 Waiver of right to participate.

Persons who fail to notify the Administrator pursuant to §§ 201.7 and 201.16 shall be deemed to have waived their right to participate as parties in any part of the hearing.

§ 201.18 Conduct of the hearing.

(a) The hearing shall be held at the time and place fixed in the notice of hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the Federal Register and shall expeditiously notify all parties by telephone or by mail; *provided,* that if the change in time or place of hearing is made less than five days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record. The notice of hearing as published in the Federal Register; all subsequent notices published in the Federal Register; the draft Environmental Impact Statement if it is required, and the comments thereon and agency responses to the comments; and a list of all parties. Direct testimony shall then be received with respect to the matters specified in the final agenda in such order as the presiding officer shall announce. With respect to direct testimony submitted as rebuttal testimony or in response to new issues presented by the prehearing conference, the presiding officer shall determine the relevance of such testimony.

(c) The hearing shall be publicly conducted and reported verbatim by an offical reporter.

(d) If a party objects to the admission or rejection of any direct testimony or to any other ruling of the presiding officer during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. The ruling of the presiding officer on any objection shall be a part of the transcript and shall be subject to review at the same time and in the same manner as the Administrator's final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.

(e) All motions and requests shall be addressed to, and ruled on by, the presiding officer if made prior to his certification of the transcript, or by the Administrator if made thereafter.

§ 201.19 Direct testimony.

(a) Direct testimony shall be submitted by affidavit as provided in these regulations and introduced at the hearing by a witness in order to be considered part of the record. Such direct testimony shall not be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof.

(b) The witness introducing direct testimony shall:

(1) State his name, address, and occupation;

(2) State his qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training that qualifies him as an expert;

(3) Identify the direct testimony previously submitted in accordance with these regulations; and

(4) Submit to appropriate direct and cross examination. Cross-examination shall be by a party whose interests are adverse to those of the witness on the issue presented if the witness is a party, or adverse to the interests of the party who presented the witness if the witness is not a party.

(c) A party shall be deemed to have waived the right to introduce direct testimony if such party fails to present a witness to introduce the direct testimony.

(d) Offical notice may be taken of such matters as are judicially noticed by the courts of the United States, *provided,* that parties shall be given adequate notice by the presiding officer at the hearing of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

§ 201.20 Cross-examination.

(a) The presiding officer may:

(1) Require the cross-examiner to outline the intended scope of the cross-examination;

(2) Prohibit parties from cross-examining witnesses unless the presiding officer has determined that the cross-examiner has an adverse interest on the facts at issue to the party-witness. For the purposes of this subsection, the Administrator's or his representative's interest shall be considered adverse to all parties;

(3) Limit the number of times any party or parties having a common interest may cross-examine an "adverse" witness on the same matter; and

(4) Exclude cross-examination questions that are immaterial, irrelevant, or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his name, address, and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical, or commercial publications may be used only for the limited purpose of impeaching witnesses under cross-examination unless previously submitted and introduced in accordance with these regulations.

§ 201.21 Oral and written arguments.

(a) The presiding officer may, in his discretion, provide for oral argument at the end of the hearing. Such argument, when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any

interested person may file with the presiding officer any written comments on the application, including proposed findings and conclusions or written arguments or brief based upon the record, citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, he shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state his arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

§ 201.22 Recommended decision, certification of the transcript, and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Administrator. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Administrator the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Administrator shall give notice thereof in the **Federal Register**, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590.

(d) Within twenty days after the notice of receipt of the recommended decision has been published in the **Federal Register**, any interested person may file with the Administrator any written comments on the recommended decision. All comments shall be submitted during the twenty-day period to the Administrator at the above address.

§ 201.23 Administrator's decision.

(a) Upon receipt of the recommended decision and transcript and after the twenty-day period for receiving written comments on the recommended decision has passed, the Administrator's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions, and decision of the presiding officer. The Administrator may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Administrator's decision shall include:

(1) A statement containing a description of the history of the proceeding;

(2) Findings on issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(c) The Administrator's decision shall be published in the **Federal Register**. If the Amtrak application is approved in whole or in part, the final order shall be promulgated with the decision.

[FR Doc. 81-681 Filed 1-9-81; 8:45 am]
BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80-12; Notice 2]

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Safety Standard No. 209, *Seat Belt Assemblies*, to exempt seat belts installed in conjunction with automatic restraint systems from the belt elongation requirements of the standard. This amendment is based on a petition for rulemaking submitted by Mercedes-Benz of North America and follows the publication of a proposal. The amendment permits manufacturers to install belt systems incorporating load-limiting devices which are intended to make further reductions in head and upper torso injuries during an accident. Some load-limiting belt systems utilize webbing that elongates more than is currently allowed by Standard No. 209. This amendment would permit this and other type systems to exceed the maximum elongation allowed by the standard.

DATES: This amendment is effective January 12, 1981.

ADDRESSES: Any petitions for reconsideration should refer to the docket number and notice number and be submitted to: National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. William Smith, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: Safety Standard No. 209, *Seat Belt Assemblies* (49 CFR 571.209), specifies performance requirements for seat belts to be used in motor vehicles. One of these performance requirements specifies the maximum amount that the webbing of a belt assembly is permitted to extend or elongate when subjected to certain specified forces (paragraph S4.2(c)). Mercedes-Benz of North America petitioned NHTSA to exempt seat belt assemblies installed in passenger cars in conjunction with air cushion restraint systems from the webbing elongation requirements of the standard. The agency granted that petition and issued a notice of proposed rulemaking to amend the standard on August 4, 1980 (45 FR 51626).

Mercedes is considering the use of a belt system that incorporates a load-limiting device. A load-limiter is a seat belt assembly component or feature that controls tension on the seat belt and modulates or limits the force loads that are imparted to a restrained vehicle occupant by the belt assembly during a crash. Load-limiting devices are intended to reduce head and upper torso injuries through increased energy management. A load-limiter can be a separate component of the seat belt system, such as a torsion bar that allows the retractor to reel out additional webbing when a certain designed force level is reached. The load-limiter can also be a feature of the webbing itself, such as webbing that will elongate to certain designed lengths when subjected to particular force levels. Mercedes is interested in using the latter type load-limiting system. However, the webbing in the Mercedes belt system would elongate beyond the limits that are currently specified in Standard No. 209. Mercedes' petition stated that this type belt system should be allowed in vehicles equipped with air cushion restraints since the two systems used in conjunction with one another can be designed to achieve the maximum reduction in head injuries and upper torso injuries.

Although safety belts protect occupants from life-threatening impacts with the vehicle interior, the forces necessarily generated by the belts upon occupants during a crash can result in upper torso injury. As noted in the notice of proposed rulemaking, data available to the agency indicate that load-limiting belts can reduce these injuries, as well as working in combination with an automatic restraint system to provide protection for impacts with the vehicle interior. The proposal specified that both Type 1 (lap belts) and Type 2 (combination lap and shoulder belts) manual belts having load-limiting devices and used in conjunction with automatic restraints would be exempted from the elongation requirements. Additionally, the proposal specified that such belts would have to be labeled to clarify that they are intended for use only in vehicles equipped with automatic restraint systems.

The proposal limited the use of load-limiting belts to vehicles equipped with automatic restraints since there are currently no dynamic performance requirements or injury criteria for manual belt systems used alone. There are no requirements to ensure that a load-limiting belt system would protect vehicle occupants from impacting the steering wheel, instrument panel and windshield, which would be very likely if the belts elongated beyond the limits specified in Standard No. 209. Therefore, the elongation requirements are necessary to ensure that manual belts used as the sole restraint system will adequately restrain vehicle occupants.

Nine comments were submitted in response to the August 4 proposal, all supporting the exemption for load-limiting belts. Vehicle manufacturers stated that the proposed exemption from the elongation requirements would allow design flexibility and lead to improved occupant restraint systems.

American Motors Corporation (AMC) stated that the exemption for load-limiting belts should only apply to Type 2 manual belts. The company argued that the only available data relates to the ability of Type 2 load-limiting belts to reduce certain head and upper-torso injuries. AMC stated that torso injury is not a function of lap belt loads and that no similar correlation has been made between lap belt loads and pelvic fractures. Therefore, the company believes that the exemption from the elongation requirements for Type 1 belts should be postponed until specific injury patterns can be correlated with lap belt loads.

The agency proposed allowing the exemption for both Type 1 and Type 2 belts in order to give manufacturers broader design latitude to use load-limiting features on all belt systems used in conjuction with automatic restraints. AMC is correct in its statement that more data are available regarding the correlation between Type 2 belts and upper-torso injury than is available regarding load-limiting features on Type 1 belts. However, comments received from Rolls-Royce Motors stated that the company has tested manual Type 1 belts incorporating load-limiting features and found that better results are obtained under the injury criteria of Safety Standard No. 208 (49 CFR 571.208) than with Type 1 belts which must comply with the elongation requirements. In light of this information, and the fact that load-limiting Type 1 belts would only be allowed in conjuction with automatic restraint systems complying with the injury criteria of Standard No. 208, the agency has decided to include Type 1 belts in the exemption. This will allow manufacturers to develop innovative designs to maximize the protection provided by its automatic restraint systems. If future data indicate a problem with Type 1 belts that incorporate load-limiting features, the exemption from the elongation requirements can be reconsidered by the agency.

The August 4, 1980, notice proposed to add a new definition to Standard No. 209 to define "load-limiter", and limited the exemption from the elongation requirements to belts incorporating load-limiters and installed in conjunction with automatic restraints. Volvo of America Corporation commented that the definition of "load-limiter" is very broad and could be interpreted to include all existing belt webbing. Volvo stated that the exemption should, therefore, apply to any Type 1 or 2 belt installed in conjunction with an automatic restraint, and not be limited to load-limiting belts.

While the agency understands Volvo's point that the proposed language may be extremely detailed, we believe the language is necessary to clarify the exemption and to avoid confusion for belt manufacturers. Safety Standard No. 209 is an equipment standard rather than a vehicle standard, and each seat belt assembly must be certified by the belt manufacturer. The proposed language was intended to create a clear distinction between belts complying with elongation requirements of Safety Standard No. 209 and those that incorporate load-limiting features that preclude compliance with the elongation requirements. The proposed language explained which belt systems must be labeled as being for use only in vehicles equipped with automatic restraints. The agency believes this language, including the definition of "load limiter", is necessary at the current time to clarify the requirements for those persons or manufacturers who may not be totally familiar with the requirements of Safety Standard No. 209. Otherwise, it would not be clear from the standard why certain belts are exempted from the elongation requirements of the standard.

In another comment related to this same subject, General Motors Corporation pointed out that the proposed labeling requirement for load-limiting belts could apply to all Type 1 and 2 belts incorporating load-limiting features even if all current 209 requirements are met. General Motors stated that load-limiting belt systems that can, nevertheless, comply with the elongation requirements of the standard should not be limited in their application to vehicles equipped with automatic restraint systems. The agency agrees with this argument, and the language is changed in this amendment accordingly.

General Motors also questioned the need to require any label at all on load-limiting belts. The proposal specified that such belts would have to be permanently marked or labeled to indicate the assembly may only be installed in vehicles in conjunction with an automatic restraint system. General Motors argued that a label is not necessary to control the installation of load-limiting belts in the proper vehicles. Seat belt manufacturers must currently provide appropriate installation instructions for its equipment. General Motors contends that this requirement, coupled with the fact that replacement belts are generally ordered and installed by a repair facility, will ensure that load-limiting belts are only installed in vehicles equipped with automatic restraints. The agency does not agree with this position. As stated earlier, the agency believes that care must be taken to distinguish load-limiting belt systems from other systems. If there is a label on the belt itself, a person making the installation will be aware that the belt should only be installed in conjunction with automatic restraints. This should be made obvious to the person making the installation without reference to the installation instructions. Further, none of the other commenters objected to the proposed labeling requirement. American Motors Corporation specifically stated that a label is necessary.

General Motors is correct in its statement that this warning will also be

provided in the installation instructions provided by the belt manufacturer. Paragraphs S4.1(1) of Safety Standard No. 209 provides, in part, that the installation instruction sheet provided by the belt manufacturer shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles. Therefore, belt manufacturers will be required to specify in the installation instructions that load-limiting belts are only to be installed in combination with automatic restraint systems. The agency believes that at the current time these duplicative warnings, in the instruction sheet and on a belt label, are a necessary precaution to ensure that load-limiting belts are only installed in the proper vehicles. After a majority of vehicles on the road are equipped with automatic restraints, such labeling may no longer be necessary.

Volvo of America Corporation commented that some upper limit on belt elongation may be required for Type 1 manual belts incorporating load-limiting features, although no such limit was specified in the proposal. Volvo pointed out that Type 1 belts installed in conjunction with air cushion restraints will also provide roll-over protection for vehicle occupants. The company is concerned that if no upper limit on elongation is specified, such belts may not provide the intended protection in roll-over accidents.

While the agency agrees that this is a legitimate concern, it does not believe it is necessary to specify such an upper limit at the current time. It is not likely that manufacturers will design load-limiting belt systems that will elongate appreciably beyond the limits specified in Standard No. 209. Presumably, load-limiting belts will be designed to provide actual restraint in conjunction with the automatic restraint system, if the vehicle is to comply with the injury criteria of Safety Standard No. 208. If a load-limiting belt design elongates to the extent that it would provide no protection in roll-over accidents, it would also not provide any protection in frontal crashes. Therefore, it is not likely that manufacturers would permit such extensive elongation in their systems. Moreover, the forces generated in frontal crashes are more severe than those that occur in roll-over accidents, so the elongation that would occur even with load-limiting systems would not be as great in roll-over accidents as in frontal accidents. The agency believes that manufacturers should be given broad latitude in the development of load-limiting belt systems to be used in vehicles equipped with automatic restraints. In light of these considerations, no uppper limit on belt elongation is specified in this amendment. Manufacturers should be cognizant of the point made by Volvo, however, during the development of their systems.

The comments of Renault USA included general questions regarding automatic seat belts and the relationship between Safety Standard No. 208 and Safety Standard No. 209. Some confusion apparently exists regarding paragraph S4.5.3.4 of Safety Standard No. 208 and agency interpretations regarding that paragraph. The agency has stated in the past that only automatic belts that are installed to meet the frontal crash protection requirements of S5.1 of Standard No. 208 are exempted from the requirements of Standard No. 209. Yet, the agency has also stated that those portions of Standard No. 209 relating to retractors are applicable to all automatic belts. Renault finds these statements inconsistent.

Paragraph S4.5.3.4 of Standard No. 208 is a general provision which exempts certain automatic belts, those meeting the injury criteria of the standard, from the requirements of Standard No. 209. However, paragraph S4.5.3.3(a) of Standard No. 208 specifically provides that automatic belts shall conform to S7.1 of Standard No. 208, and that paragraph relates to the performance requirements for belt retractors specified in Standard No. 209. It is for this reason that the agency has stated that all automatic belts must comply with the retractor requirements, notwithstanding the general exemption specified in S4.5.3.4.

Renault contends that paragraph S4.5.3.4 is also inconsistent by its own terms since, Renault states, an automatic belt system must always comply with the injury criteria of S5.1 of Standard No. 208. This incorrect. Paragraph S4.5.3 of Safety Standard No. 208 specifies that an automatic belt may be used to meet the crash protection requirements of any option under S4 and in place of any seat belt assembly otherwise required by that option. Therefore, prior to the effective date of the automatic restraint requirements of the standard, automatic belts could be used to satisfy the third option of section S4—the seat belt option. Automatic belts installed under the third option would not be required to comply with the injury criteria of S5.1, since the injury criteria is only specified as a requirement under option 1 and option 2. Manufacturers are permitted, however, to install automatic belts in satisfaction of either option 1 or option 2 and to certify to the injury criteria, if they desire. In summary, automatic belts installed in passenger cars in compliance with the injury criteria of Safety Standard No. 208 are only required to comply with the provisions of Safety Standard No. 209 relating to retractors. They are not required to comply with any other provision in Standard No. 209. Automatic belts installed in passenger cars that are not certified as being in compliance with the injury criteria of Standard No. 208, i.e., those installed under the third option of the standard, are required to comply with all provisions of Standard No. 209. Manual seat belts having load-limiters, installed in vehicles in conjunction with automatic restraints meeting the injury criteria of Standard No. 208, are required to comply with all provisions of Standard No. 209 except the elongation requirements (by this amendment).

The agency has determined that this amendment is not a significant regulation under Executive Order 12221, "Improving Government Regulations," and the Departmental guidelines implementing that Order. Therefore, a regulatory analysis is not required. The exemption specified in this amendment provides manufacturers with broader design alternatives and should have little if any economic or environmental impact. Consequently, the agency has also determined that a regulatory evaluation is not required.

The engineer and lawyer primarily responsible for the development of this rule are William Smith and Hugh Oates, respectively.

§ 571.209 [Amended].

In consideration of the foregoing, Safety Standard No. 209, *Seat Belt Assemblies* (49 CFR 571.209), is amended as set forth below.

1. A new definition is added to section S3 to read: "Load-limiter" means a seat belt assembly component or feature that controls tension on the seat belt to modulate the forces that are imparted to occupants restrained by the belt assembly during a crash,

2. Paragraph S4.2(c) is amended to add the following phrase to the beginning of the first sentence: "Except as provided in S4.5,"

3. Paragraph S4.4(a) is amended to add the following phrase to the beginning of the first sentence after the heading "Type 1 seat belt assembly": "Except as provided S4.5,"

4. Paragraph S4.4(b) is amended to add the following phrase to the beginning of the first sentence after the heading "Type 2 seat belt assembly": "Except as provided in S4.5,"

5. A new section S4.5 is added to read:

S4.5 *Load-limiter.* (a) A Type 1 or Type 2 seat belt assembly that includes a load-limiter is not required to comply with the elongation requirements of S4.2(c), S4.4(a)(2), S4.4(b)(4) or S4.4(b)(5).

(b) A Type 1 or Type 2 seat belt assembly that includes a load-limiter and that does not comply with the elongation requirements of this standard may be installed in motor vehicles only in conjunction with an automatic restraint system as part of a total occupant restraint system.

(c) In addition to the marking requirements specified in S4.1(k), a Type 1 or Type 2 seat belt assembly that includes a load-limiter and that does not comply with the elongation requirements of this standard shall be permanently and legibly marked or labeled with the following words:

"This seat belt assembly may only be installed in vehicles in combination with an automatic restraint system such as an air cushion or an automatic belt."

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 5, 1981.

Joan Claybrook,

Administrator.

[FR Doc. 81-1036 Filed 1-9-81; 8:45 am]

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Proposed Rules

Federal Register
Vol. 46, No. 7
Monday, January 12, 1981

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 982

[Docket No. F&V AO 205-A5]

Filberts Grown in Oregon and Washington; Recommended Decision on Proposed Amendment of the Marketing Agreement, as Amended, and Order, as Amended, and Opportunity To File Written Exceptions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision proposes an amendment of the filbert marketing agreement and order, and provides interested persons opportunity to file written exceptions to the proposals. The proposed amendment would change the method for adopting and implementing the marketing policy and volume regulation. Other proposals include a definition of a new term, "marketing year," which would change procedures for various aspects of marketing order administration, and would change the name of the Filbert Control Board to the Filbert/Hazelnut Marketing Board. The main purpose of the proposal is to improve the effectiveness of the order.

DATE: Written exceptions to this recommended decision must be filed by January 30, 1981.

ADDRESSES: Interested persons may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Two copies of all written exceptions shall be submitted, and they shall be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250 (202) 447-5053. The Draft Impact Statement describing the options considered in developing this proposal and the impact of implementing each option is available on request from J. S. Miller.

SUPPLEMENTARY INFORMATION: Prior documents in the proceeding: Notice of Hearing—Issued June 18, 1980, and published June 24, 1980 (45 FR 42315).

This proposal has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "significant".

J. S. Miller has determined that an emergency situation exists that warrants less than a 60-day comment period. If adopted, the new marketing year would begin May 1, 1981, and handlers need to know of any such change as soon as possible so they can plan their processing, shelling and marketing operations accordingly.

Preliminary statement. Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed amendment of the marketing agreement and order regulating the handling of filberts grown in Oregon and Washington. Copies of this decision may be obtained from the Hearing Clerk.

This proposed amendment was formulated on the record of a public hearing held at Portland, Oregon, July 9, 1980. Notice of the hearing was published in the June 24, 1980, issue of the **Federal Register** (45 FR 42315). The notice contained proposals submitted by the Filbert Control Board.

Material issues. The material issues of record are as follows:

(1) Adding the definitions of (a) "marketing year" and (b) "disappearance", and (c) revising the definition of "Board";

(2) Providing for a public member and alternate on the Board and establishing the qualifications for such membership;

(3) Changing the dates specified nomination procedures and terms of office for members and alternates on the Board;

(4) Providing that the books of the Board be audited by one or more public accountants at least once each marketing year;

(5) Changing the method for adopting and implementing the Board's marketing policy and volume regulation;

(6) Clarifying which free and restricted percentages are applicable at any given time;

(7) Changing the date by which handlers may defer satisfying their restricted obligations by posting bonds;

(8) Increasing the maximum level of funds in the Board's operating reserve;

(9) Changing the dates by which excess funds may be used by the Board or must be refunded to handlers;

(10) Changing the dates by which handlers must report their carryovers; and

(11) Making such changes in the order as may be necessary to bring it into conformity with any amendment that may result from the hearing.

Findings and conclusions. The following findings and conclusions on the material issues are based on the record of the hearing.

(1)(a) A new term, "marketing year" should be added to the marketing agreement and order (hereinafter referred to as the "order") and defined in § 982.17 to mean the 12 months from May 1 to the following April 30, both inclusive, or such other period of time as may be recommended by the Board and established by the Secretary. This term would replace "fiscal year" and "marketing policy year", both of which are currently defined to mean the 12 months from August 1 to the following July 31, both inclusive. The current definition of "marketing policy year" also provides for "such other period of time as may be recommended by the Board (i.e., the Filbert Control Board hereinafter referred to as the "Board") and established by the Secretary."

It was proposed in the notice of hearing (hereinafter referred to as the "notice") that the definitions of "fiscal year" and "marketing policy year" be revised to mean the 12 months from May 1 to the following April 30, both inclusive, or such other period of time as may be recommended by the Board and established by the Secretary. With respect to the proposed revision of the definition of "marketing policy year", the evidence of record is that the dates of operation should be so revised. While the order currently permits this change through informal rulemaking, proponents testified that the revised

dates of operation should be stated in the order.

The marketing policy year now begins August 1. The purpose of the proposal to change the beginning of the year to May 1 is to encourage handlers to shell or export filberts during May, June, and July. Currently, handlers tend to delay shelling or exporting until August 1 in order to obtain restricted credit in the new marketing policy year. Thus, these handlers may have a substantial inventory of inshell filberts. In the past, this delay has resulted in uncertainty for handlers in planning for pre-harvest shipments of inshell filberts. Also, excessive supplies of inshell filberts carried over into a new marketing policy year have resulted in price weakness in that year. To the extent that the change in marketing policy year would encourage earlier shelling and exporting of filberts during May, June, and July, it would reduce handlers' inventories of inshell filberts and in turn lower their costs.

May 1 should be selected initially for the beginning of the marketing policy year because April 30 is inventory tax date in Oregon and handlers take inventory as of that date. Moreover, handlers generally have completed processing by May 1, and most have satisfied their withholding obligations by then. However, there is still time to develop shelled and export business. Authority to change the date by informal rulemaking should be retained in the order in the event that unforeseen circumstances develop which would necessitate changing the beginning of that year.

The evidence of record does not support the need for a separate definition of "fiscal year" since no situation was envisioned in the testimony that revealed that the fiscal year date should differ from the marketing policy year. It was testified that beginning the fiscal and marketing years on different dates would only create confusion in the Board's records, in appointment of Board members and in reconciling data. One operating period should apply to order provisions which currently refer either to a "marketing policy year" or "fiscal year". In lieu of those terms, the term "marketing year" should be defined and substituted for "marketing policy year" and "fiscal year" wherever these terms appear in the order. Sections 982.54(c) and 982.86(b)(3) should also be revised by deleting "(or fiscal year, if applicable)" wherever that term appears. Also, for the purpose of uniformity in Material Issues to follow, "marketing year" will be used in the discussion of recommended changes instead of "marketing policy year", or "fiscal year" as contained in the notice.

(b) Current § 982.19 should be redesignated § 982.20 and a new § 982.19 should be added to define the term "disappearance" to mean the difference between orchard-run production and the available supply of merchantable filberts and merchantable equivalent of shelled filberts. The term "disappearance" should also reflect the quantity of cull filberts that are of no value, filberts used at home, local sales and unharvested filberts. Orchared-run production is the total amount of filberts produced by growers. The available supply of merchantable filberts and the merchantable equivalent of shelled filberts should be understood to include the merchantable inshell equivalent of ungraded lots.

The addition of a definition of the term "disappearance" is necessary because that term appears in the revised §§ 982.30(c) (1) and (2), as discussed in the Material Issue (5). Provisions in these two subsections provide that for the purpose of computing the "preliminary computed" and "final computed" percentages, the average of the "disappearance" for the past three years shall be used. The use of such an average eliminates the need for the Board to estimate in September the amount of the individual components to be included in the new definition of "disappearance". The precise level of components is difficult to estimate before harvest and the three year average of disappearance should be a close approximation. For the purpose of recommending "final" percentages on or before November 15, the Board may consider the estimates of the individual factors which would be included in "disappearance".

(c) The definition of "Board" in § 982.18 should be revised to mean the "Filbert/Hazelnut Marketing Board". "Filberts" are generally known as "Hazelnuts" on world markets and this change would identify the domestic commodity more clearly when exported to those markets. "Marketing" should be substituted for "Control", since "Marketing" more clearly demonstrates the purposes of the Board. As a conforming change, the title of the order should be changed to read "Filberts/Hazelnuts Grown in Oregon and Washington".

(2) In § 982.30(g), "public" should be inserted before "member" to make it clear that the person serving on the board is neither a grower nor a handler but represents the public.

So that the "public member" would be truly representative of the public and represent its views, that member should not have any direct financial interest in the growing or handling of filberts. The term "direct" should mean that the "public member" would not have any business dealing with any handler or grower and would not receive any remuneration directly from a grower or handler. "Direct financial interest", however, should not include interests clearly of an indirect nature such as salaries of University employees who receive grants for studies of agricultural products. This qualification should be added as a new paragraph (b) in § 982.34. Paragraph (b) should provide that any person nominated to serve as a public member or alternate shall not have a direct financial interest in any filbert growing or handling operation.

Except as provided in §§ 982.30(g) and 982.34(b), the evidence of record is that it is unnecessary to provide any additional qualifications for public member because the language should be broad enough to include anyone who is outside the industry and well qualified. The aim of the Board should be to recommend those who understand the marketing process and have a knowledge of consumer interests.

(3) In view of the proposal in Material Issue No. (1)(a) to change the beginning date of the marketing year to May 1, the dates in §§ 982.32 (e) and (f), and 982.33(b)(1), which pertain to nomination procedures and terms of office for members and alternates on the Board, should be deleted and replaced with provisions expressed in terms of a specified number of days before or after the beginning of the marketing year, as applicable. Then, it would be unnecessary to amend §§ 982.32 and 982.33 if the dates of the marketing year are changed.

In § 982.32(e), June 1 should be deleted as the final date for submitting board nominees to the Secretary and replaced with a provision setting the deadline for submitting nominations 60 days prior to the beginning of a marketing year. This would provide adequate time for the Secretary to act on the nominations prior to the marketing year. Also, the term "that date" appearing in the last sentence of paragraph (e) should be deleted, and the phrase "by that time" substituted because a date would no longer be contained in that paragraph. For effective management of the order, all industry Board members should be selected by the Secretary before the beginning of the marketing year to provide continuity in the decision making process of the Board.

A proposal in the notice of hearing to amend the first sentence of § 982.32(e) by deleting the word "group" where it

first appears in that sentence was not supported at the hearing and that word should be retained.

Since the beginning of terms of office of Board members would coincide with the beginning of the marketing year, the phrase "by July 1 of any year", in the second sentence of § 982.32(f) should be deleted and the phrase "within 30 days after the beginning of the marketing year", substituted instead. This change would allow the Secretary to select the public member or alternate without regard to nominations if the new Board members fail to nominate such member or alternate within 30 days after the beginning of the marketing year.

Finally, § 982.33(b) should be amended to eliminate the specific dates of August 1 and July 31. Instead, the beginning of the terms of office of all Board members should coincide with the beginning of the marketing year to enable them to perform their duties as Board members more efficiently.

(4) The Board should cause its books to be audited by one or more public accountants, approved by the Board, at least once for each marketing year and at such other times as the Board deems necessary or as the Secretary may request, and file with the Secretary reports of all audits made. This duty is different from that proposed at the hearing which would have required the use of one or more "accountants", and different from that currently set forth in § 982.39(f) which requires the Board to use a "competent public accountant" and file with the Secretary three copies of the reports of all audits made.

The evidence of record does not support the use of an "accountant" who is neither a "certified public accountant" nor a "public accountant". For example, "certified public accountants" so certified by the State of Oregon (in which the Board's office is located) have passed certain tests provided by the Accountancy Board and can perform in any other State based on their certification in Oregon. A "public accountant" is certified by the Oregon Secretary of State to practice in Oregon, and need not be a "certified public accountant". The testimony was that the Board should have flexibility in selection of its accountants, depending upon its needs, in order to save costs, at the same time assuring itself that audits are made by competent professionals. However, no guidelines were suggested at the hearing which the Board might use to determine when it would be appropriate to have its books audited by someone other than a "certified public accountant" or "public accountant". Further, only individuals in these two categories can certify as to the accuracy of the records. For the purposes of this provision, "public accountant" should include individuals in either of these two categories. With the required use of "public accountants," the term "competent", as currently used in § 982.39(f) in reference to the qualifications of the accountants, is no longer necessary and should be deleted. Similarly, it is no longer necessary to specify the exact number of copies of audit reports to be filed with the Secretary, and the requirement for filing three copies should be deleted.

(5) Filbert production in Oregon and Washington during the period 1969 through 1978 averaged 10,722 tons annually, but for five of the last 10 crops production exceeded the average by as much as 40 percent. Historically, the primary and most profitable outlet for filberts has been the domestic inshell market. That market, however, is limited, with annual sales holding relatively constant between about five and six thousand tons a year. Retail sales of inshell filberts are confined almost exclusively to the holiday season, and most inshell filberts for the domestic market are sold by handlers during the period August through November.

Filberts are harvested during the months of September and October, and the grower price is usually established just prior to harvest. Thus, if any uncertainty develops in the market just prior to harvest, as has often been the case for reasons to be discussed, a reduced grower price results. The grower price represents a composite based on the prices handlers expect to receive for sales of inshell and shelled filberts in domestic markets and exports. The domestic inshell market is considered the most important of these, and it is the one most subject to sudden price variation during periods of market uncertainty or oversupply.

To promote orderly marketing conditions and thereby improve grower returns, § 982.40 currently provides for a marketing policy and, when appropriate, volume regulation. For each marketing policy year, the Board must hold a meeting for the purpose of recommending to the Secretary a marketing policy for that year. The recommendation must include the inshell allocation, based on such factors as an adjustment for carryover subject to regulation, the trade demand, and the Board's estimate of the quantity of merchantable filberts or available supply expected to be produced that year. It must also take into consideration the need for an adjustment to protect against any error in estimation of that production. As soon as practicable after the official production estimate is released in November, the Board shall, if necessary, meet to determine if any change should be made in the Board's estimate of the quantity of merchantable filberts or available supply expected to be produced. At any time prior to February 15, the Board, or two or more handlers who during the preceding marketing policy year (or fiscal year, when appropriate) handled at least 10 percent of all filberts handled, may recommend to the Secretary revision in the marketing policy for that year.

Section 982.41 currently provides, in part, that whenever the Secretary finds, on the basis of the Board's recommendation or other information, that limiting the quantity of merchantable filberts which may be handled during a marketing policy year would tend to effectuate the declared policy of the act, the Secretary shall establish the free percentage or increase the free percentage, as applicable, to prescribe the portion of those filberts which may be handled as inshell filberts, and a restricted percentage to prescribe the portion that must be withheld from such handling. In establishing such percentages, the Secretary must consider the ratio of (a) the use of the estimated inshell trade demand and, when applicable, the inshell handler carryover at the end of the year, less that portion of the inshell handler carryover at the beginning of the marketing policy year not subject to regulation to (b) the estimated supply of merchantable filberts subject to regulation and other relevant factors.

While this method has proven generally satisfactory, the record evidence is that it has not always protected against underestimation of the crop or overestimation of domestic market needs and in some years it has resulted in the release of excessive amounts of inshell filberts. The Board's September estimates of crop production and trade demand are the two major components in the calculation of the free and restricted percentages which have been most subject to error. A more accurate estimate of crop production is not available until November. In six of the last ten years, the November estimate has exceeded the September estimate, in one year by as much as 19 percent. The Board's September marketing policy recommendations have a direct influence on grower prices, and the record evidence is that when handlers question the Board's September estimates, lower grower prices have resulted.

In 1975, the order was amended to permit the Board to make an adjustment to protect against any error in estimation of the production. Nevertheless, the record evidence is that market uncertainty in the critical September-November period has occurred because of the perceived possible inaccuracy of initial Board production estimates and the resulting recommended free and restricted percentages. Thus, even when the price to growers should have been stronger, market uncertainty negated that expectation.

Although the Board's September estimates of trade demand have not varied greatly from year to year, the record evidence is that the resulting quantities of filberts available to the domestic inshell markets have varied substantially and in some years have been well in excess of the September trade demand estimates. Thus, the Board's difficulty in tailoring the available supply to its September estimate is another factor which promotes market uncertainty.

To reduce market uncertainty and thus improve grower returns, the order should be amended to provide a different method for recommending and establishing free and restricted percentages. This method should be more systematic and less vulnerable to errors in estimation of crop production and trade demand, and should be implemented earlier in the marketing year. To achieve this, computations based on a prescribed formula using historical data should be adopted. And, until more accurate information is available later in the marketing year, computed free and restricted percentages for that year should be in effect. For the purpose of recommending marketing policy, the Board should meet earlier in the marketing year than it currently does.

Therefore, § 982.40 should be amended to provide that for each marketing year, the Board may hold meetings for the purpose of computing marketing policy (i.e., preliminary computed and final computed free and restricted percentages) for that year, and shall do so for the purpose of submitting any recommendations on its policy to the Secretary (i.e., the trade demand, the final percentages or any revision of those percentages). Prior to August of a marketing year, the Board should meet in order to recommend establishment of an inshell trade demand for that year to the Secretary. The Board may then designate one of its employees to compute and announce the preliminary computed and final computed free and restricted percentages, as based on such trade demand established by the Secretary pursuant to § 982.40(b). Pursuant to § 982.40(c) and (e) the Board should also meet on or before November 15 to recommend "final" percentages to the Secretary. Also, the Board should be authorized to meet prior to February 15 if it is to recommend a revision of such percentages.

In addition to these meetings, the Board may deem it necessary to hold additional marketing policy meetings, for example in September or October. Proposed § 982.40(a) is a statement of general guidelines for the operation of the section.

Section 982.40(b) should provide that prior to August of a marketing year, the Board shall recommend establishment of an inshell trade demand for that year to the Secretary. Section 982.16 currently defines the inshell trade demand to mean the quantity of inshell filberts acquired by the trade from all handlers during a marketing policy year for distribution in the continental United States. For the purpose of the initial marketing policy computations, the inshell trade demand shall be equal to the average of the trade acquisitions of inshell filberts during the preceding three marketing years. If the trade acquisitions during any one or all of those years are abnormally low because of crop conditions, the Board may use a prior year or years to determine the three year average. Thus, the words "because of crop conditions", should be added following the word "low" in the third sentence of § 982.40(b) proposed in the notice. A year might be designated as abnormal if, in the Board's judgement, the crop was so short that not enough filberts were available to supply a normal demand.

If the Secretary finds, on the basis of the Board's recommendation or other information, that limiting the quantity of merchantable filberts which may be handled during a marketing year through application of the free and restricted percentages to that trade demand, as provided in § 982.40(c), would tend to effectuate the declared policy of the act, the Secretary shall establish that trade demand.

Using an average of three years to calculate trade demand is appropriate. Such an average is long enough to dampen the effect of short-term aberrations which often occur in the supply and demand, yet not too long as to obscure trends in the consumption of filberts.

Section 982.40(c) should be added to provide that prior to September 20 of that marketing year, the Board shall compute and announce "preliminary computed" free and restricted percentages for that year to release 70 percent of the inshell trade demand computed for that year. When the Board determines that a firm field price has been established for filberts for that marketing year, it shall compute and announce "final computed" free and restricted percentages for that year to release 80 percent of the inshell trade demand computed for that year. The "preliminary computed" or "final computed" free percentages shall be computed by multiplying the trade demand, adjusted by the declared carrying, by 70 percent or 80 percent, as the case may be, and dividing by the most recent official estimate of orchard-run production, less the average disappearance during the preceding three years, plus the undeclared carryin. The difference between 100 percent and the preliminary or final computed free percentage shall be the "preliminary computed" or "final computed" restricted percentage.

The computation of "preliminary computed" and "final computed" percentages should be made using the trade demand computed pursuant to § 982.40(b). The use of 80 percent of such trade demand for the purpose of computing the "final computed" percentages provides a safety factor of 20 percent which is slightly larger than the largest percentage of error previously encountered by the Board in estimating the crop. This percentage will apply until November when a more precise estimate will be available. The use of 70 percent until a firm field price has been established should provide incentive for both handlers and growers to agree on a firm field price. Early establishment of a price is desirable to reduce marketing uncertainties which tend to inhibit domestic inshell sales and ultimately lower the grower price. In the past, delays in establishing a field price have resulted in handlers selling filberts at a lower wholesale price than was justified by existing conditions.

Section 982.40(c) should also provide that on or before November 15, the Board shall meet to recommend to the Secretary the "final" free and restricted percentages to release 100 percent, or up to 110 percent if market conditions justify, of the inshell trade demand previously established by the Secretary for the marketing year. The recommendation shall include the estimated tonnage of merchantable filberts expected to be produced during the marketing year, the estimated tonnage of inshell filberts held by handlers on the first day of the marketing year which may be available

for handling as inshell filberts thereafter, and any other pertinent factors bearing on the marketing of filberts during the marketing year. Whenever the Secretary finds, on the basis of the recommendation of the Board, or other available information that to establish the final free and restricted percentages would tend to effectuate the declared policy of the act, the Secretary shall establish such percentages.

Evidence of record is that November 15 should be the final date on which the Board should make its recommendation of the final free and restricted percentages to the Secretary. This deadline is necessary so that handlers will have sufficient time to adjust their operations to the regulatory actions. However, the Board should not be precluded from meeting before November 15 if it can make accurate estimates of the tonnage of merchantable filberts expected to be produced during the marketing year. Other considerations at this meeting should be the carryover of filberts at the start of the marketing year, prices, imports, trade position and any other factors which may affect market conditions.

The Board should be permitted to recommend release of more than 100 percent—up to 110 percent—of the trade demand if justified by market conditions. In the past, increases in free percentages have not necessarily resulted in increased domestic shipments. However, the record evidence is that in a strong market release of an additional amount may be warranted, and providing for the release of up to 110 percent would allow handlers to ship as many inshell filberts as the seasonal inshell market could absorb. However, release of amounts in excess of 110 percent should not be permitted. With few exceptions, the actual amount the market has absorbed in recent years did not exceed the trade demand as would have been computed, using a three year average. However, on occasions, when the equivalent of more than 110 percent of trade demand was released, wholesale market prices fell substantially. A prescribed maximum percentage above 110 percent could in itself create market uncertainty at the time grower prices are established because of the potential for unlimited upward adjustment of the total amount of inshell filberts to be released in domestic outlets.

The last sentence in proposed § 982.40(c) differs from that contained in the notice, which provided that "whenever the Secretary concurs with the recommendation of the Board, the Secretary shall establish the final free and restricted percentages". The record evidence is that this wording would unnecessarily restrict the actions of the Secretary. Paragraph (c) should instead provide that whenever the Secretary finds, on the basis of the recommendation of the Board, or other available information, that to establish the final free and restricted percentages, would tend to effectuate the declared policy of the act, the Secretary shall establish such percentages.

Section 982.40(e) should provide that any time prior to February 15 of the marketing year, the Board may recommend to the Secretary revisions in the marketing policy for that year. For the reasons previously stated, paragraph (e) should provide that in no event shall any revision result in free and restricted percentages which would release more than 110 percent of the inshell trade demand computed for that marketing year. Following the Board's November meeting, it may become apparent to handlers that changes have occurred in the market since that meeting which may necessitate revision of the Board's policy. Thus, paragraph (e) should also provide that at any time during the period December 1 through February 10, at the request of two or more handlers who during the preceding marketing year handles at least 10 percent of all filberts handled, the Board shall meet to determine whether the marketing policy should be revised. February 10 should be established as the deadline for such request in order to enable the Board to make the necessary arrangements for the meeting, and to meet before the February 15 deadline.

Finally, § 982.40(d) should provide that prior to September 20, the Board may review grade and size regulations and recommend any modifications thereof. This provision is the same as currently contained in § 982.40(a)(2). So that growers and handlers would be aware of any changes before new crop filberts are handled, the Board's review should be made prior to September 20. When considering changes in the grade and size regulation, the Board should take into account whether such changes will necessitate changes in plant equipment or operations. The Board should allow handlers sufficient time to complete such changes before they begin handling new crop filberts of the current marketing year. However, for discussion and recommendation of possible changes in grade and size regulations for future marketing years, the September 20 deadline should not apply.

(6) Section 982.41 should be revised to conform with the proposed revision of § 982.40 by providing that the free and restricted percentages—as computed by the Board, or established by the Secretary pursuant to § 982.40, as the case may be—shall apply to all merchantable filberts handled during the marketing year. Also, the order currently provides that until the free and restricted percentages are established by the Secretary for a marketing year, the percentages in effect at the end of the previous year are applicable. Under the proposal, the "preliminary computed" or "final computed" percentages would be applicable in September, October, or later, and the final percentages would not be established by the Secretary until November or December. Therefore, § 982.41 should also provide that until the "preliminary computed" or "final computed" free and restricted percentages are computed by the Board for the current marketing year, the percentages in effect at the end of the previous marketing year shall be applicable.

As a conforming change, §§ 982.50(a)(1) and (d) should be revised by adding the word "applicable" before the terms "free percentage" and "restricted percentage" wherever they appear. That section provides for the computation of a handler's restricted obligation. The applicable free and restricted percentages at any given time for such computations shall be those percentages then effective pursuant to § 982.41.

(7) Section 982.54(a) currently provides, in part, that compliance by any handler with the requirements of § 982.50 as to the time when restricted filberts shall be withheld shall be temporarily deferred to any date desired by the handler, but not later than April 30 of the marketing policy year. In view of the proposed change in the beginning of the marketing year, this deadline should be changed to not later than 60 days prior to the end of the marketing year.

Thus, handlers would have to meet their withholding obligations by the last day in February if the marketing year begins May 1 (as discussed in Material Issue (1)(a)). The 60-day period allows sufficient time to process documents and make the determination that the handlers have satisfied their withholding obligations. A longer period of time could impose a hardship on handlers who are shelling to satisfy their obligations and are limited by their shelling capacity.

(8) The Board, with the approval of the Secretary, should be permitted to

establish and maintain an operating monetary reserve in an amount not to exceed approximately one marketing year's operational expenses or such lower limits as the Board, with the approval of the Secretary, may establish. Currently, § 982.62(a) permits a maximum reserve of 50 percent of the average Board expenses for the most recent five years.

The increase in the operating reserve is necessary as a result of the proposed change in the beginning of the marketing year. For example, if the beginning date is changed from May 1 to August 1, a marketing year of 15 months would result for which no adequate funds may be available. Also, little is known regarding prospective crop size as early as May 1. If experience indicates that this results in an unnecessary amount of funds in the operating reserve, the Board with the approval of the Secretary, should be able to reduce the percentage to a level considered reasonable.

(9) Section 982.62(b) should be revised to permit the Board to maintain and use, until December 1, funds in excess of reserve requirements and the previous marketing year's expenses, so long as the handler's pro rata share of excess funds are refunded or credited to each handler's account by January 1. Currently, the Board may use excess funds for four months and must refund them within five months (December 31) of the end of the previous fiscal year (July 31). Under the proposal, the marketing year would end April 30, and the Board would therefore have to refund any excess by September 30.

Adequate funds generally are obtained from handlers by December 1 of each year. This proposal would permit changes in the marketing year without depriving the Board of the use of excess funds until such time as the Board obtains adequate assessments in the new marketing year. January 1 would afford the Board a reasonable time to make payment following the December 1 deadline on the use of the funds. Also, with the proposed change in the marketing year to begin May 1, the Board might have little or no assessment income for possibly six months of the marketing year. The Board must have funds available for its maintenance and functioning.

(10) In addition to the current requirement in § 982.65 that handlers file reports of inventory as of January 1 and August 1, that section should also require handlers to file reports as of May 1. If the marketing year begins on May 1, as proposed in Material Issue (1)(a), it is essential that the industry have a record of carryover from the prior marketing year. It is necessary, however, to retain the August 1 date because there is a possibility that a large quantity of the carryover on May 1 may be orchard-run condition, and a more accurate accounting would be obtained on August 1. It would also be desirable to have an accounting of the movement of filberts, both inshell and shelled, for the period from May 1 to August 1. Finally, the Board, with the approval of the Secretary, should be able to require carryover reports as of dates other than January 1, May 1, and August 1. If the marketing year were to begin on other than those dates, for example, it would be necessary to have an inventory as of that date.

(11) Some of the amendatory actions included in this recommended decision require conforming changes elsewhere in the order, as amended. Such changes have been discussed with the issues to which they are pertinent. All such changes should be incorporated in the recommended amendment of the order.

Rulings on briefs of interested persons. At the end of the hearing, the Administrative Law Judge fixed August 8, 1980, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing. No briefs were filed.

General findings. Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary, and in addition, to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except for the findings and determinations which may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of filberts grown in the production area in the same manner, as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(5) There are no differences in the production and marketing of filberts grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(6) All handling of filberts grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended Amendment of the Marketing Agreement and Order

The following amendment of the marketing agreement and order, as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

1. The Title of the order is revised to read as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

2. Section 982.17 is revised to read as follows:

§ 982.17 Marketing year.

"Marketing year" means the 12 months from May 1 to the following April 30, both inclusive, or such other period of time as may be recommended by the Board and established by the Secretary.

§§ 982.1-982.88 [Nomenclature Change]

3. The terms "marketing policy year" and "fiscal year" are changed to "marketing year" wherever they appear in §§ 982.1 through 982.88.

4. Section 982.18 is revised to read as follows:

§ 982.18 Board.

"Board" means the Filbert/Hazelnut Marketing Board established pursuant to § 982.30.

5. Section 982.19 is renumbered § 982.20 and a new § 982.19 is added to read as follows:

§ 982.19 Disappearance.

"Disappearance" means the difference between orchard-run production and the available supply of merchantable filberts and merchantable equivalent of shelled filberts.

§ 982.20 [Renumbered from § 982.19]

6. Section 982.30(g) is revised to read as follows:

§ 982.30 Establishment and membership.

* * * * *

(g) One public member who is neither a grower nor a handler.

7. Section 982.32(e) and (f) are revised to read as follows:

§ 982.32 Nomination.

* * * * *

(e) All votes cast by cooperative handlers, independent handlers, or for cooperative growers, shall be weighted according to the tonnage of certified merchantable filberts and, when shelled filbert grade and size regulations are in effect, the inshell equivalent of certified shelled filberts (computed to the nearest whole ton) recorded by the Board as handled by each such handler or cooperative grower group during the preceding marketing year and if less than one ton is recorded for any such handler or cooperative grower group, the vote shall be weighted as one vote. All votes cast by independent growers shall be given equal weight. Nominations received in the foregoing manner by the Board shall be reported to the Secretary at least 60 days prior to the beginning of each marketing year, together with a certificate of all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary. If such nominations of any group are not submitted to the Secretary by that time, the Secretary may select the representatives of that group without nomination.

(f) Nominees for the member and alternate member positions specified in § 982.30(g) shall be chosen by the other eight members who are to serve on the Board during the ensuing marketing year. If nominations for such member or alternate are not submitted within 30 days after the beginning of the marketing year, the Secretary may select such member or alternate without nomination.

* * * * *

8. Section 982.33(b)(1) is revised to read as follows:

§ 982.33 Selection and term of office.

* * * * *

(b) *Term of office.* (1) The term of office of each member and alternate member shall be two marketing years from the beginning of the marketing year, except that (i) the terms of office of one of the grower members and the member's alternate specified in § 982.30 (a) and (b) shall expire at the end of the first even numbered marketing year following the year of selection, and the terms of office of all other members and alternate members shall expire at the end of the first odd-numbered marketing year following the year of selection; (ii) if the representation on the Board in an ensuing marketing year will, by reason of change in representation pursuant to § 982.30 (c) and (f), be different from that in the current marketing year, the terms of office of all grower and handler members and alternate members shall expire at the end of the current marketing year and successor members and alternate members shall be nominated and selected in conformance with §§ 982.30 and 982.33; (iii) if the districts for independent grower presentation in an ensuing marketing year will be different from that in the current marketing year, the terms of office of all independent grower members and alternate members specified in § 982.30 (e) and (f) shall expire at the end of the current marketing year, and persons nominated to succeed them shall be nominated and selected so as to conform with such changed representation.

* * * * *

9. Section § 982.34 is revised to read as follows:

§ 982.34 Qualification.

(a) Any person selected to serve as a member or an alternate member of the Board shall qualify by filing with the Secretary a written acceptance of appointment. Any member or alternate member who at the time of selection was a member or employed by a member of the group which nominated that person shall, upon ceasing to be such a member or employee, become disqualified to serve further and that position on the Board shall be deemed vacant. In the event any member or alternate member of the Board qualified and selected, in accordance with the provisions of §§ 982.30 and 982.32, to represent independent growers should, during that person's term of office, handle filberts produced by other growers, or become an employee of a handler, that position on the Board shall thereupon be deemed to be vacant.

(b) Any person nominated to serve as a public member or alternate shall not have a direct financial interest in any filbert growing or handling operation.

10. Section § 982.39(f) is revised to read as follows:

§ 982.39 Duties.

* * * * *

(f) To cause the books of the Board to be audited by one or more public accountants, approved by the Board, at least once for each marketing year and at such other times as the Board deems necessary or as the Secretary may request, and to file with the Secretary reports of all audits made;

* * * * *

11. Section 982.40 is revised to read as follows:

§ 982.40 Marketing policy and volume regulation.

(a) *General.* As provided in this section, for each marketing year, the Board may hold meetings for the purpose of computing its marketing policy for that year, and shall do so for the purpose of submitting any recommendations on its policy to the Secretary. The Board may designate one of its employees to compute and announce the preliminary computed and final computed free and restricted percentages.

(b) *Trade demand.* Prior to August of a marketing year, the Board shall recommend establishment of an inshell trade demand for that year to the Secretary. That inshell trade demand shall be equal to the average of the trade acquisitions of inshell filberts during the preceding three years. If the trade acquisitions during any one or all of those years was abnormally low because of crop conditions, the Board may use a prior year or years in determining the three-year average.

If the Secretary finds, on the basis of the Board's recommendation or other information, that limiting the quanity of merchantable filberts which may be handled during a marketing year through application of the free and restricted percentages to that trade demand, as provided in paragraph (c) of this section, would tend to effectuate the declared policy of the act, the Secretary shall establish that trade demand.

(c) *Inshell allocation*—(1) *Preliminary computed percentages.* Prior to September 20 of that marketing year, the Board shall compute and announce preliminary computed free and restricted percentages for that year to release 70 percent of the inshell trade demand computed for that year. The preliminary computed free percentage shall be computed by multiplying that trade demand, adjusted by the delcared carryin, by 70 percent and dividing by the most recent official estimate of orchard-run production less the average disappearance during the preceding three years, plus the undeclared carryin. The difference between 100 pecent and the preliminary free percentage shall be the preliminary computed restricted percentage.

(2) *Final computed percentages.* The Board upon determining that a firm field price has been established for filberts for that marketing year, shall compute

and announce final computed free and restricted percentages for that year to release 80 percent of the inshell trade demand computed for that year. The final computed free percentage shall be computed by multiplying that trade demand, adjusted by the declared carryin, by 80 percent and dividing by the most recent official estimate of orchard-run production less the average disappearance during the preceding three years plus the undeclared carryin. The difference between 100 percent and the final computed free percentage shall be the final computed restricted percentage.

(3) *Final percentages.* On or before November 15 the Board shall meet to recommend to the Secretary the final free and restricted percentages to release 100 percent, or up to 110 percent if market conditions justify, of the inshell trade demand previously established by the Secretary for the marketing year. The recommendation shall include the following:

(i) The estimated tonnage of merchantable filberts expected to be produced during the marketing year.

(ii) The estimated tonnage of inshell filberts held by handlers on the first day of the marketing year which may be available for handling as inshell filberts thereafter.

(iii) Any other pertinent factors bearing on the marketing of filberts during the marketing year.

Whenever the Secretary finds, on the basis of the recommendation of the Board, or other available information that to establish the final free and restricted percentages would tend to effectuate the declared policy of the act, the Secretary shall establish such percentages.

(d) *Grade and size regulations.* Prior to September 20 the Board may consider grade and size regulations in effect and may recommend modifications thereof.

(e) *Revision of marketing policy.* At any time prior to February 15 of the marketing year, the Board may recommend to the Secretary revisions in the marketing policy for that year: *Provided,* That in no event shall any revision result in free and restricted percentages which would release more than 110 percent of the inshell trade demand computed for that marketing year. At any time during the period December 1 through February 10, at the request of two or more handlers who during the preceding marketing year handled at least 10 percent of all filberts handled, the Board shall meet to determine whether the marketing policy should be revised.

12. Section 982.41 is revised to read as follows:

§ 982.41 Free and restricted percentages.

The free and restricted percentages computed by the Board or established by the Secretary pursuant to § 982.40, shall apply to all merchantable filberts handled during the current marketing year. Until the preliminary or final computed free and restricted percentages are computed by the Board for the current marketing year, the percentages in effect at the end of the previous marketing year shall be applicable.

§ 982.50 [Amended]

13. Sections 982.50(a)(1) and (d) are amended by adding the word "applicable" before the words "free percentage" and "reserve percentage" wherever they appear.

14. Sections 982.54(a) and (c) are revised to read as follows:

§ 982.54 Deferment of restricted obligation.

(a) *Bonding.* Compliance by any handler with the requirements of § 982.50 as to the time when restricted filberts shall be withheld shall be temporarily deferred to any date required by the handler, but not later than 60 days prior to the end of the marketing year, upon the voluntary execution and delivery by such handler to the Board, before handling any merchantable filberts of such marketing year, of a written undertaking, secured by a bond or bonds with a surety or sureties acceptable to the Board, that on or prior to such date the handler will have fully satisfied the restricted obligation required by § 982.50.

* * * * *

(c) *Bonding rate.* Said bonding rate for each pack shall be an amount per pound representing the season's domestic price for such pack net to handler f.o.b. shipping point which shall be computed at the opening price for such pack announced by the handler or handlers who during the preceding marketing year handled more than 50 percent of the total volume handled. If such opening prices involve different prices announced by two or more handlers for respective packs, the price so announced shall be averaged on the basis of the quantity of such packs handled during the preceding marketing year by each such handler. Until bonding rates for a marketing year are fixed, the rates in effect for the preceding marketing year shall continue in effect and when such new rates are fixed, necessary adjustments should be made.

* * * * *

15. Section 982.62 (a) and (b) are revised to read as follows:

§ 982.62 Accounting.

(a) *Operating reserve.* The Board, with the approval of the Secretary, may establish and maintain an operating monetary reserve in an amount not to exceed approximately one marketing year's operational expenses or such lower limits as the Board, with the approval of the Secretary, may establish.

(b) *Refunds.* At the end of a marketing year, funds in excess of the marketing year's expenses and reserve requirements shall be refunded to handlers from whom collected and each handler's share of such excess funds shall be the amount of assessments the handler paid in excess of the handler's pro rata share of expenses of the Board. However, excess funds may be maintained and used by the Board until December 1 following the end of any such marketing year. *Provided,* That the Board shall refund to each handler upon request, or credit to the handler's account with the Board, the handler's share of such excess prior to January 1.

* * * * *

16. Section 982.65 is revised to read as follows:

§ 982.65 Carryover reports.

As of January 1, May 1, and August 1, or such other dates as the Board may recommend and the Secretary approve, each handler shall report within 10 days to the Board the handler's inventory of inshell and shelled filberts. Such reports shall be certified to the Board and the Secretary as to their accuracy and completeness and shall show, among other items, the following: (a) Certified merchantable filberts on which the restricted obligation has been met; (b) merchantable filberts on which the restricted obligation has not been met; (c) the merchantable equivalent of any filberts intended for handling as inshell filberts; and (d) restricted filberts withheld.

17. Section 982.86(b)(3) is revised to read as follows:

§ 982.86 Effective time, termination or suspension.

* * * * *.

(b) *Suspension or termination.* * * *

(3) The Secretary shall terminate the provisions of this subpart at the end of any marketing year whenever the Secretary finds that such termination is favored by a majority of the producers of filberts who during the preceding marketing year have been engaged in the production for marketing of filberts in the States of Oregon and Washington: *Provided,* That such majority have during such period produced for market more than 50 percent of the volume of

such filberts produced for market within said States; but such termination shall be effected only if announced 30 days or more before the end of the then current marketing year.

* * * * *

Signed at Washington, D.C., on January 7, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-1029 Filed 1-9-81; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

1980 Crop Sunflower Seed Price Support Program; Withdrawal of Proposed Rule

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: Consideration of a price support program for the 1980 crop sunflower seed, as represented by a proposed rule published in the Federal Register on September 15, 1980, (45 FR 60914), is withdrawn.

ADDRESS: Production Adjustment Division, ASCS-USDA, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Harry A. Sullivan, Agricultural Program Specialist, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013, 202/447-7951.

SUPPLEMENTARY INFORMATION: After careful consideration of comments received, market prices, proposed levels of support and other factors, it has been determined that no price support program for the 1980 crop of sunflower seed is necessary. Therefore, notice is hereby given by the Executive Vice President, Commodity Credit Corporation, that the proposed rule published on September 15, 1980, (45 F.R. 60914) relating to price support for 1980 crop sunflower seed is withdrawn.

Signed at Washington, D.C. on January 5, 1981.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-1033 Filed 1-9-81; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-ARM-21]

Establishment of Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to establish a 700' and 1,200' transition area at Powell, Wyoming to provide controlled airspace for aircraft executing the new nondirectional radio beacon (NDB) standard instrument approach procedure developed for the Powell Municipal Airport, Powell, Wyoming.

DATES: Comments must be received on or before February 16, 1981.

ADDRESSES: Send comments on the proposal to: Chief, Air Traffic Division, Attn.: ARM-500, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010.

FOR FURTHER INFORMATION CONTACT: Pruett B. Helm, Airspace and Procedures Specialist, Operations, Procedures and Airspace Branch (ARM-538), Air Traffic Division, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

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 be submitted in triplicate to the Chief, Air Traffic Division, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010. All communications received will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

Availability of NPRM

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 Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The Federal Aviation Administration (FAA) is considering an amendment to subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71) to establish 700' and 1,200' transition areas at Powell, Wyoming. This proposal is necessary to provide controlled airspace for aircraft executing the new NDB standard instrument approach procedure developed for the Powell Municipal Airport, Powell, Wyoming. Accordingly, the Federal Aviation Administration proposes to amend subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

By amending subpart G, 71.181 so as to establish the following transition areas to read:

Powell, Wyoming

That airspace extending upward from 700' above the surface within an 8-mile radius of the Powell Municipal airport (Latitude 44°52'10" N., Longitude 108°47'29" W.) and within 3 miles each side of the Powell NDB (Latitude 44°52'10" N., Longitude 108°47'02" W.) 164° bearing extending from an 8-mile radius area to 9 miles southeast of the Powell NDB; and that airspace extending upward from 1,200' above the surface beginning at Latitude 45°22'00" N., Longitude 108°55'00" W., to Latitude 45°22'00" N., to Longitude 108°11'00" W., to Latitude 44°11'00" N., Longitude 108°11'00" W.; thence southwestward along the edge of the Worland, Wyoming 1,200' transition area to Latitude 44°00'00" N., Longitude 108°25'00" W., to Latitude 44°00'00" N., Longitude 108°42'30" W., to Latitude 44°25'45" N., Longitude 108°57'30" W., to Latitude 44°25'45" N., Longitude 109°41'45" W.; thence along the west side of V-465 to point of beginning, excluding the Cody, Wyoming 1,200' transition area.

Drafting Information

The principal authors of this document are Pruett Helm, Air Traffic Division, and Daniel J. Peterson, office

of the Regional Counsel, Rocky Mountain Region.

This amendment is proposed under authority of section 307(a) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation, and a comment period of less than 45 days is appropriate.

Issued in Aurora, Colorado on December 31, 1980.

Walter A. Barbo,

Action Director.

[FR Doc. 81-747 Filed 1-9-81; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6274; File No. S7-867]

Consideration of the Impact of the Small Business Investment Incentive Act of 1980 on Certain Exemptions From the Registration Provisions of the Securities Act of 1933

AGENCY: Securities and Exchange Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering the relationship among certain exemptions from the registration provisions of the Securities Act of 1933 (the "1933 Act") and the efficacy of such exemptions as they relate to the capital formation needs of small business. The present inquiry is prompted by the recent enactment of the Small Business Investment Incentive Act of 1980 which includes two statutory changes in the 1933 Act that have an impact on small business. The first is the new Section 4(6) of the 1933 Act which provides an exemption from the registration requirements of that Act for offers and sales of securities by an issuer to accredited investors if the aggregate amount of securities offered is $5 million or less and if there is no public solicitation. The second is an increase from $2 million to $5 million in the ceiling on the Commission's authority under Section 3(b) of the 1933 Act to exempt small offerings from the registration requirements of that Act.

The Commission is requesting commentators to focus on the interrelationship between the recently enacted statutory exemption contained in Section 4(6) of the 1933 Act and the Commission's other exemptive rules, especially Rules 146 and 242. The Commission is also requesting comments on the adequacy of the present ceiling limitations included in the exemptions under Section 3(b) and the extent, if any, to which they should be increased. The Commission intends to consider these comments in deciding whether to propose any amendments to existing rules under the 1933 Act.

DATE: Comments must be received on or before February 20, 1981.

ADDRESSES: All communications on the matters discussed in the release should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C., 20549. Comments should refer to File No. S7-867 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Paula Chester (202/272-2644), Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol St., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced that it is considering the interrelationship among certain exemptions from the registration provisions of the Securities Act of 1933 (the 1933 "Act") [15 U.S.C. 77a *et seq.*], particularly as they relate to the capital formation needs of small business. The present inquiry is prompted by the recent enactment of the Small Business Investment Incentive Act of 1980 (the "1980 Act") [Pub. L. No. 96-477 (October 21, 1980)].

New Section 4(6) of the 1933 Act added by the 1980 Act [1] raises certain questions concerning what the appropriate relationship should be between Section 4(6) and the Commission's other exemptive rules, including Rules 146 [17 CFR 230.146], 240 [17 CFR 230.242], and 242 [17 CFR 230.242]. Section 4(6) provides an exemption from the registration provisions of the 1933 Act for transactions involving offers and sales of securities by an issuer solely to one or more "accredited investors" [2] if the aggregate offering price does not exceed the amount allowed under Section 3(b) of that Act.[3] No advertising or public solicitation is permitted in connection with such transactions, and the issuer is requird to file a notice of such sales with the Commission on such forms as the Commission shall prescribe.[4]

In addition, the increase in the Section 3(b) ceiling from $2,000,000 to $5,000,000 raises the question of whether, and to what extent, the Commission should raise the ceiling on certain exemptive provisions, including Regulation A, promulgated under Section 3(b). A corollary issue raised by the Section 3(b) increase is the relationship of the offering limit on Form S-18, which is a simplified registration form available to certain corporate issuers going public for the first time [17 CFR 239.29], to the ceiling amount under Regulation A.

Therefore, the Commission is today seeking comments and guidance from interested persons as to what the appropriate relationship should be between Section 4(6) and other exemptive provisions and what the

[1] The provisions of Section 4 of the Securities Act provide in pertinent part: The provisions of Section 5 shall not apply to—

(6) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 3(b) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.

[2] New Section 2(15) of the Securities Act provides: (15) the term "accredited investor" shall mean—

(i) A bank as defined in section 3a(21) of the Act whether acting in its individual or fiduciary capacity; an insurance company as defined in section 2(13) of the Act; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section (2)(48) of that Act; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Securities Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company or registered investment adviser; or

(ii) Any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

[3] As amended by Section 301 of the 1980 Act, the ceiling amount of Section 3(b) is increased to $5,000,000.

[4] In order to permit issuers to utilize Section 4(6) immediately, the Commission recently adopted, on an interim basis, a notice-of-sales form [hereinafter referred to as "Form 4(6)"], to be used by issuers relying on the new statutory exemption. Securities Act Release No. 6256 (November 7, 1980) [45 FR 75182].

appropriate ceiling amounts should be for the various Section 3(b) exemptions and Form S-18.[5] Any changes in the rules would of course, be made only to the extent consistent with the public interest and the protection of investors.

I. Regulatory Framework of the 1933 Act Exemptions

Absent an available exemption, the 1933 Act requires that a registration statement must be filed with the Commission disclosing prescribed categories of information before securities may be offered for sale to the public. The securities cannot be sold to the public until the registration statement becomes effective. In addition, prospective investors must be furnished a prospectus containing the most significant information in the registration statement. Congress, however, recognized that that are certain situations "where there is no practical need for * * * [registration] or where the public benefits [therefrom] are too remote." [6] Accordingly, a number of exemptions to the registration requirements are contained in the 1933 Act. The exemptions which in the past have been most typically relied upon by small business and which are the subject of this inquiry are those provided by Sections 3(b) and 4(2).[7]

A. Section 3(b)

The Commission is authorized under Section 3(b) of the 1933 Act to exempt securities from registration if it finds that registration for these securities is not necessary in the public interest because of the small amount involved or the limited character of the public offering.[8] Pursuant to this authority, the Commission has adopted various exemptive rules and regulations, the most significant of which from a small business standpoint are Regulation A [17 CFR 230. 251–264], Rule 240 and Rule 242.

Regulation A permits an issuer to sell securities in an unregistered public offering, up to an aggregate amount of $1.5 million in any one year, provided certain conditions are met. Among other things, a notification and offering cricular supplying information about the issuer and the securities offered must be filed with the regional office of the Commission for the region in which the issuer's principal business operations are conducted. The offering circular must be furnished at or prior to the time any written offer of securities is made. Simultaneous with the consideration of the primary exemptions herein, the Commission has announced in a separate release that it is proposing substantitve revisions to the disclosure requirements of Regulation A designed to codify disclosure policies and practices currently followed with respect to Regulation A.[9] Such codification is especially appropriate if the Regulation A ceiling is to be increased materially from the current level of $1,500,000.

Rule 240 provides a conditional exemption from registration for limited offers and sales of small dollar amounts of securities by small, closely-held businesses. The conditions which must be satisfied in order to use the rule are: (1) no more than $100,000 of securities of the issuer may be sold in reliance on the rule or otherwise without registration within a preceding twelve month period; (2) the securities may not be offered and sold by means of general advertising or general solicitation; (3) no commission or similar remuneration may be paid by the issuer for soliciting buyers; (4) both immediately before and after the offering the securities of the issuer must be beneficially owned by fewer than 100 people; and (5) a notice on Form 240 [17 CFR 239.240] must be filed with the Commission's Regional Office for the region in which the issuer's principal business operations are conducted within ten days after the close of the month in which a sale in reliance on the rule is made.

Rule 242, promulgated by the Commission on January 17, 1980, exempts certain corporate issuers from the registration provisions of the 1933 Act for transactions involving offers and sales of securities up to an aggregate amount of $2 million in any six-month period.[10] to an unlimited number of accredited investors and 35 non-accredited persons, provided that (a) there is no general advertising or general solicitation in connection with the offering; (b) certain specified written information is delivered in offerings involving non-accredited purchasers; and (c) a notice is filed on Form 242 [17 CFR 239.242]. Unlike Rule 240, a commission or similar remuneration may be paid by the issuer for soliciting buyers. The availability of the rule is limited to "qualified issuers" which are defined as any domestic or Canadian corporation which is not an investment company, not engaged in significant oil and gas or mining operations, and is not a subsidiary of an issuer which would not be qualified to use the exemption.

B. Section 4(2) and Rule 146

Section 4(2), commonly referred to as the "private-offering" exemption, provides an exemption from registration for "transactions by an issuer not involving any public offering. The primary consideration, as established by the Supreme Court in the *Ralston Purina* case [11] is whether the offerees need the protections afforded by the 1933 Act as evidenced by whether the offerees have "access" to the same kind of information that registration would disclose and whether they are able to fend for themselves.

In an effort to introduce certainty into the private offering exemption, the Commission adopted Rule 146 which provides that transactions involving the offer and sale of securities shall be deemed not to involve any public offering within the meaning of Section 4(2) of the 1933 Act if they are part of an offering that meets all the conditions of the Rule. When Rule 146 is used as the basis for an exemption, there can be no general advertising or solicitation in connection with the transactions; offers and sales may only be made to persons the issuer reasonably believes have the requisite knowldege and experience in financial matters or who can bear the economic risks; sales may only be made to such persons except that persons meeting only the economic risk test must also have an offeree representative capable of providing the requisite knowledge and experience; offerees must have access to or be furnished with information comparable to that

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[5] On October 16, 1980 the Commission announced that it was undertaking a study, supported jointly by the Commission and the Small Business Administration, which will examine the major exemptions from registration under the Securities Act of 1933 focusing primarily on the "private placement" exemption and on the financing needs of small businesses. The project is being conducted by the Directorate of Economic and Policy Analysis and that office will prepare a series of reports during the next 12 months which will present a descriptive profile of the issuers of securities utilizing each exemption, as well as data regarding characteristics of the offerings, aftermarket experience and compliance costs.

[6] H.R. Rep. No. 85, 73rd Cong., 1st Sess. 5 (1933).

[7] It should be noted that these sections do not provide an exemption from the anti-fraud provisions of the Securities Act or from the civil liability provisions of Sections 12(2) of the 1933 Act or other provisions of the Federal securities laws.

[8] As stated earlier, recent Congressional action increased the ceiling to $5,000,000; *supra*, note 3.

[9] Securities Act Release No. 6275 (December 23, 1980).

[10] As originally adopted paragraph (c) of Rule 242 specified that the aggregate amount of an issue of securities could not exceed the amount allowed under Section 3(b) of the 1933 Act which at that time was $2 million. However, the Rule was amended as a result of the recent increase in the Section 3(b) ceiling to $5 million to maintain the $2 million level originally prescribed by the Commission. The amendment is designed to maintain the status quo pending review of all ceiling limitations under Section 3(b). *See* Securities Act Release No. 6250 (October 23, 1980) [45 FR 71775].

[11] *Securities and Exchange Commission* v. *Ralston Purina Co.*, 346 U.S. 119 (1953).

which would be contained in a registration statement[12]; there may be no more than 35 purchasers; the issuer must inform each offeree that he must continue to bear the risk of the investment indefinitely since resales can only be effectuated through registration or an exemption therefrom; and reasonable care must be taken by the issuer to ensure that purchasers are not taking with a view to distribution. Issuers relying on the rule must file a notice of such sales with the Commission on Form 146 [17 CFR 239.146].

II. Scope of Inquiry

The Commission is interested in obtaining the written views of interested members of the public on the issues set forth below. Although the principal purpose of this release is to focus on those questions which are raised as a result of the recent enactment of the Section 4(6) exemption and the increase in the limit of Section 3(b) to $5,000,000, commentators are encouraged also to provide their views on the broader question as to whether the exemptions under the 1933 Act provided by Rules 240, 242, 257 and Regulation A and Rule 146 along with the newly created Section 4(6) exemption considered together provide a coherent scheme for relieving issuers of the burdens of the full scale registration provisions of the 1933 Act in connection with the raising of capital, particularly by smaller companies, consistent with adequate investor protection and, if not, what steps the Commission should take to make the scheme more coherent. Thus, when answering the following specific questions, commentators are invited to address the role of such exemptions in the general pattern of exemptive provisions under Sections 3(b) and 4(2).

A. Relationship Between Rules 146, 242 and Section 4(6)

The first set of issues the Commission is requesting commentators to focus on relates to the interrelationship between Section 4(6) and Rules 146 and 242. These three exemptions are all private offering exemptions in that they prohibit public solicitation and general advertising and limit the offerees and/or purchasers to specific types of individual and/or to a specified maximum number of individuals. A comparative chart outlining the exemptive provisions of these three exemptions is attached as Appendix A.

Rule 242 was designed to alleviate some of the concerns raised by various commentators at the small business hearings regarding certain problems in complying with Rule 146. Commentators at the hearings consistently indicated that the provisions of Rule 146 presented compliance problems for smaller issuers which result in uncertainty as to whether the exemption is available.[13] For example, it was noted that Rule 146 requires issuers to make a subjective determination concerning the sophistication of each offeree and each purchaser,[14] and if a mistake is made with respect to an offeree who declines to purchase, purchasers may still have the right to rescind the transaction because of the violation.[15]

In addition, it was felt that the informational requirements of Rule 146(e) created uncertainty by requiring that issuers which do not file periodic reports with the Commission pursuant to the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a *et seq.*, as amended by Pub. L. No. 94–29] (June 4, 1975) furnish their offerees with substantially the same information "as would be required to be included" in a registration statement or, if the offering does not exceed $1,500,000, the same information "as required to be included" by Schedule I of Regulation A.

Rule 242 responded to these criticisms by removing any sophistication test for either offerees or purchasers and by indicating more specifically the type of information that must be furnished to purchasers. The concept of accredited investor was introduced for the first time in Rule 242 and the rule contains no limitation on the number of accredited investors who can purchase securities. In addition, if only accredited investors are involved in an offering there is no specific requirement to furnish them with information. This is based on the assumption that accredited investors are in a position to ask for and obtain whatever information they believe is relevant. The rule also provides that securities can be sold to an additional 35 individuals and specifies that these individuals should be furnished the same kind of information as required by Form S–18, to the extent material.

Section 4(6) also includes the concept of accredited investors and a new Section 2(15) defines accredited investors in substantially the same way as Rule 242, except that $100,000 purchasers and directors and executive officers of the issuer are not included in the definition as they are in Rule 242. The Commission is given rulemaking authority in Section 2(15) to expand the definition.

In adopting the ceiling limitations placed on Rule 242 offerings, it was the Commission's intention that the Rule be primarily of benefit to small companies, providing a relatively objective and less costly method of raising capital. Apparently a similar legislative intent was present in the enactment of Section 4(6). On the other hand, Rule 146 is available to both small and large issuers and can be used to raise an unlimited amount of capital.

The Commission invites comments on the following concepts of "accredited investor," "qualified issuer," and "issue of securities" as these concepts currently exist in the three exemptions.

1. Accredited Investor

As indicated above, the new Section 4(6) exemption incorporates the accredited investor concept and that term is defined in Section 2(15). The Commission is given rulemaking authority to expand this definition to include additional types of purchasers as "accredited investors" based on such factors as financial sophistication, net worth, knowledge, experience in financial matters, or assets under management.[16] In the absence of such a rule, the only investors who may purchase securities sold in reliance on that exemption are the list of institutional-type purchasers contained in the statutory definition of "accredited investor,"[17] which, unlike Rule 242, includes "business development companies" as defined in Section

[12] Where, however, an offering does not exceed $1.5 million the rule requires the issuer to furnish only the information required by Schedule I of Regulation A. *See* Securities Act Release No. 5975 (September 8, 1978) [43 FR 41193].

[13] Summary of Comments Relating to Small Business Hearings and Proposed Form S–18, Division of Corporation Finance, Securities and Exchange Commission, File No. S7–734, at 148 [hereinafter cited as "Small Business Hearings"].

[14] Rule 146(d)(1) provides:

(d) Nature of offerees. The issuer and any person acting on its behalf who offer, offer to sell, offer for sale or sell the securities shall have reasonable grounds to believe and shall believe:

(1) Immediately prior to making any offer, either:

(i) That the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or

(ii) That the offeree is a person who is able to bear the economic risk of the investment; and

(2) Immediately prior to making any sale, after making reasonable inquiry, either:

(i) That the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or

(ii) That the offeree and his offeree representative(s) together have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment and that the offeree is able to bear the economic risk of the investment.

[15] *Henderson* v. *Hayden, Stone, Inc.*, 461 F. 2d 1069 (5th Cir. 1972).

[16] *Supra*, note 2.

[17] *Id.*

2(a)(48) of the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq]*.[18]

The definition contained in Rule 242, on the other hand, includes directors or executive officers of the issuer as well as purchasers of $100,000 or more of the issuer's securities for cash or certain cash equivalents.[19]

The Commission is currently considering proposing rules under Section 2(15) of the 1933 Act, to include officers and directors as well as $100,000 purchasers for cash or cash equivalents in the definition of "accredited investors" for purposes of Section 4(6) transactions. In addition, the Commission is considering the inclusion of "business development companies" in the definition of "accredited investor" contained in Rule 242. Such amendments would result in identical definitions for both type transactions and, thus, would eliminate this inconsistency between the two exemptions. The Commission believes, based on the public comments it received prior to adopting Rule 242, that the $100,000 purchaser may be appropriate in the context of Rule 242 which is available only to corporate issuers and which limits the amount of the offering to $2,000,000. However, a $100,000 purchaser may not have sufficient leverage in a $5,000,000 transaction to ask for and obtain the information needed to make an informed investment decision. In a limited partnership transaction involving immediate tax benefits, the economic significance to an investor of a $100,000 investment may be less than in a corporate offering. Therefore, the Commission invites comment on whether and to what extent the definition of accredited investor contained in Rule 242 and Section 2(15) for purposes of transactions in reliance on Section 4(6) should be identical.

The Commission is also considering the advisability of incorporating the accredited investor concept into Rule 146. That rule now contains a provision that persons who buy at least $150,000 of securities for cash need not be included when calculating the 35 purchasers ceiling. However, such persons must still meet the sophistication test of the rule and must be provided with an offering circular. The Commission is considering excluding accredited investors not only from the calculation of 35 purchasers but also from the sophistication and information requirements of the rule, on the assumption that one can presume that accredited investors, being sophisticated, may fend for themselves.

Interested persons are asked to comment on whether this is a desirable amendment of Rule 146 and whether the definition of accredited investor for purposes of Rule 146 should be the same as for Rule 242, especially with respect to the $100,000 amount. Comments are also invited as to whether the Commission has the authority, particularly in light of judicial interpretations, to make such changes.

2. Qualified Issuers

As stated earlier, the availability of Rule 242 is limited to "qualified issuers" which are defined as any domestic or Canadian corporation, which is (a) not an investment company; (b) not engaged in significant oil and gas operations; (c) not engaged in significant mining operations; and (d) not a subsidiary of an issuer which would not be qualified to use the exemption. These type of issuers represent the same issuers that are prohibited from using Form S-18. The Commission included the issuer restrictions because both Form S-18 and Rule 242 were considered to be in the nature of an experiment representing a significant departure from traditional disclosure concepts. For this reason the Commission determined to proceed cautiously with respect to the expansion of the availability of these provisions. Section 4(6), however, has no issuer qualification. Although the Commission recognizes that Rule 242, in its present form, is narrower than that currently provided by the statutory exemption for sales to accredited investors, the Commission also notes that, unlike Section 4(6), Rule 242 permits sales to 35 additional persons for which no qualification standards are presumed or imposed. Thus, the Commission invites comment on the advisability of eliminating some or all of the issuer qualifications of rule 242, particularly in view of the enactment of Section 4(6). Since the same types of issuers are also restricted from registering their securities on Form S-18, the Commission also invites comment on whether such restrictions should be eliminated from Form S-18.

3. The "Issue" Concept

Section 4(6) specifies that the aggregate price of an issue of securities offered in reliance on the exemption shall not exceed the amount allowed under Section 3(b). However, the term "issue of securities" is not defined in the 1933 Act. Thus, it becomes important to determine whether separate transactions are part of the same issue, *i.e.*, are deemed to be "integrated."

Generally, the determination as to whether separate sales of securities are part of the same issue depends on the particular facts and circumstances. The following factors should be considered in determining whether separate sales are part of the same issue for purposes of Section 4(6):[20]

(a) whether the sales are part of a single plan of financing;

(b) Whether the sales involve issuance of the same class of security;

(c) whether the sales have been made at or about the same time;

(d) whether the same type of consideration is received; and

(e) whether the sales are made for the same general purpose.[21]

These same factors are applicable to a determination of whether offers and sales should be integrated for purposes of the exemption under Section 4(2) of the 1933 Act and the Commission's Rules 146 and 242. The Commission, however, has adopted "safe harbor" provisions under Rules 146 and 242 which are designed to provide certainty by identifying certain offers and sales of securities which will be deemed not part of an issue in connection with offerings and sales made under these Rules. In determining which securities constitute a single issue for purposes of Rule 146, sales of securities occurring more than six months prior to and six months subsequent to the subject offering will not be considered part of the same issue if, during neither of the six-month periods, there were offers or sales of securities by or for the issuer of the

[18] Title I of the 1980 Act contains amendments to the Investment Company Act that are designed to exempt "business development companies" from certain specific provisions of that Act in favor of a carefully tailored pattern of regulation that takes into account the special needs of so-called "venture capital" activity, while at the same time preserving important investor protections. In order to qualify as a "business development company" under the 1980 Act, a company has to be a domestic company that is operated for the purpose of investing in the securities of certain described issuers, and that makes available significant managerial assistance to those issuers. *See* Section 101 of the 1981 Act.

[19] The pertinent provisions of the definition of "accredited investor" contained in Rule 242 are as follows:

(ii) Any person who purchases $100,000 or more of securities of the issuer per issue sold pursuant to this rule for any combination of (A) cash, or (B) an obligation to pay which provides for full recourse against the purchaser of the securities and for discharge of the obligation within 60 days of the first issuance of the securities, or (C) the cancellation of any indebtedness owed by the issuer of the securities being offered pursuant to this rule; and

(iii) Any director or executive officer of the issuer of the securities being offered pursuant to this rule.

[20] In its report on S. 2990, which proposed Section 4(6) as finally adopted by the House, the Senate Committee on Banking, Housing and Urban Affairs stated that ". . . existing interpretations of the term 'issue of securities' would apply in determining whether separate securities transactions should be considered as part of the same 'issue of securities.'" S. Rep. 958, 96th Cong., 2d Sess. at 44 (1980).

[21] Securities Act Release No. 4552 (November 6, 1962) [27 FR 11316].

same or a similar class as those of the subject offering. Rule 242 has a similar safe harbor provision except sales pursuant to any Section 3(b) exemption or pursuant to employee plans are permitted during the six-month "window-period."

The Commission is curently considering proposing a similar safe harbor provision for sales of securities made in reliance on Section 4(6). It is anticipated that any proposed safe harbor would permit sales pursuant to an employee plan to be made during the six-month period without resulting in a loss of the safe harbor. The Commission invites comments as to whether safe harbor provision should be adopted for purposes of Section 4(6) and, if so, what form it should take. The Commission is interested in receiving comments on the effects of such an approach on the integration concept as a whole.

B. Increases in Ceiling Limitations

As originally adopted in 1933, the maximum dollar value of securities that could be exempt from registration pursuant to Section 3(b) was $100,000. Prior to the enactment of the 1980 Act, the ceiling had been raised on several occasions, most recently in May and October 1978, when it was increased from $500,000 to $1,500,000 [21] and then from $1,500,000 to $2,000,000.[22] The recent increase to $5,000,000 authorized by Congress was intended to provide the Commission with increased flexibility in developing exemptions targeted to smaller issuers without the need to seek legislative amendments on a frequent basis.[23] Thus the Commission invites public discussion as to whether the ceiling should be raised for existing exemptive provisions under Section 3(b), or whether new exemptions tailored to offerings between $2,000,000 and $5,000,000 should be developed.

1. Rule 240.

Rule 240 has generally been applauded as representing a welcome balancing of the needs of small business to raise capital with the protection of investors. The rule has been described as being particularly useful for the small local issuer who is seeking funds from friends and relatives.[24] Commentators, however, have consistently favored an increase in the $100,000 limitation on the aggregate sales price.[25] The Commission is considering increasing the amount of securities that can be sold under this exemption, particularly since the $100,000 limitation was adopted in 1975 when the Regulation A limitation was $500,000.

The Commission notes that during the year ended September 30, 1980, 1,486 issuers who used the Rule 240 exemption filed notices on Form 240 for an aggregate amount of sales of $14,164,141. During the same period in 1979, 477 issuers filed notices on Form 240 for an aggregate amount of $9,707,205.

Rule 240 requires neither specified information nor any assurance that offerees and buyers will be able to obtain information in some other way. The Commission is concerned about whether a significant increase in the ceiling without corresponding safeguards with respect to minimum disclosure requirements is appropriate in the public interest or the protection of investors. The Commission invites comment on whether and to what extent the ceiling limitation under Rule 240 should be increased and also asks commentators to express their views on the advisability of prescribing minimum disclosure standards in conjunction with an increase in the ceiling.

2. Regulation A Ceiling

The Commission is considering the advisability of increasing the Regulation A ceiling from $1,500,000 to some greater amount, possibly $3,000,000. During the 12 months ended September 30, 1980 there were 398 filings under Regulation A for an aggregate amount of $344,355,729 compared with 347 filings for an aggregate amount of $277,807,614 in the preceding year. During the 1980 period, 115 of the filings were for offerings between $1,400,000 and $1,500,000, and during the 1979 period 87 filings were for offerings in that range.[26]

If the Regulation A ceiling is increased, the Commission has considered the advisability of requiring certified financial statements for one year, at least in offerings exceeding a certain dollar amount. However, if that were done, a Regulation A offering that is required to include certified financial statements may have little advantage over a register offering on Form S-18.

Another approach being considered is to reduce the length of time to six months in which the maximum aggregate amount of securities may be sold under Regulation A. Assuming an increase to $2,000,000, such an approach would permit an issuer to sell up to $4,000,000 in a year. This approach has the advantage of coinciding with the approach taken in Rule 242 in calculating the amount that can be sold under that exemption. The Commission is concerned, however, that, because of the time and cost involved in preparing for an offering under Regulation A, an issuer may be unable or unwilling to make two offerings in a twelve-month period.

The Commission invites comments on whether and to what extent the ceiling on Regulation A should be increased; whether issuers making offerings under Regulation A over some particular level should be required to furnish one year certified financial statements; and whether it would be useful to increase this ceiling indirectly be allowing offerings up to $2,000,000 every six months.

The Commission also invites commentators to consider whether it would be appropriate, in light of the recent efforts to implement integration, to make the exemption provided by Regulation A available only to companies who are not reporting under the Securities Exchange Act of 1934. In this connection the Commission notes that 31 of the 398 Regulation A offerings during the year ended September 30, 1980 were made by reporting companies and 30 of the 347 Regulation A offerings during the same period in 1979 were by reporting companies. Further, proposed initiatives for integration will substantialy reduce the registration costs for all companies which have been filing periodic reports for more than three years.

The Commission is also concerned with an appropriate increase in Rule 257 [17 CFR 230.257] under Regulation A. Rule 257 permits offerings not exceeding $100,000 to be made to seasoned issuers [27] without the use of an offering circular. [28] Although the rule is available for primary and secondary offerings of securities, it is not currently being utilized extensively. This may be due, in part, to the limited amount of securities which may be sold thereunder. The Commission requests commentators to express their views with respect to whether and, if so, to

[21] Pub. L. No. 95-283, May 21, 1978.

[22] Pub. L. No. 95-425, October 6, 1978.

[23] S. Rep. 958, *supra* note 20 at 12.

[24] Small Business Hearings, *supra* note 12 at 132.

[25] *Id.* at 136.

[26] Because of the increase in Regulation A filings and the probabilities of raising the current ceiling from $1,500,000, the Commission is proposing in a separate release to update the disclosure requirements adopted in 1956 to reflect current disclosure practice to enable issuers to save time and expense in complying with the Regulation.

[27] This includes issuers which have been organized or incorporated for more than one year and have a net income from operations for one of the last two fiscal years.

[28] Although an offering circular does not have to be filed, Rule 257(a) does require that there be filed as an exhibit to the notification a statement setting forth the information (other than financial statements) required by Schedule I of Form 1-A.

what extent an increase in the ceiling under rule 257 is appropriate.

3. Rule 242

When the Commission originally adopted Rule 242 it provided that an issuer could sell up to the amount allowed under Section 3(b) during any six month period in reliance on the Rule. At that time the Section 3(b) ceiling was $2,000,000. On October 23, 1980 after the Section 3(b) ceiling had been raised to $5,000,000, the Commission adopted an amendment to Rule 242 to specify that $2,000,000 could be sold in any six month period and eliminated the prior reference to the Section 3(b) amount.[29] The amendment was intended to maintain the rule's limitations as originally adopted by the Commission pending further review of its experience under Rule 242. The Commission stated at that time that it intended to reconsider the limitation on the amount of securities that can be sold under Rule 242 along with other ceiling limitations prescribed by other Section 3(b) exemptions in the near future.[30] The Commission is considering the desirability of increasing the dollar amount of securities that may be sold under the Rule 242 exemption. The Commission is also considering the desirability of conforming Rule 242 and Regulation A with respect to the time period during which the limit may be sold, so that both rules would be based on either a six month period or a twelve month period. If this were done, Rule 242 might be amended to provide that the amount permitted under Section 3(b) could be sold in a twelve month period, thus increasing in effect the amount that could be sold under Rule 242 from $4,000,000 in a 12 month period to $5,000,000 in a 12 month period.

A recent study of Rule 242 prepared by the Directorate of Economic and Policy Analysis and released by the Commission[31] indicates that during the first six months the exemption was available 64 issuers filed Form 242 notices of intended sales aggregating $38,058,704. The intended sales reported by issuers ranged from $17,500 to $2,000,000 with an average intended sales amount of $613,850. Thirteen of the issuers, approximately 20 percent, reported intended sales of $1,000,000 or more and, of these, four issuers reported intended sales of the maximum $2,000,000. This study also indicated that issuers using Rule 242 are small when measured by their financial characteristics and number of employees. Over half had no more than $1,000,000 in annual revenues and total assets for their latest fiscal year and reported either zero or negative net income. Over half of the issuers had no more than 20 full-time and 5 part-time employees. However, these issuers are about the same size or slightly larger than issuers of a sample of comparable small public offerings, as measured by revenues, assets, income, shareholders' equity, and number of employees.

Commentators are invited to comment on the advisability of increasing the Rule 242 ceiling, in light of the foregoing study, and, if an increase is advisable, the most desirable method of effecting the increase. Commentators are also requested to focus on the relationship between an increase in Rule 242 and those of other Section 3(b) ceiling limitations, as well as Section 4(6).

4. Form S-18

Last year the Commission simplified registration and reporting procedures for small businesses through the adoption of Form S-18. This form is available to certain domestic and Canadian corporate issuers, who are not subject to the Commission's continuous reporting requirements, for the registration of securities to be sold for cash not exceeding an aggregate offering price of $5 million.

The present inquiry with respect to Form S-18 relates to whether the $5,000,000 ceiling limitation should be raised if the Regulation A ceiling is significantly increased. The Commission notes that as of October 31, 1980, 23 of the 173 filings made on Form S-18 since the adoption of the Form were for offerings between $4,000,000 and $5,000,000. It is also noted that during the 12 month period ended July 31, 1980, 64 filings were made on Form S-1 by companies who were not reporting companies for offerings between $5,000,000 and $10,000,000. If the ceiling on Form S-18 had been higher and if that Form had been available to limited partnerships and/or companies with significant mining and oil and gas operations, some or all of those issuers who used Form S-1 might have used Form S-18.

The Commission invites comment on whether an increase in the Form S-18 ceiling would be advisable if an increase is adopted in the Regulation A ceiling. Comments are also invited as to whether an increase in the amount of secondary offerings that may be permitted by the Form, currently set at $1,500,000, should be effected.

All interested persons are invited to submit their written views or comments on the foregoing questions and on any other areas which they believe might be relevant to the consideration of the exemptions described herein. These comments should be sent in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington D.C., 20549 on or before February 20, 1981. Such communications should refer to File No., S7-867, and will be available for public inspection.

By the Commission.

George A. Fitzsimmons

Secretary.

December 23, 1980.

[29] Securities Act Release No. 6250 (October 23, 1980) [45 FR 71775].

[30] *Id.*

[31] Rule 242: A Monitoring Report on the First Six Months of Its Use.

Appendix A.—*Comparison Chart*

Comparison item	Rule 242	Rule 240	Rule 146	Section 4(6)
Aggregate Sales Price	$2,000,000/6 mo. (including all § 3(b) sales).	$100,000/12 mo. (including all sales of exempt securities).	Unlimited	$5,000,000 per offering.
Commission Prohibition	No	Yes	No	No.
Manner of Offering	No general solicitation or general advertising.	No general solicitation or advertising.	No general solicitation or general advertising.	No general solicitation or general advertising.
Excluded Issuers	Non-U.S. or Canadian; limited partnerships; corporations with significant oil and gas or mining operations; investment companies.	None	None	None.
Nature of Offerees	Not regulated	Not regulated	Must be capable of evaluating the merits and risks of prospective investment and/or be wealthy.	Accredited investors.
Nature of Purchasers	Not regulated	Not regulated	Must be sophisticated and/or wealthy with offeree representative.	Accredited investors.
Number of Purchasers	Reasonable basis to believe and believe, after reasonable inquiry, 35 or fewer, not counting accredited purchasers and purchasers of $100,000 of securities.	Available only if 100 or fewer total beneficial owners of securities.	Reasonable basis to believe and believe, after reasonable inquiry, 35 or fewer, not counting purchasers of $150,000 of securities.	No limit on number of accredited investors—no other persons.

Appendix A.—*Comparison Chart*

Comparison item	Rule 242	Rule 240	Rule 146	Section 4(6)
Applicability of Sec. 10b and Rule 10b-5	Applies	Applies	Applies	Applies.
Information Requirement	(1) Non-accredited purchasers: (a) Reporting companies—most recent annual report definitive, proxy statement and recent periodic reports. (b) Non-reporting companies—info required by Part I of Form S-18 to the extent material. (2) Accredited purchasers: No specific requirement unless both accredited and non-accredited purchasers involved and then all purchasers required to be furnished same info.	None	Must furnish (unless offeree has access via economic bargaining power):. (1) $1,500,000 offerings—info may be limited to Schedule I (Reg A) info;. (2) Other offerings— (a) Reporting companies—recent Form S-1 or Form 10, definitive proxy statement and recent periodic reports. (b) Non-reporting companies—info that would be required to be included in registration statement on form which issuer would be entitled to use.	No specific requirements.
Opportunity of Questions	Yes	No	Yes	No specific requirement.
Resales Restricted	Yes	Yes	Yes	Yes.
Report of Sales	Yes, if condition of Rule	Yes, condition of Rule except for first offerings under Rule.	Yes, condition of Rule	Yes, condition of exemption.

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17 CFR Parts 230 and 239

[Release No. 33-6275; File No. S7-868]

Small Offering Exemption From Registration Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing for comment amendments to the rules, forms, and disclosure requirements under Regulation A. The regulation, which may be used by a variety of issuers to raise up to $1.5 million worth of securities during any twelve-month period, has not been substantially revised since 1956. The proposals represent a comprehensive updating and revision of the disclosure requirements. Certain minor rule and form amendments are also being proposed. The proposals are being published at this time is view of the recent increase in the use of the Regulation and the Commission's inquiry in a companion release concerning an increase in the offering ceiling limit of Regulation A.

DATE: Comments must be received on or before March 23, 1981.

ADDRESSES: All communications on this matter should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C., 20549. Comments should refer to File No. S7-868 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Paul A. Belvin, or Daniel Abdun-Nabi, Office of Small Business Policy, Division of Corporation Finance (202) 272-2644.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for public comment proposed amendments to Regulation A [17 CFR 230.251 et seq.] under the Securities Act of 1933 (the 1933 Act")] [15 U.S.C. 77a et seq., as amended]. Regulation A provides an exemption from the registration provisions of the 1933 Act for sales of securities up to $1.5 million during a 12 month period .[1] Form 1-A [17 CFR 239.90], which contains the Regulation A disclosure provisions, is the subject of a complete revision.

Introduction

During April and May 1978, the Commission held a series of small business hearings in several cities across the nation.[2] The primary issue addressed at the hearings concerned the impact the federal securities laws have on small businesses trying to raise capital. In this regard, the continued viability of Regulation A as an alternative to full registration received considerable attention. Commentators at the hearings consistently indicated the need to revise and update the requirements of Regulation A to make it a more practical means for small businesses to raise capital.

As a result of the hearings, numerous revisions to the Commission's rules and regulations have already been made. With respect to Regulation A, the "ceiling" amount of securities that may be offered has been increased [3] and a rule adopted allowing issuers to use a preliminary offering circular in Regulation A offerings.[4] These revisions are significant in that they have expanded the usefulness of Regulation A.[5] The Regulation A rules and schedules themselves, however, are in need of a thorough review and update; they have not been substantially revised since 1956.[6] Consequently, the Regulation A disclosure schedule requirements have essentially become outdated and do not reflect the type of disclosure actually being included in Regulation A offering circulars.

Commentators at the Commission's Small Business Hearings expressed the view that the absence of updating revisions to the Regulation A disclosure requirements could impose a burden on

[1] Regulation A is promulgated pursuant to Section 3(b) of the Securities Act. Section 3(b) authorizes the Commission to adopt rules and regulations to exempt $5 million of securities per issue from registration, subject to appropriate conditions, if it finds that registration is not necessary in the public interest or for the protection of investors by reason of the small amount involved or the limited character of the offering. This "ceiling" amount was recently increased from $2 million to $5 million pursuant to the Small Business Investment Incentive Act of 1980, Pub. L. No. 96-477 (October 21, 1980).

[2] In Securities Act Release No. 5914 (March 6, 1978) [43 FR 10876], the Commission announced its intention to hold a series of small business hearings. The full text of the comments offered can be found in Commission File No. S7-734.

[3] The ceiling applicable to Regulation A was increased, in September 1978, from $500,000 to $1,500,000. Securities Act Release No. 5877 (September 18, 1978) [43 FR 55254].

[4] Securities Act Release No. 6075 (June 1, 1979) [44 FR 33362].

[5] During fiscal 1978, 242 notifications on Form 1-A were filed representing $87 million worth of securities while 347 notifications for $278 million were filed for fiscal 1979. During fiscal 1980, 398 notifications were filed for $351 million.

[6] Securities Act Release No. 3613 (February 14, 1956) [21 FR 1147].

smaller issuers. These issuers might be required to spend a longer period, and consequently a greater expense, in the pre-offering comment and amendment period since issuers and inexperienced counsel would believe that Schedule I accurately reflected the Regulation A disclosure requirements and prepare their initial filing accordingly. In response to these comments the proposals published today for public comment represent a comprehensive revisions and reformatting of the Regulation A disclosure provisions. Also included in the proposed amendments are certain minor changes to the Regulation A rules. Additional substantive amendments to these rules will be proposed in the near future. In this regard the Commission today published a companion release [7] which, among other things, seeks public comment as to whether the "ceiling amount" in Regulation A should be raised and, if so, whether any amendments to disclosure requirements, such as the inclusion of certified financial statements, should be made for offerings in excess of the current $1.5 million ceiling. The release is in response to the recently enacted Small Business Investment Incentive Act of 1980 which, among other things, raised the ceiling applicable to Section 3(b) of the 1933 Act, under which Regulation A is promulgated, from $2 million to $5 million.[8]

As discussed fully below, the instant proposals are designed to codify disclosure standards which are currently being applied to Regulation A offerings and to provide specific disclosure requirements for different types of issuers and different types of offerings. The Commission does not expect that the amendments proposed today will in any way increase the burdens on issuers utilizing the Regulation. Rather, the proposals should have a beneficial effect on those issuers through a reduction in the time spent in the preparation and review of a Regulation A filing. In addition, the Commission anticipants that the proposed amendments should significantly assist the administration of uniform disclosure policies with respect to Regulation A offerings as processed by the Commission's nine Regional Offices.

Discussion

Regulation A represents a method by which a variety of different types of issuers may issue securities publicly. The offerings may involve a simple offering of debt or equity securities to the public to raise capital or they may involve transactions such as a merger of companies or an offering pursuant to an employee stock option or benefit plan. Generally, the Form 1–A notification, Schedule I of Form 1–A and a group of relatively brief rules currently delineate the disclosure requirements applicable to all of these types of offerings. If the same types of offerings were registered, they would be subject to the detailed disclosure requirements established by the guides for the preparation of registration statements (17 CFR 231, Release No. 33–4936), a series of rules under Regulation C (17 CFR 230.400–230.494), and the various registration forms which are applicable to the different types of offerings (17 CFR 239.4–239.61).

Form 1–A and Schedule I were not designed to reflect the variety of offerings that have, over the years, been made pursuant to Regulation A. As a result, offering circulars filed for these offerings, to a certain extent rely, by analogy, on the standards applied to registered offerings. The staff of the Office of Small Business Policy, Division of Corporation Finance, have reviwed a large number of offering circulars over a recent period. This review indicated that the disclosure in these circulars is often similar, in certain respects, to the quantity and quality of disclosure being made in registered offerings. For example, circulars relating to employee plans included disclosure that would be required by Form S–8 (17 CFR 239.16b); circulars for mergers include disclosure that would normally appear in a Form S–14 (17 CFR 239.23) registration; offerings relating to bank holding companies included much of the information required by Guide No. 61 to Guides to Preparation of Registration Statements.[9] The bulk of disclosure included in these circulars was not limited to the disclosure requirements set out in Schedule I of Regulation A and did not result necessarily from comments by the staff.

A review of more commonplace corporate equity offerings by Regulation A issuers also revealed that many current disclosure practices, which are technically applicable to registration statements only, were and are followed with respect to these offerings when made pursuant to Regulation A. For example, most offering circulars include a "risk factors" section in the forepart of the circular. Such disclosure is not technically required by the existing Regulation A disclosure requirements but is required in registration statements pursuant to Guide No. 6 to Guides to Preparation of Registration Statements. The inclusion of certain registered offering type disclosures may be explained in part by the fact that issuers concerned with Securities Acts liability for failure to state a material fact pattern have looked to the various forms for registration for guidance in the absence of adequate disclosure requirements under Regulation A.

The initial consideration in revising the Regulation was to develop disclosure requirements for a single regulation that would be flexible enough to facilitate a wide variety of offerings. In addition, primary consideration was given to retaining a regulatory structure that would remain less burdensome for small issuers than the registration format. The approach proposed herein represents a flexible method of facilitating a variety of issuers and offerings and, at the same time, minimizing to the extent possible the burdens that would be placed on issuers utilizing the exemption. The proposed items generally are less burdensome than the corresponding items applicable to registration statements. In this respect, any future additions to these items for the more specialized offerings, such as employee plans and mergers, will be drafted with a view towards minimizing the disclosure burdens on small issuers.

The existing structure of Regulation A calls for the filing of a "notification" on Form 1–A, and exhibits to that form which include, among other things, an offering circular prepared in accordance with Schedule I of Form 1–A. As proposed today, a single document, designated the "offering statement," would replace the present notification and offering circular. The offering statement would consist of three parts and would be the basic form to be used by every issuer for every offering made under the Regulation.

Part I of the offering statement is similar to the present notification. Every issuer utilizing the Regulation will be required to disclose the information called for in Part I—Notification. The basic purpose of the current notification is to present certain information which is necessary to determine the availability of the exemption. For example, the existence of any disqualifications under Rule 252 would be disclosed in the notification. Part I—Notification of the Offering Statement serves the same purpose. As discussed below, the items have been revised and consolidated. Similar to the existing

[7] Securities Act Release No. 6274 (December 23, 1980) (Comment period expires on February 20, 1981).

[8] Pub. L. No. 96–477 (October 21, 1980).

[9] 17 CFR 231, Release No. 33–4936.

notification, Part I—Notification will be filed and publicly available but will not be circulated by the issuer to investors.

Part II of the offering statement consists of the offering circular to be distributed to investors. Part II—Offering Circular was specifically designed to facilitate the different types of offerings which may be made under the exemption. The proposed structure contemplates the establishment of a "pool" of disclosure items. The disclosure required by this pool will range from basic items such as description of business and management remuneration to more specialized items such as the description of an employee plan or a discussion of the investment policies of a real estate investment trust. The general instructions to Part II of the offering statement indicate the items to which a particular issuer would be required to respond. Accordingly, a real estate investment trust would not have to respond to items germane to offerings by mining companies. However, both real estate investment trusts and mining companies would have to disclose information pursuant to the management remuneration item. This concept was first recommended by the Advisory Committee on Corporate disclosure with respect to registered offerings [10] and has been adopted in part by the Commission in Regulation S-K.[11] The Commission believes that the concept is especially appropriate in the context of Regulation A since the disclosure requirements must relate to a wide variety of issuers and offerings.

The "pool" of items proposed today represents the basic disclosure items that will be applicable to most Regulation A issuers. In the event the proposed amendments are adopted, additional items tailored to the various issuers that use the Regulation, e.g. issuers engaged in oil and gas or mining operations, will be proposed.

Part III of the offering statement relates solely to exhibits. The exhibits would be treated in the same manner as those currently required by Form 1-A. That is, they would be filed with the Commission, be publicly available, but would not be circulated to investors. Most of the exhibits currently required by Form 1-A are required by Part III—Exhibits with the notable exception of the offering circular which would become Part II of the Offering Statement. Certain exhibits have been added to the list of those currently required by Form 1-A. These represent documents which are often called for by the staff as suppemental information. Also, Part III—Exhibits would require the sequential numbering of the Offering Statement.[12] The manually signed copy of the offering statement would be required to be sequentially numbered beginning with the cover page and for each copy to utilize an exhibit index which relies on this numbering system.

In considering the proposed revision of Regulation A, it is important to recognize that, as a practical matter, it would not represent an expansion of the disclosure that is currently being made in Regulation A offering circulars. Therefore, while the proposed revisions would result in more detailed disclosure requirements, in fact, they would constitute a codification of current disclosure policies and practices followed by the staff and experienced issuers with respect to Regulation A offerings. More comprehensive and explanatory disclosure requirements should aid issuers in preparing the necessary documents and should therefore save issuers time and expense in complying with Regulation A. Adoption of a comprehensive system of disclosure standards is particularly important at this time in view of the possible increases in the ceiling amount that may be offered pursuant to the Regulation as discussed above.

Although the Commission anticipates that adoption of the proposals published today would benefit smaller issuers, inquiry also is made as to whether the codification represented by today's proposals reflects an appropriate level of disclosure for Regulation A offerings. The Commission specifically requests comment on whether any or all of the disclosure requirements of Regulation A should call for different levels or types of disclosure than the instant proposals.

Amendments to Rules and Forms

Numerous amendments to the regulation A rules are proposed simply to make them consistent with the new terminology utilized in the proposed disclosure requirements. The rules currently refer to a "notification" on Form 1-A and an offering circular including the information required by Schedule I. The revised structure proposes a uniform "offering statement" which is made up of three parts. The majority of the rule amendments are therefore merely technical in nature. Certain substantive amendments which are proposed are discussed below.

Synopsis

I. Offering Statement

A. General

A cover page for the offering statement will be placed on the front of the Part I—Notification. This cover page is designed to set forth basic information such as the issuer's name and address. Following the cover page is a series of self-explanatory instructions as to the use and preparation of the offering statement.

B. Part I—Notification

The first six items of this part are generally a consolidated version of the present notification. The existing requirements have been abbreviated in several instances. For example, Item 2(b) of Schedule I requires the issuer's affiliates to be named and all positions held with the issuer to be described. The revised version of these items only requires disclosure of the names of these individuals. The existing requirements have also been consolidated. For example, Items 2, 3 and 4 of the existing notification have been consolidated into Item 1 of Part I—Notification. Also, old Items 5, 6 and 7 have been consolidated into new Item 2.

Items 7 and 8 of Part I—Notification are new additions. Item 7 requires disclosures of any marketing arrangements known to the issuer that may have a deleterious effect on the aftermarket in the issuer's securities. Item 8 concerns potential conflicts of interest with respect to experts that prepare or certify portions of the offering statement.

C. Part II—Offering Circular

1. Text.—The textual disclosure requirements of Part II—Offering Circular are essentially self-explanatory. The revised offering circular disclosure requirements were built upon the major concepts embodied in Schedule I; however, the proposed disclosures emphasize the importance of information on the business of the issuer, the quality of its management, potential conflicts of interest, and the use of proceeds. This emphasis reflects the Commission's belief that these issues are of particular importance in Regulation A offerings.

The revised items are longer that those appearing in existing Schedule I for two reasons. First, the revised items reflect disclosure standards which have evolved since the adoption of the existing Schedule I in 1956 and which, for the most part, are being followed by issuers and their counsel in drafting their circulars. Second, existing

[10] Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Committee Print 95-29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. (1977) at 456.

[11] 17 CFR 229.20 et seq.

[12] A similar proposal was recently adopted with respect to registration statements. Securities Act Release No. 6230, (August 27, 1980) [45 FR 58822].

Schedule I does not provide any explanatory instructions to issuers. The language of the Schedule I requirements is so general that necessary refining of the scope of any item is, therefore, accomplished through the comment process. The result is more extensive comments by the staff and more expense to the issuer through time and money spent in revising the offering circular. A significant portion of the revised items is dedicated to instructions which are designed to aid issuers in determining the intent and scope of the disclosure requirement prior to filing. These instructions should aid issuers in the preparation of the circular and therefore result in a more complete document at the time of filing with the Commission.

As noted above, the proposals are lengthier than the requirements of existing Schedule I. However, the proposed amendments generally call for significantly less extensive disclosure than Form S-18. For example, the proposals, similar to Schedule I, do not contain an express disclosure requirement regarding pending legal proceedings. Also, proposed Item 10. Security Ownership of Management and Certain Security Holders calls for less disclosure than its corresponding item in Form S-18 by requiring disclosure relating to record ownership and voting control only. The Commission specifically solicits comments as to whether the narrative disclosure requirements of Regulation A and Form S-18 should be more uniform.[13]

2. Financial Statement.—The financial statement requirements have remained essentially unchanged. The standards for when certified financial statements are required and when uncertified financials will be allowed have not been altered. Requirements have been added which will codify the standards applied in cases where there have been past successions to other businesses or will be future successions to other businesses. In addition, a detailed definition of the term "significant subsidiary" has been included as a guide to issuers.

With regard to certified financial statements, an instruction has been added requiring that any report of an independent accountant regarding financial statements shall comply with Article 2 of Regulation S-X. Article 2 sets forth technical requirements regarding the content of auditors' reports which are included to: (1) represent that the audit was performed in accordance with Generally Accepted Auditing Standards, (2) clearly state an opinion on the financials and related accounting principles, and (3) identify and explain matters to which exception is taken. Article 2 also includes standards regarding auditors independence.

D. Part III—Exhibits

Although the exhibit requirements delineated in Form 1-A have been reworded, the substantive requirements have remained substantially unchanged. One major modification is this regard concerns the reformatting of the disclosure requirements. The offering circular will no longer be filed as an exhibit to the notification. Pursuant to the proposal, the offering circular will constitute an entirely separate part of the offering statement.

Two procedural concepts have been added and are set forth in Item 1 of Part III. These provisions allow for incorporation by reference of exhibits that have been previously filed. The second indicates that if any material changes occur with respect to exhibits filed an amended version reflecting such changes would be required. The former is meant to avoid duplication and will benefit those Regulation A issuers that are subject to the reporting provisions under the Securities Exchange Act of 1934.[14] The latter was meant to assure that material changes in required documents are filed with the Commission.

Certain exhibit requirements have been added as has the new sequential numbering system and exhibit index requirements. The latter two additions are discussed fully below "Rule Amendments." Six new requirements have been included in the proposals. The first concerns the issuer's charter and/or by-laws or similar instruments. The second concerns voting trust agreements. Certain material contracts will also be required under the third new section. In most instances, each of the above three types of documents are filed pursuant to staff comments since such documents are essential to an adequate review of the disclosure made in the offering circular. Additionally, filing these documents should not represent a significant burden to issuers. The fourth requirement concerns the filing of material foreign patents which is necessitated since Regulation A may be used by Canadian issuers. Unlike domestic patents, the staff and the public do not have any assured access to Canadian patents. be used by certain Canadian issuers. Unlike domestic patents, the staff and the public do not have any assured access to Canadian patents. Based on past experience the Commission does not anticipate that this additional requirement will place a significant burden on issuers. Fifth, certain reorganization and acquisition agreements will be filed under the revised item. Since Regulation A may be used in the merger/acquisition context, such information is important. Lastly, two provisions concerning escrow agreements have been added. Any escrow agreement utilized to comply with Rule 253(c) will be filed as an exhibit. In this connection, the proposals include a new optional Form 7-A which is described below. In the event the offering is minimum-maximum offering, the escrow agreement that will be used for funds received, up to the minimum, will also be filed.

A new subsection has been added which encompasses the consent requirements set forth in existing Form 1-A concerning experts, underwriters and non-residents. This subsection includes the consent requirements already included in Form 1-A. Specifically the consent of the underwriter connected with the offering, experts who prepare parts of the offering statement and non-residents will continue to be required. A new requirement concerning experts has been included. If an expert's report is quoted or summarized (as opposed to experts who actually prepare or certify parts of the offering statement), his consent will now be required. Form requirements, such as a manual signature an dating requirement, have also been added. Finally, a provision has been made to allow issuers to apply to the Commission for a waiver of any consent requirement.

II. Amendments to Rules

Amendments to each Regulation A rule are proposed herein.[15] The majority of these amendments are technical in nature since terminology in the existing rules referring to a "notification" on Form 1-A and an "offering circular" which includes information required by Schedule I needed to be revised to

[13] The Commission has simultaneously proposed for comment substantial revisions to Regulation S-K [17 CFR 229.20 et seq.] and the Guides for the Preparation and Filing of Registration Statements. Securities Act Release No. 6276 (December 23, 1980) (Comment period expires March 6, 1981). While it is recognized that Regulation A calls for less extensive disclosure than registered offerings, the Commission solicits comments as to whether Regulation A should require disclosure consistent with any of the proposed substantive disclosure provisions.

[14] *See* Sections 12, 13, and 15(d) of the Securities Exchange Act of 1934. 15 U.S.C. § 78 l, m, n(d) (1976).

[15] No amendments to Rule 252 have been proposed inasmuch as substantial revisions to that rule were proposed in the recent past. *See* Securities Act Release No. 6214 (June 19, 1980) [45 FR 42642].

reflect the new "offering statement" terminology.

Four substantive revisions are also proposed. First, Rule 259 has been revised to require an affirmative statement in every circular to the effect that the Commission has not passed upon the adequacy or accuracy of the disclosure presented therein. In addition, this undertaking notes that the Commission has not passed upon the availability of the Section 3(b) exemption from registration as it relates to the particular issuer. Existing Rule 259 prohibits statements which imply that the Commission has passed upon the adequacy or accuracy of disclosure or the availability of the exemption. As a matter of practice, the proposed undertaking was inserted in virtually every circular under the existing rule. Therefore, the proposal merely represents a codification of current practice.

Second, Rule 255 has been amended to include a sequential numbering system. This system would require the manually signed version of the offering statement to be numbered sequentially from the first page of the statement through the last page of the last exhibits. This numbering may be done in any legible form, including handwriting. Rule 255 as amended would call for a new "index" which is to be included at the beginning of Part III—Exhibits. The cover page of the offering statement would include an indication of the total number of pages which make up the statement as well as an indication of where the exhibit index is located. Since this system may be presented in handwritten form, it is not expected that it would represent a significant burden to issuers. On the other hand, the benefit to the staff and public would be significant since locating specific pages of the statement will be much easier. This is especially true because the Commission's files are now kept on a microfiche system.

Third, a basic definition of the term "parent" has been inserted in Rule 251. This addition was necessary since new Item 10(e) of Part II—Offering Circular refers to "parents" of the issuer.

Fourth, the printing and legibility requirements previously included in Rule 256(d) with respect to the offering circular have been deleted and a new general instruction concerning legibility has been included in the offering statement. Previously, Rule 256(d) set forth specific requirements as to print size allowed in the offering circular. The revised General Instruction sets out legibility requirements but does not specify print size. Accordingly, General Instruction B(d) provides that the Offering Statement must be printed, mimeographed, lithographed, typewritten or prepared by a similar process which will result in clearly legible copies.

III. New Form 7–A

Issuers that are subject to Rule 253(c) are required to file an escrow agreement with the Commission as an exhibit to the ntofication. In the past the staff of the Commission's regional offices distributed a form of escrow to issuers which met the requirements of Rule 253(c). Rather than continuing this distribution by the staff, it is proposed that the form of escrow be adopted as new optional Form 7–A under Regulation A. Form 7–A will not be a mandatory form. Issuers will have the option of utilizing any other type of escrow agreement as long as it meets the requirements of Rule 253(c).

Text of Proposals

The text of the proposals is set forth below.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Regulation A, § 230.251–§ 230.264, is proposed to be amended as follows:

1. Section 230.251 is amended by adding the definition of "parent" to read as follows:

§ 230.251 Definitions of terms in this regulation.

* * * * *

Parent. A "parent" of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

* * * * *

2. Section 230.253 is amended by revising paragraph (c)(1) to read as follows:

§ 230.253 Special requirements for certain offerings.

* * * * *

(c) * * *

(1) All securities issued prior to the filing of the offering statement, a proposal to be issued, for a consideration consisting in whole or in part of assets or services and held by the person to whom issued; and

* * * * *

3. Section 230.254 is amended by revising paragraphs (b) and (d)(1) to read as follows:

§ 230.254 Amount of securities exempted.

* * * * *

(b) The aggregate offering price of securities which have a determinable market value shall be computed upon the basis of such market value as determined from transactions or quotations on a specified date within 15 days prior to the date of filing the offering statement or the offering price to the public, whichever is higher; *Provided,* That the aggregate gross proceeds actually received from the public for the securities offered hereunder shall not exceed the maximum aggregate offering price permitted in the particular case by paragraph (a) of this section.

* * * * *

(d) * * *

(1) Unsold securities the offering of which has been withdrawn with the consent of the Commission by amending the pertinent offering statement to reduce the amount stated therein as proposed to be offered;

* * * * *

4. Section 230.255 is revised to read as follows:

§ 230.255 Filing of offering statement.

(a) At least 10 days (Saturdays, Sundays and holidays excluded) prior to the date on which the initial offering or sale of any securities is to be made under this regulation, there shall be filed with the Regional Office of the Commission specified below five copies of the offering statement required by this Regulation which shall consist of Part I—Notification, Part II—Offering Circular, and Part III—Exhibits. The Commission may, however, in its discretion, authorize the commencement of the offering prior to the expiration of such 10-day period upon a written request for such authorization.

(b) The offering statement shall be signed by the issuer and each person, other than the issuer, for whose account any of the securities are to be offered. If the offering statement is signed by any person on behalf of any other person, evidence of authority to sign on behalf of such other person shall be filed with the offering statement, except where an officer of the issuer signs on behalf of the issuer. At the time of filing an offering statement, the applicant shall pay to the Commission at the Regional Office where the offering statement is filed a fee of $100.00, no part of which shall be refunded.

(c) The offering statement shall be filed with the Regional Office for the region in which the issuer's principal business operations are conducted or proposed to be conducted in the United States. The offering statement of any issuer having or proposing to have its principal business operations in Canada shall be filed with the Regional Office nearest the place where the issuer's

principal business operations are conducted or proposed to be conducted, unless the offering is to be made through a principal underwriter located in the United States, in which case the offering statement shall be filed with the Regional Office for the region in which such underwriter has its principal office.

(d) An amendment to any part of the offering statement will necessitate the filing of an amended offering statement which shall be signed in the same manner as the original offering statement. Five copies of such amendment shall be filed with the same Regional Office as the original offering statement at least 10 days prior to any offering or sale of the securities subsequent to the filing of such amendment, or such shorter period as the Commission, in its discretion, may authorize upon a written request for such authorization.

(e) An offering statement or any other document filed as a part thereof may be withdrawn upon application unless the offering statement is subject to an order under § 230.261 at the time the application is filed or becomes subject to such an order within 15 days (Saturdays, Sundays and holidays excluded) thereafter; *Provided* That an offering statement may not be withdrawn after any of the securities proposed to be offered thereunder have been sold. Any such application shall be signed in the same manner and filed with the same Regional Office as the offering statement.

(f) The manually signed original (or in the case of duplicate originals, one duplicate original) of all offering statements, reports, or other documents filed shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed, or other legible form of notation from the cover page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first on the first page of the document.

(g) Each offering statement shall contain an exhibit index, which should immediately precede the exhibits filed with such offering statement. The index shall list each exhibit filed and identify by handwritten, typed, printed, or other legible form of notation in the manually signed original, the page number in the sequential numbering system described in paragraph (f) of this section where such exhibit can be found or where it is stated that the exhibit is incorporated by reference. Further, the first page of the manually signed offering statement shall list the page in the filing where the exhibit index is located.

5. Section 230.256 is amended by revising paragraphs (a) introductory text, (a)(1), (b), and (c) introductory text, removing existing paragraph (d), and redesignating existing paragraphs (e) through (i) as paragraphs (d) through (h) revised to read as follows:

§ 230.256 Filing and use of the offering circular.

(a) Except as provided in paragraph (c) of this section and in § 230.257 of this part:

(1) No written offer of securities of any issuer shall be made under this regulation unless an offering circular containing the information specified in Part II of the offering statement is concurrently given or has previously been given to the person to whom the offer is made, or has been sent to such person under such circumstances that it would normally have been received by him at or prior to the time of such written offer; and

* * * * *

(b) In the case of transactions effected on a securities exchange, delivery of the offering circular (offering statement—Part II) shall be deemed to have been made if prior to such transactions a reasonable number of copies of the offering circular have been furnished to the exchange for delivery to any person or persons requesting copies thereof.

(c) Any written advertisement or other written communication, or any radio or television broadcast, which states from whom an offering circular containing the information specified in Part II of the offering statement may be obtained and in addition contains no more than the following information may be published, distributed or broadcast at or after the commencement of the public offering to any person prior to sending or giving such person a copy of such circular:

* * * * *

(d) If the offering is not complete within nine months from the date of the offering circular (offering statement-part II) a revised offering circular shall be prepared, filed and used in accordance with these rules as for an original offering circular, except that in the case of offerings under stock purchase, savings, stock option or other similar plans for the benefit of employees, if the offering is not completed within 12 months from the date of the offering circular, a revised offering circular shall be prepared, filed and used in accordance with these rules as for an original offering circular. In no event shall an offering circular be used which is false or misleading in light of the circumstances then existing.

(e) If the original offering circular (offering statement—Part II) is revised or amended, such revised or amended circular shall be filed as an amendment to the offering statement, as provided by §230.255(d), with the appropriate Regional Office of the Commission at least 10 days prior to its use, or such shorter period as the Commission may, in its discretion, authorize upon a written request for such authorization.

(f) Sales by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction) of securities of an issuer not subject, immediately prior to the time of filing an offering statement, to the provisions of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, offered pursuant to this regulation and taking place prior to the expiration of ninety days after the first date upon which the securities were bona fide offered to the public, shall not be exempt pursuant to this regulation unless: (1) the dealer furnishes a copy of the then current offering circular (offering statement—Part II) to the purchaser prior to or with the purchaser's receipt of the confirmation of the sale; or (2) the offering circular has previously been mailed or delivered to such purchaser. Failure by a dealer to comply with the provision of this subparagraph shall not otherwise affect the availability of the exemption for any other person, including the aggregate amount of securities exempted pursuant to Rule 254.

(g) The issuer or, if there is an underwriter, the underwriter shall provide reasonable quantities of copies of the offering circular (offering statement—Part II) to any dealer on request prior to the expiration of ninety days after the first date upon which securities of such issuer were bona fide offered to the public pursuant to this regulation.

(h) An offering circular filed pursuant to paragraph (e) of this section may be distributed prior to the expiration of the 10-day waiting period for offerings provided for in § 230.255 (a) and (d) and paragraph (e) of this section and such distribution may be accompanied or followed by oral offers related thereto, provided the conditions in paragraphs (1) through (4) are met. For the purposes of this section, any offering circular distributed prior to the expiration of the ten day waiting period is called a Preliminary Offering Circular. Such Preliminary Offering Circular may be used to meet the requirements of paragraph (a)(2) of § 230.256: *Provided,*

That if a Preliminary Offering Circular is inaccurate or inadequate in any material respect, a revised Preliminary Offering Circular or an offering circular of the type referred to in paragraph (4) of this section, shall be furnished to all persons to whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or shall be sent to such persons under such circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale.

(1) Such Preliminary Offering Circular contains substantially the information required by this section to be included in an offering circular, or contains substantially that information except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price. For issuers not subject to the reporting provisions under section 13(a) or 15(d) of the Securities Exchange Act of 1934, the disclosure on the outside front cover page of the Preliminary Offering Circular should include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered or should include a bona fide estimate of the principal amount of debt securities to be offered.

(2) The outside front cover page of the Preliminary Offering Circular shall bear the caption "Preliminary Offering Circular," the date of its issuance, and the following statement which shall run along the left hand margin of the page and be printed perpendicular to the text, in boldface type at least as large as that used generally in the body of such offering circular;

An offering statement pursuant to Regulation A relating to these securities has been filed with the Securities and Exchange Commission. Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time an offering circular which is not designated as a Preliminary Offering Circular is delivered. This Preliminary Offering Circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

(3) The Preliminary Offering Circular relates to a proposed public offering of securities which is to be sold by or through one or more underwriters who are broker-dealers registered under section 15 of the Securities Exchange Act of 1934, each of whom has furnished a signed Consent and Certification in the form prescribed as a condition to the use of such offering circular;

(4) An offering circular which contains all of the information specified in Part II of the offering statement and which is not designated as a Preliminary Offering Circular is furnished with or prior to delivery of the confirmation of sale to any person who has been furnished with a Preliminary Offering Circular pursuant to this paragraph.

6. Section 230.257 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 230.257 Offerings not in excess of $100,000.

Except as to issues specified in paragraph (a) of § 230.253 and issues of assessable stock, the offering circular (offering statement—Part II) need not be filed or used in connection with an offering of securities under this regulation if the aggregate offering price of all securities of the issuer, its predecessors and affiliates offered or sold without the use of such an offering circular does not exceed $100,000, computed in accordance with § 230.254, provided the following conditions are met:

(a) In addition to filing Part I—Notification and Part III—Exhibits, there shall be filed as an exhibit five copies of a statement setting forth the information (other than financial statements) required by Part II—Offering Circular of the offering statement.

* * * * *

7. Section 230.258 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 230.258 Sales material to be filed.

Four copies of each of the following communications prepared or authorized by the issuer or anyone associated with the issuer, and of its affiliates or any principal underwriter for use in connection with the offering of any securities under §§230.251 to 230.265 shall be filed, with the office of the Commission with which the offering statement is filed, at least five days (exclusive of Saturdays, Sundays and holidays) prior to any use thereof, or such shorter period as the Commission, in its discretion, may authorize:

* * * * *

(c) every letter, circular or other written communication proposed to be sent, given or otherwise communicated to more than ten persons, except an offering circular (offering statement—Part II) filed pursuant to § 230.256(e).

8. Section 230.259 is revised to read as follows:

§ 230.259 Statement required in all offering circulars.

There shall be set forth on the cover page of every offering circular the following statement in capital letters printed in boldface roman type at least as large as ten-point modern type and at least two points leaded:

"THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION DOES NOT PASS UPON THE MERITS OF OR GIVE ITS APPROVAL TO ANY SECURITIES OFFERED OR THE TERMS OF THE OFFERING, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE. THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE COMMISSION; HOWEVER, THE COMMISSION HAS NOT MADE AN INDEPENDENT DETERMINATION THAT THE SECURITIES OFFERED HEREUNDER ARE EXEMPT FROM REGISTRATION."

9. Section 230.260 is revisd to read as follows:

§ 230.260 Reports of sales hereunder.

Within 30 days after the end of each six-month period following the date of the original offering circular (offering statement—Part II) required by § 230.256, or of the statement required by § 230.257, the issuer or other person for whose account the securities are offered shall file with the Regional Office of the Commission with which the offering statement was filed four copies of a report on Form 2-A containing the information called for by that form. A final report shall be made upon completion or termination of the offering and may be made prior to the end of the six-month period in which the last sale is made.

10. Section 230.261 is amended by revising the introductory text of paragraph (a), and paragraphs (a)(2), (a)(4), (b), and (d) to read as follows:

§ 230.261 Suspension of exemption.

(a) The Commission may, at any time after the filing of an offering statement, enter an order temporarily suspending the exemption, it has reason to believe that * * *

(2) The offering statement or any other sales literature contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

* * * * *

(4) Any event has occurred after the filing of the offering statement which would have rendered the exemption hereunder unavailable if it had occurred prior to such filing;

* * * * *

(b) Upon the entry of an order under paragraph (a) of this section the Commission will promptly give notice to the persons on whose behalf the offering statement was filed (1) that such order has been entered, together with a brief statement of the reasons for the entry of the order, and (2) that the Commission, upon receipt of a written request within 30 days after the entry of such order, will, within 20 days after the receipt of such request, set the matter down for hearing at a place to be designated by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of an opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

* * * * *

(d) All notices required by this rule shall be given to the person or persons on whose behalf the offering statement was filed by personal service, registered or certified mail or confirmed telegraphic notice at the addresses of such persons given in the offering statement.

11. Section 230.262 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 30.262 Consent to service of process. —

(a) If the issuer, any of its directors or officers, any person for whose account any of the securities are to be offered, or any underwriter of the securities to be offered, is not a resident of the United States, each such non-resident person shall, at the time of filing the offering statement required by § 230.255, furnish to the Commission in a form prescribed by or acceptable to it, a written irrevocable consent and power of attorney which—

* * * * *

12. Section 230.263 is revised to read as follows:

§ 230.263 . Notice of delayed or suspended offering and sale.

If within three business days after the issuer has received notice that the Commission has no further comments with respect to the offering statement a bona fide effort is not made to proceed with the offering and sale of the securities proposed to be offered under this regulation, or if the offering or sale of such securities is suspended by the issuer or any underwriter within 15 days after the issuer has received such notice, a notice of the delay or suspension, stating the reasons therefor, shall be filed by the issuer or underwriter with the Regional Office of the Commission with which the offering statement was filed, unless such information is set forth in the offering statement. Such notice shall be sent promptly by telegraph or air mail and if sent by telegraph shall be confirmed in writing within a reasonable time by the filing of a signed copy of the notice.

13. Section 230.264 is revised to read as follows:

§ 230.264 Procedure with respect to abandoned offering statement.

When an offering statement under §§ 230.251 to 230.265, or the latest substantive amendment thereto, if any, has been on file with the Commission for a period of nine months from its filing date and the offering has not commenced, the Commission may, in its discretion, proceed in the following manner to determine whether such filing has been abandoned by the issuer:

(a) Notice will be sent to the issuer, and to any counsel for the issuer named in the offering statement, by registered or certified mail, return receipt requested, addressed to the most recent addresses for issuer and issuer's counsel as reflected in the offering statement. Such notice will inform the issuer and issuer's counsel that the offering statement or amendments thereto is out of date and must be either amended to comply with applicable requirements of §§ 230.251 to 230.265 or be withdrawn within thirty days after the date of such notice.

(b) If the issuer or issuer's counsel fails to respond to such notice by filing a substantive amendment or withdrawing the offering statement or does not furnish a satisfactory explanation as to why the issuer has not done so within thirty days, the Commission may, where consistent with the public interest and the protection of investors, enter an order declaring the offering statement abandoned.

(c) When such an order is entered by the Commission, the papers comprising the offering statement and any amendment thereto will not be removed from the files of the Commission but will be plainly marked in the following manner: "Declared abandoned by order dated ————."

(Secs. 3(b), 19(a), 48 Stat. 75, 85; sec. 209, 48 Stat. 908; 59 Stat. 167; 84 Stat. 1480; sec. 308(a)(1)(2)(3), 90 Stat. 56, 57; sec. 18, 92 Stat. 275; sec. 2, 92 Stat. 962; 15 U.S.C. 77c(b), 77s(a))

Statutory Authority

The Commission hereby proposes for comment adoption of Form 7–A and revisions to Form 1–A, Rule 251, and Rules 253 through 264 pursuant to the Securities Act of 1933, particularly sections 3(b) and 19(a).

By the Commission.

Dated: December 23, 1980.

Shirley E. Hollis,

Assistant Secretary.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. Section 239.90 is proposed to be revised as follows:

§ 239.90 Form I-A, offering statement under Regulation A.

Date Filed ————————

File No. ————————

Securities and Exchange Commission

Washington, D.C. 20549

Regulation A Offering Statement

Under the Securities Act of 1933

————————

(Exact name of issuer as specified in charter)

————————

(Address of principal executive offices)

————————

(Address of principal place of business or intended principal place of business)

————————

(Name and address of agent for service)

————————

(State other jurisdiction of incorporation)

————————

(Date of incorporation or organization)

————————

(Standard industrial classification code number) [1]

————————

(IRS employer I.D. number) [1]

General Instructions

A. Rule as to Use of the Offering Statement

(a) This form is to be used for securities offerings made pursuant to Regulation A [17 CFR §§ 230.251 et seq.] under the Securities Act of 1933. Attention is directed to the rules applicable to offerings made pursuant to Regulation A which describe, among other

[1] If, at the time of filing, the issuer is unable to supply its standard industrial classification code number or its IRS employer I.D. number, such information may be omitted and supplied by amendment prior to the commencement of the offering.

things, the kinds of securities that may be sold, those issuers which may utilize Regulation A, and the amount of securities that may be exempted thereunder.

(b) Issuers utilizing Regulation A shall prepare an offering statement. All issuers shall provide the information which is called for by Part I—Notification and Part III—Exhibits, of the offering statement. Depending on the type of issuer, the kind of securities being issued, and the nature of the transaction in which the securities are being issued, issuers will be required to provide information required by the appropriate items of Part II—Offering Circular of the offering statement.

B. Preparation of Offering Statement

(a) Part I—Notification

Part I of the offering statement shall contain the numbers and captions of the items in Part I of the offering statement, but the text of the items may be omitted provided the answers are so prepared to indicate to the reader the coverage of the items without the necessity of referring to the text of the items or the instructions thereto.

(b) Part II—Offering Circular

(1) Part II of the offering statement shall contain the information required by items 1 through and including 13.

(2) Part II of the offering statement shall contain the information called for by the items which are applicable to the issuer pursuant to General Instruction B(b), except that no reference need be made to inapplicable items and negative answers to any item may be omitted. Information provided in the offering circular should be presented in textual form rather than presenting item-by-item answers. The text of the items should be omitted from the offering circular.

The information required in the offering circular need not follow the order of the items or other requirements in Part II. Such information shall not, however, be set forth in such fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Where an item requires information to be given in tabular form it shall be given in substantially the tabular form specified in the item. All information contained in the offering circular shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, all information set forth in the offering circular shall be divided into reasonably short paragraphs or sections.

Unless indicated otherwise, information set forth in any part of the offering circular need not be repeated elsewhere in the offering circular. Where necessary or desirable to call attention to information contained elsewhere in the offering circular, this may be done by an appropriate cross-reference.

(c) Part III—Exhibits

Part III of the offering statement shall include the index to exhibits and all exhibits required by that part. The text of the items in Part III need not be repeated in Part III provided the index clearly identifies each exhibit and the exhibits are in readable form.

(d) Printing

The offering statement may be printed, mimeographed, lithographed, or typewritten or prepared by any similar process which will result in clearly legible copies.

C. Documents Comprising the Offering Statement

The offering statement shall consist of the cover page, Part I—Notification, Part II—Offering Circular, Part III—Exhibits, the required signatures, and any other information or documents which are required or which the issuer may file as a part of the offering statement.

Each part of the offering statement may be amended independent of the other parts of the offering statement. Each amendment should indicate which part(s) is being amended. An amendment to any part will, however, necessitate the filing of a new signature page.

D. Supplemental Information

Supplemental information submitted pursuant to any item in Part I—Notification, Part II—Offering Circular, or Part III—Exhibits of the offering statement will be returned to the person who submitted it provided a request for its return is made at the time such information is submitted to the Coimmission and provided further that return of such information is consistent with the protection of investors and the provisions of the Freedom of Information Act (5 U.S.C. 552). In addition, issuers may request confidential treatment of supplemental information submitted to the Commission (17 CFR 200.83).

Part I—Notification

Item 1. Significant Parties

(a) List the full name and business and residential addresses for (1)–(3) below. List the full name and business address for (4)–(13) below:

(1) the issuer's directors;

(2) the issuer's officers;

(3) the issuer's general partners;

(4) record owners of 10 percent or more of any class of the issuer's equity securities or any other person who has or shares the right to vote or direct the voting of such securities;

(5) promoters currently connected with the issuer;

(6) predecessors of the issuer;

(7) affiliates of the issuer;

(8) counsel to the issuer in connection with the proposed offering;

(9) each managing underwriter in connection with the proposed offering;

(10) the underwriter's directors;

(11) the underwriter's officers;

(12) the underwriter's general partners;

(13) counsel to the underwriter.

Item 2. Application of Rule 252(c)–(e)

(a) State whether any of the individuals or entities identified pursuant to Item 1 are subject to any disability described in Rule 252(c)–(e).

(b) If any such individual or entity is subject to the provisions of Rule 252: (1) provide a full description including pertinent names, dates and other details; and

(2) state whether or not an application has been made pursuant to Rule 252(f) for a waiver of the applicable provisions of Rule 252 and whether such application has been granted or denied.

Item 3. Application of Rule 253(a) and (b)

State whether or not the issuer is subject to the provisions of Rule 253(a) or (b).

Item 4. Jurisdications in which Securities are to be Offered

(a) List the jurisdictions in which the securities are to be offered by underwriters, dealers or salespersons.

(b) List the jurisdictions in which the securities are to be offered other than by underwriters, dealers or salesmen and state the method by which such securities are to be offered.

(c) If the offering or any part thereof is to be made by use of the facilities of any securities exchange, identify the exchange.

(d) If the issuer is subject to Rule 253(b), state the Province(s) in which the securities have been or will be qualified or made eligible for offering.

Instruction: In the event an offering is to be made in jurisdictions or on exchanges not previously identified pursuant to this item, an amendment to the offering statement should be filed which identifies the new jurisdictions and exchanges.

Item 5. Unregistered Securities Issued or Sold Within One Year

(a) As to any unregistered securities issued by the issuer or any of its predecessors or affiliated issuers within one year prior to the filing of this notification, state (1) the name of such issuer; (2) the title and amount of securities issued; (3) the aggregate offering price or other consideration for which they were issued and the basis for computing the amount thereof; (4) the names of the persons or the identity of the class of persons to whom the securities were issued.

Instruction: In responding to this subsection, issuers should consider the effect of the grant or exercise of options, warrants, or rights with regard to the issuer's securities.

(b) As to any unregistered securities of the issuer or any of its predecessors or affiliated issuers which were sold within one year prior to the filing of this notification by or for the account of any person who at the time was a director, officer, promoter or principal security holder of the issuer of such securities, or was an underwriter of any securities of such issuer, furnish the information specified in 1 through 4 of paragraph (a).

(c) Indicate the section of the Act or rule or regulation of the Commission under which exemption from registration was claimed with respect to such securities and state briefly the facts relied upon for the exemption.

Item 6. Other Present or Proposed Offerings

State whether or not the issuer or any of its affiliated issuers is currently offering or currently contemplates the offering of any securities in the United States or Canada in addition to those covered by this notification.

If so, describe fully the present or proposed offering.

Item 7. Marketing Arrangements

Briefly describe any arrangement known to the issuer or to any person named in answer to Item 4(d) or 10(a) of Part II made for any of the following purposes:

(a) To limit or restrict the sale of other securities of the same class as those to be offered for the period of distribution.

(b) To stabilize the market for any of the securities to be offered.

(c) For withholding commissions, or otherwise to hold each underwriter or dealer responsible for the distribution of his participation.

(d) Identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities so intended to be confirmed.

Instructions: 1. If the information required by subsection (d) is not available at the time the offering statement is filed, an amendment to Part I—Notification, including such information, should be made prior to the commencement of the offering.

2. If the answer to this item is contained in an exhibit, the item may be answered by a cross-reference to the relevant paragraphs of the exhibit.

Item 8. Relationship with Issuer of Experts Named in Offering Statement

If any expert named in the offering statement as having prepared or certified any part thereof was employed for such purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a material interest in the registrant or any of its parents or subsidiaries or was connected with the registrant or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee furnish a brief statement of the nature of such contingent basis, interest or connection.

Part II—Offering Circular

Item 1. Cover Page

The cover page of the offering circular shall include the following information:

(a) Name of the issuer;

(b) The mailing address of the issuer's principal executive offices including the zip code and the issuer's telephone number;

(c) Date of the Offering circular;

(d) Description and amount of securities offered (*Note:* this description should include, for example, appropriate disclosure of redemption and conversion features of debt securities);

(e) The statement required by Rule 259;

(f) The table(s) required by Item 2;

(g) The name of the underwriter or underwriters;

(h) Any materials required by the law of any state in which the securities are to be offered;

(i) If applicable, identification of material risks in connection with the purchase of the securities; and

(j) Approximate date of commencement of proposed sale to the public.

Instruction: Where the name of the registrant is the same as the name of another well-known company or indicates a line of business in which the registrant is not engaged or is engaged to only a limited extent, a statement should be furnished to that effect. In some circumstances, however, disclosure may mot be sufficient, and a change of name may be the only way to cure its misleading character.

Item 2. Distribution Spread

(a) The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the offering circular as to all securities being offered (estimate, if necessary).

	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Per unit			
Total			

If the securities are to be offered on a best efforts basis the cover page should set forth the termination date, if any, of the offering, any minimum required sale and any arrangements to place the funds received in an escrow, trust, or similar arrangement. The following tabular presentation of the total maximum and minimum securities to be offered should be combined with the table required above:

	Price to public	Underwriting discounts and commissions	Proceeds to issuer to other persons
Total Minimum			
Total Maximum			

Instructions: 1. The term "commissions" shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made in connection with the sale of such security.

2. Only commissions paid by the issuer in cash are to be indicated in the table. Commissions paid by other persons or any form of non-cash compensation shall be briefly identified in a note to the table with a cross-reference to a more complete description elsewhere in the offering circular.

3. Prior to the commencement of sales pursuant to Regulation A, the issuer shall inform the Commission whether or not the amount of compensation to be allowed or paid to the underwriters, as described in the offering statement, has been cleared with the National Association of Securities Dealers, Inc.

4. If the securities are not to be offered for cash, state the basis upon which the offering is to be made.

5. If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained.

(b) Any finder's fees or similar payments shall be disclosed on the cover page with a reference to a more complete discussion in the offering circular. Such disclosure should identify the finder, the nature of the services rendered and the nature of any relationship between the finder and the issuer, its officers, directors, promoters, principal stockholders and underwriters (including any affiliates thereof).

(c) The amount of the expenses of the offering borne by the issuer, including underwriting expenses to be borne by the issuer, should be disclosed in a footnote to the table.

Item 3. Summary Information, Risk Factors and Dilution

(a) Where appropriate to a clear understanding by investors, there should be set forth in the forepart of the offering circular, under an appropriate caption, a carefully organized series of short, concise paragraphs, summarizing the principal factors which make the offering one of high risk or speculative. *Note:* These factors may be due to such matters as an absence of an operating history of the issuer, an absence of profitable operations in recent periods, an erratic financial history, the financial position of the issuer, the nature of the business in which the issuer is engaged or proposes to engage, conflicts of interest with management, reliance on the efforts of a single individual, or the method of determining the market price where no market currently exists. Issuers should *avoid* generalized statements and include only those factors which are unique to the issuer.

(b) Where there is material disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons for shares acquired by them in a transaction during the past three years, or which they have a right to acquire, there should be included a comparison of the public contribution under the proposed public offering and the effective cash contribution of such persons. In such cases, and in other instances where the extent of the dilution makes it appropriate, the following shall be given: (a) the net tangible book value per share before and after the distribution; (b) the amount of the increase in such net tangible book value per share attributable to the cash payment made by purchasers of the shares being offered; and (c) the amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

Item 4. Plan of Distribution

(a) If the securities are to be offered through underwriters, give the names of the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship to the issuer and state the nature of the relationship. State briefly the nature of the underwriters' obligation to take the securities.

(b) State briefly the discounts and commission to be allowed or paid to dealers,

including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities.

(c) Outline briefly the plan of distribution of any securities being issued which are to be offered through the selling efforts of brokers or dealers or otherwise than through underwriters.

(d) If any of the securities are to be offered for the account of security holders, indicate on the cover page the total amount to be offered for their account and include a cross-reference to a fuller discussion elsewhere in the offering circular. Such discussion should identify each selling security holder, state the amount owned by him, the amount offered for his account and the amount to be owned after the offering.

(e)(1) Describe any arrangements for the return of funds to subscribers if all of the securities to be offered are not sold; if there are no such arrangements, so state.

(2) If there will be a material delay in the payment of the proceeds of the offering by the underwriter to the issuer, the salient provisions in this regard and the effects on the issuer should be stated. Instruction: Attention is directed to the provisions of Rules 10b–9 [17 CFR § 240.10b–9] and 15c2–4 [17 CFR § 240.15c2–4] under the Securities Exchange Act of 1934. These rules outline, among other things, antifraud provisions concerning the return of funds to subscribers and the transmission of proceeds of an offering to a seller.

Item 5. Use of Proceeds to Issuer

State the principal purposes for which the net proceeds to the issuer from the securities to be offered are intended to be used, and the approximate amount intended to be used for each such purpose. Instructions. 1. If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect shall be made together with a statement of the amount of proceeds not so allocated and how the registrant expects to employ such funds not so allocated.

2. Include a statement as to the use of the actual proceeds if they are not sufficient to accomplish the purposes set forth and the order of priority in which they will be applied. However, such statement need not be made if the underwriting arrangements are such that, if any securities are sold to the public, it can be reasonably excpected that the actual proceeds of the issue will not be substantially less than the estimated aggregate proceeds to the issuer as shown under Item 2.

3. If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds.

4. If any material part of the proceeds is to be used to discharge indebtedness, describe the terms of such indebtedness. If the indebtedness to be discharged was incurred within one year, describe the use of the proceeds of such indebtedness.

5. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, briefly describe and state the cost of the assets. If the assets are to be acquired from affiliates of the issuer or their associates, give the names of the persons from whom they are to be acquired and set forth the principle followed in determining the cost to the issuer.

6. The issuer may reserve the right to change the use of proceeds provided that such reservation is due to certain contingencies which are adequately disclosed.

Item 6. Description of Business

(a) Narrative description of business.

(1) Describe the business done and intended to be done by the issuer and its subsidiaries and the general development of the business during the past five years or such shorter period as the issuer may have been in business. Such description should include, but not be limited to, a discussion of the following factors if such factors are material to an understanding of the issuer's business:

(a) The principal products produced and services rendered and the principal markets for and method of distribution of such products and services.

(b) The status of a product or service if the issuer has made public information about a new product or service which would require the investment of a material amount of the assets of the issuer or is otherwise material.

(c) The estimated amount spent during each of the last two fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state the estimated dollar amount spent during each of such years on material customer-sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(d) The number of persons employed by the issuer, indicating the number employed full time.

(e) The material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the issuer and its subsidiaries. The issuer shall disclose any material estimated capital expenditures for environment control facilities for the remainder of its current fiscal year and for such further periods as the issuer may deem material.

(2) The issuer should also describe those distinctive or special characteristics of the issuer's operation or industry which may have a material impact upon the issuer's future financial performance. Examples of factors which might be discussed include dependence on one or a few major customers or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation, material terms of and/or expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions or royalty agrreements, unusual competitive conditions in the industry, cyclicality of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(3) The following requirement in subparagraph (a) applies only to issuers (including predecessors) which have not received revenue from operations during each of the three fiscal years immediately prior to the filing of the offering statement.

(a) Describe, if formulated, the issuer's plan of operation for the twelve months following the commencement of the proposed offering. If such information is not availabe, the reasons for its unavailability shall be stated. Disclosure relating to any plan should include, among other things, a statement indicating whether, in the issuer's opinion, the proceeds from the offering will safisfy its cash requirements and whether, in the next six months, it will be necessary to raise additional funds.

(b) Any engineering, management or similar reports which have been prepared or provided for external use by the issuer or by a principal underwriter in connection with the proposed offering should be furnished to the Commission at the time of filing the offering statement or as soon as practicable thereafter. There should also be furnished at the same time a statement as to the actual or proposed use and distribution of such report or memorandum. Such statement should identify each class of persons who have received or will receive the report or memorandum, and state the number of copies distributed to each such class. If no such report or memorandum has been prepared, the Division should be so informed in writing at the time the report or memorandum would otherwise have been submitted.

(b) Segment Data. If the issuer is required to include segment information in its financial statements an appropriate cross-reference shall be included in the description of business.

Item 7. Description of Property

State briefly the location and general character of the principal plants, and other materially important physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instruction. What is required is information essential to an investor's appraisal of the securities being offered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 8. Directors, Executive Officers and Significant Employees

(a) List the names and ages of each of the following persons stating his term of office and any periods during which he has served as such and briefly describe any arrangement or understanding between him and any other person(s) (naming such person(s)) pursuant to which he was or is to be selected to his office or position:

(1) directors;

(2) persons nominated or chosen to become directors;

(3) executive officers;

(4) persons chosen to become executive officers;

(5) significant employees.

Instructions. 1. No nominee or person chosen to become a director or person chosen to be an executive officer who has not consented to act as such should be named in response to this item.

2. The term "executive officer" means the president, secretary, treasurer, any vice-president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the issuer.

3. The term "significant employee" means persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make significant contributions to the business of the issuer.

(b) Family relationships. State the nature of any family relationship between any director, executive officer, person nominated or chosen by the issuer to become a director or executive officer or any significant employee.

Instruction. The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) Business experience. Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or executive officer, and each significant employee, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or significant employee has been employed by the issuer for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(d) Involvement in certain legal proceedings. Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the issuer.

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was general partner at or within 2 years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses).

Item 9. Remuneration of Directors and Officers

(a) Furnish, in substantially the tabular form indicated, the aggregate annual remuneration of each of the three highest paid persons who are officers or directors of the issuer and all officers and directors as a group.

Name of individual or identity of group	Capacities in which remuneration was received	Aggregate Remuneration

Instruction: 1. In case of remuneration paid or to be paid otherwise than in cash, if it is impracticable to determine the cash value thereof, state in a note to the table the nature and amount thereof. 2. This item is to be answered on an accrual basis if practicable; if not so answered, state the basis used.

(b) Briefly describe all remuneration payments proposed to be made in the future pursuant to any ongoing plan or arrangement to the individuals and group specified in Item 9(a). The description should include a summary of how each plan operates, any performance formula or measure in effect (or the criteria used to determine payment amounts), the time periods over which the measurement of benefits will be determined, payment schedules, and any recent material amendments to the plan. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in scope, terms or operation in favor of officers or directors of the registrant and which are available generally to all salaried employees.

Item 10. Security Ownership of Management and Certain Security-Holders

(a) Voting securities and principal holders thereof.

Furnish the following information, in substantially the tabular form indicated, with respect to voting securities held of record by:

(1) each of the three highest paid persons who are officers and directors of the issuer;

Note.—In the event none of the issuer's officers or directors have received a salary in the past twelve months, this item should be responded to for every officer and director.

(2) all officers and directors as a group;

(3) each shareholder who owns more than 10% of any class of the issuer's securities, including those shares subject to outstanding options.

(1)	(2)	(3)	(4)	(5)
Title of class	Name and address of owner	Amount owned before the offering	Amount owned after the offering	Percent of class

Instruction: Column (4) need not be responded to if the information would be the same as that appearing under column (3).

(b) If, to the knowledge of the issuer, any other person holds or shares the power to vote or direct the voting of securities described pursuant to subsection (a) above, appropriate disclosure should be made. In addition, if any person other than those named pursuant to subsection (a) holds or shares the power to vote 10% or more of the issuer's voting securities, the information required by the table should be provided with respect to such person.

(c) Non-voting securities and principal holders thereof. Furnish the same information as required in subsection (a) above with respect to securities that are not entitled to vote.

(d) Options, warrants and rights. Furnish the information required by the table as to options, warrants or rights to purchase securities from the issuer or any of its subsidiaries held by each of the individuals and group referred to in subsection (a) above:

Name of holder	Title and amount of securities called for by options, warrants or rights	Exercise price	Date of exercise

Instruction: Where the total market value of securities called for by all outstanding options, warrants or rights does not exceed $10,000 for any officer, director, or principal shareholder named in answer to this item, or $50,000 for all officers and directors as a group, this item need not be answered with respect to options, warrants or rights held by such person or group. If the issuer cannot ascertain the market value of its securities, the offering price may be used for purposes of this subsection. If, as is the case with offerings of debt securities, the offering price cannot be determined at the time of filing the offering statement, the issuer may utilize any reasonable method of valuation.

(e) List all parents of the issuer, showing the basis of control and as to each parent the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Item 11. Interest of Management and Others in Certain Transactions

Describe briefly any transactions during the previous two years or any presently proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest;

(1) Any director or officer of the issuer;

(2) Any nominee for election as a director;

(3) Any principal security holder named in answer to Item 10(a);

(4) If the issuer was incorporated or organized within the past three years, any promotor of the issuer;

(5) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same house as such person or who is a director or officer of any parent or subsidiary of the issuer.

Instruction: 1. No information need be given in answer to this item as to any transaction where:

(a) The rates of charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or a series of similar transactions, including all periodic installments in the case if any lease or other agreement providing for periodic payments or installments does not exceed $50,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro-rata basis by all of the holders of securities of the class.

2. It should be noted that this Item calls for disclosure of indirect as well as direct material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity which engages in a transaction with the issuer or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item where:

(a) the interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (5) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) the interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (5) above had an interest of less than 10 percent; or

(c) the interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the issuer or any of its subsidiaries and the transaction is not material to such other person.

3. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of interest, the approximate amount involved in the transaction shall be disclosed.

4. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the issuer or its subsidiaries.

5. As to any transaction involving the purchase or sale of assets by or to any issuer or any subsidiary, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller.

6. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the issuer or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the issuer or its subsidiaries.

Item 12. Securities Being Offered

(a) If capital stock is being offered, state the title of the class and furnish the following information:

(1) Outline briefly: (i) dividend rights; (ii) voting rights; (iii) liquidation rights; (iv) preemptive rights; (v) conversion rights; (vi) redemption provisions; (vii) sinking fund provisions; and (viii) liability to further calls or to assessment by the issuer.

(2) Briefly describe potential liabilities imposed on shareholders under state statutes or foreign law, e.g., to laborers, servants or employees of the registrant, unless such disclosure would be immaterial because the financial resources of the registrant are such as to make it unlikely that the liability will ever be imposed.

(b) If debt securities are being offered, outline briefly the following:

(1) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement.

(2) Provisions with respect to the kind and priority of any lien securing the issue, together with a brief identification of the principal properties subject to such lien.

(3) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(4) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instruction: In the case of secured debt there should be stated (i) the approximate amount of unbonded property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being issued are to be issued against such property, against the deposit of cash, or otherwise.

(c) If securities described are to be offered pursuant to warrants, rights, or convertible securities, state briefly:

(1) the amount of securities called for by such warrants, convertible securities or rights;

(2) the period during which and the price at which the warrants, convertible securities or rights are exercisable;

(3) the amounts of warrants, convertible securities or rights outstanding; and

(4) any other material terms of such securities.

(d) In the case of any other kind of securities, appropriate information of a comparable character.

Item 13. Financial Statements

Furnish the following financial statements of the issuer, or of the issuer and its predecessors, prepared in accordance with generally accepted accounting principles and practices in the United States or, in the case of a Canadian company, a reconciliation to such shall be provided. The statements required for the issuer's latest fiscal year shall be certified by an independent public accountant or certified public accountant if the issuer has filed or is required to file with the Commission certified financial statements for such fiscal year; the statements filed for the period or periods preceding such latest year need not be certified. Any report of an independent accountant shall comply with the requirements of Article 2 of Regulation S-X. (a) A balance sheet shall be furnished as of a date within 90 days prior to the filing of an offering statement or such longer period of time not exceeding six months, as the Commission may permit at the written request of the issuer upon a showing of good cause therefor. (b) Statements of income, statements of changes in financial condition, and statements of other stockholders' equity for each of the two fiscal years preceding the date of the most recent balance sheet being filed and for the interim period, if any, between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period specified above.

If an unaudited income statement for an interim period is filed, a statement shall be made that all adjustments necessary for a fair statement of the results for such period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise there shall be furnished as supplementary information, but not as a part of the offering statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

(c) Past succession to other businesses.

(1) If, during the period for which its income statements are required, the issuer has by purchase or by pooling of interests succeeded to one or more businesses which in the aggregate are significant, the additions, eliminations and other changes effected in the succession shall be appropriately set forth in a note or supporting schedule to the balance sheet being filed, and, if a purchase has been effected during the most recent fiscal year or in a subsequent period, pro forma statements of income reflecting the combined operations of the entities shall be

furnished in columnar form for the latest fiscal year and any interim periods. In addition, furnish income statements, separate or combined as appropriate, for such business or businesses for such period prior to the purchase as may be necessary when added to the time, if any, for which income statements after the purchase are filed to cover the same period for which income statements of the issuer are required in Item (b) above.

(2) the term "significant subsidiary" means (a) a subsidiary or (b) a subsidiary and its subsidiaries which meet any of the conditions described below based on (i) the most recent annual financial statements, including consolidated financial statements, of such subsidiary which would be required to be filed if such subsidiary were an issuer and (ii) the most recent annual consolidated financial statements of the issuer being filed:

1. the parent's and its other subsidiaries' investments in and advances to, or their proportionate share (based on their equity interests) of the total assets (after intercompany elimination) of, the subsidiary exceed 10 percent of the total assets of the parent and its consolidated subsidiaries.

2. the parent's and its other subsidiaries' proportionate share (based on their equity interests) of the total sales and revenues (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total sales and revenues of the parent and its consolidated subsidiaries.

3. the parent's and its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiary exceeds 10 percent of such income of the parent and its consolidated subsidiaries, provided that if such income of the parent and its consolidated subsidiaries is at least 10 percent lower than the average of such income for the last five fiscal years such average income may be substituted in the determination.

Note.—This instruction shall not apply with respect to the issuer's succession to the business of any totally held subsidiary or to the succession of one or more businesses which, considered in the aggregate, would not meet the test of a significant subsidiary.

(d) Future successions to other businesses.

(1) If, after the date of the most recent balance sheet filed pursuant to paragraph (a) above, the issuer by purchase or by pooling of interests succeeded or is about to succeed to one or more businesses or acquired or is about to acquire an investment in a business the investment in which is required to be accounted for by the equity method, there shall be filed for such business financial statements, combined if appropriate, which would be required if they were the issuer. In addition, to reflect the succession to any businesses, there shall be filed in columnar form (i) a balance sheet of the issuer, (ii) the balance sheets of the constitutent businesses, (iii) the changes to be effected in the succession, and (iv) the pro forma balance sheet of the issuer giving effect to the plan of succession. There shall also be filed pro forma statements of income in columnar form for the periods for which the results of operations of the acquired business would have been included in the issuer's income statement for a pooling of interests or would have been presented on a pro forma basis for a purchase had succession occurred on the date of the latest balance sheet filed. By a note to the financial statements, or otherwise, a brief explanation of the changes shall be given.

(2) the acquisition of securities shall be deemed to be the acquisition of a business if such securities give control of the business or combined with securities already held give such control.

(3) no financial statements need be filed, however, for any business acquired or to be acquired, or for any business in which an investment acquired or to be acquired is required to be accounted for by the equity method, from a totally held subsidiary. In addition, the statements of any one or more such businesses may be omitted if the businesses, considered in the aggregate, would not meet the test of a significant subsidiary as defined above.

Part III—Exhibits

Item 1. Index to Exhibits

(a) An index to the exhibits filed should be presented immediately following the cover page of Part III.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 3.

(c) The index to exhibits should identify the location of the exhibit under the sequential numbering system.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index to exhibits. Instructions: (1) Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any offering statement. (2) If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

Item 2. Description of Exhibits

Set forth below is a description of each document for which copies should be filed, where appropriate:

(1) *Underwriting agreement*—Each underwriting contract or agreement with a principal underwriter or letter pursuant to which the securities are to be distributed; if the terms of such documents have not been determined, the proposed forms thereof.

(2) *Charter and by-laws—The charter and by-laws of the issuer or instruments corresponding thereto as presently in effect and any amendments thereto.*

(3) *Instruments defining the rights of security holders*—(a) All instruments defining the rights of (1) holders of the equity or debt securities being issued; (2) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed; and (3) holders of a new class of securities or indebtedness, the creation of which was required to be disclosed in a periodic report.

(b) Where the instrument defines the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated or unconsolidated financial statements are required to be filed, there need not be filed (1) any instrument with respect to long-term debt not being issued if the total amount of securities authorized thereunder does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such agreement to the Commission upon request; (2) any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the issuer of the securities being issued; or (3) copies of instruments evidencing scrip certificates for fractions of shares.

(4) Voting trust agreement—Any voting trust agreements and amendments thereto.

(5) Material contracts—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the offering statement or was entered into not more than two years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest. (b) If the contract is such as ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(1) Any contract to which directors, officers, promoters, voting trustees, security holders named in the offering statement or report, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price;

(2) Any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of issuer's products or services or to purchase the major part of issuer's requirement of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which issuer's business depends to a material extent;

(3) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 10 percent of all such assets of the issuer and its subsidiaries; or

(4) Any lease under which a significant part of the property described in the offering statement as held by the issuer.

(c) Any management contract or any remunerative plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except the following:

(1) Ordinary purchase and sales agency agreements.

(2) Agreements with managers of stores in a chain organization or similar organization.

(3) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.

(4) Any remunerative plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same period of allocation of benefits between management and non-management participants.

(6) Material foreign patents—Each material foreign patent for an invention not covered by a United States patent. If the filing is an offering statement and if a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material patents on patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

(7) Plan of acquisition, reorganization, arrangement, liquidation, or succession—Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the statement or report.

(8) Statement concerning issuer's financing—If any of the securities proposed to be offered hereunder are to be offered for the account of any person other than the issuer, a written statement signed by the issuer representing that the proposed offering will not interfere with any needed financing by the issuer under this regulation.

(9) Escrow agreements—(a) Any escrow agreement or similar arrangement which has been executed in order to effect compliance with Rule 253(c) shall be filed and may be prepared in conformity with Form 7-A. (b) In the event the offering is contingent upon a minimum purchase requirement, any escrow agreement applicable to the proceeds received up to the minimum amount required.

(10) Consents—(a) Experts—(i) If any accountant, engineer, geologist, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering statement or is named as having prepared or certified a report or evaluation, whether or not for use in connection with the offering statement; (ii) if any portion of the report of an expert is quoted or summarized as such in the offering statement, the written consent of the expert shall expressly state that the expert consents to such quotation or summarization; (iii) if it is stated that any information contained in the offering statement has been reviewed or passed upon by any persons and that such information is set forth in the offering statement upon the authority of or in reliance upon such persons as experts, the written consents of such persons shall be filed with the offering statement.

(b) Consent and certification by underwriter—A written consent and certification, in the form set forth below, signed by each underwriter of the securities proposed to be offered hereunder. All underwriters may, with appropriate modifications, sign the same consent and certification or separate consents and certifications may be signed by any underwriter or group of underwriters.

Consent and Certification by Underwriter

1. The undersigned hereby consents to being named as underwriter in an offering statement filed with the Securities and Exchange Commission by (name of issuer) pursuant to Regulation A in connection with a proposed offering of (title of securities) to the public.

2. The undersigned hereby certifies that it furnished the statements and information set forth in such offering statement with respect to the undersigned, its directors and officers or partners, that such statements and information are accurate, complete and fully responsive to the requirements of Parts I, II and III of the Offering Statement thereto, and do not omit any information required to be stated therein with respect of any such persons, or necessary to make the statements and information therein with respect to any of them not misleading.

(Underwriter)

By _____

Date _____

3. If a Preliminary Offering Circular will be distributed as permitted by Rule 256(i), the Consent and Certification by Underwriter shall include the following additional paragraph:

The undersigned hereby undertakes, in connection with any distribution of the Preliminary Offering Circular as permitted by Rule 256(i), (a) to keep an accurate and complete record of the name and address of each person furnished such Preliminary Offering Circular and (b) if such Preliminary Offering Circular is inaccurate or inadequate in any material respect, to furnish a revised Preliminary Offering or an offering circular of the type referred to in Rule 256(i)(4) to all persons to whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or to send such a circular to such persons under circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale.

(c) Consent of non-resident—Each consent to service of process required by Rule 262 shall be filed. Each such consent shall be prepared and executed in conformity with the appropriate form prescribed therefor.

(d) Formal requirements—All written consents filed shall be dated and manually signed.

(e) Application to dispense with consent—An application to the Commission to dispense with any written consent of an expert shall be made by the issuer and shall be supported by an affidavit or affidavits establishing that the obtaining of such consent is impracticable or involves undue hardship on the issuer.

Signature

This offering statement has been signed in the City of _____ State (or Province) of _____ on _____, 19——

(Issuer)

By _____

(name and title)

(Selling security holder)

2. Section 239.96 is proposed to be added to read as follows:

239.96 Form 7A, optional form of escrow for securities that are subject to the provisions of Rule 253(c) of Regulation A (§ 230.253(c) of this chapter).

Securities and Exchange Commission, Washington, D.C.

Form 7-A

[As adopted in Release No. 33-——, ——, 1980]

OPTIONAL FORM OF ESCROW FOR SECURITIES THAT ARE SUBJECT TO THE PROVISIONS OF RULE 253(c) OF REGULATION A

(Pursuant to Regulation A under Securities Act of 1933)

This escrow agreement entered into this —— day of ——, 19—, between (the issuer), a corporation organized under the laws of the State of ——, hereinafter referred to as the "Corporation," and (the purchaser) ——— of (address) ———, hereinafter referred to as "Purchaser," and (independet agent) ——— of (address) ———, hereinafter referred to as the "escrow agent," witnesseth:

Whereas in order to comply with the provisions of Rule 253(c) of the General Rules and Regulations under the Securities Act of 1933, as amended, hereinafer referred to as the "General Rules and Regulations," the Corporation simultaneously with the execution of this agreement is depositing with the escrow agent (number) ——— shares of the (class) ——— stock of the Corporation issued in the name of Purchaser and bearing certificate No. ———, the deposit of which is hereby acknowledged by the escrow agent:

Now, therefore, the parties hereto agree as follows:

1. The escrow agent hereby accepts said shares in escrow and agrees to hold and keep said shares in accordance with the terms and conditions hereof and for the uses and purposes herein set forth, and to deliver said shares upon the performance of the conditions hereinafter set forth.

2. The escrow agent shall not be held to take notice of any terms of any agreement or any rights stated with respect to the deposited shares unless expressly stated in writing herein.

3. During the period of holding the deposited shares in escrow, no transfer or any other disposition of any of said shares or of any interest therein is to be made whether subject to this escrow agreement or otherwise but all of said shares are to be held intact as issued and placed in escrow hereunder.

4. The escrow agent is hereby authorized and instructed to hold the deposited shares in escrow, pursuant to Rule 253(c) of the General Rules and Regulations, until such date as shall be thirteen months from the date, shown on a definitive offering circular, of an offering of shares of stock of the

Corporation in accordance with the provisions of the General Rules and Regulations. Thereafter upon receipt of written advice by the Corporation and Purchaser to the escrow agent (and to the Securities and Exchange Commission) that none of the deposited shares or any interests therein have been transferred or otherwise disposed of and that the deposited shares are registered under the Securities Act of 1933, as amended, or covered by a filing pursuant to the provisions of Regulation A under the General Rules and Regulations, or are otherwise exempt from registration or are not then required to be registered and that a copy of such advice has been delivered to the Securities and Exchange Commission, said shares will be delivered to Purchaser by escrow agent. If a registration statement is not then in effect and if an appropriate filing under Regulatin A has not been completed under said Act with respect to the deposited shares, prior to delivery of the deposited shares to Purchaser by escrow agent, (i) Corporation and Purchaser will advise escrow agent that Corporation and Purchaser have instructed the transfer agent for the deposited shares to the effect that no transfer of the deposited shares shall be made unless a registration statement under the Securities Act of 1933, as amended, with respect to such shares is in effect or an exemption from the registration requirements of such Act is in fact applicable to such shares and (ii) Corporation shall impress upon the face of the certificate or certificates representing the deposited shares and upon all certificates issued in exchange therefor the following legend:

"No sale, offer to sell or transfer of the shares represented by this certificate shall be made unless a registration statement under the Federal Securities Act of 1933, as amended, with respect to such shares is then in effect or an exemption from the registration requirements of such Act is then in fact applicable to such shares."

5. The fee of the escrow agent for its services hereunder shall be $———, payable at the time of the execution of this agreement, to be borne by ———.

6. In performing any of its duties hereunder, the escrow agent shall not incur any liability to anyone for any damages, losses, or expenses except for willful default or negligence, and it shall accordingly not incur any such liability with respect (i) to any action taken or omitted in good faith upon advice of its counsel or counsel for the Corporation given with respect to any questions relating to the duties and responsibilities of the escrow agent under this agreement, or (ii) to any action taken or omitted in reliance upon any instrument, including the written advices provided for herein, not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which the escrow agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this agreement.

7. The Corporation and Purchaser, jointly and severally, hereby agre to indemnify and hold harmless escrow agent against any and all losses, claims, damages, liabilities and expenses, including reasonable cost of investigation and counsel fees and disbursements, which may be imposed upon escrow agent or incurred by escrow agent in connection with its acceptance of appointment of escrow agent hereunder, or the performance of its duties hereunder, including any litigation arising from this agreement or involving the subject matter hereof or the shares deposited hereunder.

In witness whereof, (Corporation) ——— and (escrow agent) ——— have caused this agreement to be executed by their respective officers, thereunto duly authorized, (Purchaser) ——— has signed this agreement as of the day and year first above written.

(Corporation)
By: ———
(Title)
(Escrow Agent)
By: ———
(Title)
———(I.S.)

[FR Doc. 81-978 Filed 1-9-81; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5 80-20R]

Drawbridge Operation Regulations: Cambridge Harbor, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Maryland State Highway Administration, the Coast Guard is considering amending the regulations governing operation of the drawbridge on Maryland State Highway 342 across Cambridge Harbor, mile 0.1, at Cambridge, Maryland. The proposed change would extend the midday period when the draw need not be opened for the passage of vessels, and would delete those portions of the regulations providing for the departure of passenger trains on the Pennsylvania Railroad at Cambridge. This proposal is being made because of an increase in vehicular traffic congestion during the proposed period of change, and the fact that passenger trains no longer serve Cambridge. This change is being considered because it should improve the flow of vehicular traffic and still provide for the reasonable needs of navigation. Additionally, several other changes are being proposed which are editorial in nature.

DATE: Comnments must be received on or before February 11, 1981.

ADDRESS: Comments should be submitted to and are available for examination at the office of the Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23705, from 8 a.m. through 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Specialist, Aids to Navigation Branch, Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23705 (804-398-6222).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Fifth Coast Guard District, will evaluate all comments received and decide on a final course of action. The proposed regulation may be changed in the light of comments received.

Classification: This proposed regulation is considered to be nonsignificant in accordance with the guidelines set forth in DOT Order 2100.5 (Policies and Procedures for Simplification, Analysis and Review of Regulations).

Regulatory Analysis: An economic evaluation of the proposal has not been conducted because the expected economic impact is so minimal as to not warrant the evaluation. Anticipated benefits to be derived are mainly intangible and include savings in time and increased convenience for motorists, and less wear and tear on the draw machinery of the bridge. Drafting Information:

The principal persons involved in drafting this proposal are: Ann B. Deaton, Project Manager, Fifth Coast Guard District, Aids to Navigation Branch and LCDR Mark P. Troseth, Project Attorney, Assistant Legal Officer, Fifth Coast Guard District.

Discussion of the Proposed Regulation:

The proposed changes in the regulations are as follows: (1) to amend the current regulations by increasing the midday period when the draw need not open for the passage of vessels to: from 12 noon until 1 p.m. Current regulations

provide that the draw need not open for the passage of vessels from 12 noon to 12:10 p.m. and from 12:50 p.m. to 1 p.m.; (2) to delete that portion of the regulations providing for the departure of passenger trains from Cambridge. Current regulations provide that the draw need not open for 20 minutes before the scheduled time of departure from Cambridge of any regularly scheduled passenger train on the Pennsylvania Railroad; (3) to delete that portion of the regulations concerning vessel right of way; (4) to delete that portion of the regulations concerning opening signals; (5) to rewrite and renumber that portion of the regulations concerning posting of the regulations.

These changes in the regulations are being considered because: (1) An increased volume of vehicular traffic between the hours of 12 noon and 1 p.m., Monday through Friday, causes traffic congestion problems at the bridge, and there has been a corresponding decline in the number of drawbridge openings for the passage of vessels during the same hour. The Coast Guard believes this change would benefit vehicular traffic and still provide for the reasonable needs of navigation; (2) passenger trains on the Pennsylvania Railroad no longer stop in, depart from or pass through Cambridge; (3) discussion of vessel right of way is considered inappropriate for this regulation; (4) the provisions for opening signals for drawbridges are contained in Section 117.240 of this part; (5) the existing paragraph concerning posting of regulations is unclear insofar as the location of the signs is concerned.

For the reasons set out in the preamble, it is proposed that Part 117 of Title 33, Code of Federal Regulations, § 117.270 be amended to read as follows:

§ 117.270 Cambridge Harbor, MD; bridge.

(a) The draw shall be opened on signal except that: (1) From 8 p.m. to 6 a.m., every day, and from 12 noon to 1 p.m., Monday through Friday, the draw need not be opened for the passage of vessels.

(2) At all times not covered by the regulations in paragraph (a)(1), and in all other respects, the regulations contained in Section 117.240 shall govern the operation of this bridge.

(b) A copy of the regulations in this section shall be posted in a conspicuous place on both the upstream and downstream sides of the bridge.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: December 23, 1980.

T. T. Wetmore III,

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

[FR Doc. 81-1030 Filed 1-9-81; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

Correction of Inventorship

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed rulemaking.

SUMMARY: The proposed rules specify that certain inventorship errors can be corrected in patents and patent applications which are not correctable under the existing rules. For example, the named inventor could be changed from a sole individual who is not the inventor to a sole individual who is the inventor. The change is being proposed in view of the court decision in *Stoddard* v. *Dann*, 564 F.2d 556, 195 USPQ 97 (D.C. Cir. 1977) which held a sole-to-sole inventorship change to be appropriate in certain instances. The proposed rule change will clarify what corrections may be made by applicants and patentees.

DATES: Written comments by March 6, 1981. Hearing: March 6, 1981, beginning at 9:30 a.m.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. The hearing will be held in Room 11C24 of Building 3, Crystal Plaza located at 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and transcript of hearing will be available for public inspection in Room 11E10 of Building 3, Crystal Plaza at 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Louis O. Maassel by telephone at (703) 557-3070 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office is considering amendments to the Rules of Practice in Patent Cases which authorize the correction of inventorship. The proposal would permit changes from an applicant who is not the inventor to another applicant who is the actual inventor in a situation where there is no deceptive intention. The situation is similar to that presented in *Stoddard* v. *Dann*, 564 F.2d 556, 195 USPQ 97, a decision rendered by the U.S. Court of Appeals for the District of Columbia Circuit in 1977. Situations which involve deceptive intention, such as that in *Bemis* v. *Chevron Research Co.*, 599 F.2d 910, 203 USPQ 123 (9th Cir. 1979) where the Court prohibited a conversion from a sole applicant to another sole applicant who was the actual inventor, are not covered by the proposed amendment. The proposed changes adding §§ 1.48 and 1.426 would broadly provide for the correction of inventorship from an original applicant or applicants, who was or were not the actual inventor or inventors to another applicant or applicants who is or are the actual inventor or inventors.

The proposal would permit the substitution of one inventor for another inventor as contemplated by *Stoddard* v. *Dann*. Only joint inventorship errors involving addition or deletion of less than all applicants, were correctable prior to the *Stoddard* v. *Dann*, decision. To date, two petitions requesting sole-to-sole conversion of inventorship have been granted by the Patent and Trademark Office based on *Stoddard* v. *Dann*. Others have been denied where the fact situations were not appropriate.

Codifying the Court's decision in *Stoddard* v. *Dann* in the patent rules seems highly desirable and will result in very little additional expense to the Patent and Trademark Office or applicants. It is expected that only a few requests for conversion will have to be processed each year by the Patent and Trademark Office.

The proposed rule change takes full advantage of the holding in *Stoddard* v. *Dann*. The decision is construed to cover not just fact situations identical to that in *Stoddard* v. *Dann* (e.g., covering only a foreign inventor who cannot understand English and does not know United States patent practice). The rationale of *Stoddard* v. *Dann* is considered to apply to all innocent inventorship errors. Therefore, if the statute can be read to permit sole-to-sole conversion in a specific fact situation, it can also be read to permit correction of other innocent errors of inventorship.

Notice is hereby given that, pursuant to the authority contained in Section 6 of the Act of July 19, 1952, as amended (66 Stat. 793, 85 Stat. 364, 88 Stat. 1949; 35 U.S.C. 6 as amended) the Patent and Trademark Office proposes to amend Title 37 of the Code of Federal Regulations by amending §§ 1.45 and 1.324 and by adding new §§ 1.48 and 1.426.

This proposal has been reviewed pursuant to E.O. 12044 and determined to have no potential major economic

consequences requiring the preparation of a regulatory analysis.

In the text of the proposed amendments to § 1.324, additions are indicated by arrows and deletions are indicated by brackets.

It is proposed to amend 37 CFR Chapter I, as follows:

§ 1.45 [Amended]

1. By amending § 1.45 by removing the heading "(a)" to the first paragraph and by removing entirely paragraphs "(b)" and "(c)".

2. By adding § 1.48 to read as follows:

§ 1.48 Correction of inventorship.

If an application for patent has been made through error without any deceptive intention by one person as sole inventor when the person was not in fact the inventor, or was actually a joint inventor, the application may be corrected by amendment to remove the name of the person not the inventor and add the name of the actual sole inventor, or to include all the joint inventors. Such amendment must be accompanied by a statement of the facts verified by the original applicant and an oath or declaration as required by § 1.65 by the applicant who is the actual inventor, or each applicant who is a joint inventor. Such amendment must be diligently made and have the written consent of any assignee. In like manner, if an application for patent has been made through error without any deceptive intention by two or more persons as joint inventors, when they were not in fact joint inventors, or all the actual joint inventors, the application may be corrected by amendment to remove the names of those not inventors and add the names of the actual joint inventors, or to include all the joint inventors. Such amendment must be accompanied by a statement of the facts verified by the original applicants and an oath or declaration as required by § 1.65 by each applicant who is a joint inventor. Such amendment must be diligently made and have the written consent of any assignee.

3. By revising § 1.324 to read as follows:

§ 1.324 Correction of error in joining inventor.

Whenever a patent is issued and it appears that there was [a misjoinder or nonjoinder of inventors] ►an error in the designation of inventorship◄ and that such [misjoinder or omission] ►error◄ occurred [by error and] without deceptive intention, the Commissioner may, on application of all the parties and the assignees and satisfactory proof of the facts, or on order of a court before which such matter is called in question, issue a certificate [deleting the misjoined inventor from the patent or adding the non-joined inventor to] ►correcting inventorship in◄ the patent.

4. By adding § 1.426 to read as follows:

§ 1.426 Correction of inventorship.

If an international application for patent designating the United States of America has been made through error without any deceptive intention by one person as sole inventor when the person was not in fact the inventor, or was actually a joint inventor, the international application may be corrected by amendment before the United States Patent and Trademark Office to remove the name of the person not the inventor and add the name of the actual sole inventor, or to include all the joint inventors. Such amendment must be accompanied by a statement of the facts verified by the original applicant and an oath or declaration as required by § 1.70 by the applicant who is the actual inventor, or each applicant who is a joint inventor. Such amendment must be diligently made and have the written consent of any assignee. In like manner, if an international application for patent designating the United States of America has been made through error without any deceptive intention by two or more persons as joint inventors, when they were not in fact joint inventors, or all the actual joint inventors, the international application may be corrected by amendment before the United States Patent and Trademark Office to remove the names of those not inventors and add the names of the actual joint inventors, or to include all the joint inventors. Such amendment must be accompanied by a statement of the facts verified by the original applicants and an oath or declaration as required by § 1.70 by each applicant who is a joint inventor. Such amendment must be diligently made and have the written consent of any assignee.

Dated: December 15, 1980.

Sidney A. Diamond,

Commissioner of Patents and Trademarks.

Dated: December 24, 1980.

Approved:

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 81-678 Filed 1-9-81; 8:45 am]

BILLING CODE 3510-16-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans' Education; Resumption of Contribution to Funds Upon Reenlistment

AGENCY: Veterans Administration and Department of Defense.

ACTION: Proposed regulation.

SUMMARY: The proposed regulation issued jointly by the Veterans Administration and the Department of Defense clarifies that an individual who, because of a discharge or release from active duty, stops contributing to the fund upon which Post Vietnam era veterans' educational assistance payments are based, may resume contributing upon reenlisting. Since the regulations do not address this problem, confusion has arisen as to whether these individuals may resume contributions. The proposed regulation eliminates the confusion by providing a rule to deal with this situation.

DATES: Comments must be received on or before February 11, 1981. It is proposed to make this amendment effective the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Comments will be available for inspection at the address shown above during normal business hours until February 23, 1981.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: Section 21.5058(a), Title 38, Code of Federal Regulations is amended specifically to permit an individual whose contributions to the Veterans' Educational Assistance Program fund have been interrupted as a result of the individual's discharge or release, to resume contributing if he or she reenlists.

This proposed regulation does not meet the Veterans Administration's

established criteria for significant regulations. The proposal will have no effect, either direct or indirect, on schools, businesses, the general public, the environment, or State and local governments. The proposal will not impose any new reporting requirements on schools. There will be no costs to businesses or to educational institutions caused by this proposal. The proposal will affect some veterans, but their number will be small.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until February 23, 1981. Any person visiting the Veterans Administration Central Office in Washington, DC for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: November 17, 1980.

Max Cleland,

Administrator, Veterans Administration.

Approved: December 12, 1980.

Robert A. Stone,

Deputy Assistant, Secretary of Defense.

In § 21.5058, paragraph (a) is revised to read as follows:

§ 21.5058 Resumption of participation.

(a) An eligible individual, who remains otherwise eligible, may resume active contribution to the fund, if he or she has—

(1) Voluntarily elected to suspend following completion of minimum participation;

(2) Suspended at anytime for reasons of hardships; or

(3) Received a discharge or release from active duty after participation and reenlisted. (38 U.S.C. 1621)

* * * * *

[FR Doc. 81-1014 Filed 1-9-81; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[A-6-FRL 1723-3]

Approval and Promulgation of State Implementation Plans; Air Quality Surveillance Data Reporting for Arkansas, Louisiana, New Mexico and Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the State Implementation Plans (SIPs) for the States of Arkansas, Louisiana, New Mexico and Oklahoma to meet Federal Monitoring Regulations, 40 CFR Part 58, Subpart C, Paragraph 58.20, Air Quality Surveillance; Plan Content.

DATES: Interested persons are invited to submit comments on this proposed action on or before February 11, 1981.

ADDRESSES: Written comments should be submitted to the address below: Environmental Protection Agency, Region 6, Air and Hazardous Materials Division, Air Program Branch, Attn: Jerry Stubberfield, 1201 Elm Street, Dallas, Texas 75270.

Copies of the State's submittals are available for inspection during normal business hours at the address above and at the following location: Environmental Protection Agency, Public Information Reference Unit, Room 2922, EPA Library, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Jerry Stubberfield, Chief, Implementation Plan Section, Air Program Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas, 75270, (214) 767-1518.

SUPPLEMENTARY INFORMATION:

Background

Section 319 of the Clean Air Act, as amended, requires the Environmental Protection Agency (EPA) to establish monitoring criteria to be followed uniformly across the Nation. Pursuant to this requirement and the recommendations of the Standing Air Monitoring Work Group (SAMWG), EPA, on May 10, 1979 (44 FR 27558), promulgated Rules and Regulations for Ambient Air Quality Monitoring, Data Reporting, and Surveillance Provisions.

Requirements for Air Quality Surveillance Network

The regulations revoke Part 51 of Title 40 of the Code of Federal Regulations and establish a new Part 58 entitled Ambient Air Quality Surveillance.

40 CFR 58.20 requires that the State adopt and submit to the Administrator a revision to the plan which will:

(a) Provide for the establishment of an air quality surveillance system that consists of a network of monitoring stations designated as State and Local Air Monitoring Stations (SLAMS) which measure ambient concentrations of those pollutants for which standards have been established in 40 CFR Part 50.

(b) Provide for meeting the requirements of Appendices A, C, D, and E of 40 CFR Part 58.

(c) Provide for the operation of at least one SLAMS per pollutant during any stage of an air pollution episode as defined in the contingency plan.

(d) Provide for the review of the air quality surveillance system on an annual basis to determine if the system meets the monitoring objectives defined in Appendix D of 40 CFR Part 58. Such review must identify needed modifications to the network such as termination or relocation of unnecessary stations or establishment of new stations which are necessary.

(e) Provide for having a SLAMS network description available for public inspection and submission to the Administrator upon request. The network description must be available at the time of plan revision submittal and must contain the following information for each SLAMS:

(1) The Storage and Retrieval of Aerometric Data (SAROAD) site identification form for existing stations.

(2) The proposed location for scheduled stations.

(3) The sampling and analysis method.

(4) The operating schedule.

(5) The monitoring objective and spatial scale of representativeness as defined in Appendix D to this part.

(6) A schedule for:

(i) Locating, placing into operation, and making available the SAROAD site identification form for each SLAMS which is not located and operating at the time of plan revision submittal;

(ii) Implementing quality assurance procedures of Appendix A of 40 CFR Part 58 for each SLAMS for which such procedures are not implemented at the time of plan revision submittal; and

(iii) Resiting each SLAMS which does not meet the requirements of Appendix E to this part at the time of plan revision submittal.

On the dates listed below, the indicated States submitted final revisions to their SIPs concerning compliance with these Federal Monitoring Regulations and EPA finds that they meet the requirements of Part 58.

Arkansas—April 24, 1980
Louisiana—January 10, 1980
New Mexico—December 12, 1979
Albuquerque—January 18, 1980
Oklahoma—March 7, 1980

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized developmental procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Pursuant to the provisions of 5 U.S.C 605(b) I hereby certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reason for this finding is that the proposal relates only to air quality surveillance to be carried out by four states and will not cause any significant economic impacts.

This notice of proposed rulemaking is issued under the authority of Section 319 of the Clean Air Act as amended.

Dated: December 29, 1980.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 81-1032 Filed 1-9-81; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[CGD 80-148]

Great Lakes Pilotage; Rates Increase

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to amend the Great Lakes Pilotage Regulations. These amendments would increase the basic pilotage rates by an average of approximately ten percent in the U.S. Great Lakes pilotage system. Reasonable travel expenses would be included in the cancellation charge if a pilot has commenced travel to that assignment prior to the cancellation notice being received. Additionally, it is proposed that if a pilot is available for service but not utilized for more than one hour due to delay or cancellation then charges would be made for the entire period. These changes are made in order to increase the revenue received by the pilot organizations so that they may cover their increased operating costs.

DATE: Comments must be received on or before February 26, 1981.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/24) (CGD 80-148), U.S. Coast Guard, Washington, D.C. 20593. Between the hours 7 a.m. and 5 p.m., Monday through Thursday, comments may be delivered to, and are available for inspection and copying at the Marine Safety Council (G-CMC/24), Room 2418, Department of Transportation, Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke (G-MVP-4/14), Room 1400, Department of Transportation, Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593. (202) 755-8683.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this notice (CGD 80-148) and the specific section of the proposal to which the comment applies, and give the reasons for the comment. Persons desiring acknowledgement that their comment has been received should enclose a stamped self-addressed postcard or envelope.

The proposal may be changed in view of the comments received. All comments received will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons at the Marine Safety Council address noted above. 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.

Drafting Information

The principal persons involved in drafting this rule are: John J. Hartke, Project Manager, Office of Merchant Marine Safety, and LT Michael Tagg, Project Attorney, Office of the Chief Counsel.

Discussion of the Proposed Regulations

The Coast Guard has recently completed a review of revenues earned and expenses incurred by the three Great Lakes pilot organizations during 1980. Revenue requirements for 1981 have been developed and the number of vessels, their size, and route patterns have been projected for 1981.

It is proposed to increase the basic rates for pilotage on the Great Lakes by an average of approximately ten percent so that the pilot organizations may cover their increased operating costs. The various cost elements (pilot boats, dispatching, pilot travel, administration, and pilot training) have increased at different rates. While the average rate increase for the whole system is approximately ten percent, pilot compensation is projected to increase by only eight percent. The guideline followed in the development of a pilot compensation figure is that target compensation for U.S. pilots is to be comparable to the earnings of their licensed counterparts on U.S. Great Lakes vessels. Increasing the basic rates by an average of ten percent would cover the projected increase in pilot organization operating costs for 1981 and would sufficiently increase pilot compensation to maintain reasonable parity between the Great Lakes pilots and their licensed counterparts on U.S. Great Lakes vessels.

Situations have occurred where a request for a pilot has been placed and subsequently cancelled, but the pilot, based on the original request, was placed on travel enroute to the normal boarding place prior to the cancellation being received. In addition to the dislocations caused the pilot pools there is the matter of the travel expenses that were incurred by the pilot. These unproductive travel expenses must be absorbed by the pilot organizations. It is therefore proposed that a charge for reasonable travel expenses be added to the cancellation charge in cases where the pilot is placed on travel prior to the cancellation being received.

Presently, when a pilot is available but not utilized due to delay or cancellation, time charges are assessed only for periods in excess of one hour. In an effort to encourage better pilot utilization, it is proposed that if the pilot is available but not utilized for periods exceeding one hour, then all hours may be charged. If the period is one hour or less there is no time charge.

Under certain circumstances a ship may request the assignment of two pilots, or, the Director, Great Lakes Pilotage Staff may require the assignment of two pilots when it is considered necessary for the safe navigation of the ship. At present the vessel is charged one and one half times the normal charge for the two pilots. Generally, assignments involving two pilots are more difficult and a longer period of time is required to complete a

transit. This reduces the availability of pilots but produces revenue for the second pilot at only one half the normal rate. In order to make the charge for this type of assignment more representative of the difficulty and length of the assignment, it is proposed that in those instances where two pilots are assigned to a vessel the fee will be twice the normal basic rate.

These proposed regulations are considered to be nonsignificant and, accordingly, a draft evaluation has been prepared and placed in the public docket as required by the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 dtd 5-22-80). The DOT Order requires that each draft evaluation include an economic analysis which quantifies, to the extent practicable, the estimated cost of the regulations to the private sector, consumers, and Federal, State, and local governments, as well as the anticipated benefits and impacts of the regulations. The estimated cost of this proposal is $700,000. This figure is the amount of additional revenue the U.S. pilots should receive under this proposal based on the projected 1981 traffic and the increased amount that shippers would have to pay for pilotage services on the Great Lakes. The benefit of this rule is the value of avoiding or minimizing costly delays and disruptions in shipping attributable to the failure to retain qualified pilots and to attract new qualified pilots. The overall efficiency of the pilotage system is enhanced by having an appropriate number of pilots available to provide the required services. The draft evaluation from which this information is taken has been included in the public docket and can be obtained from the Marine Safety Council at the address indicated above.

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1166) requires an initial regulatory flexibility analysis for proposed regulations having a significant economic impact on an substantial number of small entities. The pilotage fees in question account for less than five percent of the total shipping costs and the increase necessitated by the current high inflation rates will not have a significant impact on the shipping industry. The proposed regulations will impose no additional paperwork burden on the users. For these reasons it has been determined that the proposed regulations do not fall within the purview of the Act. Pursuant to section 605(b) of the Act, it is certified that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

In the development of this proposal U.S. and Canadian shipping associations and pilot associations were consulted.

In consideration of the foregoing, the Coast Guard proposes to amend Part 401 of Title 46 of the Code of Federal Regulations as set forth below:

1. By revising § 401.405 to read as follows:

§ 401.405 Basic rates and charges on designated waters.

Except as provided under § 401.420, the following basic rates shall be payable for all services and assignments performed by U.S. Registered Pilots in the areas described in § 401.300.

(a) District 1: (1) For passage through the District or any part thereof, $7.24 for each statute mile, plus $96 for each lock transited, but with a minimum basic rate of $211 and a maximum basic rate for a through trip of $927.

(2) For a moveage in any harbor, $318.

(b) District 2: (1) Southeast Shoal to Toledo or any point on Lake Erie west of Southeast Shoal, $494.

(2) Between points on Lake Erie west of Southeast Shoal, $292.

(3) Southeast Shoal to Port Huron Change Point or any point on the St. Clair River when pilots are not changed at Detroit Pilot Boat, $860.

(4) Southeast Shoal to Detroit/Windsor or any point on the Detroit River, $494.

(5) Southeast Shoal to Detroit Pilot Boat, $358.

(6) Toledo or any point on Lake Erie west of Southeast Shoal and Port Huron Change Point, when pilots are not changed at Detroit Pilot Boat, $996.

(7) Toledo or any point on Lake Erie west of Southeast Shoal and the Detroit/Windsor or any point on the Detroit River, $641.

(8) Toledo or any point on Lake Erie west of Southeast Shoal and the Detroit Pilot Boat, $494.

(9) Detroit/Windsor or any point on the Detroit River and between points on the Detroit River, $292.

(10) Detroit/Windsor or any point on the Detroit River to Port Huron Change Point or any point on the St. Clair River, $648.

(11) Detroit Pilot Boat to any point on the St. Clair River, $648.

(12) Detroit Pilot Boat to Port Huron Change Point, $503.

(13) Between points on the St. Clair River, $292.

(14) Port Huron Change Point to any point on the St. Clair River, $358.

(c) District 3: (1) Between the southerly limit of the District and the northerly limit of the District or the Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario, $844.

(2) Between the southerly limit of the District and Sault Ste. Marie, Ontario or any point in Sault Ste. Marie, Ontario other than the Algoma Steel Corporation Wharf, $708.

(3) Between the northerly limit of the District and Sault Ste. Marie, Ontario, including the Algoma Steel Corporation Wharf, or Sault Ste. Marie, Marie, Michigan, $318.

(4) For a moveage in any harbor, $318.

2. By revising § 401.410(a) to read as follows:

§ 401.410 Basic rates and charges on undesignated waters.

(a) Except as provided under § 401.420 and subject to paragraph (b) of this section, the basic rates for each 6 hour period or part thereof that a U.S. pilot is on board in the undesignated waters shall be:

(i) In Lake Ontario, $171

(ii) In Lake Erie, $211

(iii) In Lakes Huron, Michigan and Superior, $171 plus $162 for each time a U.S. pilot performs the docking or undocking of the ship.

(b) When in direct transit of the undesignated waters of Lake Erie between Southeast Shoal and Port Colborne, or between Port Colborne and Southeast Shoal, and the vessel's master plans to use an appropriate certificate in lieu of a pilot, the ship shall pick up or discharge the pilot at the Cleveland pilot boat. No charge is to be made for the transit between Southeast Shoal and the Cleveland pilot boat or between the Cleveland pilot boat and Southeast Shoal unless the services of the pilot are utilized.

3. By revising § 401.420 to read as follows:

§ 401.420 Cancellation, delay or interruption in rendition of services.

(a) Except as provided in this paragraph, whenever the passage of a ship is interrupted and the services of a U.S. pilot are retained during the period of the interruption or when a U.S. pilot is detained on board a ship after the end of an assignment for the convenience of the ship, the ship shall pay an additional charge calculated on a basic rate of $26 for each hour or part of an hour during which each interruption lasts with a maximum basic rate of $422 for each continuous 24 hour period during which the interruption continues. There is no charge for an interruption caused by ice, weather, or traffic, except during the period beginning the 1st of December and ending on the 8th of the following April. No charge shall be made for an interruption if the total interruption ends during the 6 hour period for which a charge has been made under § 401.410.

(b) When the departure or movage of a ship for which a U.S. pilot has been ordered is delayed for the convenience of the ship for more than one hour after the U.S. pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, the ship shall pay an additional charge calculated on a basic rate of $26 for each hour or part of an hour including the first hour of the delay, with a maximum basic rate of $422 for each continuous 24 hour period of the delay.

(c) When a U.S. pilot reports for duty as ordered and the order is cancelled, the ship shall pay:

(1) A cancellation charge calculated on a basic rate of $160;

(2) A charge for reasonable travel expenses if the cancellation occurs after the pilot has commenced travel; and

(3) If the cancellation is more than one hour after the pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, a charge calculated on a basic rate of $26 for each hour or part of an hour including the first hour, with a maximum basic rate of $422 for each 24 hour period.

4. By revising § 401.425 to read as follows:

§ 401.425 Provision for additional pilot.

The Director, Great Lakes Pilotage Staff, U.S. Coast Guard, or the General Manager, Great Lakes Pilotage Authority, Ltd., Canada, may require the assignment of two pilots to a ship upon request of the ship or when in his judgment, because of anticipated long transit, uncommon ship size, adverse weather or sea conditions or other abnormal circumstances, the assignment of two pilots is considered necessary for the safe navigation of the ship. The Director or General Manager shall direct which of the pilots is to be in charge, as circumstances require. The charge to the ship shall be twice the appropriate charge provided for in §§ 401.405, 401.410, and 401.420. This section does not apply to a ship in a direct transit of the undesignated waters of Lake Erie between Southeast Shoal and Port Colborne unless the ship is required by law to have a registered pilot on board in these waters.

5. By revising § 401.428 to read as follows:

§ 401.428 Basic rates and charges for carrying a U.S. pilot beyond normal change point or for boarding at other than the normal boarding point.

If a U.S. pilot is carried beyond the normal change point or is unable to board at the normal boarding point the pilot shall be paid at the rate of $162 per day or part thereof, plus reasonable travel expenses to or from the pilot's base. These charges are not applicable if the ship utilizes the services of the pilot beyond the normal change point and the ship is billed for those services. The change points to which this section applies are designated in § 401.450.

(Sec. 5, 74 Stat. 260 (46 U.S.C. 216c); Sec. 6(a)(4), 80 Stat. 937, as amended (49 U.S.C. 1655(a)(4); 49 CFR 1.46(d)))

Dated: January 6, 1981.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 81-1031 Filed 1-9-81; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 46, No. 7
Monday, January 12, 1981

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Public Information Meeting

Notice is hereby given pursuant to § 800.6(b)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that on Saturday, January 31, 1981, at 9:00 a.m., a public information meeting will be held at the State of Hawaii, Department of Education Board Room, Room 403, Queen Liliuoukalani Building, 1390 Miller Street, Honolulu, Hawaii.

The meeting is being called by the Executive Director of the Council in accordance with § 800.6(b)(3) of the Council's regulations. The purpose of the meeting is to provide an opportunity for representatives of national, State, and local units of government, representatives of public and private organizations, and interested citizens to receive information and express their views concerning the continuing use of Kaho'olawe, an undertaking of the U.S. Department of the Navy, that will adversely affect archeological and cultural properties eligible for the National Register of Historic Places. Consideration will be given to the undertaking, its effects on National Register or eligible properties, and alternate courses of action that could avoid, mitigate, or minimze any adverse effects on such properties.

The following is a summary of the agenda of the meeting:

I. An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.

II. A description of the undertaking and an evaluation of its effects on the properties by the Navy.

III. A statement by the Hawaii State Historic Preservation Officer.

IV. Statements from local officials, private organizations, and the public on the effects of the undertaking on the properties.

V. A general question period.

Speakers should limit their statement to 5 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 44 Union Boulevard, Suite 616, Lakewood, Colorado 80228; or 303-234-4946.

Dated: January 6, 1981.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 81-948 Filed 1-9-81; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Systems of Records; Annual Publication

Pursuant to 5 U.S.C. 552a(e)(4), the Department of Agriculture hereby republishes its annual notice of the existence and character of the systems of records currently maintained pursuant to the Privacy Act of 1974. The last such annual republication for the Department of Agriculture can be found at 44 FR 69694 (December 4, 1979). That republication updated the earlier complete publication found at 43 FR 51268 (November 2, 1978).

Since the last annual republication, the following additions and corrections have been published:

45 FR 3361 (1/17/80)—Revision of FS-21—Public Involvement Respondents on Forest Service Activities

45 FR 10824 (2/19/80)—Revision of FS-4—Certification of Engineering Personnel

45 FR 10825 (2/19/80)—Publication of SCS-3—Federal Financed Cost-Sharing Information Applicable to Individual Participants in SCS Programs.

The above-cited Federal Register notices are printed in full below.

Dated: January 6, 1981.

Bob Bergland,

Secretary of Agriculture.

USDA/FS-21

SYSTEM NAME:

Public Involvement Respondents on Forest Service Activities, USDA/FS

SYSTEM LOCATION:

Records in this system are maintained at Forest Service Headquarters in Washington, D.C., the 9 Regional Offices, 123 Forest Supervisor Office, and 673 District Ranger Offices. The address for the Headquarters is Forest Service, U.S. Department of Agriculture, P.O. Box 2417, Washington, D.C. 20013; the address for Regional Foresters and Forest Supervisors are listed in 36 CFR 200:2, Subpart A; and addresses for District Rangers are in the telephone directory of the applicable locality under the heading, United States Government, Department of Agriculture, Forest Service.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteer respondents in public involvement efforts related to natural resource management issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

May include one or more elements of Correspondence, news clippings, questionnaires, response forms, summary lists, oral comments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order No. 11514, March 5, 1970, and 42 U.S.C. 4321.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

"Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

By issue on published documents; keysort cards; magnetic tape; punched cards; original correspondence; microfilm.

RETRIEVABILITY:

By issues.

SAFEGUARDS:

File cabinets.

RETENTION AND DISPOSAL:

Records are retained for 2 years after the decision is made and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Public Information and Involvement, Forest Service, U.S. Department of Agriculture, P.O. Box 2417, Washington, D.C. 20013, or the appropriate Regional Forester, Forest Supervisor, or District Ranger at the addresses specified under Location above.

NOTIFICATION PROCEDURE:

Any Forest Service field office or the WO, where the respondent gave or mailed comment or any Forest Service office to which such comments might have been sent for review or analysis. Identifying information should be by public involvement issue and approximate year.

RECORD ACCESS PROCEDURES:

Use same procedures as for requesting Notification.

CONTESTING RECORD PROCEDURES:

Use same procedures as for requesting Notification.

RECORD SOURCE CATEGORIES:

Respondents voluntarily give the information to agency in meetings, hearings, and by correspondence.

USDA/FS-4

SYSTEM NAME:

Certification of Engineering Personnel, USDA/FS.

SYSTEM LOCATION:

At the Forest Service Headquarters Offices of the Chief, Regional Foresters, and Forest Supervisors as listed in 36 CFR 200.2, Subpart A, where individual is or was employed, and at Bibliographic Retrieval Service, Inc., 702 Corporation Park, Scotia, N.Y. 12302.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Forest Service employees who have taken examinations in one or more of the certification categories.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of the name, social security number, work location, written and oral examination results, and certificates issued for each Forest Service employee defined in the preceding paragraph.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 7 CFR 2.60.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

"Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Examination results, and supporting documents. Data is also on magnetic tape.

RETRIEVABILITY:

Manual system is indexed by name and location. ADP System is indexed by individual Social Security numbers.

SAFEGUARDS:

Records are maintained in standard filing system and on magnetic tape. The records are located in offices that are locked during non-office hours. They are available only to authorized personnel.

RETENTION AND DISPOSAL:

Records are maintained for the duration of individual's employment and thereafter filed in the Federal Records Center in accordance with standard procedures. Entries on magnetic tape are eliminated when employee leaves the organization.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Engineering, Forest Service, U.S. Department of Agriculture, Washington, D.C. 20250 or the appropriate Regional Forester, Forest Supervisor in charge of the unit where the individual is or was employed.

NOTIFICATION PROCEDURE:

Employees (past or present) may request information as to whether or not the system contains records pertaining to them from the appropriate system manager listed in the preceeding paragraph. A request for information should be in writing and should include the individual's full name, address, and social security number; approximate date of last certification or examination, and place of employment at that time.

RECORD ACCESS PROCEDURES:

Use same procedures as for requesting Notification.

CONTESTING RECORD PROCEDURES

Use same procedures as for requesting Notification.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from written, oral, and applied examinations.

USDA/SCS-3

SYSTEM NAME:

Federal Financed Cost-Sharing Information applicable to individual particpants in USDA—Soil Conservation Service (SCS) programs.

SYSTEM LOCATION:

Records in this system are maintained at the Soil Conservation Service. Headquarters in Washington, D.C. and in the Computer Centers located at the National Finance Center, New Orleans, Louisiana, SCS Technical Service Center, Fort Worth, Texas, and USDA Computer Centers located in Washington, D.C., Fort Collins, Colorado, and Kansas City, Missouri.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteer participants, namely landowners and operators in conservation programs administered by the Soil Conservation Service where federally financed cost sharing is involved. The programs are the Great Plains Conservation Program, Small Watershed Program, Rural Abandoned Mine Program, and Resource Conservation and Development Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer data cards, tapes, computer printouts, and hard copies of records. these records include name, address, social security number, SCS program, and amount of payment by program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Soil Conservation Act, Pub. L. 74-46, 49 Stat. 163, (16 U.S.C. 590a-f, q); Resource Conservation and Development Program, Pub. L. 87-703, as amended (7 U.S.C. 1010-1011); Small Watershed Program, Pub. L. 83-566, 68 Stat. 666, as amended (16 U.S.C. 1001-1009); Rural Abandoned Mine Program, Pub. L. 95-87, 91 Stat. 163 (16 U.S.C. 590 a-f, q); Great Plains Conservation Program, Pub. L. 84-1021, 70 Stat. 1115, as amended (16 U.S.C. 590 p(b)); and related laws 42 U.S.C. 3271-3274.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Report to Internal Revenue Service (IRS) of payments made to individual participants for income tax purposes. Also used by authorized USDA personnel for budget estimates and program cost data.

Disclosure of data to IRS is in accordance with the Internal Revenue Act of 1954 (26 U.S.C. 6041) as amended.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING RECORDS IN THE SYSTEM.

STORAGE:

By individual on keypunched cards or magnetic tapes for computers.

RETRIEVABILITY:

Names and addresses of the individuals are kept for reports to the Internal Revenue Service. Record material will be retrieved by name, social security number, and program applicable.

SAFEGUARDS:

Locked file cabinets, locked computer storage rooms, and locked computer terminal rooms. Access to records is in accordance with USDA ADP security plan as supplemented by SCS.

RETENTION AND DISPOSAL:

Maintained indefinitely on a currently updated basis.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Management Systems Branch, Management Evaluation Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013.

NOTIFICATION PROCEDURE:

Any Soil Conservation Service officer from which the individual participant has received technical assistance for implementation of a conservation plan required for Federal cost-sharing financial assistance will receive requests for information regarding the system of records. Identifying information should be made by individual names, social security number, address, contract or agreement number, and program involved.

RECORD ACCESS PROCEDURES:

To obtain information for obtaining access to the system of records, write to the system manager listed above.

CONTESTING RECORD PROCEDURES:

Use the same procedures as for records access.

RECORD SOURCE CATEGORIES:

Participants voluntarily ask for Federal financial cost-share assistance to apply needed conservation treatment or practices to lands owned or operated by the individual particpant. Such cost-sharing data is needed for Federal income tax information as it applies to the year and income of the participant using the programs.

[FR Doc. 81-1019 Filed 1-9-81; 8:45 am]
BILLING CODE 3410-01-M

Science and Education Administration

Establish Eligibility for Funding for Animal Health and Disease Research

The Science and Education Administration announces that it will accept statements of eligibility for funds to be distributed in Fiscal Year 1981 under the provisions of Sections 1429–1439 of Pub. L. 95–113 (7 U.S.C. 3191–3201) relating to Animal Health and Disease Research.

Section 1433 of Pub. L. 95–113 authorizes funds to be distributed among the States on a formula basis for the support of animal health and disease research programs conducted by eligible institutions in the States. Section 1434 authorizes funds to be allocated to eligible institutions on a discretionary basis to support research on specific national or regional animal health or disease problems. For Fiscal Year 1981 6.5 million dollars will be distributed under Section 1433. No funds will be distributed under Section 1434.

Any college or university having an accredited college of veterinary medicine or a department of veterinary science or animal pathology, or a similar unit conducting animal health and disease research in a State agricultural experiment station is eligible for funding, provided the institution has a demonstrable capacity for conducting animal health and disease research. Colleges or universities with a department of veterinary science or animal pathology must provide evidence that such department is a distinct unit within the institution with its major activity centered on food animal health and disease research, education or extension. At least one faculty member of this department must hold the degree, Doctor of Veterinary Medicine. Published material of the college or university must be submitted which identifies the department of veterinary science or animal pathology, its administrative relationship to other units within the college or university, its functions and its faculty. Fiscal information should be included that will permit estimation of the magnitude which food animal health research, education or extension bears to the total effort of the department.

The capacity to conduct animal health and disease research will be determined on the basis of the following criteria:

1. One or more faculty of professional rank currently conducting food animal health and disease research.

2. Ongoing programs in livestock, poultry, or other food animal health and disease research. Such programs should involve studies on infectious, noninfectious, parasitic, and chemical factors that reduce the efficiency of production or endanger the suitability for human food of livestock, poultry, and other food animals or their products.

Colleges of Veterinary Medicine, State agricultural experiment stations, and other institutions that established eligibility in Fiscal Year 1980 are not required to submit new statements of eligibility in response to this Notice. Such institutions will be notified individually and requested to certify their continued eligibility status.

Other institutions desiring to establish eligibility under Section 1433 for Fiscal Year 1981 must submit a statement of eligibility to the Director of Science and Education, U.S. Department of Agriculture, Washington, D.C., within 30 days following the date of publication of this notice. In addition to the specific information required for colleges and universities with a department of veterinary science or animal pathology as identified above, statements must include evidence of the institution's capacity to perform animal health and disease research. Such evidence should address the above-numbered criteria and include, where available, a summary of each research project which was conducted by the institution on animal health and disease problems of food animals in Fiscal Year 1979. The summaries should include the following information:

1. Project Title
2. Research Objectives
3. Research Approach
4. Total Expenditures on the Project
5. Full-time Equivalents of Professional Rank Staff Devoted to the Project

Questions regarding this program should be directed to: Dr. Earl J. Splitter, Assistant Deputy Administrator, Animal Sciences, SEA/CR, U.S. Department of Agriculture, Washington, D.C. 20250 Telephone Number: (202) 447–5007.

Dated: January 6, 1981.

Anson R. Bertrand,

Director, Science and Education.

[FR Doc. 81-1000 Filed 1-9-81; 8:45 am]
BILLING CODE 3410-22-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations, Week Ended January 2, 1981

Subpart Q Applications [1]

The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

[1] See 14 CFR 302.1701 et seq.

Date filed	Docket No.	Description
Dec. 31, 1980	39114	Trans World Airlines, Inc., 605 Third Avenue, New York, New York 10158. Application of Trans World Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Board Procedural Regulations, requests that its certificate of public convenience and necessity for Route No. 2 be amended by adding a new segment which would authorize service between the terminal point Akron/Canton, OH, and the intermediate points: Albuquerque, NM*; Allentown-Bethlehem-Easton, PA; Anchorage, AK; Ashville, NC; Augusta, GA; Austin, TX; Bakersfield, CA; Bangor, ME; Baton Rouge, LA; Billings, MT; Boise, ID; Boston, MA*; Bristol-Kingsport-Johnson City, TN; Burlington, VT; Casper, WY; Cedar Rapids-Iowa City, IA; Charleston, SC; Charleston/Dunbar, WV; Chattanooga, TN; Chicago, IL*; Columbia, SC; Columbus, GA; Corpus Christi, TX; Daytona Beach, FL; Denver, CO*; Duluth, MN-Superior, WI; Erie, PA; Eugene, OR; Evansville, IN; Fairbanks, AK; Fargo, ND-Moorhead, MN; Fayetteville, NC; Flint, MI; Ft. Wayne, IN; Gainsville, FL; Grand Junction, CO; Grand Rapids, MI; Great Falls, MT; Green Bay-Clintonville, WI; Greensboro-High Point, NC; Greenville-Spartanburg, SC; Honolulu, HI*; Houston, TX*; Huntsville, AL; Jackson-Vicksburg, MS; Jacksonville, FL; Juneau, AK; Kahului, HI; Kailua, HI; Kalamazoo-Battle Creek, MI; Lansing, MI; Lexington-Frankfort, KY; Lihue, HI; Los Angeles, CA*; Lubbock, TX; Melbourne, FL; Miami, FL*; Midland-Odessa, TX; Mobile, AL; Monterey-Salinas, CA; Montgomery, AL; Newport News-Hampton, VA; Pensacola, FL; Pittsburgh, PA*; Portland, ME; Raleigh-Durham, NC; Rapid City, SD; Roanoke, VA; Rochester, NM; Saginaw-Bay City-Midland, MI; St. Croix, VI; St. Louis, MO*; St. Thomas, VI; Santa Barbara, CA; Savannah, GA; Scranton-Wilkes Barre, PA; Seattle-Tacoma, WA*; Shreveport, LA; South Bend, IN; Springfield, MO; Spokane, WA; Tallahassee, FL; and the terminal point Youngstown, OH. Conforming Applications, motions to modify scope, and Answers may be filed by January 28, 1981.
Jan. 2, 1981	39127	American Eagle Airlines, Inc., P.O. Box 8782, Baltimore-Washington International Airport, Maryland 21240. Application of American Eagle Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity authorizing it to engage in scheduled air transportation between a point or points in the United States, on the one hand, and points in Belgium, the Netherlands, Luxemburg, and West Germany, on the other. Conforming Applications, motions to modify scope, and Answers may be filed by January 30, 1981.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 81-1021 Filed 1-9-81; 8:45 am]

BILLING CODE 6320-01-M

[Docket 37498]

Carrier Selection Case for New Bedford, Mass.; Change of Time and Date of Oral Argument

The Oral Argument in this proceeding has been changed from Tuesday, January 13, 1981, at 10:00 a.m. to Monday, January 19, 1981, at 1:00 p.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C. Parties which wish to participate in the argument please advise the Secretary, in writing, on or before Wednesday, January 7, 1981, together with the name of the person who will represent it at the argument.

Dated at Washington, D.C. January 5, 1981.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 81-1022 Filed 1-9-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Union Shake Company, P.O. Box 692, Sylva, North Carolina 28779, a producer of red cedar shakes (accepted December 9, 1980); (2) RTR Industries, Inc., 8116 Deering Avenue, Canoga Park, California 91304, a producer of loudspeakers (accepted December 15, 1980); (3) Ahlstedt Manufacturing Corporation, 8747 Ferry Street, Montague, Michigan 49437, a producer of electric cargo carriers (accepted December 17, 1980); (4) S. J. Novelties, Inc., 136 West 21st Street, New York, New York 10011, a producer of women's footwear and belts (accepted December 18, 1980); (5) Robert Manufacturing Company, Inc., 125 Whipple Street, Providence, Rhode Island 02940, a producer of women's dresses (accepted December 19, 1980); (6) Engineering Products Company, Inc., 2021 MacArthur Road, Waukesha, Wisconsin 53186, a producer of garden and lawn tractors (accepted December 22, 1980); (7) Acousti-phase, Inc., P.O. Box 207, Proctorsville, Vermont 05153, a producer of stereo speakers (accepted December 22, 1980); (8) R & N Knitted Headwear, Inc., 544 Park Avenue, Brooklyn, New York 11205, a producer of knit scarves, headwear, dickies and leg warmers (accepted December 22, 1980); (9) Champ Products Corporation, R. R. 2, 117 Pleasant Drive, Union City, Indiana 47390, a producer of handbags (accepted December 23, 1980); (10) Rapid Die and Molding Company, Inc., 3901 Wesley Terrace, Schiller Park, Illinois 60176, a producer of loudspeaker parts (accepted December 23, 1980); (11) Grace Shoe Mfg. Company, Inc., 200 Market Street, Lowell, Massachusetts 01852, a producer of women's footwear (accepted December 23, 1980); (12) Liberty Leather Corporation, 65 Harrison Street, Gloversville, New York 12078, a producer of leather (accepted December 23, 1980); (13) Shamrock Knitting Mills, Inc., 670 South Cobb Drive, Marietta, Georgia 30061, a producer of hosiery and knit headwear (accepted December 24, 1980); (14) Congelados Criollos, Inc., G.P.O. Box K, San Juan, Puerto Rico 00936, a processor of vegetables, fruits, herbs and meats (accepted December 29, 1980); (15) Sunbury, Inc., 125 Providence Street, West Warwick, Rhode Island 02983, a producer of women's skirts and slacks (accepted December 29, 1980); (16) D & R Cedar Products, Inc., P.O. Box 269, Forks, Washington 98331, a producer of cedar shakes and shingles (accepted December 30, 1980); (17) Automated Automation, Inc., 11110 Allisonville Road, Noblesville, Indiana 46060, a producer of wire detangling equipment (accepted December 31, 1980); (18) Bossert Manufacturing Corporation, 1002 Oswego Street, Utica, New York 13503, a producer of metal stampings (accepted December 31, 1980); (19)

Jaqueline Knitwear, Inc., 131 Saw Mill River Road, Yonkers, New York 10702, a producer of women's sweaters (accepted January 2, 1981); and (20) Parker Metal Corporation, 60 Prescott Street, Worcester, Massachusetts 01605, a producer of television antennas, shipping carts, fasteners and other hardware (accepted January 5, 1981).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (P.L. 93-618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalogue of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 81-939 Filed 1-9-81; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

Beth Israel Hospital; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 80-00247. Applicant: Beth Israel Hospital, 330 Brookline Avenue, Boston MA 02215. Article: Accessories for Electron Microscope consisting of: Stem Videoscope, Remote Control Photomonitor, Focus Control Unit and Bulk Specimen Holder. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: See Notice on page 41996 in the Federal Register of June 23, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: This application relates to a compatible accessory for an instrument that has been previously imported for the use of the applicant institution. The article is being manufactured by the manufacturer which produced the instrument with which it is intended to be used. We are advised by the Department of Health and Human Services in its memorandum dated August 7, 1980 that the accessory is pertinent to the applicant's intended uses and that it knows of no comparable domestic article.

The Department of Commerce knows of no similar accessory manufactured in the United States which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105 Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-940 Filed 1-9-81; 8:45 am]

BILLING CODE 3510-25-M

Massachusetts Institute of Technology et al.; Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the Federal Register.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80-00456. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Article: Standard Spark-Ignition Research Engine. Manufacturer: Ricardo Engineers, Ltd., United Kingdom. Intended use of article: The article is intended to be used for the study of turbulent combustion in internal combustion engines. Initially, research will be concentrated in the areas of theoretical model evaluation and the determinant detonation characteristics of alternative fuels. The article will be used in conjunction with a dynamometer for experiments under various operating conditions. Experimental data will be collected by means of a high-speed on-line data acquisition system. These data will be used directly in experimental investigations as support for theoretical models. Application received by Commissioner of Customs: September 18, 1980.

Docket No. 80-00466. Applicant: Grinnell College, Grinnell, Iowa 50112. Article: Electron Microscope, Model H-300 and Accessories. Manufacturer: Hitachi Limited, Canada. Intended use of article: The article is intended to be used for various research interests which include: developmental studies of nectaries, investigations of endomycorhizal fungi associations with the plants they infect, detection of structural damage in *Tetrahymena* DNA, and detection of lesions in rat brain tissue resulting from electrode implantation. In addition, the article will be used to teach a course entitled Transmission Electron Microscopy, Biology 343. The course teaches practical theoretical aspects of transmission electron microscopy from tissue preparation to photography. Application received by Commissioner of Customs: September 24, 1980.

Docket No. 80-00468. Applicant: University of California, San Francisco, 612 Forbes Blvd., So. San Francisco, California 94080. Article: High Purity Germanium Well Counter. Manufacturer: Enertec, France. Intended use of article: The article is intended to be used in the radioactive microsphere method of measuring flow to organs and regions within organs. Microspheres made of polystyrene are injected into the left atrium (in adult animals) or into venal cavae (in fetal animals) and distributed to various organs and regions within those organs in proportion to the blood flow at that time. At the end of the experiment, the animal is sacrificed, and the

organs to be examined are removed and sectioned into small pieces that can be placed in a well counter to measure the gamma-ray emissions from the various radionuclides used. Application received by Commissioner of Customs: September 26, 1980.

Docket No. 80-00469. Applicant: Columbia University in the City of N.Y., Box 610 Havemeyer Hall, Chemistry Department, New York, N.Y. 10027. Article: Excimer Laser, EMG 101. Manufacturer: Lambda Physik, West Germany. Intended use of article: The article is intended to be used for studies of diphenyl carbene and diphenyl trimethylene methane. The article will also be used in graduate studies in chemistry to train students in "state-of-the-art" scientific research. Application received by Commissioner of Customs: September 26, 1980.

Docket No. 80-00471. Applicant: University of Illinois at Urbana-Champaign, 223 Administration Building, Urbana, Illinois 61801. Article: Magnet System I (500 MHz). Manufacturer: Oxford Instruments, United Kingdom. Intended use of article: The article is intended to be used for studies of very low concentrations of hydrogen and carbon nuclei in systems of chemical and biological importance, e.g., coal, drugs, antibiotics, catalysts. Experiments to be conducted will consist of observation of nuclear quadrupole couplings and carbon-13 chemicals shifts via Fourier transform nuclear resonance techniques. These experiments will be conducted to determine the molecular structure of new materials used in energy research, improvement of drug design, analysis of molecular structure of new antibiotics, etc. Application received by Commissioner of Customs: September 26, 1980.

Docket No. 80-00472. Applicant: NIH, Molecular Toxicology Section, Bldg, 10, Room 6N119, Bethesda, Maryland 20205. Article: Electron Microscope JEM 100CX w/Scanning Attachments. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used by scientists to analyze the ultrastructure and composition of a wide variety of biological specimens. Application received by Commissioner of Customs: September 26, 1980.

Docket No. 80-00473. Applicant: University of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, Texas 75235. Article: Single-photon Emission Tomography System, Tomomatic 64. Manufacturer: Medimatic A/S, Denmark. Intended use of article: The article is intended to be used to study brain function in patients, including cognitive brain mechanism (learning, speech, hearing, etc.) as well as psychiatric disorders. Human volunteers will be studied by applying various stimuli (e.g., reading material, visual scenes, mental exercises, sound patterns, muscle movements) and recording the local changes in the brain blood flow pattern in cross section. The objectives of these studies will be to obtain a better understanding of how different parts of the brain function with regard to psychiatric and cognitive aspects of human behavior. After evaluation, this method of studying brain function will be introduced to physicians who are in the neurology residency program. Application received by Commissioner of Customs: September 26, 1980.

Docket No. 80-00474. Applicant: University of Texas Medical Branch, 322 Administration Building, UMED No. O-45075-S, Galveston, TX 77550. Article: Tachophor, #2127-01 with Accessories. Manufacturer: LKB Produkter AB, Sweden, Intended use of article: The article is intended to be used for studies on in vitro and/or in vivo reactions between biological molecules following increase, decrease, or absence of one or all of the reacting molecules. The objective pursued in the course of these investigations is to understand and identify the role of biological molecules in physiological functions and to correlate these functions with chemical alterations seen in animals. Application received by Commissioner of Customs: September 30, 1980.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-941 Filed 1-9-81; 8:45 am]

BILLING CODE 3510-25-M

National Institutes of Health; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 80-00199. Applicant: National Institutes of Health, Building 2, Room 122, Bethesda, MD 20205. Article: Superconducting Magnet, Model 500-54 and Attachments. Manufacturer: Oxford Instruments, United Kingdom. Intended use of article: The article is intended to be used for investigations of proteins; nucleotides associated through hydrogen bonding and other mechanisms; synthetic and natural polynucleotides, such as t-RNA; carbohydrates; lipids; and various types of organic natural products. These investigations will include studies of proton NMR, where the small range of chemical shifts, together with broad lines in polymeric molecules or complexities engendered by spin-spin interactions in various organic molecules, prevent interpretation of the spectra at frequencies significantly less than 500 MHz. In addition, the article will be used in other studies of quadrupolar nuclei, such as ^{2}H, ^{14}N, where high field is required to minimize overlap broad lines; ^{13}C, ^{31}P, and other nuclei of spin ½, in cases where resolution of signals will be enhanced; and elucidation of relaxation and dynamic processes by investigation of magnetic field strength.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a wide bore (54 millimeters) 500 megahertz proton frequency magnet. The National Bureau of Standards advises in its memorandum dated June 16, 1980 that (1) the feature of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-942 Filed 1-9-81; 8:45 am]

BILLING CODE 3510-25-M

Ramapo College of New Jersey; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 80-00239. Applicant: Ramapo College of New Jersey, Program in Biology, 505 Ramapo Valley Road, Mahwah, New Jersey 07430. Article:

Ultramicrotome, Model LKB 8800A and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section biological materials that have been embedded in an appropriate resin. These specimens will then be used in investigations that include ultrastructural studies on normal and pathologic plant and animal tissues, developmental studies on fungal systems, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at hostparasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. The article will also be used in the courses, Introduction of Electron Microscopy and Advanced Electron Microscopy, I, II, and III which will involve a study of general principles on techniques and the use of the electron microscope to study the fine structure of tissues and cells, and various subcellular organelles and the employment of cytochemical staining methods to localize various constituents.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (June 8, 1978).

Reasons: The captioned application is a resubmission of Docket Numbers 78-00388 and 79-00153 which were denied without prejudice to resubmission on December 14, 1978 and June 8, 1979 respectively for informational deficiencies. The foreign article has a cutting speed range of 0.1 to 60 millimeters/second (mm/sec) The Model MT 5000 ultramicrotome manufactured by DuPont/Sorvall Division of the DuPont Company (Sorvall) has a cutting speed range 0.1 to 40 mm/sec. However, the most closely comparable domestic instrument available at the time the article was ordered was Sorvall's Model MT-2B ultramicrotome. The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm/sec. We are advised by the Department of Health and Human Services in its memorandum dated August 7, 1980, that (1) cutting speeds in the excess of 5 mm/sec are pertinent to the applicant's research studies and (2) the Model MT-2B does not provide the pertinent feature. We, therefore, find that the Model MT-2B ultramicrotome was not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-943 Filed 1-9-81; 8:45 am]

BILLING CODE 3510-25-M

University of Michigan et al.; Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with repsect to the question of whether an instrument or apparatus or equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the **Federal Register.**

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 80-00374. Applicant: University of Michigan, Biological Station 4053, Natural Sciences Bldg., Ann Arbor, Michigan 48109. Article: Infrared Gas Analyzer. Manufacturer: ADC., Inc., United Kingdom. Intended use of article: The article is intended to be used to measure the rate of carbon dioxide exchange in selected trees in the field. The rate of this exchange is dependent on several environmental factors, including light, temperature, and humidity. It is necessary that carbon dioxide exchange be measured continuously and simultaneoulsy with the other environmental factors so that the effects of these factors on the exchange can be assessed. Experiments will consist of monitoring carbon dioxide exchange throughout 24 hr. periods along with the environmental factors. The objective of this research effort is to develop the capability to predict carbon dioxide exchange in a successional temperate forest. Application received by Commissioner of Customs: July 11, 1980.

Docket Number 80-00387. Applicant: Department of Defense, U.S. Navy, Mare Island Naval Shipyard, Code 134.2, Vallejo, CA 94592. Article: Electron Microscope, Model JEM 100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended Use of article: The article is intended to be used for studies of the following materials: Crystalline and non-crystalline solids, including items such as ferrous and non-ferrous alloys, oxides, sulphides, and minerals (especially asbestos), interactions involved in phase transformations, dislocation-precipitate reactions in these and other materials. The experimental work will be designed to study phenomena related to: various failure modes, types of structural defects and their effect on basic internal structures, identification of particles by morphology and composition, observe effects of phase transformations. Application received by Commissioner of Customs: July 21, 1980.

Docket Number 80-00431. Applicant: State University of New York, Maritime College, Fort Schuyler, Bronx, N.Y. 10465. Article: Ship Tanks Load Indicator. Manufacturer: Gotaverken, Sweden. Intended use of article: The article is intended to be used for marine transportation training for merchant marine officers. Application received by Commissioner of Customs: August 22, 1980.

Docket Number 80-00442. Applicant: Thomas Jefferson University Hospital, Division of Diagnostic Ultrasound, 5th Fl. Curtis Bldg., 1015 Walnut Street, Philadelphia, PA 19107. Article: Octoson, Multiple Transducer Echoscope. Manufacturer: Ausonics Ltd., Australia. Intended use of article: The article is intended to be used for clinical and scientific research in the field of human ultrasonic diagnosis. The article will also be used in extensive educational programs for both physicians and technologists in which trainees from multiple disciplines are exposed to the state of the art of imaging capabilities of various instrumentation types. Application received by Commissioner of Customs: September 4, 1980.

Docket Number 80-00443. Applicant: Gerontology Research Center, National

Institute on Aging, Experimental Morphology Section, OSD, c/o Baltimore City Hospitals, Baltimore, Maryland 21224. Article: ASID-4D Scanning Mode for Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is an accessory to an existing electron microscope being used for analysis of biological tissue and sub-cellular fragments to determine by scanning electron microscopy changes which occur with aging and the effects of experimental manipulation of aging. Application received by Commissioner of Customs: September 11, 1980.

Docket Number 80-00444. Applicant: Henry Ford Hospital, 2799 W. Grand Blvd., Detroit, MI 48202. Article: Electron Microscope, Model EM 109. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in the diagnosis of renal, muscular, viral and hematopoetic diseases and establishing the identity of a number of tumors all of which are used in the medical management of patients. In addition, the article will be used to study the effects of disease and localization of enzymes and other substances at the ultrastructural level. Examples of research projects are (1) ultrastructure of liposarcoma in vivo and in vitro and the localization of creatine phosphokinase (CPK) in the myocardium. The article will also be used for educational purposes—training of pathologists to study the diseases listed. Application received by Commissioner of Customs: September 11, 1980.

Docket Number 80-00445. Applicant: University of Illinois at Chicago Circle, Department of Physics, 829 W. Taylor Street, Chicago, Ill. 60680. Article: Excimer-Multigas Laser, Model EMG 2000. Manufacturer: Lambda Physik Gmbh, West Germany. Intended use of article: The article is intended to be used to generate radiation of ultra-high spectral brightness at wavelengths of 193 and 248 nm. This laser emission, in turn, will be converted to the XUV region with nonlinear optical processes. Experiments will include development of a laser emitting below 100 nm, feasibility studies of VUV light source for plasma diagnostics, and spectroscopic and kinetic processes relevant to XUV lasers. One postdoctoral fellow and two graduate students will use the article for the above research and will learn fundamental techniques of laser application to chemical and physical research. Application received by Commissioner of Customs: September 11, 1980.

Docket Number 80-00446. Applicant: Cornell University, College of Agriculture and Life Sciences, Mann Library, Ithaca, New York 14853. Article: Gas Exchange Leaf Chamber. Manufacturer: University of Calgary, Canada. Intended use of article: The article is intended to be used to monitor carbon dioxide exchange and water vapor loss in plant leaves under field conditions. Ozone and sulfur dioxide pollutants will be added to the air intake stream in order to assess the impact of these gases on net assimilation. The objective of this work is to identify the physiological impact of various gaseous pollutants (at low concentrations) on trees common to Northeastern United States. Air pollutants will be viewed as an additional environmental stress acting on plants under field conditions. Application received by Commissioner of Customs: September 11, 1980.

Docket Number 80-00447. Applicant: SUNY at Stony Brook, Stony Brook, L.I., New York 11794. Article: Diffraction Grating on Fused Silica. Manufacturer: Ion Tech Ltd., United Kingdom. Intended use of article: The article is intended to be used in a small-scale monochromator for ultra-high vacuum environment. The experiments to be conducted include ultraviolet and photoelectron spectrometry, extended absorption fine structure, and generally, photoemission at various wavelengths. The purpose of these studies is to elucidate the electronic structure of solid surfaces of metals and semi-conductors. In addition, the article will be used for graduate training in scientific research in courses in Materials Science and Engineering. Application received by Commissioner of Customs: September 11, 1980.

Docket Number 80-00449. Applicant: The Ohio State University Research Foundation, 1314 Kinnear Road, Columbus, Ohio 43212. Article: Electron Microscope, Model EM 10CA. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for examination of DNA molecules (plasmids, bacterial chromosomes and bacteriophage genomes) cells and subcellular material.The experiments to be conducted are: Examination of Plasmid DNAs from B.thuringiensis, B.subtilis and Staphylococcus aureus; examination of phage DNAs from B.thuringiensis and B.subtilis; and Heteroduplex analysis of plasmid and phage DNAs from these species. The article will also be used for training of students in the use of electron microsopy for analysis of biological molecules in the courses: Microbiology 999. "Doctoral Research" and Microbiology 693. "Undergraduate Research". Application received by Commissioner of Customs: September 11, 1980.

Docket Number 80-00450. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 S. Cass Avenue, Argonne, IL. 60439. Article: Mass Spectrometer System, Model Isomass 54R. Manufacturer: VG Isotopes Limited, United Kingdom. Intended use of article: The article is intended to be used for studies of uranium in nuclear reactor fuel elements. The relative abundances of all uranium isotopes, as well as the total uranium content of fuel rods, will be determined by mass spectrometry. Application received by Commissioner of Customs: September 11, 1980.

Docket Number 80-00451. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Article: NMR Magnet System, Model 250/80. Manufacturer: Oxford Instruments, United Kingdom. Intended use of article: The article is intended to be used for studies of nuclear magnetic resonance spectra and relaxation of chemical substances in liquid, crystalline, amorphous, and polymeric states. The research is carried out in the framework of training students to be independent scientific investigators. Application received by Commissioner of Customs: September 11, 1980.

Docket Number 80-00452. Applicant: University of Washington, Ocean TGT II, Oceanography WB-10, Room "G", Marine Science Building, Seattle, WA 98195. Article: #800 Telescope Cases, 6 each. Manufacturer: Lortie, Canada. Intended use of article: The article is intended to be used for logistic support of research cruises. Application received by Commissioner of Customs: September 11, 1980.

Docket Number 80-00453. Applicant: Iowa State University, Ames, Iowa 50011. Article: NMR Spectrometer, Model WM-300 and Accessories. Manufacturer: Bruker AG, West Germany. Intended use of article: The article is intended to be used to obtain primarily ^{31}P, ^{13}C, ^{1}H and ^{19}F spectra of a variety of organic and biological compounds. Some of the experiments to be carried out involve in situ and perfusion experiments on tissues. Kinetic experiments will be performed occasionally as well as studies of fluctional molecules as a function of temperature. The objective purused in the investigation will be to make structural assignments in the most rapid manner possible. In most cases the work will be done on low sensitivity nuclei (i.e., natural abundance ^{13}C). In addition, the article will be used in a

thesis research course to prepare students for a career in research. Application received by Commissioner of Customs: September 11, 1980.

Docket Number 80-00454. Applicant: U.S. Geological Survey, Western Region, 345 Middlefield Road, MS-85, Menlo Park, CA 94025. Article: Mass Spectrometer, MAT 260 with Accessories. Manufacturer: Varian MAT, West Germany. Intended use of article: The article is intended to be used in geochemical and geochronologic studies which involve analysis of Rb, Sr, Nd, Sm, U, Pb, Th. In addition, the article will be used in the training of visting graduate and post-graduate students in geologic research using isotopic techniques. Application received by Commissioner of Customs: September 11, 1980.

Docket Number 80-00455. Applicant: U.S. Department of Energy, Savannah River Laboratory, Operated by E.I. dupont DeNemours, Aiken, SC 29801. Article: Mass Spectrometer, Model MAT 250. Manufacturer: Varian MAT GmbH, West Germany. Intended use of article: The article is intended to be used in investigations to determine the article's suitability for research analyses and for routine control analyses in the various Department of Energy nuclear energy installations. Mixtures of the hydrogen isotopes will be analyzed. Pure gases will be used for standardization and stability measurements. Application received by Commissioner of Customs: September 18, 1980.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-944 Filed 1-9-81; 8:45 am]

BILLING CODE 3510-25-M

Senior Executive Service Bonuses

The following Senior Executives of the International Trade Administration are scheduled to receive bonuses on January 26, 1981:

Michael Doyle, Director for Administration—$7,516.87 (15%)

Allen J. Lenz, Director, Office of East-West Policy and Planning—$5,512.37 (11%)

Paul T. O'Day, Deputy Assistant Secretary for Textiles and Apparel—$5,512.37 (11%)

John B. Roose, Director, Office of Export Promotion—$5,512.37 (11%)

William V. Skidmore, Deputy to the Deputy Assistant Secretary for Export Administration—$5,512.37 (11%)

Dated: January 8, 1981.

James T. King, Jr.,

Director, Office of Personnel.

[FR Doc. 81-925 Filed 1-9-81; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: National Zoological Park (P6C).

b. Address: Smithsonian Institution. Washington, D.C. 20008.

2. Type of Permit: Scientific Research.

3. Names and Number of Animals: Grey seal (Halichoerus grypus) 200.

4. Type of Take: To import specimen material taken from up to 100 grey seals which are to be killed by the Canadian Ministry of Fisheries and Oceans in 1981, and from up to 100 live grey seals in 1982.

5. Location of Activity: Canada.

6. Period of Activity: 2 years.

Concurrent with the publication of this notice in the Federal Register the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of the notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: January 7, 1981.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 81-1026 Filed 1-9-81; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Permit Modification Request

Notice is hereby given that Ms. Barbara J. Kuljis, c/o National Marine Fisheries Service, P.O. Box 3830, Honolulu, Hawaii 98612, has requested a modification to Scientific Research Permit No. 306 issued on October 15, 1980 (45 FR 70297), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 126).

The Permit Holder is requesting to take an additional Pacific bottlenose dolphin (*Tursiops truncatus*) as a replacement for an animal which died during capture operations. The animal will be taken by the means, in the area, and for the purposes set forth in the original permit application.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above request are available for review in the following offices:

Assistant Administrator for Fisheries, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region,

300 South Ferry Street, Terminal Island, California 90731.

Dated: January 7, 1981.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 81-1027 Filed 1-9-81; 8:45 am]

BILLING CODE 3510-22

Pacific Fishery Management Council, its Groundfish Subpanel and Its Scientific and Statistical Committee; Public Meeting With Partially Closed Session

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Pacific Fishery Management Council was established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94-265), and the Council has established a Scientific and Statistical Committee and a Groundfish Subpanel to assist the Council in carrying out its responsibilities.

DATES: February 17-19, 1981.

ADDRESS: The meetings will take place at the Thunderbird Motor Inn, 1312 North Bayshore Drive, Coos Bay, Oregon.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221-6352.

SUPPLEMENTARY INFORMATION: Meeting Agendas follows: *Scientific and Statistical Committee (SSC)*—(open meeting) February 17-18, 1981, (10 a.m. to 5 p.m., on February 17; 8 a.m. to 5 p.m. on February 18).

Agenda: Consideration of the draft Groundfish Fishery Management Plan (FMP); conduct a public comment period beginning at 3:30 p.m., on February 17, and evaluate and develop recommendations on other matters referred to the SSC by the Council.

Groundfish Subpanel—(open meeting) February 17-18, 1981, (10 a.m. to 5 p.m., on February 17; 8 a.m. to 5 p.m. on February 18).

Agenda: Consideration of draft Groundfish FMP.

Council—(open meeting) February 18-19, 1981, (10 a.m. to 5 p.m., on February 18; 8 a.m. to 4 p.m. on February 19).

Agenda: Open Session—Consideration of the Groundfish FMP; review of National Marine Fisheries Service's proposed 1981 amendment to the Washington, Oregon and California Foreign Trawl Fishery Preliminary Management Plan; discussion of matters pertaining to the 1981 Ocean Salmon FMP amendment; conduct of a public comment period beginning at 4 p.m., on February 18, and conduct other fishery management business and administrative matters.

Council—(closed session) February 18, 1981 (8 a.m. to 10 a.m.)

Agenda: Closed Session—Discuss the status of current maritime boundary and resource negotiations between the U.S. and Canada and discuss personnel matters concerning appointments to the Hearing Subpanel. Only those Council, SSC members, and related staff having security clearance will be allowed to attend this closed session.

The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of its General Counsel, formally determined on November 12, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the closed session may be exempt from the provisions of the Act relating to open meetings and public participation therein, because items will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(1), as information which will disclose matters that are (A) specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to Executive Order and 5 U.S.C. 552b(c)(6), as information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. (A copy of the determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, Department of Commerce.) All other portions of the meetings will be open to the public.

Dated: January 6, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81-1020 Filed 1-9-81; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Public Telecommunications Facilities Program Policy Statement

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Policy statement

SUMMARY: The National Telecommunications and Information Administration (NTIA) announces that it will allow grantees to "buy out" any Federal interest in equipment funded with monies obtained under the Public Telecommunications Facilities Program (PTFP) or the former Educational Broadcasting Facilities Program (EBFP) of the Department of Health, Education, and Welfare (HEW). In addition, NTIA will allow grantees under these programs to transfer the Federal interest in Federally funded equipment to other eligible equipment, if they give assurances that they will continue to use the original equipment to serve substantially the same purposes for which a grant was initially issued.

EFFECTIVE DATE: January 12, 1981.

FURTHER INFORMATION: Persons desiring further information regarding this Policy Statement should contact: Robert M. Hunter, Office of Chief Counsel, NTIA/DOC, 1800 G Street, N.W., Room 703, Washington, D.C. 20504, telephone (202) 377-1866; or John L. Cameron, Director PTFP, NTIA/DOC, 608 13th Street, N.W., Washington, D.C. 20004, telephone (202) 724-3307.

SUPPLEMENTARY INFORMATION:

Policy Statement

I. Introduction

The Public Telecommunications Financing Act of 1978 (Act)[1] transferred the duties and responsibilities of the former EBFP from HEW to the Department of Commerce (Department). Under that Act, the Department (through NTIA and the PTFP), extends grants to various nonprofit entities for the planning and/or construction of public telecommunications facilities. Section 392(g) of the Act requires that NTIA maintain a ten year interest in all equipment purchased with Federal funds and further requires that during the ten year period grantees may only use the Federally funded equipment for the provision of public telecommunications services to the public.[2]

Heretofore, the public telecommunications entities receiving grants from the PTFP (or the EBFP) generally obtained the monies to pay their operating expenses from a multitude of sources—*e.g.*, donations from private corporations and members, various grants from the Corporation for Public Broadcasting and the States, and other income producing activities. Because of inflation and a generally sluggish economy, public telecommunications entities have found

[1] Pub. L. No. 95-567, 92 Stat. 2405, 47 U.S.C. § 390, *et seq.* (1978).

[2] *See also* Former section 392(f). Pub. L. No. 87-447, 76 Stat. 65 (1962), as amended by Pub. L. No. 90-129, 81 Stat. 365 (1967) and Pub. L. 94-309, 90 Stat. 683 (1976).

it more difficult in recent times to meet their expenses through these means. NTIA recognizes the extreme economic needs that many public telecommunications entities now have. Consequently, we believe it is necessary for us to encourage and facilitiate the increased independence of grantees in meeting those needs.

Many public telecommunications entities have already begun to seek out various means by which they might augment their incomes. Some of these entities have found it possible to generate substantial amounts of income by leasing unused or under-used facilities to other noncommercial organizations. To some extent, of course, these facilities have been funded in part by the Federal Government and are subject to the ten year Federal interest that restricts the use of the equipment to "the provision of public telecommunications services to the public". 47 U.S.C. 392(a)(4) and (g)(2). That interest, as described above, generally prohibits the entities that have received Federal grants from leasing any PTFP (or EBFP) funded equipment to commercial entities.

NTIA has received various proposals from its grantees as to different methods by which the grantees might be able to augment their budgets or decrease their expenses by allowing some limited use of Federally funded equipment by commercial entities. In the *PTFP Report and Order*, 44 FR 30898 (1979), we addressed some of these concerns and adopted the active/passive test which had been developed by the EBFP under HEW.[3] In a more recent *PTFP Policy Statement* we altered that test to suit the needs of the expanding technologies. 45 FR 69430 (1980). There we stated that our "primary concern was that shared use of Federally funded equipment [should] not obstruct the [simultaneous] use of that equipment by the grantee." *Id.* at 69431. We have continued to receive requests from public telecommunications entities suggesting different ways in which we might liberalize our policies. An example of such a request is the letter from Stephen W. Smith, former General Manager of WGVY-TV, to Henry Geller, Assistant Secretary for Communications and Information (dated, August 14, 1980). [Appendix A.] We set out Mr. Smith's proposals below, because they are illustrative of the broad policy issues which exist in this field and which we address in this Policy Statement.

[3] Under that test grantees were allowed to share with or lease to commercial entities spare capacity on a broadcasting tower. *See PTFP Report and Order, supra*, at 30911.

II. Proposals

In his letter Mr. Smith stated that it is necessary for WGBY-TV to generate more income to support its operations and suggested that WGBY-TV would be able to do so by leasing its mobile TV unit to commercial as well as noncommercial organizations. Currently, WGBY-TV leases the mobile unit only to noncommercial organizations. Mr. Smith indicated that the gross income from this activity has been between $75,000 and $100,000 annually. Since the equipment associated with the mobile unit was funded through several grants from the former EBFP, however, it can only be used for the "provision of public telecommunications services".[4] As noted in the letter, NTIA's present PTFP guidelines would not permit WGBY-TV to lease the mobile unit to commercial organizations, because the van could not be operated simultaneously for both commercial and noncommercial purposes. *See PTFP Report and Order, supra* at 30,911, and *PTFP Policy Statement, supra* at 69,431. Mr. Smith, therefore, proposed four alternatives that would allow WGBY-TV to use the Federally funded equipment more profitably:

(1) NTIA would provide a blanket release of Federal interest in subject equipment based on WGBY-TV's current financial realities and demonstrated need, at no cost to WGBY-TV.

(2) WGBY-TV would expand its leasing activities to other than nonprofit clients under current NTIA guidelines or a modification thereto.

(3) NTIA would transfer Federal interest from equipment associated with the mobile unit to other equipment now held by or to be purchased by WGBY-TV; the income (if any) from which would fall within current NTIA guidelines. For example, a transfer of interest from the mobile equipment to equipment used strictly for broadcast purposes.

(4) WGBY-TV would buy out the remaining Federal interest in subject equipment on terms to be negotiated between WGBY-TV and NTIA.

III. Discussion

The first alternative is that NTIA provide a blanket release of the Federal interest in the equipment at no cost to WGBY-TV. That alternative would require the Assistant Secretary to find that there is "good cause for releasing [WGBY-TV or any other grantee] from the obligation to [use the equipment only for the provision of public telecommunications services]". Former 47 U.S.C. 392(f)(2). *See also* 47 U.S.C. 392(g)(2). However, the only causes cited by Mr. Smith in support of this blanket release of the Federal interest are the "fiscal realities of the 80's". In our view, every public telecommunications entity in the country faces the same fiscal realities and, therefore, those realities are not sufficient to establish good cause under section 392(g)(2). For us to grant a waiver in these circumstances to WGBY-TV or any other grantee would be tantamount to establishing a general policy allowing all grantees to lease their Federally funded facilities to commercial entities and would in effect repeal the restriction contained in sections 392(a)(4) and 392(g)(2). Therefore, we will not grant any such release.

The second proposed alternative is that NTIA allow WGBY-TV to "expand its activities to [include] other than nonprofit clients" either under the present guidelines or under a modification of those guidelines. In the recent *PTFP Policy Statement, supra*, NTIA adopted the position that it would permit the use of Federally funded equipment whenever such equipment could be used simultaneously by the grantee and a commercial party without interference to either. The adoption of this policy represented a significant updating of the prior active/passive test that the EBFP had initiated and NTIA had followed within the context of the statutory mandate of 47 U.S.C. 392(a)(4). However, we believe that we have given a sound and very broad interpretation to sections 392(a)(4) and (g)(2), and cannot modify our guidelines in the manner suggested. Such a modification, we believe, would require the amendment of the Act itself.

The third and fourth alternatives that were suggested (*i.e.*, the transfer of the Federal interest in PTFP funded equipment to other eligible equipment presently owned or to be purchased with non-Federal monies by grantees and the "buy out" of the Federal interest by the grantees), however, do not conflict with any provision of the Act or require an alteration of an existing NTIA policy. Either alternative could, therefore, provide a workable solution to the situation described in Mr. Smith's letter.

However, the transfer of the Federal interest to equipment other than that applied for and agreed to in the initial grant could undercut to some degree the competitive basis on which the grant was made. For example, if a grant application is evaluated in one year as

[4] Former sections 392(a)(4) and (f)(2). *See also*, 47 U.S.C. §§ 392(a)(4) and (g)(2).

being superior to other grant applications because it proposes to use a new technology to deliver public telecommunications services to the public, and the next year the grantee seeks to transfer that Federal interest to other equipment that did not have as high a priority or efficiency as that initially agreed to in the grant, it would be unfair to those applicants who had sought equipment similar to that being substituted and whose grants had been denied.

Nevertheless, to the extent that the original equipment continues to generally serve its program purposes, the overall purpose of the initial grant would continue to be served. Therefore, we will not foreclose the possibility of transferring the Federal interest to other eligible equipment (either already owned or to be purchased) of equivalent value, but will look with favor only upon requests from grantees who have held and used the originally funded equipment for a substantial period of time and who will continue to use the originally funded equipment for substantially the same purposes.

In determining how long a period would be "substantial," we have examined the policy of the Federal Commuications Commission (FCC or Commission) relating to transfers by licensees after comparative hearings. The FCC presently engages in an often protracted comparative hearing process to determine which one of several mutually exclusive applicants would best serve the public interest. The Commission's present rules (47 CFR 74.597) prohibit any transfer of a license within three years of the initial granting of the license. After that three year period, however, a victorious applicant may then transfer the license to anyone subject to the Commission's approval. We believe that our comparative evaluation of grants, while not involving mutually exclusive applicants, is fairly analogous to the Commission's process and that our purpose in awarding grants on a competitive basis would continue to be effectuated, if we followed the FCC's policy of prohibiting the transfer of the Federal interest to other eligible equipment for at least three years, and if we required the released equipment to be used for substantially the same purposes as under the original grant.

Finally, as we have already pointed out, the "buy out" of the Federal interest by an applicant would not have any negative impact on the PTFP whatsoever. In fact, the "buy out" alternative would actually enable the agency to extend assistance to a greater number of public telecommunications entities, because the monies returned to the agency would in some instances be available to award further grants to entities whose applications had been deferred in a prior grant round.

IV. Conclusion

NTIA recognizes that many public telecommunications entities are now experiencing greater difficulty raising the increasingly greater amounts they need to meet their increasing operating costs. Because of this greater need, NTIA believes it is necessary to allow grantees as much freedom as possible in developing new sources of income. To the extent that we may encourage the development of these new sources of income, we have determined that a grantee may obtain the release of particular equipment from the strictures of sections 392(a)(4) and (g)(2) of the Act by: (1) transferring the Federal interest in PTFP (or EBFP) funded equipment to other eligible equipment presently owned or to be purchased by a grantee with non-Federal monies, or (2) buying out the Federal interest with non-Federal monies. In either case, the amount of the Federal interest must be determined by negotiation between PTFP and the grantee, and agreed upon by NTIA's Grants Officer (the Associate Administrator for Applications).

If the Federal interest is to be transferred to other equipment presently owned or to be purchased by a grantee: the Federal interest in that equipment must be equal to the Federal interest in the original equipment and the other equipment must have a value and useful life sufficient to satisfy the Federal interest for the remainder of the Federal interest period; the project under which the purchase of the equipment was initially funded must have been completed for at least three years; [5] the grantee must give assurances that, it will continue to use the equipment originally funded by the PTFP (or EBFP) for substantially the same purposes as under the initial grant; and if a grantee desires to transfer the Federal interest to other equipment *to be purchased* by the grantee, the grantee must submit a specific list of the equipment and the method of financing to the PTFP for prior approval and must comply with the procurement guidelines of Attachment O to the Office of Management and Budget Circulars A-102 and A-110.

(Catalog Program No. 11.550)

Dated: January 7, 1981.

Henry Geller,

Administrator, National Telecommunications and Information Administration.

[5] Under section 392(g) and former section 392(f) the period of Federal interest does not begin to run until a project has been completed. Therefore, even though a grantee may have purchased equipment five or six years ago with EBFP funds, the PTFP will not allow such a grantee to the transfer of the Federal interest to other equipment, unless the grant project had been completed for at least three years. The effective date of the completed construction is furnished to the grantee by the PTFP when final grant payment is certified.

Appendix A

August 14, 1980.

Henry Geller,

Assistant Secretary for Communications, National Telecommunications & Information Administration 608 13th Street NW., Washington, DC 20004

Dear Mr. Geller: I'm writing to ask for your help and that of NTIA.

It's not necessary, I'm sure, to outline in any detail the financial challenges facing local public television stations these days. Like many others, WGBY is facing the fiscal realities of the 80's—federal support that is both decreased relative to inflation and more difficult to get from those who control it; increased costs across the board; a leveling out of corporate, individual and foundation support; new competition for our audience from cable, STV and other program sources, and rapid technological change that is usually beyond our financial means to obtain.

These challenges impact particularly hard upon a station such as WGBY—a UHF (Channel 57) community licensed station in the 86th market. The market is predominantly blue collar and ethnic with many sparsely populated areas to be served. There is a finite limit to the amount of individual and corporate support we can expect. Our future survival depends on the development of new sources of income or upon increasing certain current income producing activities.

One area of income that has been particularly significant is that of facilities leasing, particularly the leasing of WGBY-TV's mobile unit which has been funded in major part by the EBFP of HEW, now under the purview of NTIA. A listing of equipment for the mobile unit purchased under three EBFT grants, along with costs and dates, is included as Attachment A.

This area of endeavor has been limited to providing leasing services in line within HEW and NTIA guidelines for use of federally-funded equipment. But there are limits on the amount of business that can be generated strictly within the guidelines. WGBY has come to the realization that substantial income can be generated from other clients, in addition to the non-profit ones previously served, the nature of whose business precludes used of our equipment because of the restrictions inherent in the federal guidelines.

Our current business level is in the $75,000 to $100,000 range, gross income, annually. However, we have identified market potential of at least $300,000 gross, and

potentially much more, were the equipment not subject to the federal restrictions.

This is not to say that this station disagrees with the need for such restrictions or with the intent of the program. Literally, this station would not be in existence without the support it has received from the EBFT/PTFP. And it is thoroughly understood that some restrictions are necessary in order to insure the proper use of equipment funded by the federal government.

However, the financial realities facing this station make it necessary to seek relief from the restrictions in order to provide income that is direly needed for the continued existence of WGBY-TV.

There appear to be four alternatives for dealing with the situation. WGBY requests that NTIA consider each and respond as to the possibility of implementing any or all of them.

(1) NTIA would provide a blanket release of federal interest in subject equipment based on WGBY's current financial realities and demonstrated need, at not cost to WGBY.

(2) WGBY would expand its leasing activities to other than non-profit clients under current NTIA guidelines or a modification thereto.

(3) NTIA would transfer federal interest from equipment associated with the mobile unit to other equipment now held by or to be purchased by WGBY, the income (if any) from which would fall within current NTIA guidelines.

For example, a transfer of interest from the mobile unit equipment to equipment used strictly for broadcast purposes.

(4) WGBY-TV would buy out the remaining federal interest in subject equipment on terms to be negotiated between WGBY and NTIA.

These alternatives are presented in order of desirability, the most desirable appearing first.

It appears that there is now a mood favoring deregulation in the federal government. It is hoped that that spirit will augur well for this request for relief and that an early response will be forthcoming.

Sincerely,

Stephen W. Smith,

General Manager.

SWS/jm

cc: William Lucas, Associate Administrator/NTIA, John Cameron, Director/NTIA, Joanne Anderson, Project Officer/NTIA, David O. Ives, President/WGBH Educational Foundation, Henry Becton, Vice President & General Manager/WGBH, Maurice Katz, Chairman/Channel 57 Board of Tribunes

Attachment A.—*HEW I, Grant No. OEG-0-74-7604, File No. 469-I (HEW), No. T0161SC (EBFP)*

Complete project	$439,873.83
WGBY match (23.7 percent)	104,498.00
Federal grant (76.3 percent)	313,491.00

Equipment	Date	Cost	Original Federal interest in dollars	Federal interest months left	Remaining Federal interest in dollars
3 cameras	Mar. 1975	$226,010.00	$172,445.63	55 months	$79,037.75
Switcher	Mar. 1975	15,308.97	11,680.74	55 months	5,353.70
Miscellaneous (monitors, fans, delay lines)	Mar. 1975	1,650.28	1,240.46	55 months	568.15
Total phase I					84,959.60
Option: Videotape machine	April 1975	80,722.00	61,590.89	56 months	28,742.41

HEW II, Grant No. G007603074, File No. 501-T (HEW), No. AH51120 (EBFP)

Project amount	$400,744.35
WGBY match (25.1 percent)	100,744.35
Federal grant (74.9 percent)	300,000.00

Equipment	Date	Cost	Original Federal interest in dollars	Federal interest months left	Remaining Federal interest in dollars
1 camera	June 1976	$78,222.88	$58,588.94	70 months	$34,176.80
Switcher retrofit	Jan. 1977	5,212.42	3,904.10	77 months	2,505.13
Audio board	Jan. 1977	7,800.00	5,482.20	77 months	3,748.75
Total phase II					40,430.68

HEW IV, Grant No. G007804805 (25-02-04805), New July 2, 1979, File No. 613-T (HEW)

Complete project	$133,400
WGBY match	33,350
Federal grant	133,400

Equipment	Date	Cost	Original Federal interest in dollars	Federal interest months left	Remaining Federal interest in dollars
Vidifont	Mar. 1979	$15,188.50	$15,188.50	105 months	$9,967.65

HEW I	$84,959.60
HEW I (VTR)	28,742.41
HEW II	40,430.68
HEW IV	9,967.65
	164,100.34

[FR Doc. 81-1024 Filed 1-9-81; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Restraint Levels for Certain Cotton Textile Products From Pakistan

Correction

In FR Doc. 80-40083 appearing at page 85140 in the issue for Wednesday, December 24, 1980, on page 85141, in the first column, fourteenth line of the table "3359" should be corrected to read "359".

BILLING CODE 1505-01-M

COMMUNITY SERVICES ADMINISTRATION

Privacy Act System of Personnel Grievance Records

AGENCY: Community Services Administration (CSA).

ACTION: CSA internal system notice of a transfer of responsibility previously carried by the Office of Personnel Management (OPM).

SUMMARY: On November 25, 1980, OPM published a Privacy Act System Notice (45 FR 78378) that it would discontinue its Governmentwide system OPM/GOVT-2, Grievance Records, effective December 31, 1980. The notice stated OPM's conclusion that records which result from employee-filed grievance under either an agency's negotiated or OPM's administrative grievance procedure should be covered by the agency's internal system. The Office of Management and Budget (OMB) agreed. In an OMB memorandum, the agencies were informed that if, in publishing their individual system notices, they merely modify the former OPM/GOVT-2 Grievance Record notice (44 FR 30836, May 29, 1979, amended at 44 FR 61702, October 26, 1979), no Report on New System would be required.

This CSA notice conforms to the above instructions. Although this system #CSA-15, Personnel Grievance Records, is now added to the CSA index of Privacy Act Systems of Records, it is not in fact a new system to CSA. The notice follows.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Alan O. Mann, Privacy Act Officer,

Community Services Administration, 1200 19th St., N.W., Washington, D.C. 20506.

CSA 15 (Formerly OPM/GOVT-2)

SYSTEM NAME:

Personnel Grievance Records—CSA

SYSTEM LOCATION:

See system manager title and address below for location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former CSA employees who have submitted grievances with CSA in accordance with the Office of Personnel Management (OPM) regulations (5 CFR 771), or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by agency employees under OPM regulations (5 CFR 771), or under procedures established by CSA labor-management negotiations. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, arbitrators' awards, a copy of the original decision, and related correspondence and exhibits. This system includes files and records of internal grievances that agencies established through negotiations with the recognized CSA labor organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p218, E.O. 10987, 3 CFR 1959-1963 Comp., p519, (agency employees, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management) and 5 U.S.C. 7121.

PURPOSE(S):

These records are used to process an employee's grievance filed either under negotiated CSA grievance procedures or administrative procedures prescribed by OPM in accordance with 5 CFR 771.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where CSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By employees of the National Archives and Records Service (General Services Administration) as necessary for the performance of their records management function.

g. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual indentifiers, in some instance the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

i. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee

Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978, and to otherwise ensure compliance with the provisions of U.S.C. 7201.

j. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

k. By the Office of Personnel Management for review of individual files and the CSA grievance procedures.

l. By the Department of Labor in carrying out its functions regarding labor management relations in the Federal service.

m. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

n. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records in filed folders.

RETRIEVABILITY:

Filed by names of the individuals.

SAFEGUARDS:

Locked metal file cabinets accessible by authorized personnel only.

RETENTION AND DISPOSAL:

These records are disposed of 3 years after closing of the case. Disposal is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Director, Community Services Administration, 1200 19th St., N.W., Washington, D.C. 20506.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may also contact the System manager above on the existence of such records about them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

RECORDS ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, the individual may request access to the official copy of the grievance file by contacting the agency personnel or designated office where the action was processed.

Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting access must follow the CSA Privacy Act regulations regarding access to records and verification of identity in accordance with the CSA regulations at 45 CFR 1006.4.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the System manager above in accordance with the CSA regulations at 45 CFR 1006.7. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Richard J. Rios,

Director.

[FR Doc. 81-1016 Filed 1-9-81; 8:45 am]

BILLING CODE 6315-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 6, 1981.

The USAF Scientific Advisory Board Ad Hoc Committee on Non-Nuclear Armament will hold a meeting at the Penatagon, Washington, D.C., in room 5D982, on January 29 and 30, 1981 from 8:30 a.m., to 4:30 p.m.

The Committee will receive classified briefings and participate in classified discussions relating to the U.S. Air Force non-nuclear armament programs for air-to-ground munitions.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly the meeting will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 81-914 Filed 1-9-81; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Military Personal Property Symposium; Open Meeting

Announcement is made of a meeting of the Military Personal Property Symposium. This meeting will be held on 29 January 1981 at the Quality Inn, Pentagon City, 300 Army Navy Drive, Arlington, VA, and will convene at 0900 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the Symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation (DOD 4500.34-R), and then handling of other matters of mutual interest relating to the movement and/or storage of household goods and unaccompanied baggage, as well as proposed changes and innovations in the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should submit them in writing to the Commander, Military Traffic Management Command, ATTN: MT-PPM, Washington, DC 20315. Topics to be discussed should be received on or before 16 January 1981.

Dated: December 24, 1980.

Robert F. Waldman,

Deputy Director, Directorate of Personal Property.

[FR Doc. 81-1011 Filed 1-9-81; 8:45 am]

BILLING CODE 3810-70-M

Office of the Secretary

Advisory Group on Electron Devices; Meeting

Working Group D (Mainly Laser Devices) of the DoD Advisory Group on Electronic Devices (AGED) will meet in closed session 5 and 6 February 1981, at the University of Arizona, Tucson, Arizona.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The laser area includes programs on developments and research related to low energy lasers for such applications as battlefield surveillance, target designation, ranging, communications, weapon guidance and data transmission. The review will include classified program details throughout.

In accordance with 5 U.S.C. App. 1, § 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: January 7, 1981.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 81-1005 Filed 1-9-81; 8:45 am]

BILLING CODE 3810-70-M

Defense Advisory Committee on Military Personnel Testing

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Defense Advisory Committee on Military Personnel Testing has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law.

The nature and purpose of the Defense Advisory Committee on Military Personnel Testing is to: (1) review the procedures used in the development, calibration, and validation of the current Defense selection and classification tests; (2) review the procedures being used in developing future Defense tests; and (3) provide recommendations regarding how state-of-the-art testing technology can be applied to the Defense personnel testing program

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

January 6, 1981.

[FR Doc. 81-896 Filed 1-9-81; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Allocation of Firm Energy and System Reserve Energy; Termination of Allocation Policy Formulation and Retraction of Notice of Intent To Prepare a Draft Enviornmental Impact Statement

AGENCY: Bonneville Power Administration, Department of Energy.

ACTION: Notice of Termination of Allocation Policy Development Process and Retraction of Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: The Bonneville Power Administration (Bonneville or BPA) is terminating the development of its Proposed Policy and Formula to Guide the Allocation of Firm Energy and System Reserve Energy from the Federal Columbia River Power System (44 FR 59824, October 5, 1979). The policy was originally proposed to guide firm electric energy allocations during periods of shortage. The enactment into law of the Pacific Northwest Electric Power Planning and Conservation Act (Pub. L. 96-501) has altered regional electric energy planning and development. Although it does not provide new resources, the Act gives BPA the authority to acquire resources through purchase or conservation, and it provides guidance in the areas heretofore addressed in the allocation policy and associated documents.

Specifically, the Act provides for the inclusion in new power sales contracts of provisions governing the restriction of contractural obligations to meet loads in the event of a period of insufficiency. BPA expects to develop such provisions in accordance with the Act and is therefore ending work on the proposed allocation policy presently pending before the public.

This Notice also terminates development of the proposed Energy Conservation Program Requirements and Guidelines (Notice of Proposed Energy Conservation Program Requirements and Guidelines to Accompany Proposed Policy and Formula to Guide Allocation of Firm Electric Energy and System Reserve Energy from the Federal Columbia River Power System, 45 FR 58938, September 5, 1980) and the draft Environmental Impact Statement (Allocation of Firm Electric Energy and System Reserve Energy Notice of Intent to Prepare a Draft Environmental Impact Statement, 44 FR 57465, October 5, 1979). BPA plans to use the comments and information on these areas contributed to date as it develops programs and policies pursuant to the Act.

FOR FURTHER INFORMATION: Additional information on the termination of the formulation process for this policy may be obtained from Ms. Donna Lou Geiger, P.O. Box 12999, Portland, Oregon 97212, (503) 234-3361, estension 4261. Oregon callers may use the toll-free number 1-800-452-8429; callers in Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California may use 1-800-547-6048.

SUPPLEMENTARY INFORMATION: In 1976, BPA notified its preference customers that it would lack sufficient resources to fully meet their firm energy requirements after June 30, 1983. On January 26, 1978, BPA announced its intent to develop a formula to guide the allocation of available electric energy after the June 30, 1983, date of insufficiency. On October 5, 1979, Bonneville published its Proposed Policy and Formula to Guide Allocation of Firm Electric Energy and System Reserve Energy from the Federal Columbia River Power System (44 FR 57824) deferring until later the publication of proposed conservation program requirements. BPA simultaneously announced its intent to prepare a draft Environmental Impact Statement on the allocation policy. On September 5, 1980, Bonneville published proposed conservation program requirements and guidelines to accompany the proposed allocation formula and guidelines. At the time this decision to terminate was made, Bonneville was following its published Procedure for Public Participation in Marketing Policy Formulation in developing the allocation policy, including conservation guidelines, and had tentatively scheduled public meetings on the proposed policy. The development of the proposed policy will

not be continued and no meeting will be held.

Bonneville expects extensive public participation in the development of policies and programs under the new Act. At a future time, Bonneville will advise the interested public of the arrangements for their participation in the development of these policies and programs.

Dated: January 2, 1981.

Ray Foleen,

Acting Administrator.

[FR Doc. 81-898 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Transportation Task Group of the Committee on Arctic Oil and Gas Resources; Meeting

Notice is hereby given that the Transportation Task Group of the Committee on Arcitc Oil and Gas Resources will meet in January 1981. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Arctic Oil and Gas Resources will analyze the various issues bearing on expeditious resource development of this promising frontier area. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Transportation Task Group meeting follow:

The third meeting of the Transportation Task Group will be held on Tuesday, January 27, 1981, starting at 9:00 a.m., Room 210-B, Anaconda Tower, 555 Seventeenth Street, Denver, Colorado.

The tentative agenda for the meeting follows:

1. Introductory remarks by the Chairman and Government Cochairman.
2. Review progress of Task Group members in individual study assignments.
3. Review and discuss the overall schedule of the Task Group.
4. Discussion of any other matters pertinent to the overall assignment from the Secretary.

The meeting is open to the public. The Chairman of the Transportation Task Group is impowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Transportation Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on December 31, 1980.

R. D. Langenkamp,

Deputy Assisstant Secretary, Resource Development and Operations, Resource Applications.

[FR Doc. 81-899 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Production Engineering Task Group of the Committee on Arctic Oil and Gas Resources; Meeting

Notice is hereby given that the Production Engineering Task Group of the Committee on Arctic Oil and Gas Resources will meet in January 1981. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Arctic Oil and Gas Resources will analyze the various issues bearing on expeditious resource development of this promising frontier area. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Production Engineering Task Group meeting follows:

The third meeting of the Production Engineering Task Group will be held on Tuesday, January 13, 1981, starting at 9:00 a.m., Room 317, Chevron U.S.A. Inc., 225 Bush Street, San Francisco, California.

The tentative agenda for the meeting follows:

1. Introductory remarks by the Chairman and Government Cochairman.
2. Review progress of Task Group members in individual study assignments.
3. Review and discuss the overall schedule of the Task Group.
4. Discussion of any other maters pertinent to the overall assignment from the Secretary.

The meeting is open to the public. The Chairman of the Production Engineering Task Group is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Production Engineering Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 31, 1980.

R. D. Langenkamp,

Deputy Assistant Secretary, Resource Development and Operations, Resource Applications.

[FR Doc. 81-901 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Production Engineering Task Group of the Committee on Arctic Oil and Gas Resources; Meeting

Notice is hereby given that the Production Engineering Task Group of the Committee on Arctic Oil and Gas Resources will meet in March 1981. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Arctic Oil and Gas Resources will analyze the various issues bearing on expeditious resource development of this promising frontier area. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Production Engineering Task Group meeting follows:

The fourth meeting of the Production Engineering Task Group will be held on Thursday, March 19, 1981, starting at 9:00 a.m., Room 215, Anaconda Tower, 555 Seventeenth Street, Denver, Colorado.

The tentative agenda for the meeting follows:

1. Introductory remarks by the Chairman and Government Cochairman.
2. Review progress of Task Group members in individual study assignments.
3. Review and discuss the overall schedule of the Task Group.

4. Discussion of any other matters pertinent to the overall assignment from the Secretary.

The meeting is open to the public. The Chairman of the Production Engineering Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Transportation Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 31, 1980.

R. D. Langenkamp,

Deputy Assistant Secretary, Resource Development and Operations, Resource Applications.

[FR Doc. 81-902 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Water Quality Task Group of the Committee on Environmental Conservation; Meeting

Notice is hereby given that the Water Quality Task Group of the Committee on Environmental Conservation will meet in January 1981. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Environmental Conservation will analyze the environmental problems of the oil and gas industries and the impact of current environmental control regulations on the availability and costs of petroleum products and natural gas. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Water Quality Task Group meeting follows:

The Water Quality Task Group will hold its third meeting on Thursday, January 22, 1981, starting at 9:00 a.m., in the Lancaster E Room of the Hyatt Regency Hotel, 265 Peachtree Street, Northeast, Atlanta, Georgia.

The tentative agenda for the meeting follows:

1. Review of Task Group progress and assignments of individual members.
2. Review and discussion of members' proposals for primer update.
3. Discussion of any other matters properly brought before the Task Group.

The meeting is open to the public. The Chairman of the Water Quality Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Water Quality Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room IE-190, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 31, 1980.

R. D. Langenkamp,

Deputy Assistant Secretary, Resource Development and Operations, Resource Applications.

[FR Doc. 81-903 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Hazardous Waste Task Group of the Committee on Environmental Conservation; Meeting

Notice is hereby given that the Hazardous Waste Task Group of the Committee on Environmental Conservation will meet in January 1981. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Environmental Conservation will analyze the environmental problems of the oil and gas industries and the impact of current environmental control regulations on the availability and costs of petroleum products and natural gas. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Hazardous Waste Task Group meeting follows:

The Hazardous Waste Task Group will hold its second meeting on Thursday, January 29, 1981, starting at 10:00 a.m., in the Standard Oil Company (Indiana) Building, 200 East Randolph Drive, Chicago, Illinois.

The tentative agenda for the meeting follows:

1. Review Task Group assignment from the NPC Committee on Environmental Conservation.
2. Discuss Task Group study approach and individual assignments.
3. Discuss Task Group schedule.
4. Discuss any other matters pertinent to the overall assignment of the Hazardous Waste Task Group.

The meeting is open to the public. The Chairman of the Hazardous Waste Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Hazardous Waste Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room IE-190, DOE, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on January 2, 1981.

R. D. Langenkamp,

Deputy Assistant Secretary, Resource Development and Operations, Resource Applications.

[FR Doc. 81-904 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Synthetic Fuels Task Group of the Committee on Environmental Conservation; Meeting

Notice is hereby given that the Synthetic Fuels Task Group of the Committee on Environmental Conservation will meet in January 1981. The National Petroleum Council was established to provide advice,

information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Environmental Conservation will analyze the environmental problems of the oil and gas industries and the impact of current environmental control regulations on the availability and costs of petroleum products and natural gas. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Synthetic Fuels Task Group meeting follows:

The Synthetic Fuels Task Group will hold its third meeting on Friday, January 30, 1981, starting at 9:30 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street Northwest, Washington, D.C.

The tentative agenda for the meeting follows:

1. Review Task Group assignment from the NPC Committee on Environmental Conservation.
2. Discuss Task Group study approach and individual assignments.
3. Discuss Task Group schedule.
4. Discuss any other matters pertinent to the overall assignment of the Synthetic Fuels Task Group.

The meeting is open to the public. The Chairman of the Synthetic Fuels Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Synthetic Fuels Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room IE-190, DOE, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on January 2, 1981.

R. D. Langenkamp,

Deputy Assistant Secretary, Resource Development and Operations, Resource Applications.

[FR Doc. 81-905 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Air Quality Task Group of the Committee on Environmental Conservation; Meeting

Notice is hereby given that the Air Quality Task Group of the Committee on Environmental Conservation will meet in February 1981. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Environmental Conservation will analyze the environmental problems of the oil and gas industries and the impact of current environmental control regulations on the availability and costs of petroleum products and natural gas. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Air Quality Task Group meeting follows:

The Air Quality Task Group will hold its second meeting on Tuesday, February 17, 1981, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, Northwest, Washington, D.C.

The tentative agenda for the meeting follows:

1. Review Task Group assignment from the NPC Committee on Environmental Conservation.
2. Discuss Task Group study approach and individual assignments.
3. Discuss Task Group schedule.
4. Discuss any other matters pertinent to the overall assignment of the Air Quality Task Group.

The meeting is open to the public. The Chairman of the Air Quality Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Air Quality task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room IE-190, DOE, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on January 2, 1981.

R. D. Langenkamp,

Deputy Assistant Secretary, Resource Development and Operations Resource Applications.

[FR Doc. 81-906 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Lakeside/Crystal Refining Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order.

Comments by: February 11, 1981.

ADDRESS: Send to Alan L. Wehmeyer, Chief, Crude Products Program Management Branch, 324 East 11th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Alan L. Wehmeyer, Chief, Crude Products Program Management Branch, 324 East 11th Street, Kansas City, Missouri 64106. Phone (816)/374-5932.

SUPPLEMENTARY INFORMATION: On December 12, 1980, the Office of Enforcement of the ERA executed a Consent Order with Lakeside Refining Company, Crystal Refining Company, Peerless Distributing Company, and Petroleum Specialties, Incorporated, ("Lakeside/Crystal Refining Company") of Southfield, Michigan. Under 10 CFR § 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Lakeside/Crystal Refining Company, with its home office located in Southfield, Michigan, is a firm engaged in the refining of crude oil and sale of covered products, and is subject to the Mandatory Petroleum and Allocation Regulations at 10 CFR, Parts 210, 211, and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Lakeside/Crystal Refining Company the Office of Enforcement, ERA, and Lakeside/Crystal Refining Company entered into a Consent Order, the

significant terms of which are as follows:

1. This Consent Order covers the filing of consolidated amended Forms FEO-96, P-110-M-1, and EIA-14 by Lakeside/Crystal Refining Company for the reporting periods of November 1973 through October 1980.

2. It is understood that Lakeside/Crystal Refining Company does not, by entering into the Consent Order, admit that it has violated any regulations of the DOE.

3. The provisions of 10 CFR § 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Terms and Conditions

In this Consent Order, Lakeside/Crystal Refining Company agrees to file amended Forms FEA-96, P-110-M-1, and EIA-14 for the reporting periods of November 1973 through October 1980. The amended forms shall be based on the consolidated data of Lakeside Refining Company, Crystal Refining Company, Peerless Distributing Company, and Petroleum Specialties, Incorporated.

Lakeside/Crystal Refining Company shall not for a thirty day period commencing October 28, 1980, charge to each class of purchaser of a covered product a price no higher than the price charged to the class of purchaser on October 27, 1980 for that covered product.

III. Submission of Written Comments

A. *Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Alan L. Wehmeyer, Chief, Crude Products Program Management Branch, Central Enforcement District, 324 East 11th Street, Kansas City, Missouri 64106. You may obtain a free copy of the Consent Order by writing to the same address or by calling (816) 374-5932.

You should identify your comments on the outside of your envelope and on the documents you submit with the designation, "Comments on Lakeside/Crystal Refining Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on February 11, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures at 10 CFR § 205.9(f).

Issued in Kansas City, Mo., on the 22nd day of December 1980.

William D. Miller,

Manager, Central Enforcement District, Economic Regulatory Administration.

David H. Jackson,

Chief Enforcement Counsel, Central Enforcement District.

[FR Doc. 81-997 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

American Statistical Association Ad Hoc Committee on Energy Statistics; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770), notice is hereby given that the American Statistical Association's Ad Hoc Committee on Energy Statistics will meet with representatives of the Energy Information Administration (EIA) on Friday, January 30, 1981, at the Hotel Washington, 15th and Pennsylvania Avenue, Northwest, Washington, D.C., from 9:00 a.m. to approximately 4:30 p.m., in the Capitol Room.

The purpose of the meeting is to enable the EIA to utilize the American Statistical Association's Ad Hoc Committee on Energy Statistics to obtain advice on EIA programs and to benefit from the Ad Hoc Committee's expertise concerning other energy statistical matters.

The tentative agenda is as follows:

A. Introductory Remarks
B. Major Topics
1. Discussion of the work of statisticians at the DOE national laboratories
2. Measuring the impact of alternative energy sources, specifically, solar, biomass, wood, and wind energy
3. EIA activities in preparation for the decontrol of petroleum prices
4. Redesign of the weekly petroleum reporting system and its relationship to the *Monthly Petroleum Statistics Report* and the *Monthly Petroleum Statement*
5. The methodology for performing data requirements studies
6. Overview and conclusions of the forecast volume of the EIA Annual Report to Congress, 1980
C. Other Committee Business
1. Topics for future meetings
2. Public comments

The meeting is open to the public. Any member of the public may file a written statement with the EIA for forwarding to the Committee, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should inform Mr. John H. Weiner, EIA Committee Liaison, (202) 633-8696, or Dr. Fred C. Leone, Executive Director of the American Statistical Association, (202) 393-3253, at least five days prior to the meeting and reasonable provision will be made to include their presentations on the agenda. Subsequent to approval by the Committee, minutes and an executive summary of the meeting will be available for public review and copying at the Office of Planning, Evaluation, and Project Control, EIA, 12th and Pennsylvania Avenue, N.W., Room 6149, Mail Stop 4311, Washington, D.C. 20461, (202) 633-8707, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Issued at Washington, D.C. on January 6, 1981.

Albert H. Linden, Jr.,

Acting Administrator, Energy Information Administration.

[FR Doc. 81-999 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-01-M

Office of Environment

Environmental Advisory Committee and Subcommittee on Clean Air Act Reauthorization; Open Meetings

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meetings:

DATE AND TIME: The *Subcommittee on Clean Air Act Reauthorization* will meet Wednesday, January 28, 1981 from 3:00 p.m. to approximately 5:00 p.m.

The *Environmental Advisory Committee* will meet Thursday and Friday, January 29-30, from 9:00 a.m. to approximately 5:00 p.m. each day.

PLACE: Department of Energy, Forrestal Building—Room 4A110, 1000 Independence Avenue, S.W., Washington, D.C. 20585

CONTACT: Rhoda Shechtel, Department of Energy, Forrestal Building—Room 4G052, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Telephone: 202-252-5187.

PURPOSE OF COMMITTEE: To advise the Department of Energy on the overall activities which pertain to the goals of restoring, protecting and enhancing environmental quality and assuring public health and safety.

Tentative Agenda: *Subcommittee on Clean Air Act Reauthorization*—1-28-81 3:00-5:00 p.m.

- Opening Remarks by Chairman
- Discuss Individual Assignments of Subcommittee Members
- Prepare Tentative Agenda Items for Next Subcommittee Meeting
- Prepare Status Report for Full Committee
- Public Comment (10 minute rule)

Environmental Advisory Committee Thursday, January 29, 1981—9:00 a.m.-12:00 noon

- Welcome and Report by Chairman
- Opening Remarks by Ruth Clusen, Assistant Secretary for Environment
- Report by DOE on Studies Relevant to Clean Air Act
- Report by Clean Air Act Reauthorization Subcommittee
- Briefing on Major Environmental Issues Pending at DOE

1:30 p.m.–5:00 p.m.

- Committee Working Session on Environmental Issues at DOE
- Committee Discussion
- Public Comment (10 minute rule)

Friday, January 30, 1981–9:00 a.m.–12:00 noon

- Continution of Committee Discussion on Environmental Issues
- DOE Reports on Pending Committee Business

1:30 p.m.–5:00 p.m.

- Discussion of Future Subcommittee Plans
- Review of Final Report on Key Environmental Issues
- Committee Business
- Public Comment (10 minute rule)

PUBLIC PARTICIPATION: The meetings are open to the public. Any member of the public who wishes to file a written statement with the Committee or Subcommittee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at 202–252–5187. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Members of the public who have not previously requested an opportunity to make an oral presentation, but who wish to speak, will be permitted to do so at a time determined by the Chairman.

TRANSCRIPTS: Available for public review and copying at the Public Reading Room 1E190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

EXECUTIVE SUMMARY: Available approximately 30 days following the meeting form the Advisory Committee Management Office.

Issued at Washington, D.,C. on January 7, 1981.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 81-998 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. G-3894-003, et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Co., et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

December 29, 1980.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 8, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-3894-003, C, Nov. 10, 1980	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	El Paso Natural Gas Company, All of Section 34, Block 39, Township 5 South, T & P RR Co. Survey, Upton County, Texas.	(1)	14.65
G-3913-000, D, Dec. 5, 1980	Ashland Exploration, Inc., P.O. Box 391, Ashland, Kentucky 41101.	Columbia Gas Transmission Corporation, Mingo County, West Virginia, Floyd, Breathitt, Knott and Pike Counties, Kentucky.	(2)	
G-11861-002, C, Dec. 2, 1980	Mobil Oil Corporation, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Cities Service Gas Company, Hardtner Field, Barber County, Kansas.	(3)	14.65
G-13746-002, C, Nov. 24, 1980	Mobil Oil Exploration & Producing Southeast, Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Transcontinental Gas Pipe Line Corporation, South Pelto 20 Field, Federal Offshore Louisiana.	(4)	15.025
G-17948-000, D, Dec. 2, 1980	Mobil Oil Corporation	Cities Service Gas Company, North Medicine Lodge Field, Barber County, Kansas.	Gas Purchase Contract dated 11-10-58 expired by its own terms effective 3-24-79.	
CI69-242-000, D, Dec. 9, 1980	Shell Oil Company, One Shell Plaza, P.O. Box 2463, Houston, Texas.	Southern Natural Gas Company, Block 295, OCS-G-1672, Offshore Louisiana.	(5)	
CI75-38-010, C, Nov. 24, 1980	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77001.	El Paso Natural Gas Company, Drinkard and Ellenburger Formations in Lea County, New Mexico.	(6)	14.73
CI77-517-003, C, Nov. 28, 1980	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Mid-Louisiana Gas Company, East Cameron Block 335, Offshore Louisiana.	(7)	15.025
CI77-518-003, C, Dec. 9, 1980	do	Northern Natural Gas Company, East Cameron Block 335, Offshore Louisiana.	(7)	15.025
CI77-554-001, Nov. 10, 1980 [8]	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Transwestern Pipeline Company, South Empire Deep Field, Eddy County, New Mexico.		14.65

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI77-565-001, Nov. 10, 1980 [9]	do	Transwestern Pipeline Company, South Empire Deep (1679) Field, Eddy County, New Mexico.		14.65
CI79-301-001, C, Nov. 28, 1980	do	Tennessee Gas Pipeline Company, Vermilion Block 241, Offshore Louisiana.	([10])	14.73
CI79-510-001, F, Oct. 30, 1980 [11]	Cotton Petroleum Corporation (Succ. in Interest to Ladd Petroleum Corporation), Suite 4200, One Williams Center, Tulsa, Okla. 74172.	Colorado Interstate Gas Company, Wild Rose Field, Sweetwater County, Wyoming.	([12])	15.025
CI80-200-001, C, Nov. 10, 1980 [13]	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Southern Union Gathering Company, San Juan Basin Area, San Juan County, New Mexico.	([14])	15.025
CI80-424-001, C, Nov. 21, 1980	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Transwestern Pipeline Company, Nash Field, Eddy County, New Mexico.	([7])	14.65
CI80-490 (CI62-48, CI63-674 and CI65-3), B, July 12, 1980.	Dorchester Gas Producing Company (Succ. to Palm Petroleum Corporation), P.O. Box 31049, Dallas, Texas 75231.	United Gas Pipe Line Company, *et al.*, Weesatche Field, Goliad County, Texas, *et al.*	Request to terminate and cancel defunct certificates and rate schedules belonging to predecessors-in-interest.	
CI81-43-000, F, Nov. 10, 1980 [15]	ARCO Oil and Gas Company, Division of Atlantic Richfield Company (Partial Successor to Pioneer Production Corporation), P.O. Box 2819, Dallas, Texas 75221.	Michigan Wisconsin Pipe Line Company, Armagost Unit, Section 27-3N-27ECM, Beaver County, Oklahoma.	([16])	14.65
CI81-44-000, A, Nov. 10, 1980	Cities Service Company, P.O. Box 300, Tulsa, Okla. 74102.	Texas Eastern Transmission Corporation, West <Cameron Block 459, OCS G-3383, Offshore Louisiana.	([17])	15.025
CI81-45-000, A, Nov. 10, 1980	Texas Gas Exploration Corporation, 3300 First International Plaza, 1100 Louisiana, Houston, Texas 77002.	Columbia Gas Transmission Corporation, Block 248 "D" Platform and Block 247 "F" Platform, Ship Shoal Area, Offshore Louisiana.	([18])	14.73
CI81-46-000, F, Nov. 13, 1980 [19]	El Paso Exploration Company (Succ. in Interest to El Paso Natural Gas Co.), P.O. Box 1492, El Paso, Texas 79978.	El Paso Natural Gas Company, High Island Block A-571, Offshore Texas.	([20])	14.65
CI81-47-000, A, Nov. 17, 1980	Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150.	Florida Gas Transmission Company, South Timbalier Block 156 and Ship Shoal Block 292, Calcasieu Parish, Louisiana.	([21])	15.025
CI81-48-000, A, Nov. 17, 1980	do	Florida Gas Transmission Company, Vermilion Blocks 147, 182, 201, East Cameron Block 222, West Cameron Blocks 513 and 528, Jefferson Davis Parish, Louisiana.	([22])	15.025
CI81-49-000, A, Nov. 17, 1980	Case-Pomeroy Oil Corporation, P.O. Box 1511, Midland, Texas 79702.	Columbia Gas Transmission Corporation Block A-414 High Island Area, Offshore Texas.	([23])	14.65
CI81-50-000, A, Nov. 17, 1980	General American Oil Company, of Texas, Meadows Building, Dallas, Texas 75206.	United Gas Pipe Line Company, West Cameron Area, South Addition, Block 552 (OCS-G-2556), Offshore Louisiana.	([24])	15.025
CI81-51-000, A, Nov. 17, 1980	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Michigan Wisconsin Pipe Line Company, High Island Block A-555, Offshore Texas.	([25])	14.65
CI81-52-000, A, Nov. 17, 1980	Felmont Oil Corporation, P.O. Box 2266, Midland, Texas 79702.	Columbia Gas Transmission Corporation, Block A-414, High Island Area, Offshore Texas.	([23])	14.65
CI81-53-000, A, Nov. 17, 1980 General American Oil Company of Texas.		United Gas Pipe Line Company, West Cameron Area, Block 115, (OCS-G-2828), Offshore Louisiana.	([24])	15.025
CI81-54-000, A, Nov. 17, 1980	do	United Gas Pipe Line Company, West Cameron Area, Block 116 (OCS-G-2829), Offshore Louisiana.	([24])	15.025
CI81-55-000, A, Nov. 17, 1980	do	United Gas Pipe Line Company, West Cameron Area, South Addition, Block 541 (OCS-G-2554), Offshore Louisiana.	d([24])	15.025
CI81-56-000, A, Nov. 18, 1980	do	United Gas Pipe Line Company, West Cameron Area, South Addition, Block 551 (OCS-G-2555), Offshore Louisiana.	([24])	15.025
CI81-58-000, B, Nov. 14, 1980	John B. Hawley, Jr. Trust No. 1	Northern Natural Gas Company, Hugoton Field, Stevens County, Kansas.	The landowner would like to buy gas from this well to run the motor to pump water for irrigation purposes.	
CI81-59-000, B, Nov. 17, 1980	J. R. Perkins and F. L. Parham d/b/a Perkins Production Company, P.O. Drawer 878, Duncan, Okla. 73533.	Arkansas Louisiana Gas Company, Northwest Okeene Field, Blaine County, Oklahoma.	Depleted, Well plugged and abandoned.	
CI81-59-002, C, Dec. 9, 1980	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Transcontinental Gas Pipe Line Corporation, High Island Block 179, Offshore Texas.	([7])	14.65
CI81-60-000, A, Nov. 21, 1980	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Lone Star Gas Company, Harrison Estate Well No. 1-B, T. D. Hunt Survey, Dexter Area, Cooke County, Texas.	([26])	14.65
CI81-61-000, A, Nov. 18, 1980	General American Oil Company of Texas, Meadows Building, Dallas, Texas 75206.	United Gas Pipe Line Company, West Cameron Area, South Addition, Block 560 (OCS-G-3283), Offshore Louisiana.	([24])	15.025
CI81-62-000, A, Nov. 19, 1980	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Columbia Gas Transmission Corporation, West Delta Block 73 Field, Offshore Louisiana.	([7])	15.025
CI81-63-000, A, Nov. 21, 1980	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Pipeline Company, Sabine Pass Blocks 8 and 11, Offshore Louisiana.	([26])	15.025
CI81-64-000, A, Nov. 21, 1980	Tenneco Oil Company	Tennessee Gas Pipeline Company, Sabine Pass Block 13, Offshore Louisiana.	([26])	15.025
CI81-65-000, F, Nov. 21, 1980 [27]	Resource Oil and Gas Company (Succ. in Interest to Provident Resources, Inc.), P.O. Box 2511, Houston, Texas 77001.	Northwest Pipeline Corporation, Various Leases in Rio Blanco and Garfield Counties, Colorado.	([28])	15.025
CI81-66-000, A, Nov. 21, 1980	Tenneco Oil Company	Tennessee Gas Pipeline Company, Sabine Pass Block 18, Offshore Texas.	([26])	14.65
CI81-67-000, A, Nov. 28, 1980	Southland Royalty Company, 1000 Fort Worth Club Tower, Fort Worth, Texas 76102.	Transcontinental Gas Pipe Line Corporation, OCS-G-2825 No. 3 Well, West Cameron Block 65, Offshore Louisiana.	([29])	15.025
CI81-68-000, A, Nov. 25, 1980	do	Florida Gas Transmission Company, West Cameron Block 65, Offshore Louisiana.	([29])	15.025
CI81-69-000, A, Nov. 25, 1980	Texas Gas Exploration Corporation, 3300 First International Plaza, 1100 Louisiana, Houston, Texas 77002.	Texas Gas Transmission Corporation, "A" Platform Block A-382, A-572 and A-573, Block A-573 Field, Offshore Texas.	([18])	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI81-70-000, A, Dec. 1, 1980	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	United Gas Pipe Line Company and Southern Natural Gas Company, East Cameron Block 46 Field, Federal Offshore Louisiana.	d([29])	14.73
CI81-71-000, A, Dec. 1, 1980	Natresco Incorporated, P.O. Box 1521, Houston, Texas 77001.	Michigan Wisconsin Pipe Line Company, Block A-325, High Island Area, Offshore Texas.	([31])	14.65
CI81-72-000, A, Dec. 1, 1980	The Superior Oil Company, P.O. Box 1521, Houston, Texas 77001.	Michigan Wisconsin Pipe Line Company, Block A-325, High Island Area, Offshore Texas.	([31])	14.65
CI81-73-000, B, Dec. 1, 1980	Lear Petroleum, P.O. Box 7512, Amarillo, Texas 79109.	Natural Gas Pipeline Company of America, Panhandle, West Field, Carson County, Texas.	Termination of contract with NGPA.	
CI81-74-000, A, Dec. 4, 1980	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Transcontinental Gas Pipe Line Corporation, High Island Area Block A-508, Offshore Texas.	([32])	14.65
CI81-75-000, A, Dec. 4. 1980	Transco Exploration Company, P.O. Box 1396, Houston, Texas 77001.	Transcontinental Gas Pipe Line Corporation, North Padre Island Area, Block 967 Field, Offshore Texas.	([31])	14.65
CI81-76-000, A, Dec. 8, 1980	Texoma Production Company, P.O. Box 90996, Houston, Texas 77090.	Natural Gas Pipeline Company of America, Eugene Island Area Block 321, Well Nos. A-1, A-2, A-3 and A-4, Offshore Louisiana.	([33])	15.025
CI81-77-000, A, Dec. 8, 1980	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Northern Natural Gas Company, West Cameron Area Block 205, Offshore Louisiana.	([34])	15.025
CI81-78-000, D, Dec. 8, 1980	Summit Energy, Inc., 1800 First Natl. Bank Bldg., Dallas, Texas 75202.	Northern Natural Gas Company, Blinebry Field, Lea County, New Mexico.	([35])	
CI81-79-000, F, Dec. 9, 1980[36]	Anadarko Production Company (Partial Succ. in Interest to Sid Richardson Carbon And Gasoline Company), P.O. Box 1330, Houston, Texas 77001.	Sea Robin Pipeline Company (Succ. in Interest to United Gas Pipeline Company and Southern Natural Gas Company), Block 16, South Marsh Island Area, Offshore Louisiana OCS-G 1184.	([37])	14.73

[1]Applicant is filing under Supplemental Casinghead Gas Contract dated 4-7-80, as amended by Letter Agreement dated 9-17-80, amendatory to Casinghead Gas Contract dated 10-16-54.

[2]Ashland Exploration, Inc. hereby seeks release of approximately 210,000 Mcf annually from its 12-31-30 contract with Columbia Gas Transmission Corporation, in order to continue furnishing gas which will be sold or resold to the existing consumers.

[3]Applicant is filing under Gas Purchase Contract dated 1-5-76, amended by Amendment (S-5521-E) dated 10-8-80.

[4]Applicant is filing under Gas Sales Contract, as amended, dated 9-18-57, amended by Amendment dated 6-27-80, but made effective 2-28-79.

[5]Four expendable exploratory wells drilled on lease with no commercial potential found; acreage surrendered/relinquished to Lessor (USBLM).

[6]Applicant is willing to accept a permanent Certificate in conformance with the Commission's Regulations under the Natural Gas Act and the NGPA of 1978.

[7]Applicant is willing to accept a permanent Certificate of Public Convenience and Necessity convering the subject sale conditioned in accordance with the NGPA of 1978 and the Commission's Regulations under said Act.

[8]Rollover Gas Purchase Contract by and between Transwestern Pipeline Company, Buyer, and Tenneco Oil Company, Seller, dated 8-8-80, superseding the previous Gas Purchase Contract between Transwestern Pipeline Company, Buyer, and Tenneco Oil Company, Seller, dated 4-1-77, the primary term of which expired on 8-8-79, and which was extended by Letter Agreement dated 7-5-79.

[9]Rollover Gas Purchase Contract by and between Transwestern Pipeline Company, Buyer, and Tenneco Oil Company, Seller, dated 6-1-80, superseding the previous Gas Purchase Contract between Transwestern Pipeline Company, Buyer, and Tenneco Oil Company, Seller, dated 4-1-77, the primary term of which expired on 7-21-79, and which was extended by Letter Agreement dated 7-5-79.

[10]Applicant is filing under Gas Purchase and Sales Agreement dated 2-27-79, amended by Amendment dated 4-24-80.

[11]Applicant has acquired from Ladd Petroleum Corporation by virtue of an Assignment of Oil and Gas Leases and Bill of Sale dated 9-30-80.

[12]Applicant requests to continue the sale to CIG, pursuant to the terms of the Gas Purchase Contract dated 10-14-76.

[13]Supron Energy Corporation conveyed to Applicant an undivided twenty-five percent (25%) working interest in such acreage, as more fully set out in the Assignments of 6-25-80.

[14]Applicant is filing under Gas Purchase Contract dated 9-27-54, as amended, and ratified by ARCO on 11-15-79.

[15]By assignment executed 3-17-80, but effective 2-25-80, Pioneer conveyed to Applicant all of its interest in and to the Gas Producing Enterprises, Inc. Armagost No. 1 Well located at the approximate center of the SE/4 NW/4 Section 27, Township 3 North, Range 27ECM, Beaver County, Oklahoma.

[16]Applicant is filing under Gas Purchase Agreement dated 10-18-79.

[17]Applicant is filing under Gas Purchase Contract dated 9-19-80.

[18]Applicant is willing to accept the rates set forth in Section 104 of Title I of the NGPA of 1978 and as more fully set forth in Subpart D of Part 271 of the Commission's Regulations under the NGPA of 1978.

[19]By the three (3) Assignments each dated 9-30-80, El Paso conveyed to Exploration Company the properties subject to said Gas Purchase Agreement dated 10-15-80. Such Assignments are effective as of 3-14-80.

[20]Applicant is filing under Gas Purchase Agreement dated 10-15-80.

[21]Applicant proposes to construct and operate a compressor for the purpose of delivering gas to Florida Gas Transmission Company in partial satisfaction of its warranty obligations to that company under Amoco Production Company FERC Gas Rate Schedule No. 439. The gas will be delivered from those blocks by Trunkline Gas Company pursuant to a Certificate of Public Convenience and Necessity currently in force. The facility is necessary because the pressure in Florida Gas Transmission Company's pipeline at that location exceeds the pressure in Trunkline's system.

[22]Applicant proposes to construct and operate a compressor for the purpose of delivering gas to Florida Gas Transmission Company in partial satisfaction of its warranty obligations to that company under Amoco Production Company FERC Gas Rate Schedule No. 439. The gas will be delivered from those blocks by Texas Eastern Transmission Corporation pursuant to a Certificate of Public Convenience and Necessity currently in force. The facility is necessary because the pressure in Florida Gas Transmission Company's pipeline at that location exceeds the pressure in Texas Eastern's system.

[23]Applicant is willing to accept the Certificate being applied for herein if such Certificate authorizes the initial sale of gas thereunder at the applicable maximum rate prescribed by the Commission at the time of initial deliveries thereunder; provided, however, Applicant reserves the right to reject such Certificate if it contains other conditions that are unacceptable, in Applicant's judgment.

[24]Applicant is filing under Gas Purchase Contract dated 10-21-80.

[25]Applicant is filing under Gas Purchase Contract dated 9-5-80.

[26]Applicant is filing under Gas Purchase Contract dated 8-1-80.

[27]Resource Oil is acquiring this property as of 9-16-80. Sales have previously been made under the small producer certificate of Provident Resources, Inc., CS76-0530.

[28]Applicant is filing under Gas Purchase and Sales Agreement dated 8-2-74.

[29]Applicant is willing to accept a certificate conditioned to the maximum lawful price established under Section 104 of the NGPA of 1978.

[30]Applicant is willing to accept an initial rate determined in accordance with the NGPA of 1978, Part 271, Subpart B, Section 102(d).

[31]Applicant is willing to accept an initial rate consistent with that prescribed by the NGPA of 1978.

[32]Applicant is filing under Gas Purchase Contract dated 11-18-80.

[33]Applicant is filing under Gas Sales Contract dated 5-1-80.

[34]Applicant is filing under Gas Purchase Contract dated 5-22-80.

[35]The New Mexico Oil Conservation has reclassified Applicant's Gulf Hill No. 3-0 Well as an oil well, so that gas produced from said well is no longer gas subject to Applicant's gas contract with Northern Natural Gas Company, but is subject to the terms of a Casinghead Gas Contract dated 1-26-73, between Skelly Oil Company, Buyer, (Getty Oil Company has succeeded to the interest of Buyer) and Applicant, Seller, applicable to all gas produced from a well classified as an oil well.

[36]The rights and interest in the leased acreage in Block 16, South Marsh Island Area, Offshore Louisiana, OCS-G 1184, was assigned by Sid Richardson to Applicant effective 10-16-79.

[37]Applicant is filing under Contract dated 11-12-68, amended by Amendment dated 8-19-80 and Applicant requests a Certificate of Public Convenience and Necessity effective as of the effective date of assignment, 10-16-79.

Filing Code: A—Initial Service, B—Abandonment, C—Amendment to add acreage, D—Amendment to delete acreage, E—Total Succession, F—Partial Succession.

[FR Doc. 81-968 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RE-81-16-000]

Central Louisiana Electric Co., Inc.; Filing

January 5, 1981.

The filing company submits the following:

Take notice that Central Louisiana Electric Company, Inc. (CLECO), on December 23, 1980, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations concerning collection and reporting of cost-of-service information under Section 133 of the Public Utility Regulatory Policies Act, Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file, on or before June, 1982, information on the costs of providing electric service as specified in Section 290.404 relating to the collection and filing of sample-metered load data for all of its large rate classes.

In its application for exemption, CLECO states it should not be required to file the specified data for the following reasons:

(1) Simultaneously metering all large rate classes would impose substantial financial costs on the Company.

(2) The Company has not developed sufficient experience with load research techniques to anticipate and to remedy any logistical and technical problems that may occur.

(3) Supplying best-estimate load data for the exempted large rate classes will satisfy the intent of Section 133 of PURPA and will not significantly detract from the overall accuracy of CLECO load data estimates.

(4) CLECO will fully comply with Section 290.404 in all future filings by a rotation of metering equipment to the required classes.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 26, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-969 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-199-000]

Central Telephone & Utilities Corp., Western Power Division; Filing

January 5, 1981.

The filing company submits the following:

Take notice that on December 30, 1980, Western Power Division, Central Telephone & Utilities Corporation (Western Power) tendered for filing proposed changes to its present rate schedules for service to its REA Cooperative customers as follows:

Substitute Rate Schedule 81-CWh-2 for Rate Schedule 80-Cwh-2

For service to its Municipal Wholesale customers as follows:

Substitute Rate Schedule 81-MWh-2 for Rate Schedule 80-MWh-2

For service to Central Kansas Electric Cooperative, Inc. (an interconnected transmission and distribution utility) as follows:

Substitute Schedule 81-CWh-2 for firm power service for present Schedule 80-A.

And for service to interconnected municipal utilities (the cities of Anthony, Attica, Beloit, Hoisington, Kingman, Pratt, Osborne, Stockton, Russell, and Washington, Kansas) as follows:

Substitute Schedule 81-MWh-5 for firm power service for present Schedule 80-A1.

For Transmission Service to Kansas Electric Power Cooperative Inc., an initial filing designated as:

81-TSv-1 (Transmission Service)

Western Power proposed March 1, 1981, as the effective date of these new rate schedules and states that copies of this filing were served upon each of its wholesale customers affected by this filing and the Kansas State Corporation Commission.

The proposed rate schedules, according to Western Power, will produce in the case of its REA Cooperative customers a 14.26% increase in revenue, in the case of its Municipal Wholesale customers a 12.71% increase in revenue, in the case of Central Kansas Electric Cooperative Inc., a 6.41% increase in revenue and in the case of the Interconnected Municipal Utilities a 4.37% increase in revenue over projected unadjusted test period revenue, the test period being the 12 months ending December 31, 1981. The rates under which the Company presently provides service to its REA Cooperatives and Municipal Wholesale customers are prohibitively low and confiscatory. The rates proposed for these customers will provide an adequate rate of return on the Company's investment. The proposed tariff 81-TSv-1 is to provide transmission service that has been requested by Kansas Electric Power Cooperative, Inc.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.18 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before January 26, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-970 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3603-000]

City of Aspen and Pitkin County; Notice of Application for Preliminary Permit

December 10, 1980.

Take notice that the City of Aspen and Pitkin County (Applicant) filed on October 24, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3603 to be known as the Ruedi Project located on the Fryingpan River at the existing Ruedi Dam owned by the United States Water and Power Resources Service in Eagle and Pitkin Counties, Colorado. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. William T. Smith Jr., Musick, Williamson, Schwartz & Cope, P.C., Attorneys at Law, P.O. Box 4579, Boulder, Colorado 80306. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize an existing government dam and would consist of a powerhouse with three turbine-generators with a total rated capacity of 5 MW. A transmission line with a minimum length of one mile would be required. The applicant estimates that the average annual energy output would be 25,600,000 kWh, which would save the equivalent of 43,000 barrels of oil or 11,900 tons of coal.

Purpose of Project—Power generated by the project would be sold to either the City of Aspen, Public Service Company of Colorado, Colorado-Ute Electric Association or the Holy Cross Electric Association, Inc.

Proposed Scope and Cost of Studies Under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of work to be performed under this preliminary permit would be $285,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—This application was filed as a competing application to the Ruedi Project No. 3225 on June 24, 1980, by Harrison Western Corporation, under 18 CFR 4.33 (1980), and, therefore, no further competing applications or notices of intent to file a competing application will be accepted for filing.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before January 26, 1981.

Filing and Service of Responsive Documents—Any comments, protests, or petitions to intervene must bear in all capital letters the title "Comments," "Protests," or "Petition To Intervene," as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3603. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-971 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3704-000]

City of Redding; Application for Preliminary Permit

January 5, 1981.

Take notice that the City of Redding (Applicant) filed on November 12, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3704 to be known as the American River North Fork Dam Power Plant located on the North Fork of the American River in Placer County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. W. Brickwood, City Manager, City of Redding, 760 Parkview Avenue, Redding, California 95814 with copies to Martin McDonough, Esquire, 555 Capitol Mall, Sacramento, California 95814. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project, to be located at the base of the existing U.S. Army Corps of Engineers' North Fork Dam, would consist of: (1) a 300-foot long, 6-foot diameter penstock serving; (2) a powerhouse with a rated capacity of 12 MW; and (3) 300 feet of transmission line to connect to existing transmission facilities.

The Applicant estimates that the average annual energy output would be 63.5 million kWhs.

Purpose of Project—The power generated at the project would be used to serve the electrical need of the Applicant's customers in the City of Redding.

Proposed Scope and Cost of Studies under Permit—The Applicant has conducted some reconnaissance studies of the site. The Applicant now seeks

issuance of a preliminary permit for a period of 36 months during which it would prepare a definitive project report that would include engineering, economic, and environmental data. The costs of these activities, the preparation of an environmental report, obtaining agreements with various Federal, State, and local agencies, and preparation of an FERC license application are estimated to be about $70,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant). Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before Feb. 18, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than April 20, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR § 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before Feb. 18, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title, "Comments," "Notice of Intent To File Competing Application," "Competing Application," "Protest," or "Petition To Intervene," as applicable. Any of these filings must also state that it is made in response, to this notice of application for preliminary permit for Project No. 3704. Any comments, notices of intent, competing application, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-972 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-106-000]

Columbia Gas Transmission Corp.; Notice of Publication

January 6, 1981.

Take notice that on December 19, 1980, Columbia Gas Transmission Corporation (Applicant), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP81-106-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of 91 interconnecting tap facilities to provide additional points of delivery to existing wholesale customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the following new points of delivery for the following wholesale customers:

(1) Columbia Gas of Kentucky, Inc.; 8 taps for residential service
Estimated annual usage of 1,200 Mcf
(2) Columbia Gas of Maryland, Inc.; 1 tap for residential service, 1 tap for commercial service
Estimated annual usage of 1,827 Mcf
(3) Columbia Gas of Ohio, Inc.; 41 taps for residential service, 1 tap for commercial service, 4 taps for industrial service
Estimated annual usage of 52,225 Mcf
(4) Columbia Gas of Pennsylvania, Inc.; 11 taps for residential service, 1 tap for commercial service
Estimated annual usage of 11,350 Mcf
(5) Columbia Gas of Virginia, Inc.; 1 tap for residential service
Estimated annual usage of 150 Mcf
(6) Columbia Gas of West Virginia, Inc.; 18 taps for residential service
Estimated annual usage of 2,700 Mcf
(7) The Dayton Power and Light Company; 2 taps for residential service, 1 tap for industrial service
Estimated annual usage of 520 Mcf
(8) Washington Gas Light Company; 1 tap for residential service
Estimated annual usage of 230 Mcf

It is estimated that the total cost of the interconnections proposed herein is $42,232 to be financed through internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition

for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-973 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-195-000]

Connecticut Light and Power Co.; Filing

January 5, 1981.

The filing company submits the following:

Take notice that on December 29, 1980, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to the Transmission Agreement dated April 29, 1980 between (1) CL&P, The Hartford Electric Light Company (HELCO) and Western Massachusetts Electric Company (WMECO) and (2) Westfield Gas and Electric Department (Westfield).

CL&P states that the Transmission Agreement provides for a transmission service to Westfield for the wheeling of Westfield's entitlement in Uxbridge Unit Nos. 1 and 2 generating facilities during the period from May 1, 1980 to October 31, 1980.

The transmission charge rate is a monthly rate equal to one-twelfth of the annual average cost of transmission service on the Northeast Utilities system determined in accordance with Section 13.9 (Determination of Amount of Pool Transmission Facilities (PTF) Costs) of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The monthly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-month), and (ii) the number of kilowatts which Westfield is entitled to receive during such month. The monthly transmission charge will be reduced by 50% to give due recognition for payments made by Westfield to intervening systems.

CL&P requests an effective date of May 1, 1980 for the Transmission Agreement.

HELCO and WMECO have filed certificates of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut; HELCO, Hartford, Connecticut; WMECO, West Springfield, Massachusetts and Westfield, Westfield, Massachusetts.

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 26, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-974 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-98-000]

Consumers Power Co.; Notice of Application

January 6, 1981.

Take notice that on November 10, 1980, Consumers Power Company (Applicant), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP81-98-000 an application pursuant to Section 284.127 of the Commission's Regulations under the Natural Gas Policy Act of 1978 for authorization to transport natural gas for Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated July 17, 1980, involving Panhandle, Southeastern Michigan Gas Company (Southeastern), Michigan Gas Storage Company (Storage Company) and Applicant, Applicant proposes to receive Panhandle gas by displacement from Storage Company at existing points of interconnection located at the Rochester Valve Site, Grand Blanc and Branch Road and by displacement deliver equivalent quantities of gas to Southeastern at New Haven, Michigan, for the account of Panhandle. Applicant proposes to begin the transportation service as soon as possible and continue for as long as the need for the service continues to exist. It is stated that maximum quantities to be transported are limited to 55,000 Mcf per day and 13,000,000 Mcf per year.

Applicant asserts that because of the benefits which accrue to Applicant as a result of a related facilities exchange agreement with Southeastern and a related letter agreement with Panhandle covering Applicant's acquisition of certain Panhandle facilities, the transportation service proposed herein would be provided by Applicant without any additional compensation.

Applicant requests authorization for the proposed transportation service herein because it proposes to perform the service on a long-term basis in excess of the 2-year limitation provided in 18 CFR 284.122.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-975 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3641-000]

Continental Hydro Corp.; Notice of Application for Preliminary Permit

January 5, 1981.

Take notice that Continental Hydro Corporation (Applicant) filed on November 3, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for the proposed Mississippi River Lock & Dam 5A Project, FERC 3641 to be located at the U.S. Army Corps of Engineers' Mississippi River Lock & Dam 5A, a navigational aid project, on the Mississippi River near Trempealeau, Buffalo County, Wisconsin. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, President,

Continental Hydro Corporation, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109. Any person who wishers to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize an existing U.S. Army Corps of Engineers' lock and dam. Project No. 3641 would consist of: (1) a proposed powerhouse located on the northeastern bank of the Mississippi River and containing five turbine units mounted on existing Corps of Engineers' Tainter gates; (2) a proposed transmission line from the powerhouse to an existing 161 kV transmission line owned by Dairyland Power Cooperative; and (3) appurtenant facilities. Applicant estimates the capacity at the Mississippi River Lock and Dam 5A to be approximately 19 MW.

The Applicant estimates that the average annual energy output would be 56,000,000 kWh.

Purpose of Project—Energy produced at the proposed project would be sold to the Dairyland Power Cooperative.

Proposed Scope and Cost of Studies under Permit—Applicant has requested a 36-month permit to prepare a definitive project report, including data acquisition and analysis, preliminary project layout and design, economic feasibility studies, and environmental and social studies. The cost of the aforementioned activities along with obtaining agreements with other Federal, State and local agencies is estimated to be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 16, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 15, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR § 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 16, 1981.

Filing and Service of Response Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "Comments," "Notice of Intent to File Competing Application," "Competing Application," "Protest," or "Petition To Intervene," as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3641. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-9778 Filed 1-9-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. CP69-23-003]

El Paso Natural Gas Co.; Notice of Petition To Amend

January 5, 1981.

Take notice that on December 9, 1980, El Paso Natural Gas Company (Petitioner), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP69-23-003 a petition to amend the order issued August 21, 1969,[1] in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Pioneer Natural Gas Company (Pioneer) from an additional delivery point, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued August 21, 1969, in the instant docket it was authorized, *inter alia*, to transport gas for the account of Pioneer. Petitioner proposes pursuant to an amendatory agreement with Pioneer dated November 11, 1980, to transport natural gas acquired by Pioneer from West Texas Gathering Company which is in close proximity to Petitioner's Keystone Emperor Plant in Winkler County, Texas. Petitioner further states that the Keystone Emperor Plant would also be utilized as an additional balancing point.

It is asserted that no additional facilities would be required at such point.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 22, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-977 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA79-24]

Exxon Company, U.S.A.; Extension of Time

January 5, 1981.

On December 30, 1980, the Secretary of Energy filed a request for an extension of time to file comments as required by the Proposed Order of the Presiding Officer issued December 17, 1980, in the above-docketed proceeding. The motion states that additional time is required since counsel has been unable to consult with appropriate agency officials because of the intervening holidays.

Upon consideration, notice is hereby given that an extension of time for the filing of comments is granted to and including January 9, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-949 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-69-000]

Georgia Power Co.; Order Accepting for Filing and Suspending Proposed Interchange Agreement Rates, Waiving Notice Requirements, and Consolidating Proceedings

Issued: December 30, 1980.

On November 13, 1980, Georgia Power Company (Georgia Power) submitted for filing proposed changes in the rates for emergency assistance and short-term power services under an Interchange Agreement with Savannah Electric and Power Company (Savannah). Such proposed rates were derived using the same costing methodologies as those originally set for investigation in Docket No. ER79-575,[1] and which are currently under investigation in Docket No. ER80-222.[2]

In Docket Nos. ER79-575 and ER80-222, Georgia Power filed revisions in its rates for emergency assistance, short-term capacity, and economy energy services under the interconnection agreement involved in this filing. Docket No. ER79-575 was terminated by Commission order on April 16, 1980, but the Commission stated that the investigation of the costing methodologies initiated in Docket No. ER79-575 was to be continued in Docket No. ER80-222[3] which was later consolidated with Docket Nos. ER80-58, *et al.*[4]

Georgia Power requests waiver of the notice requirements in order to permit an effective date of January 1, 1981. Georgia Power further requests that if the Commission orders a hearing on the justness and reasonableness of the proposed charges, a one day suspension be imposed.

Notice of the filing was issued on November 12, 1980, with comments, protests, or petitions to intervene due on or before December 2, 1980. No responses were received.

Discussion

The proposed charges are based on the same costing methodologies as those currently under investigation in Docket No. ER80-222. Consistent with our preliminary evaluation in Docket No. ER79-575, we find that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In a number of suspension orders,[5] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. The Commission notes that both parties have agreed to apply the revised charges as of January 1, 1981, and that no comments, protests, or petitions to intervene were filed by any other individuals. Accordingly, we shall exercise our discretion to suspend the rates for only one day and to waive the notice requirements set out in section 35.3 of our regulations permitting the rates to take effect subject to refund thereafter on January 2, 1981.

Furthermore, the costing methodologies on which these proposed rates are based are the same as those currently being investigated in Docket No. ER80-222 which has been consolidated with Docket Nos. ER80-58, *et al.* Therefore, we find that common questions of law and fact exist. In order to avoid unnecessary duplication of effort or expenditures of resources, we shall consolidate this docket with those currently under investigation in Docket Nos. ER80-58, *et al.*

The Commission Orders:

(A) Waiver of the notice requirements of section 35.3 of the regulations is hereby granted for good cause shown.

(B) Georgia Power Company's proposed rates are accepted for filing and suspended for one day, to become effective January 2, 1981, subject to refund.

(C) This proceeding is consolidated with Docket Nos. ER80-58, *et al.*

(D) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-950 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CI61-601]

Getty Oil Co.; Petition To Amend

January 6, 1981.

Take notice that on November 24, 1980, Getty Oil Company (Petitioner), P.O. Box 1404, Houston, Texas 77001, filed in Docket No. CI61-601[1] a petition to amend the order issued in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the exchange of natural gas at an additional delivery point, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Pursuant to a letter agreement dated January 7, 1980, Petitioner proposes to exchange natural gas with Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), at a new delivery point located in Northern's 6-inch pipeline at the discharge side of the Eunice Gas Plant No. 2 in order to enable Petitioner to receive residue gas from Northern when Petitioner's

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[1] *Georgia Power Co.*, Docket No. ER79-575, order issued October 5, 1979.

[2] *See Georgia Power Co.*, Docket No. ER80-222, order issued April 16, 1980.

[3] *Id.*, Mimeo at p. 3.

[4] *Georgia Power Company*, Docket No. ER80-222, order issued September 3, 1980.

[5] *E.G., Boston Edison Co.*, Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80-506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-488 (August 22, 1980) (one day suspension).

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

cryogenic plant located at the Eunice Gas Plant No. 1 is shut down.

It is asserted that all gas delivered to Petitioner would be on a volume basis and would be redelivered in kind to Northern within 30 days of the date of the use of said gas.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-951 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-192-000]

Hartford Electric Light Co.; Filing

January 5, 1981.

The filing company submits the following:

Take notice that on December 22, 1980, The Hartford Electric Light Company (HELCO) tendered for filing as an initial rate schedule an exchange agreement (the "Agreement") between HELCO and New Bedford Gas and Edison Light Company (NBG&E). The Agreement, dated as of October 25, 1978, provides for HELCO to exchange system capacity having the characteristics of Middletown Unit No. 4, a mid-range oil-fired steam unit, for non-operable capacity from NBG&E's entitlements in Canal Unit Nos. 1 or 2, each base load oil-fired steam units.

The Agreement provides that the parties will determine prior to Monday of each week during the term of the Agreement whether it is economically advantageous to the parties that an exchange, pursuant to the Agreement, shall take place during that week.

NBG&E will pay capacity charges to HELCO in an amount equal to the kilowatts of capacity exchanged during the week time $0.00300 times the number of hours during each week during which NBG&E actually received associated energy deliveries. NBG&E will purchase energy from HELCO at the incremental cost of providing such energy from Middletown Unit No. 4.

HELCO requests an effective date of October 25, 1978 for the Agreement.

NBG&E has filed a certificate of concurrence in this docket.

The Agreement has been executed by HELCO and by NBG&E and copies have been mailed to each of them.

HELCO further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426 in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, and 1.10). All such petitions or protests should be filed on or before January 26, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-952 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA81-14-000]

Huntway Refining Co.; Further Extension of Time

January 5, 1981.

On December 31, 1980, Huntway Refining Company filed a request for a further extension of time to file a petition for review of a decision and order issued September 30, 1980, by the Department of Energy's Office of Hearings and Appeals (DOE Case No. BEE-0392). The motion states that the company requires additional time to receive and analyze responses to Freedom of Information requests filed with the Department of Energy which are required for the preparation of the petition for review.

Upon consideration, notice is hereby given that an extension of time for the filing of a petition for review is granted to and including February 9, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-953 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3629-000]

Keystone Hydro Ltd.; Application for Preliminary Permit

December 10, 1980.

Take notice that Keystone Hydro Ltd. (Applicant) filed on October 30, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3629 to be known as the Howard Fork Project located on Howard Fork, Lake Fork, and the South Fork of the San Miguel River near the towns of Ames and Ophir in San Miguel County, Colorado. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Jerome R. Vass, P.O. Box 457, Telluride, Colorado 81435. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of respsonse that person wishes to file.

Project Description—The proposed project would affect lands of the United States within the Uncompahgre National Forest and would consist of: (1) the Lake Fork facility consisting of: (a) a small diversion structure located about 0.5 miles south of Ames; (b) a 2,000-foot long water conveyance structure along the left (west) side of the river valley; (c) a 750-foot long penstock; (d) a turbine operated at a 400-foot head utilizing a flow of 60 cfs; (2) the Howard Fork facility consisting of: (a) a small diversion structure located about 0.8 miles east of Ames; (b) a 5,000-foot long water conveyance structure along the right (east) side of the river valley; (c) a 1,000-foot long penstock; (d) a turbine operated at a 640-foot head utilizing a flow of 40 cfs; (3) a powerhouse located along the left (south) bank of the South Fork containing the turbines connected to generator(s) with a total rated capacity of 3,200-kW; (4) a short tailrace; (5) a switchyard; (6) a 150-foot long 44-kV transmission line; and (7) appurtenant facilities. Project energy would be transmitted to an existing San Miguel Power Association 44-kV transmission line.

The Applicant estimates that the average annual energy output would be 9,800,000 kWh.

Purpose of Project—Applicant intends to sell project energy to a public or private utility.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic, construction, economic, environmental,

historic, and recreational aspects of the project, would consult with Federal, State and local agencies, and would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $200,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before February 17, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than April 20, 1981. A notice of intent must conform with the requirements of 18 C.F.R. § 4.33(b) and (c)(1980). A competing application must conform with the requirements of 18 C.F.R. § 4.33(a) and (d)(1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 C.F.R., § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intevene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before February 17, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3629. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-954 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP78-433-003]

Michigan Consolidated Gas Co., Interstate Storage Division; Petition To Amend

January 6, 1981.

Take notice than on December 17, 1980, Michigan Consolidated Gas Company—Interstate Storage Division (Petitioner), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP78-433-003 a petition to amend the order issued July 23, 1979, as amended, pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of up to an additional 1,960,000 Mcf of natural gas annually for Panhandle Eastern Pipe Line Company (Panhandle), all as more full set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued July 23, 1979, as amended, it was authorized, *inter alia,* to provide gas transportation service to Panhandle in connection with a storage service agreement Panhandle entered into with ANR Storage Company (ANR) which provides Panhandle with 50-day gas storage service for 1,140,000 Mcf of gas each year.

It is stated that in order to provide for additional gas storage services required by Panhandle's customers ANR has agreed to increase the maximum volume of gas stored from 1,140,000 Mcf annually to 3,100,000 Mcf annually effective as of April 1, 1981.

Petitioner proposes herein to transport the additional 1,960,000 Mcf of gas annually that Panhandle has contracted to store with ANR pursuant to an amendatory agreement dated December 5, 1980. It is asserted that Panhandle has also arranged with Michigan Wisconsin Pipe Line Company and Great Lakes Gas Transmission Company to increase the volumes of gas to be transported under their contracts from 1,140,000 Mcf to 3,100,000 Mcf effective as of April 1, 1981.

Petitioner states it would charge Panhandle a rate of $32,799 per month for the transportation service proposed herein.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-955 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RE81-14-000]

Mississippi Power & Light Co.; Application for Exemption

January 5, 1981.

The filing company submits the following:

Take notice that Mississippi Power & Light Company, hereinafter called MP&L, on December 23, 1980, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file, on or before June 30, 1982, information on the cost of providing electric service as specified in Sections 290.404(b), 290.404(g)(2), 290.305(a)(3), 290.403(a) and 290.406(a) with respect to the following nine small rate classes: (1) General Light and Power (GLP-6); (2) Fayette Residential; (3) Fayette Commercial; (4) Centreville; (5) X-Ray (XR-1); (6) Miscellaneous; (7) Private Area Light (PSL-15); (8) Flood Lighting (UFL-4); and (9) Flood Lighting (RFL-4). Applicant seeks to have the exemption apply to its June, 1982, Part 290 filing and to all future Part 290 filings. This exemption is sought pursuant to Section 290.601(a)(3)(i), pertaining to exemptions based on the extent of service provided.

In its application for exemption, MP&L states that it should not be required to file the specified data for the following reasons:

(1) The nine rate classes for which exemption is sought are frozen classes into which no new customers will be allowed. Over a period of time the number of customers and the energy sales represented by these nine classes should decrease. In 1979 they represented .3% of the number of customers and .08% of the total retail energy sales of MP&L.

(2) The information gathered on these nine classes would be of little or no use since they gradually are being discontinued and since none of them are a representative sample for any of MP&L's other rate classes or for any end-use class. The primary purpose of Section 133 of PURPA is to gather information from which rates can be made. The time and expense needed to provide cost and load data for these nine small classes would be excessive compared to the amount or usefulness of the information obtained.

Applicant seeks for the exemption to apply to all future Part 290 filings since these nine classes will not be expanding. In fact, these classes should gradually decrease and eventually disappear with each successive filing.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before January 26, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-989 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3594-000]

Mitchell Eneregy Company, Inc.; Application for Preliminary Permit

December 10, 1980.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on October 22, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3594 to be known as Marseilles No. 2 Lock and Dam located on the Illinois River in LaSalle County, Illinois. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Decription—The proposed project would consist of: (1) a proposed powerhouse, located on the south bank of the river and 2 miles downstream from the dam, with generating units having a total installed capacity of 19,500 kW; (2) proposed transmission lines; and (3) appurtenant facilities. Applicant would utilize an existing dam and reservoir owned by the U.S. Army Corps of Engineers. Applicant's facilities would be located on U.S. lands.

The Applicant estimates that the average annual energy output would be 97,000,000 kWh.

Purpose of Project—The power generated at the project would be sold to Illinois Power Company.

Proposed Scope and Cost of Studies under Permit—The Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time a study would be made of the engineering, economic, and environmental feasibility of the project. The study would include, among other things, soil exploration, design of hydraulic structures, and recreational uses. The Applicant estimates the cost of the proposed studies would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before February 11, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than April 13, 1981. A notice of intent must conform with the requirements of 18 C.F.R. § 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 C.F.R. § 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 C.F.R., § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or

other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before February 11, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3594.

Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-956 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3596-000]

Mitchell Energy Company, Inc.; Application for Preliminary Permit

December 10, 1980.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on October 22, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3596 to be known as Saylorville Dam located on the Des Moines River in Polk County, Iowa. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of: (1) a proposed powerhouse, located on the west bank of the river, with generating units having a total installed capacity of 11,000 kW; (2) proposed transmission lines; and (3) appurtenant facilities. Applicant would utilize an existing dam and reservoir owned by the U.S. Army Corps of Engineers. Applicant's facilities would be located on U.S. lands.

The Applicant estimates that the average annual energy output would be 50,000,000 kWh.

Purpose of Project—The power generated at the project would be sold to Iowa Power and Light Company.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time a study would be made of the engineering, economic, and environmental feasibility of the project. In addition, a subsurface study would be made for the powerhouse, along with preparing preliminary and final design plans for the project. The Applicant estimates the cost of the proposed studies would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before February 11, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than April 13, 1981. A notice of intent must conform with the requirements of 18 C.F.R. § 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 C.F.R. § 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 C.F.R., § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before February 11, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATIONS", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3596.

Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the

Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-957 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3671-000]

Mitchell Energy Company, Inc.; Application for Preliminary Permit

January 5, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 4, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)] for proposed Project No. 3671 to be known as Allegheny Lock and Dam No. 5 Hydro Project located on the Allegheny River in Armstrong County, Pennsylvania. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' Allegheny Lock and Dam No. 5 and would consist of: (1) new penstocks near the left dam abutment; (2) a new powerhouse containing generating units having a total rated capacity of 17,100 kW; (3) a tailrace; (4) a new transmission line; and (5) appurtenant facilities. The Applicant estimates that the average energy output would be 89,800,000 kWh.

Purpose of Project—Project energy would be sold to a local utility.

Purpose Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of two years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—This application was filed as a competing application to Noah Corporation's application for Project No. 3494 submitted September 23, 1980, under 18 CFR 4.33 (1980). Anyone desiring to file a competing application must submit to the Commission, on or before March 13, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 12, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR § 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 13, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3671. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-958 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3692-000]

Mitchell Energy Co., Inc.; Application for Preliminary Permit

January 5, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 7, 1980, an application for preliminary permit [pursuant to the Federal Power Act 16, U.S.C. §§ 791(a)—825(r)] for proposed Project No. 3692 to be known as Arrowrock Dam Project located on Boise River in Elmore County, Idaho. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize an existing government dam owned by the United States Water and Power Resources Service and would consist of a powerhouse with a total installed capacity of 220 MW.

The Applicant estimates that the average annual energy output would be 321,273,000 kWh.

Purpose of Project—Power generated by the project would be sold to the Idaho Power Company or another local utility.

Proposed Scope and Cost of Studies Under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of the studies, Applicant would decide to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates the cost of the studies to be performed under the preliminary permit would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibiity of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 16, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 15, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 16, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3692. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-986 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3723-000]

Mitchell Energy Co., Inc.; Application for Preliminary Permit

January 5, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 12, 1980, an application for preliminary permit for proposed Project No. 3723 to be known as Clear Lake Dam Hydroelectric Project located at the United States Department of the Interior, Water and Power Resources Service's (WPRS) Clear Lake Dam on the North Fork River in Yakima County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of a powerhouse with a rated capacity of 1,500 kW and appurtenant facilities.

The Applicant estimates that the average annual energy output would be 6.7 million kWh.

Purpose of Project—Project energy would be sold to a local utility.

Proposed Scope and Cost of Studies under Permit—Applicant has requested a 24-month permit to prepare a definitive project report including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with WPRS and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicants.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file

comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 11, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 11, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 11, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3723. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St. NE., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Application Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St. NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-987 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3715-000]

Mitchell Energy Co., Inc.; Application for Preliminary Permit

January 5, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 10, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3715 to be known as the Kachess Lake Dam Hydroelectric Project located on Kachess River in Kittitas County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would be located at the existing U.S. Water and Power Resources Service's Kachess Lake Dam and would consist of a power plant with a rated capacity of 3.5 MW. The Applicant estimates that the average annual energy output would be 10 million kWhs.

Purpose of the Project—Applicant states that during the permit period a power purchase agreement with a local utility will be negotiated.

Proposed Scope and Cost of Studies under Permit—Applicant seeks a preliminary permit for a period of 24 months during which it would conduct environmental, engineering and economic studies to determine the feasibility of constructing and operating the proposed project. Applicant estimates that the cost of the feasibility studies would be about $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 11, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 11, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980). This application was filed as a competing application to the Kittitas County Public Utility District No. 1 and the City of Ellenburg's application for the Kachess Hydroelectric Project No. 3487, filed September 18, 1980.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 11, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS"

"NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3715. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-988 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-104-000]

Natural Gas Pipeline Company of America; Application

January 6, 1981.

Take notice that on December 18, 1980, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP81-104-000 an application pursuant to Section 7 of the Natural Gas Act and Section 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission and approval to abandon for the period commencing March 21, 1981, and ending December 31, 1981, and operation of various field compression and related metering and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to enable Applicant to act with reasonable dispatch in constructing and abandoning facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that the total cost of the proposed construction and abandonment for the approximately eight-month period would not exceed $4,000,000 with no single project limit to exceed $1,000,000 consistent with the limits prescribed by the Commission in Applicant's order issued March 21, 1980, in Docket No. CP79-505. Such costs, it is asserted, would be financed from funds on hand.

In order to conform the time constraints in this budget authorization to other budget authorizations, Applicant proposes that the authorization herein end on December 31, 1981.

Any person desiring to be heard on or to make any protest with reference to said application should on or before January 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-990 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-38]

Northern Natural Gas Company, Division of InterNorth, Inc.; Petition To Vacate Order

January 6, 1981.

Take notice that on December 12, 1980, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP80-38 a petition pursuant to Section 1.7 of the Commission's Rules of Practice and Procedure to vacate the Commission's order issued February 26, 1980, authorizing the construction and operation of a proposed standby compressor unit at the Egan Compressor Station, Acadia Parish, Louisiana, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Northern states that it was authorized by order issued February 26, 1980, to construct and operate one 1,140 horsepower compressor unit as a back-up to the existing 1,250 horsepower electric unit at the Egan Station because the Egan Station experienced irregular suction pressures from time to time causing throughput surge and shut down of the unit. Northern further asserts that Tennessee Gas Transmission Company, a Division of Tenneco, Inc. (Tennessee), assists Northern during shut-down periods in order to continue the transportation of Northern's Gulf Coast gas onshore.

Northern further states that by order issued April 28, 1980, in Docket No. CP79-396 it was authorized to transport and exchange gas by displacement with United Gas Pipe Line Company (United) and Panhandle Eastern Pipe Line Company which gas, up to 800,000 Mcf per day, is being transported and delivered into Northern's system by Northern Border Pipeline Company (Northern Border). It is explained that with the receipt by Northern of gas from Northern Border, Northern would begin exchanging up to 450,000 Mcf of its Gulf Coast gas per day for that gas received from Northern Border for United's account at the Ventura, Iowa, interconnection.

Since back-up at the Egan Station would only be required until Northern Border commences delivery of gas into Northern's system, Northern states that it believes adequate back-up for the Egan Station can be provided by the existing transportation arrangements with Tennessee. It is submitted that when Northern Border commences delivery of gas into Northern's system, those volumes presently delivered to the Egan Station would be redirected to

United in the Gulf Coast area to comply with the exchange agreement.

Northern, therefore, requests that the Commission vacate its order issued February 26, 1980, in the instant docket.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-991 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-97-000]

Northern Natural Gas Company, Division of InterNorth, Inc., Application

January 6, 1981.

Take notice that on December 15, 1980, Northern Natural Gas Company, Division of InterNorth, Inc., (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP81-97-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale in interstate commerce of natural gas to Panhandle Eastern Pipe Line Company (Panhandle) for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has obtained the right to purchase certain quantities of natural gas produced by Exxon Company, U.S.A. in Vermilion Block 372, offshore Louisiana, which is transported onshore by Michigan Wisconsin Pipe Line Company (Mich Wis) and delivered to Trunkline Gas Company (Trunkline) at a point of connection at the Superior Oil Company Lowry gas processing plant, Cameron Parish, Louisiana, or at an existing interconnection on the discharge side of Mich Wis' Patterson Compressor Station, St. Mary Parish, Louisiana.

It is asserted that on September 18, 1980, Applicant entered into a transportation and sales agreement with Panhandle and Trunkline which provides for the transportation of Applicant's Block 372 gas and the sale of up to 20 percent of such gas to Panhandle. Applicant submits that Trunkline would receive Applicant's Block 372 gas at the Lowry or Patterson locations and transport such gas to its Longville, Louisiana, compressor station from which the gas would be transported by Trunkline and Panhandle pursuant to the terms of a transportation agreement between the parties dated September 24, 1976.

Applicant explains that the gas would be sold to Panhandle on a monthly cost of service basis with the estimated average cost of service per Mcf for the first year of operation to be $3.32.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-992 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-51-001]

Northern Natural Gas Company, Division of InterNorth, Inc.; Amendment to Application

January 5, 1981.

Take notice that on December 19, 1980, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP80-51-001 an amendment to its application pending in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to relocate its proposed pipeline facilities, all as more fully set forth in the amendment which is on file with the Commission and open for public inspection.

By its application filed October 26, 1979, in the instant docket, Applicant requested authorization to construct and operate two new 4,500 horsepower compressor stations (Zavala County No. 1 and No. 2), approximately 6.1 miles of 12 inch pipeline, and approximately 163 miles of 16-inch pipeline to connect its reserves in the Spillar-Haskett and Pryor Ranch acreages in Zavala County, Texas, to its existing pipeline system.

Applicant further states that subsequent to its initial filing in this proceeding, Valero Transmission Company (Valero) intervened and proposed to provide a transportation service for its Zavala County reserves and that the parties have agreed that Valero would transport for Applicant 60 billion Btu per day on a firm basis and an additional 20 billion Btu per day on a best-efforts basis.

Applicant asserts that such transportation by Valero necessitates modification of the facilities as originally proposed in order to provide for the attachment and transportation of the Zavala County reserves and that the routing change proposed herein would result in the construction and operation of approximately 7.4 miles of 12-inch pipeline connecting Zavala County No. 1, Zavala County No. 2, and approximately 19.0 miles of 12-inch pipeline connecting Zavala County No. 2 to Valero's Dimmit County 20-inch mainline. In addition, Applicant proposes to provide all measurement facilities installed at the points of delivery and redelivery. Applicant maintains that the compressor stations

and the gathering facilities would remain as proposed in the original application.

Applicant estimates the cost to construct the referenced facilities is $30,771,710.

Applicant states that delivery of the referenced reserves to its system would be accomplished by connection and transportation of said reserves through the facilities herein proposed to be constructed to the tie-in on Valero's 20-inch pipeline in Dimmit County, Texas. Applicant further states that Valero would accept and transport volumes received at said interconnection and redeliver such volumes to Applicant at two interconnections of Applicant's 30-inch pipeline and Valero's 36-inch pipeline. The primary redelivery point, it is asserted, is located in Pecos County, Texas, and the alternate redelivery point is located in Midland County, Texas.

Applicant submits that said agreement with Valero would provide for a transportation charge of 14.2 cents per million Btu to the primary delivery point and 15.9 cents per milion Btu to the alternate delivery point which rate would increase one cent per year and be subject to redetermination every second year based upon Valero's actual cost. In addition, Applicant asserts that it would pay Valero a monthly charge to cover the cost of service on a compressor station Valero is required to construct and operate to transport its gas.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before January 16, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-993 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-103-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Application

January 6, 1981.

Take notice that on December 17, 1980, Northern Natural Gas Company, Division of InterNorth, Inc., (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP81-103-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and related facilities, offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has the right to purchase or is in the process of completing negotiations for the purchase of natural gas attributable to reserves located in West Cameron Area Blocks 205, 238, and 249, offshore Louisiana. In order to attach and transport these additional supplies of natural gas, Applicant proposes to construct and operate approximately 3.2 miles of 16-inch pipeline, 5.3 miles of 8-inch pipeline, associated metering and appurtenant facilities.

It is stated that the proposed 16-inch pipeline would extend from the producer platform located in Block 205 to a subsea valve on Michigan Wisconsin Pipe Line Company's (Mich Wis) proposed 20-inch pipeline in Block 204. It is further stated that an 8-inch lateral approximately 3.8 miles in length would be installed connecting the "C" Platform in Block 249 to a subsea valve on Mich Wis' proposed pipeline at the "A" Platform in Block 238. Further, it is asserted that approximately 1.5 miles of 8-inch pipeline would extend from "B" Platform in Block 238 to the subsea valve on Mich Wis' proposed pipeline at the "A" Platform in Block 238.

Applicant estimates that the proved reserves and potential gas supply attributable to the above-described sources of gas are approximately 211,000,000 Mcf. The proposed facilities, it is stated, would provide the capacity needed to transport the estimated maximum daily volumes that are expected to be available to Applicant.

The estimated cost of the proposed facilities is $7,200,000 which would be financed from funds on hand, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-994 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-94-000]

Panhandle Eastern Pipe Line Co.; Application

January 5, 1981.

Take notice that on December 12, 1980, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP81-94-000 an application pursuant to Section 7 of the Natural Gas Act and Section 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission and approval to abandon for the 12-month period commencing April 26, 1981, and operation of various field compression and related metering and appurtenant facilities, all as more fully set forth in the application which is on file with the

Commission and open to public inspection.

The stated purpose of this budget-type application is to enable Applicant to act with reasonable dispatch in constructing and abandoning facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that the total cost of the proposed construction and abandonment under Section 157.7(g) would not exceed $3,000,000 and the cost for any single project would not exceed $500,000. Such costs, it is asserted, would be financed from funds available to the company.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 22, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-995 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-99-000]

Transwestern Pipeline Co.; Application

January 6, 1981.

Take notice that on December 12, 1980, Transwestern Pipeline Company (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP81-99-000 an application pursuant to Section 284.107(b) of the Regulations under the Natural Gas Policy Act of 1978 for authorization to exchange natural gas with Intratex Gas Company (Intratex), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant and Intratex, an intrastate pipeline, have entered into an exchange agreement dated November 11, 1980, whereby Applicant would exchange with Intratex up to 1,000 Mcf of natural gas per day. It is further stated that gas would be received by Applicant from or for the account of Intratex at a mutually agreeable point on Applicant's 30-inch loop or 24-inch West Texas lateral in Lea County, New Mexico. It is asserted that Applicant would redeliver thermally equivalent volumes of gas to Oasis Pipe Line Company (Oasis) for Intratex's account at either or both of certain points located in Reeves and Ward Counties, Texas, thus reducing deliveries to Applicant under a gas gathering and transportation agreement dated December 19, 1978, between Applicant and Oasis. Applicant assures that if the transportation agreement terminates prior to the termination of the exchange agreement, Intratex and Applicant would make other mutually satisfactory arrangements.

Applicant asserts that the exchange agreement would be in effect for a primary term of 10 years commencing on the date of first deliveries and from year to year thereafter.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-981 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 2512]

Union Carbide Corp. and Alloy Hydro Corp.; Application for Transfer of Major License

January 5, 1981.

Public notice is hereby given that an application was filed on Noveber 21, 1980, under the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r), by Union Carbide Corporation (Licensee) and Alloy Hydro Corporation (Transferee) for transfer of the major license for the Hawk's Nest-Glen Ferris Project No. 2512. The Hawk's Nest and Glen Ferris Developments are located on the New River and the Kanawha River, respectively, in Fayette County, West Virginia. Correspondence should be directed to: Gary J. Triplett, Esq., Union Carbide Corporation, Law Department, 437 MacCorkle Avenue, S.W., South Charleston, West Virginia, and Robert G. Bleakney, Jr., Esq., Sullivan and Worcester, 100 Federal Street, Boston, Massachusetts 02110.

Project No. 2512 consists of Hawk's Nest Development and the Glen Ferris development with installed hydroelectric generating capacity of 102 and 5.45 Megawatts, respectively. The project energy is used by the Licensee for its ferroalloy manufacturing processes, and the Licensee proposes to sell its ferroalloy business to Elkem Metal Company, the sole stockholder of Alloy Hydro Corporation.

Alloy Hydro Corporation is a private corporation, organized under the laws of the State of West Virginia, domesticated in the State of West Virginia, and is a wholly owned subsidiary of Elkem Metals Company.

Transferee proposes to continue to operate Project No. 2512 in the same manner and for the same purposes for which it is now operated, namely as a source of energy for industrial manufacturing processes.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance

with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before February 11, 1981. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-982 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-117-000]

Valero Transmission Co.; Application

January 5, 1981.

Take notice that on December 18, 1980, Valero Transmission Company (Applicant), P.O. Box 500, San Antonio, Texas 78292, filed in Docket No. CP81-117-000 an application pursuant to Section 284.127 of the Commission's Regulations under the Natural Gas Policy Act of 1978 for authorization to transport natural gas for Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated December 9, 1980, Applicant proposees to transport on behalf of Northern up to 60 billion Btu equivalent of natural gas per day on a firm basis and such additional quantities as the parties may agree upon from time to time up to 20 billion Btu per day on a best-efforts basis from a designated point of receipt in Dimmit County, Texas, to two points of redelivery in Pecos and Midland Counties, Texas.

It is further stated that Northern has agreed to pay Applicant an initial transportation fee of 14.2 cents per million Btu for gas delivered at the Pecos County redelivery point and 15.9 cents per million Btu for gas delivered at the Midland County redelivery point for a term of ten years from the date of first delivery of gas or commencing January 1, 1982, whichever occurs first. Applicant states that its transportation fee would increase commencing with the second billing period and annually thereafter one cent per million Btu and would be subject to redetermination at the beginning of the third billing period and every other billing period thereafter. It is further stated that Northern would be obligated to pay a minimum monthly bill comprised of the above-stated transportation fees multiplied by 66⅔ percent of the contract volumes and that Applicant would also retain one-half of one percent of the total voumes of gas received from Northern to cover system fuel and shrinkage.

Applicant asserts that in order to transport Northern's gas Applicant would install compressor facilities on its Dimmit County 20-inch pipeline and that in consideration for the construction and operation of such facilities, Northern has agreed to pay Applicant a monthly demand charge of $89,000 for the first billing period. It is asserted that subsequent billing period demand charges would be based upon Applicant's actual cost of service. Applicant seeks approval of this initial $89,000 demand charge and the formula for calculating subsequent demand charges pursuant to Section 284.123(b)(2) of the Commission's Regulations.

Applicant requests authorization for the proposed transportation service herein because it proposes to perform the service on a long-term basis in excess of the 2-year limitation in 18 CFR 284.122.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 16, 1981, filed with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-983 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-197-000]

Vermont Electric Power Co., Inc.; Filing

January 5, 1981.

The filing company submits the following:

Take notice that on December 29, 1980, Vermont Electric Power Company, Inc. (VELCO) tendered for filing the following rate schedule and related data:

"Participation Agreement" between	Date of agreement	Substation
Central Vermont Public Service Corp. and VELCO.	Dec. 10, 1979	Blissville.
Do	do	Chelsea.
Do	do	Fairfax.
Do	do	Hartford.
Do	do	Irasburg.
Do	do	New Haven.
Do	do	St. Johnsbury.
Do	do	Windsor.
Vermont Marble Co. and VELCO.	Aug. 14, 1980	Florence.
Washington Electric Cooperative, Inc. and VELCO.	Aug. 26, 1980	Chelsea.

VELCO states that the service to be rendered under this Rate Schedule consists of the joint use of VELCO's facilities. In each case some of the participant's facilities will be incorporated into the substation and the participant will use in common with VELCO other parts of the substation.

The estimated monthly charges under this rate schedule are as follows:

Participant	Substation	Estimated monthly carrying charge	Estimated monthly operation and maintenance charge
Central Vermont Public Service Corp.	Blissville	$481	$64
Do	Chelsea	363	36
Do	Fairfax	553	42
Do	Hartford	926	36
Do	Irasburg	317	40
Do	New Haven	1,001	23
Do	St. Johnsbury	753	90
Do	Windsor	1,299	59
Vermont Marble Co	Florence	1,097	71
Washington Electric Cooperative, Inc.	Chelsea	363	20

Since revenues under this rate schedule will be credited to the State of Vermont under VELCO's charges to the state under the Power Transmission Contract between the State of Vermont and VELCO, there will be no change in VELCO's overall rate of return.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission.

825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commissions Rules of Practice and Procedure (18 CFR 1.9, 1.10). All such petitions or protests should be filed on or before January 26, 1981. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-984 Filed 1-9-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. ER81-190-000]

Virginia Electric and Power Co.; Filing

January 5, 1981.

The filing company submits the following:

Take notice that on December 22, 1980, Virginia Electric and Power Company (VEPCO) tendered for filing revised supplements to the contract between VEPCO and Prince William Electric Cooperative (PWEC). VEPCO states that the contract supplements have been revised to reflect a change in the delivery voltage at PWEC's Johnson, Catharpin, Smoketown, Minnieville and Wellington Delivery Points. The Cooperative is purchasing from VEPCO the substation facilities at these five delivery points.

The contract supplement for Independent Hill Delivery Point has been revised to reflect a change in protective equipment provided by VEPCO due to the Coopertive increasing the transformer capacity at this delivery point substation.

Delivery point	Present FERC No.	Proposed FERC No.	Item corrected
Johnson	83-7	To be designated by FERC	1, 4, 5. (1), (2), (3), 6, 7, 10.
Catharpin	83-24	To be designated by FERC	1, 4, 5. (1), (2), (3), 6, 7, 10.
Smoketown	83-28	To be designated by FERC	1, 4, 5. (1), (2), (3), 6, 7, 10.
Minnieville	83-11	To be designated by FERC	1, 4, 5. (1), (2), (3), 6, 7, 10.
Wellington	83-10	To be designated by FERC	1, 4, 5. (1), (2), (3), 6, 7, 10.
Independent Hill	83-1	To be designated by FERC	1, 5. (3), 10.

VEPCO states that the revised contract supplements are intended to supersede the listed FERC Rate Schedules and requests that the revised supplements be allowed to become effective on the date the sale of the substation facilities is completed. VEPCO requests that the revised Independent Hill Delivery Point supplement be allowed to become effective on the date the Cooperative completes the installation of the new transformer.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 26, 1981, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing herein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-985 Filed 1-9-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. CP81-100-000]

Panhandle Eastern Pipe Line Co., Trunkline Gas Co.; Application

January 6, 1981.

Take notice that on December 16, 1980, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP81-100-000 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for the account of Central Illinois Public Service Company (CIPSCO), an existing resale customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation and exchange agreement between the parties dated September 30, 1980, Applicants propose to transport certain volumes of natural gas for injection into CIPSCO's storage fields during the summer period and during the succeeding winter period to transport natural gas withdrawn from storage for use by CIPSCO in its Hoopeston System.

It is stated that during the summer period, April 1 through October 31, of each year of the agreement, Trunkline would receive at the existing interconnection between Trunkline and CIPSCO's Hoopeston System in Vermilion County, Illinois, and transport to Panhandle and Panhandle would transport and deliver to CIPSCO at existing points of interconnection in Pike County or Fulton County, Illinois, for injection into CIPSCO's Sciota Field or at a point of interconnection in Edgar County, Illinois, for injection into CIPSCO's Ashmore Field natural gas at a daily rate not to exceed 4,000 Mcf. It is asserted that such deliveries would be on an interruptible basis.

It is stated that during the winter period, November 1 through March 31, Panhandle would receive gas from storage at the points of delivery described above which gas would be transported to Trunkline. Trunkline, it is further stated, would deliver natural gas at a daily rate not to exceed 8,000 Mcf to CIPSCO at the existing interconnection between Trunkline and CIPSCO in Vermilion County, Illinois. It is submitted that the term of the transportation and exchange agreement is five years from the date of first delivery and from year to year thereafter.

Applicants state that CIPSCO would pay Panhandle a unit charge of 3.25 cents per Mcf transported and Panhandle would reimburse Trunkline for its portion of the transportation service.

It is further asserted that Applicants have sufficient available capacity to transport the subject gas as well as gas provided for existing customers and transported on behalf of others.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or

1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-960 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-101-000]

Panhandle Eastern Pipe Line Co., Trunkline Gas Co.; Application

January 6, 1981.

Take notice that on December 16, 1980, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP81-101-000 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for the account of Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) and authorizing Trunkline to transport gas for Panhandle, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation and sales agreement dated November 5, 1980, Applicants propose to transport gas purchased by Northern from Eugene Island Blocks 384 and 385, offshore Louisiana. It is stated that Trunkline would receive the gas at a point of receipt in Jefferson Davis Parish, Louisiana, through arrangements made by Northern with Tennessee Gas Pipeline Company, a Division of Tenneco Inc. Trunkline states that it is seeking authorization herein to redeliver said gas for Northern's account at Trunkline's Longville, Louisiana, compressor station in Beauregard Parish, Louisiana. It is asserted that the subject gas would be transported from Longville to Northern in Kiowa County, Kansas, pursuant to a previously authorized blanket transportation agreement among the parties.

Applicants assert that they initially propose to transport up to 28,000 Mcf of natural gas per day for Northern, 20 percent of which Northern has agreed to sell to Panhandle. It is further asserted that Panhandle may purchase additional volumes of gas which in Northern's sole discretion may have become available. It is submitted that Northern would pay Panhandle a monthly transportation charge of $4,480 subject to a 0.67-cent per Mcf adjustment based on firm transportation of 22,400 Mcf per day. Panhandle states it would pay Trunkline for its *pro rate* share of the transportation service from the amounts paid by Northern. Northern, it is further asserted, would reimburse Trunkline 1.0 percent of the volume received for fuel usage and line losses.

It is stated that Panhandle would pay Northern for the 20 percent it purchases Northern's actual weighted average purchase price per Mcf for the respective month for such gas plus associated transportation charges paid to others to effectuate delivery to Trunkline plus associated cost of service charges applicable to facilities Northern installs or causes to be installed to provide service to effect deliveries herein.

Panhandle and Trunkline state that they have entered into a transportation agreement dated December 5, 1980, which provides for the transportation by Trunkline of Panhandle's gas. Trunkline, it is asserted, would transport the subject gas to an existing point of interconnection in Douglas County, Illinois. Panhandle states it would pay Trunkline a monthly charge of $39,032 based on a firm transportation quantity of 5,600 Mcf per day with an upward or downward adjustment of 22.90 cents per Mcf. Trunkline further states it would retain 5.0 percent of the volumes received as reimbursement for fuel and line losses.

The service proposed herein, it is stated, is the most efficient and economical means of transporting Northern's offshore Gulf Coast gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-961 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3295]

South Columbia Irrigation District, et al.; Application for License (Major)

December 10, 1980.

Take notice that on August 4, 1980, the South Columbia Basin Irrigation District, East Columbia Basin Irrigation District, and Quincy-Columbia Basin Irrigation District (Applicant) filed a joint application [pursuant to the Federal

Power Act, 16 U.S.C. Sections 791(a)–825(r)] for a major license for the unconstructed Summer Falls Project No. 3295. Correspondence with the Applicant should be directed to: Mr. Russell Smith, Secretary-Manager, South Columbia Basin Irrigation District, P.O. Box 1006, Pasco, Washington 99301.

The proposed Summer Falls Project would consist of: (1) a diversion structure across the Main Canal of the Columbia Basin Irrigation Project just upstream of Summer Falls; (2) a canal carrying water from the diversion structure to; (3) a concrete intake structure; (4) a powerhouse on the shore of Billy Clapp Lake containing two 37–MW generating units; (6) a 13.8/230–kV substation adjacent to the powerhouse; and (7) a 230–kV transmission line, approximately 2,500 feet long, leading from the powerhouse substation to a proposed switchyard where it would tie into an existing Bonneville Power Administration transmission line.

The proposed project would have a total rated capacity of 74 MW and an average annual generation of 270,000 MWh at an estimated 1982 cost of $65,386,000. Power would be marketed to the Cities of Seattle and Tacoma.

All project facilities would be constructed on U.S. owned lands administered by the Water and Power Resources Service of the Department of the Interior.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before February 17, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than June 17, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before February 17, 1981.

Kennth F. Plumb,

Secretary.

[FR Doc. 81-962 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-102-000]

Southern Natural Gas Co.; Application

January 6, 1981.

Take notice that on December 17, 1980, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP81–102–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for the account of Florida Gas Transmission Company (Florida), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Florida has arranged to purchase 50 percent of the gas produced from Block 311, Mississippi Canyon Area, offshore Louisiana, from Shell Oil Company (Shell). It is further stated that Florida would take delivery of this gas on Shell's platform in Mississippi Canyon Block 311 and would transport it through its share of the capacity of existing facilities owned by Applicant and Florida to a point of interconnection at an existing subsea tap on Applicant's 18-inch pipeline in West Delta Block 89, offshore Louisiana.

Applicant proposes pursuant to a November 13, 1980, agreement to transport up to 57,500 million Btu of the subject gas per day, less 1.0 percent for compressor fuel and unaccounted-for gas, to the interconnection of existing facilities of Applicant in Washington Parish, Louisiana, or at any other existing point of interconnection which may be mutually agreeable to Applicant and Florida from time to time.

It is asserted that Florida has agreed to compensate Applicant at a rate of 21.5 cents per million Btu of gas redelivered at the point of redelivery. It is further asserted that the term of the transportation agreement is until January 1, 1991, and from year to year thereafter.

It is submitted that the proposed service would enable Florida to take delivery of an additional source of gas without having to construct and operate duplicate facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-963 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-96-000]

Texas Gas Transmission Corp.; Application

January 6, 1981.

Take notice that on December 15, 1980, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP81–96–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing natural gas service to Illinois Gas Company (Illinois Gas) under a superseding service agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to an order issued by the Illinois Commerce Commission on January 8, 1980, the petition of Illinois Gas and Eastern Illinois Gas and Securities Company (Eastern Illinois) for approval of a plan of merger under which Eastern Illinois would be merged into Illinois Gas was granted. Applicant explains that sales by Applicant to both Illinois Gas and Eastern Illinois are governed at the present time under separate service agreements both dated September 1, 1970. Applicant asserts that by letter dated April 30, 1980, Illinois Gas requested that the two contracts be combined.

Applicant, therefore, requests permission to file with the Commission a superseding service agreement between Applicant and Illinois Gas which would combine the terms and conditions and points of delivery listed in the two separate September 1, 1970, service agreements.

It is asserted that the quantity entitlements for Illinois Gas would be the combined quantity entitlements of Illinois Gas and Eastern Illinois and that the contract demand in the new agreement would be the sum of the contract demands of the two previous agreements.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-966 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-18]

Texas Gas Transmission Corp.; Proposed Changes in FPC Gas Tariff

January 5, 1981.

Take notice that Texas Gas Transmission Corporation, on December 24, 1980, tendered for filing Thirty-Second Revised Sheet No. 7 and Third Revised Sheet No. 7-B to its FPC Gas Tariff, Third Revised Volume No. 1.

These sheets are being issued to reflect (1) changes in the cost of purchased gas pursuant to Texas Gas' Purchased Gas Adjustment Clause, and (2) changes in the Louisiana First Use Tax, pursuant to the provisions of Section 25 of Texas Gas' Tariff, as approved by Commission Order issued May 9, 1979 in Docket No. RP79-31.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 19, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-964 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-18]

Texas Gas Transmission Corp.; Proposed Changes in FPC Gas Tariff

January 5, 1981.

Take notice that Texas Gas Transmission Corporation, on December 24, 1980, tendered for filing Thirty-Second Revised Sheet No. 7 and Third Revised Sheet No. 7-B to its FPC Gas Tariff, Third Revised Volume No. 1.

These sheets are being issued to reflect (1) changes in the cost of purchased gas pursuant to Texas Gas' Purchased Gas Adjustment Clause, and (2) changes in the Louisiana First Use Tax, pursuant to the provisions of Section 25 of Texas Gas' Tariff, as approved by Commission Order issued May 9, 1979, in Docket No. RP79-31.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 19, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public insepction.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-965 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP77-453-001]

Transcontinental Gas Pipe Line Corp.; Petition To Amend

January 5, 1981.

Take notice that on December 5, 1980, Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP77-453-001 a petition to amend the order issued September 28, 1977,[1] in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the construction and operation of certain compression and appurtenant facilities, all as more fully set forth in the petition to amend which is on file

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

with the Commission and open to public inspection.

Petitioner states that by order issued September 28, 1977, it was authorized to construct and operate a major extension of its Southeast Louisiana gathering system from Block 66, South Marsh Island area into Blocks 130 and 132, South Marsh Island, South Addition, and into Block 331, Vermilion area, South Addition, offshore Louisiana, in order to attach substantial new gas supplies which Petitioner had contracted to purchase in these areas as well as to provide transportation services for certain other pipelines which had purchased gas in the area. Petitioner further states that in ordering paragraph (A) of the September 28, 1977, order, the Commission conditioned the grant of the authorization therein upon compliance with Section 2.65(b) of the Commission's General Policy and Interpretations.

Petitioner proposes herein to construct and operate certain compression and appurtenant facilities including a platform for such facilities to be located on the Southeast Louisiana gathering system in South Marsh Island Block 66. It is asserted that the proposed facilities would consist of one 3,480 horse power Solar Centaur gas turbine compressor unit and one 1,080 horsepower Solar Saturn gas turbine compressor unit and appurtenant facilities to be located on a new platform. The estimated cost of the proposed facilities, it is stated, is $21,100,000 which would be financed initially through short-term loans and available cash with permanent financing to be undertaken as a part of an overall long-term financing program at a later date.

It is asserted that the proposed facilities would enable Petitioner's South Marsh Island Block 130 facilities upstream from the proposed Station No. 67 to accommodate 85,700 Mcf of additional natural gas per day which are attributable to existing firm transportation and exchange arrangements and additional purchase volumes from existing sources of gas supplies in the area while allowing delivery pressures into such facilities to be at or below maximum contract levels.

Further Petitioner requests the Commission to waive the Section 2.65(b) condition and delete such condition from its September 28, 1977, order. Petitioner submits that Section 2.65 was issued in 1968 when the Outer Continental Shelf area, offshore Louisiana, began to be developed as a major source of new natural gas reserves, with an avowed purpose of discouraging duplicative facilities and to promote maximum economies of scale through joint utilization of large-diameter pipeline extensions into the offshore area.

Petitioner avers that actual experience has fully demonstrated Petitioner's ability to utilize the facilities authorized by the September 28, 1977, order to the maximum extent possible even to the point of requiring an increase in throughput capabilities. Accordingly, Petitioner requests deletion of the Section 2.65(b) condition from the September 28, 1977, order.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 22, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-967 Filed 1-9-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. ER81-95-000]

Alabama Power Co; Order Accepting for Filing and Suspending Proposed Rates, Granting Interventions, and Establishing Price Squeeze and Other Procedures

Issued January 2, 1981.

On November 5, 1980, Alabama Power Company (Alabama) tendered for filing a proposed increase in rates for firm power service to its wholesale customers.[1] The rates proposed by Alabama would result in an increase in revenues of approximately $23,434,137 (33.6%) for the twelve month period ending December 31, 1981. Alabama has stated a proposed effective date of January 4, 1981, and has requested that the Commission allow the rates to actually become effective on January 5, 1981, following a one-day suspension. Alabama has also offered an alternative proposal under which the rate increase would be placed into effect in two phases. The first phase, representing one-half of the requested rate increase, would become effective, subject to refund, on January 5, 1981, following a one-day suspension; the second phase, representing the balance of the proposed increase would be made effective, subject to refund, no later than November 1, 1981.[2] Alabama has specifically predicated its offer of a two-phased procedure on the willingness of its customers as well as the Commission to accept its proposal.

Notice of the filing was issued on November 13, 1980, with comments, protests or petitions to intervene due on or before December 1, 1980. On December 1, 1980, the Municipal Electric Utility Association of Alabama and its twelve municipal members (collectively referred to as MEUA)[3] filed a protest and petition to intervene. MEUA requests that Alabama's proposed rates be suspended for the full statutory five-month period. MEUA has also rejected Alabama's offer of a phased-in rate increase, arguing that such a procedure would have an adverse impact on Alabama's wholesale customers. MEUA has also requested that an investigation of the company's fuel adjustment clause be undertaken in this proceeding. In particular, MEUA challenges Alabama's practice of defining energy purchases from its affiliates through Southern Company central dispatching as "economic dispatch" purchases for fuel clause purposes.[4] Furthermore, MEUA questions the provision in Alabma's fuel clause which allows the company to charge its wholesle customers the full energy costs of economy energy puchases while crediting them only for the fuel component of economy energy sales. MEUA contends that this methodology results in a windfall in revenues to the company. Even assuming that Alabama's fuel clause is in compliance with the Commission's regulations, MEUA submits that under section 35.14(a)(10) of the regulations,

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[1] See Attachment A for a list of the affected customers. Rate schedule designations for these customers are shown on Attachment B.

[2] A similar two-phased procedure was proposed by the company and accepted by the Commission in Alabama's last wholesale rate filing in Docket No. ER78-77.

[3] The municipal customers are Alexander City, Dothan, Fairhope, Foley, Lafayette, Lanett, Luverne, Opelika, Piedmont, Sylacauga, Troy, and Tuskegee, Alabama.

[4] The identical issue was raised by the petitioners in Docket No. EL78-27. That docket, which involved a motion for a declaratory order with respect to Alabama's fuel clause billings, was consolidated with Alabama's prior rate increase submittal in Docket No. ER78-77. The issue was settled on an interim basis by a settlement agreement that encompassed both dockets and which was approved by Commission order dated March 15, 1979. Article VI of the settlement agreement provided that the interim settlement of this fuel clause issue would apply "to the date the settlement rates are replaced or superseded by a rate filing of the company."

deviations from the fuel clause regulations may be allowed where application of the regulations "would result in an undue burden." MEUA assets that application of Alabama's proposed fuel clause would impose such a burden on its customers.

In addition, MEUA has raised questions concerning Alabama's rate design, its requested return on equity, and cost of service issues. MEUA has also expressed its belief that a price squeeze would result due to the magnitude of the increase sought by Alabama in this proceeding.

On December 1, 1980, the Alabama Electric Cooperative, Inc. and ten cooperative customers (collectively referred to as Cooperatives) [5] filed a joint protest and petition to intervene. Cooperatives have raised numerous issues in their pleading, including the company's treatment of leases, its requested return on equity, its inclusion in rate base of the Farly Nuclear Unit No. 2, and the company's cash working capital request. The Cooperatives also have raised isssues similar to those addressed by MEUA relating to Alabama's fuel clause, and have alleged that Alabama's proposed rates may result in a price squeeze. Cooperatives conclude by requesting that the company's proposed rates be suspended for the full five-month statutory period.

In response to the petition of MEUA and Cooperatives, Alabama, on December 18, 1980, filed an answer primarily addressing two issues raised by the respective petitioners. The company first responds to the petitioners' requests that the Commission suspend Alabama's proposed rate increase for the full five month period, arguing that its filed case-in-chief clearly justifies the granting of a one-day suspension. In support of this claim the company states that a five month suspension would be an unconscionable result in light of Alabama's "severely depressed financial condition." Additionally, Alabama argues that its decision to file for an increase under the revised requirements of § 35.13 of the Commission's regulations, as encouraged by Order No. 91, "should weigh heavily as a factor in favor of the granting of a one-day suspension."

Alabama's second contention relates to the petitioners' requests for an investigation into the company's fuel clause. Alabama argues that, due to a settlement agreement in a previous docket, an investigation into the company's fuel clause can have only a prospective application beginning with the date on which the settlement rates are replaced or superseded by a rate filing of the company.

On December 10, 1980, Mr. Robert S. Crowder, a private citizen from Birmingham, Alabama, filed an untimely letter with the Commission requesting that he be accorded intervenor status in this docket. In support of his request, Mr. Crowder states that he is a retail customer of Alabama's, that he is an intervenor in Alabama's retail rate proceedings before the Alabama Public Service Commission, and that he has appealed the decisions of that commission to the Alabama Supreme Court. Mr. Crowder states that the decisions of this Commission may affect the financial integrity of the company, and therefore the reliability of the service and the cost of that service to the petitioner at his residence. Alabama, on December 19, 1980, filed an opposition to Mr. Crowder's request for intervention, arguing that, (1) the petitioner's request is untimely, and (2) Mr. Crowder, being a retail customer, has insufficient interest and status in a wholesale proceeding to warrant his intervention in this docket.

On December 24, 1980, the Commission received a petition to intervene, dated December 12, 1980, from the Attorney General of Alabama. The petition challenges several aspects of Alabama's rate filing and requests late intervention because the Attorney General did not receive notice of the filing in a timely manner.

On December 18, 1980, Alabama filed an answer in opposition to the petition to intervene of the Attorney General, asserting that it should be denied because it was untimely filed and did not comply with the Commission's regulations.

Discussion

Alabama has made its offer to phasse the proposed rate increase expressly contingent upon the agreement of its wholesale customers to such a procedure. As noted above, MEUA has refused to accept Alabama's offer of a phased-in increase. Accordingly, the Commission will not accept the company's alternative of phased-in rates.

With respect to Alabama's fuel adjustment clause, the Commission notes that the same issues as those currently raised by Alabama's customers were raised in the previous alabama rate filing which was eventually settled. Because these fuel clause issues were not decided in the previous docket, the Commission finds it appropriate to consider these matters, along with the other issues raised by the petitioners, during the evidentiary proceeding ordered below. With regard to the Company's contention that any relief resulting from an investigation into Alabama's fuel clause may only be ordered from the date of filing of the proposed rate increase, we agree. Our review of the prior settlement agreement reveals that the parties to Docket No. ER78-77 expressly agreed to the use of the present fuel clause during the period October 1, 1976 "to the date the settlement rates are replaced or superseded by a rate filing of the Company . . ." (Article VI, Settlement Agreement). As a result, any relief that may be ordered by the Commission in this docket with respect to the company's fuel clause may be given application prospectively, beginning on June 5, 1981, the effective date of Alabama's filing. The Commission finds that participation by the petitioners in this proceeding may be in the public interest. In addition, we find that, despite the contentions raised in Alabama's opposition, good cause exists to permit Robert S. Crowder and the Attorney General of Alabama to intervene out of time and that these interventions may be in the public interest. Accordingly, we shall grant each of the petitions to intervene.

We note that Alabama has utilized a calendar year 1979 Period I and a calendar year 1981 Period II. Under section 35.13 of the Commission's regulations, as currently in effect, use of 1979 data for Period I in this case would be prohibited. However, in this as well as other respects, Alabama's submittal does comply with the revised § 35.13 regulations, as adopted by Commission Order No. 91, issued June 27, 1980, in Docket No. RM79-64. In that order, the Commission encouraged electric utilities to implement the new filing methodologies and noted that waiver of the existing regulations would be granted during the 180-day period prior to the effective date of Order No. 91. We construe Alabama's filing as impliedly requesting such waiver and, accordingly, we shall waive the current filing requirements of section 35.13.

Our analysis of Alabama's filing indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

[5] The Cooperatives are Baldwin County, Central Alabama, Clarke-Washington, Coosa Valley, Dixie, Pea River, Pioneer, Tallapoosa, Wiregrass and Tombigbee. All but Tombigbee are members of Alabama Electric Cooperative.

In a number of suspension orders,[6] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. No such circumstances have been presented here. Alabama has claimed for the first time in response to the petitions to intervene of MEUA and Cooperative, that a five-month suspension would lead to harsh results. The Commission has stated on prior occasions however, that only a preliminary finding of a clear financial emergency would serve as an independent ground for a shorter suspension period.[7] Our review of the company's filing reveals insufficient support for such a finding here. The Commission also finds that Alabama's decision to file for an increase under the revised requirements of Section 35.13 of the Commission's regulations, does not merit the granting of a shorter suspension of rates that the Commission has preliminarily found to be unjust and unreasonable. Accordingly, we shall suspend the rates for a period of five months permitting the rates to take effect subject to refund thereafter on June 5, 1981.

In accordance with Commission policy established in *Arkansas Power & Light Company*, Docket No. ER79-339, order issued August 6, 1979, we shall phase the price squeeze issue in this case. This will allow a determination first to be reached on the cost of service, capitalization, rate of return, and fuel clause issues. If, in the view of the intervenors or staff, a price squeeze persists, a second phase of the proceeding may follow.

The Commission orders:

(A) Waiver of the current 35.13 filing requirements is hereby granted.

(B) Alabama's proposed rates are hereby accepted for filing and suspended for five months from 60 days after filing, to become effective, subject to refund, on June 5, 1981.

(C) All petitions to intervene are hereby granted subject to the rules and regulations of the Commission; *Provided, however,* that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further,* that the admission of any intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter I (1979)], a public hearing shall be held concerning the justness and reasonableness of Alabama's proposed rates.

(E) The Commission staff shall serve top sheets in this proceeding on or before January 19, 1981.

(F) A presiding administrative law judge to be designated by the Chief Administrative Law Judge for that purpose shall convene a conference in this proceeding to be held within ten (10) days after the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The designated law judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(G) We hereby order initiation of price squeeze procedures and further order that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for a consideration of price squeeze, would be just and reasonable. The presiding judge may order a change in this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-881 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[6] *E.g., Boston Edison Co.,* Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.,* Docket Nos. ER80-506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.,* Docket No. ER80-488 (August 22, 1980) (one day suspension).

[7] *Public Service Company of Colorado,* Docket No. ER80-447, issued September 15, 1980; *Boston Edison Company,* "Order Denying Rehearing", Docket No. ER80-508, issued October 29, 1980.

[Docket No. ER81-196-000]

Arizona Public Service Co.; Filing

January 5, 1981

The filing company submits the following:

Take notice that on December 29, 1980, Arizona Public Service Company tendered for filing proposed Supplement to APS-FPC Rate Schedule No. 33 for sale of non-firm energy to United States—Western Area Power Administration.

The parties request waiver under the provisions of 35.11 so that service could be commenced on December 12, 1980.

A copy of the filing was served upon the Arizona Corporation Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 26, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-882 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-191-00]

Carolina Power & Light Co.; Filing

January 5, 1981.

The filing company submits the following:

Take notice that Carolina Power and Light Company on December 22, 1980, tendered for filing changes outlined below in its agreements with the Tri-County EMC and the Randolph EMC.

1. *Tri-County EMC*—The establishment of a new point of delivery at 115 KV to be known as Falling Creek.

2. *Randolph EMC*—The change in voltage from 69 KV to 115 KV on the Spero Point of delivery.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with §§1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 26, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-683 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3685-000]

City of Bakersfield and Kern Delta Water District; Application for Preliminary Permit

January 2, 1981.

Take notice that City of Bakersfield and Kern Delta Water District (Applicant) filed on November 5, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3685 to be known as the Carrier Canal Project located on the Kern River in Kern County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Harold Bergen, City Manager, City of Bakersfield, 1501 Truxtun Avenue, Bakersfield, California 93301. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of: (1) a powerhouse containing a single 660-kW generating unit constructed as an integral part of the rebuilt Carrier Canal Headworks Structure; and (2) a short transmission line.

The Applicant estimates that the average annual energy output would be 2,530 MWh.

Purpose of Project—Project power would supplement existing electrical supplies in the project area.

Proposed Scope and Cost of Studies Under Permit—Applicant would prepare a feasibility study, secure water rights, complete environmental documentation, perform preliminary design and cost estimates for the project, prepare an application for license, and negotiate any necessary agreements for project construction and operation. Applicant estimates the cost of performing these studies at $44,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before February 18, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than April 20, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR § 4.33(a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before February 18, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3685. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-684 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3507]

City of Santa Clara, California; Application for Preliminary Permit

January 2, 1981.

Take notice that the City of Santa Clara (Applicant) filed on September 29, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3507 to be known as East Park Dam Hydroelectric Project located at the U.S. Water and Power Resources Service's (WPRS) East Park Dam on the Little Stony Creek in Colusa County, California. The project would utilize a WPRS's dam and waters released from its East Park Reservoir for irrigation and other purposes. The application is on file with the Commission and is available for public inspection. Correspondence with the applicant should be directed to: Mr. D.R. Von Raesfeld, City Manager, City of

Santa Clara, 1500 Warburton Ave., Santa Clara, California 95050.

Project Description—The proposed project would consist of: a powerhouse containing a single generating unit with a rated capacity of 900 kW, a two mile long transmission line connecting the powerhouse to an existing Pacific Gas and Electric Company's 21-kV transmission line west of the powerhouse, and appurtenant facilities.

The Applicant estimates that the average annual energy output would be 2.2 million kWh.

Purpose of Project—Project energy would be used to serve the Applicant's electric service area.

Proposed Scope and Cost of Studies Under Permit—Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, results of geological, environmental and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with WPRS and other Federal, State and local agencies, preparing a license application, conducting final field surveys and preparing designs is estimated by the Applicant to be $175,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before February 18, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than April 20, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR §4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 C.F.R. § 1.8 or §1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before February 18, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3507. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-885 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-182-00]

Otter Tail Power Co.; Filing

January 5, 1981.

The filing company submits the following:

Take notice that on December 18, 1980, Otter Tail Power Company (Otter Tail) submitted for filing an agreement between Otter Tail and the City of Ortonville, Minnesota (Ortonville).

The agreement provides for connection and distribution services to be provided by Otter Tail. Otter Tail contends that this filing is being made without prejudice to its position that the agreement and its provisions for service are not within the jurisdiction of the Commission.

Otter Tail further submits that no detailed cost of service studies have been performed.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 26, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-886 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-198-000]

Puget Sound Power and Light Co.; Filing

January 5, 1981.

The filing company submits the following:

Take notice that Puget Sound Power and Light Company (Puget Power), on December 30, 1980, tendered for filing a change in rates applicable to electric service rendered to ten wholesale customers under its existing Wholesale for Resale Power Contracts. Puget's filing would change both of its wholesale rate schedules, one for large customers and the second for small customers. Puget Power states that the proposed changes would increase revenues for the ten wholesale

customers by $314,838 based on the 12-month period ending December 31, 1979.

Puget Power states that the reason for the proposed change in rates is that its wholesale expenses have grown significantly, while revenues have failed to keep pace since the time of the last rate change.

Copies of the filing were served upon Puget's wholesale customers and upon the Washington Utilities and Transportation Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 26, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-887 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EF81-4051]

Southwestern Power Administration; Filing

January 5, 1981.

The filing company submits the following:

Take notice that on December 11, 1980, the Assistant Secretary for Resource Applications of the Department of Energy (Assistant Secretary) did confirm and approve, on an interim basis, effective January 1, 1981, Rate Order No. SWPA-7.

Rate Order No. SWPA-7 provides for the transmission and/or displacement of non-Federal power and energy pursuant to Rate Schedule TDC-2.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 26, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-888 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER79-121]

Utah Power and Light Co.; Filing

January 5, 1981.

The filing company submits the following:

Take notice that on December 22, 1980, Utah Power and Light Company submitted for filing a copy of its wholesale accounts, including an indication of the amount of revenue subject to refund. Said filing is in compliance with Part 36.19a of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before January 26, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-889 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-189-000]

Vermont Electric Power Co., Inc.; Filing

January 5, 1981.

The filing company submits the following:

Take notice that on December 22, 1980, Vermont Electric Power Company, Inc. (VELCO) tendered for filing an amendment to the following rate schedule:

Ontario Hydro Power and Transmission Contract dated November 15, 1979, between VELCO and the Village of Enosburg Falls Water and Light Department, Village of Hardwick Electric Department, Village of Ludlow Electric Department, Village of Morrisville Water and Light Department, Village of Stowe Water and Light Department, Village of Swanton and Washington Electric Cooperative, Inc. for the period November 15, 1979, through September 30, 1980.

The purpose of the amendment is to change the termination date of the contract from September 30, 1980 to December 2, 1980. The amendment became effective as of October 1, 1980. All other terms and conditions of the contract remain unchanged.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 26, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-890 Filed 1-9-81; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53020; TSH-FRL-1723-4]

Premanufacture Notices; Monthly Status Report for November 1980

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to publish a list in the Federal Register at the beginning of each month reporting the premanufacture notices (PMN's) pending before the Agency and the PMN's for which the review period has expired since publication of the last monthly summary. This is the report for November 1980.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on a specific chemical substance.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-447, 401 M St., SW., Washington, DC 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-210, 401 M St., SW., Washington, DC 20460 (202-426-3936).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA (90 Stat. 2012 (15 U.S.C. 2604)) requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** on May 15, 1979 (44 FR 28558) and the notice of availability of the Revised Inventory was published on July 29, 1980 (45 FR 50544). The requirement to submit PMN's for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979. EPA has 90 days to review a PMN once the Agency receives it (section 5(a)(1)). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register**.

The monthly status report published in the **Federal Register** as required under section 5(d)(3), will identify: (a) PMN's received during the month; (b) PMN's received previously and still under review at the end of the month; (c) PMN's for which the notice review period has ended during the month; and (d) chemical substances that EPA has added to the Inventory during the month. Therefore, EPA is publishing the November 1980 PMN Status Report.

Interested persons may submit written comments on the specific chemical substance no later than 30 days before the applicable notice review period ends to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room. E-447, 401 M St., SW., Washington, DC 20460. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-53020]" and the specific PMN number. Nonconfidential portions of the PMN's written comments received on individual PMN's, and other documents in public record may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Dated: January 6, 1981.

Edward A. Klein,
Director, Chemical Control Division.

Premanufacture Notices Monthly Status Report for November 1980

PMN No.	Identity and generic name	FR citation	Expiration date
	I. Premanufacture Notices Received During the Month		
80-313	2-Chloro-2-sulfopropionic acid	In preparation	Feb. 2, 1981.
80-314	2,4-Bis[(4-(*N*-cyano-N-phenylsulfonylamino)phenyl)methyl]-*N*-cyano-*N*-phenylsulfonylbenzenamine; 4,4'-methylenebis(*N*-cyano-*N*-phenylsulfonylbenzenamine; 4,4'-methylenebis [2-[(4-(*N*-cyano-*N*-phenylsulfonylamino)pheny-methyl)-*N*-cyano-*N*-phenylsulfonylbenzenamine].	do	Feb. 1, 1981.
80-315	4,4'-Methylenebis(*N*-cyanobenzenamine); 2,4-bis[(4-(*N*-cyanoamino)phenyl)methyl]-*N*-cyanobenzenamine; 4,4'methylenebis [2-[(4-*N*-cyanoamino)phenyl)methyl]-*N*-cyanobenzenamine].	do	Do.
80-316	Generic name: Dialkyltin-diricinoleate	do	Feb. 2 1981.
80-317	Generic name: Polymer of modified resin esters and mixed oils.	do	Feb. 3, 1981.
80-318	Dimethyl diallyl ammonium chloride-acrylamide-potassium acrylate terpolymer.	do	Feb. 5, 1981.
80-319	Generic name: Salt form of acrylic acid-acrylate copolymer	do	Do.
80-320	Vanadic acid, tris(2-methylpropyl)ester	do	Do.
80-321	Generic name: Polymer of an alkyl acrylate, an alkyl methacrylate, and a saturated cyclic methacrylate.	do	Feb. 10, 1981.
80-322	Generic name: Polymer of epoxidized soybean oil benzoic acid.	do	Do.
80-323	Generic name: Acrylic emulsion	do	Do.
80-324	Generic name: Poly (allyl ether) hydroxy alkyl ester	do	Feb. 11, 1981.
80-325	Generic name: Chromophore substituted poly (oxyethylene)	do	Feb. 15, 1981.
80-326	Generic name: Chromophore substituted poly (oxyethylene)	do	Do.
80-327	Generic name: Toluene diisocyanate blocked prepolymer	do	Do.
80-328	Generic name: Unsaturated melamine formaldehyde methanol resin.	do	Feb. 16, 1981.
80-329	Generic name: Salt of fatty acid dimer	do	Do.
80-330	Amino Alcohol	do	Feb. 18, 1981.
80-331	Methacrylic fatty acid adduct	do	Feb. 19, 1981.
80-332	Soya fatty ester	do	Feb. 22, 1981.
80-333	Polymer of: Substituted alkanediol, alkanedioic acid, and alkenedioic acid.	do	Do.
80-334	Polymer of: Alkanediol, alkanedioic acid, and alkenedioic acid.	do	Do.
80-335	Polymer of: Substituted alkanediol, alkanedioic acid, and alkenedioic acids.	do	Do.
80-336	1,2,4-Substituted anthraquinone	do	Do.
80-337	Acrylamid-methacrylic copolymer	do	Feb. 23, 1981.
80-338	Salt form of acrylic acid-acrylate copolymer	do	Feb. 22, 1981.
80-339	Salt form of acrylic acid-acrylate acrylate copolymer	do	Do.
80-340	Polymer diol, monocarboxylic acid diol, diamine, and a diisocyanate.	do	Feb. 24, 1981.
	II. Premanufacture Notices Received Previously and Still Under Review at the End of the Month		
80-239	2,2,4-Trimethyl-1,3-pentanediol, trimethylolpropane, succinic anhydride, adipic acid, isophthalic acid.	45 FR 63919 (9/26/80)	Dec. 2, 1980.
80-240	Generic name: Ethene-alkene-vinyl carbonyl amine polmer	45 FR 65030 (10/1/80)	Dec. 1, 1980.
80-241	Generic name: Polyurethane polyacrylic polymer	45 FR 63345 (9/24/80)	Dec. 3, 1980.
80-242	*N*(2-Hydroxypropyl)-*N*-tris(5-hydroxy-2-oxopentyl)-amonium acitate.	45 FR 64245 (9/29/80)	Dec. 4, 1980.
80-243	2,2,4-Trimethyl-1,3-pentanediol, trimethylolpropane, succinic anhydride, trimellitic anhydride, adipic acid, and isophthalic acid.	45 FR 65033 (10/1/80)	Dec. 7, 1980.
80-244	1-Nitronaphthaline-6-sulfonic acid, potassium salt	45 FR 65029 (10/1/80)	Do.
80-245	1-Nitronaphthaline-7-sulfonic acid, potassium salt	do	Do.
80-246	Generic name: Disubstituted heptadecane	45 FR 65032 (10/1/80)	Do.
80-247	Generic name: Aliphatic diol	do	Do.
80-248	Azelaic acid, 1,4-cyclohexanedimethanol, dimer acid, dimethylol propionic acid, methylene-bis (cyclohexyl isocyanate), neopentyl glycol, trimethylolpropane polmer.	45 FR 65033 (10/1/80)	Dec. 8, 1980.
80-249	Generic name: Aliphatic polyurethane waterborne dispersion	45 FR 65034 (10/1/80)	Dec. 9, 1980.
80-250	Propylene glycol, ethylene glycol terephthalic acid polymer, phthalic anhydride, and maleic anhydride.	45 FR 65664 (10/3/80)	Dec. 11, 1980.
80-251	Generic name: Carbomonocyclic, carbopolycyclic polyester	45 FR 69293 (10/20/80)	Do.
80-252	Generic name: Acryloxyethylheteromonocycle	45 FR 67449 (10/10/80)	Dec. 15, 1980.
80-253	Coconut fatty acids, benzoic acid, isophthalic acid, neopentyl glycol, propylene glycol.	45 FR 67450 (10/10/80)	Do.
80-254	Generic name: Dimer fatty acid polyamide	do	Do.
80-255	1-Octanamine, *N*, *N*-dimethyl-, phosphate salt	45 FR 67751 (10/14/80)	Dec. 16, 1980.
80-257	Generic name: Unsaturated branched chain hydrocarbon having 10 carbon atoms.	45 FR 67761 (10/14/80)	Dec. 17, 1980.

II. Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

80-258	Generic name: Unsaturated branched chain ketone having 12 carbon atoms.	do	Do.
80-260	Generic name: Neutralized polymer of styrene, alkyl acrylates, and substituted alkyl methacrylates.	45 FR 69293 (10/20/80)	Dec. 18, 1980.
80-261	Polymer of: Palm oil, coconut oil pentaerythritol, benzoic acid, phthalic anhydride, and maleic anhydride.	45 FR 71419 (10/20/80)	Dec. 21, 1980.
80-262	Generic name: Fatty acids, esters with polyols	45 FR 71418 (10/28/80)	Do.
80-263	Linseed oil, styrene, glycerine, toluene disocyanate	45 FR 73130 (11/4/80)	Dec. 22, 1980.
80-264	Benzenamine, [N-(1-methylhexylidene)-N'-(1-methyl butylidene)-4,4-methylene bis].	45 FR 73127 (11/4/80)	Dec. 25, 1980.
80-265	Generic name: Di (substituted alkyl) carbomonocyclic dicarboxylate.	45 FR 73125 (11/4/80)	Do.
80-266	Generic name: Polymer of alkanedioic acids, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 2,2-dimethyl-1,3-propanediol.	do	Do.
80-267	Generic name: Substituted phenol, reaction products with sulfur chloride.	45 FR 72785 (11/3/80)	Dec 28, 1980.
80-268	Generic name: Esterified polyamic acid	45 FR 70107 (11/22/80)	Do.
80-269	Generic name: Dineoalkyl ester of glycerine	45 FR 74558 (11/10/80)	Do.
80-270	Polymer of glycidyl methacrylate, hydroxy propyl methacrylate, 12-hydroxystearic acid, methacrylic acid, methyl methacrylate polmer.	do	Do.
80-272	N-Methyl-N-glucitylstearoylamide	45 FR 73128 (11/4/80).	Jan. 1, 1980.
80-273	Amines, C_{1-18} alkyldimethyl, phosphate salt	do	Do.
80-275	Polymer of: Tall oil fatty acid, isophthalic acid, trimethylol propane, trimellitic anhydride, methyl methacrylate, ethyl acrylate, methacrylic acid, hydroxy ethyl methacrylate.	45 FR 73132 (11/4/80).	Jan. 4, 1981.
80-276	Generic name: Styrene acrylic polymer	45 FR 71415 (10/28/80).	Do.
80-277	Generic name: Modified terpolymer of mixed alkyl acrylates	do	Do.
80-278	Generic name: Modified copolymer of mixed alkyl acrylates	45 FR 71415 (10/28/80).	Do.
80-279	Polymer of: 2,2-Dimethyl 1,3-propanediol; 2,2,4-trimethyl 1,3-pentanediol isophthalic acid; and fumaric acid.	45 FR 73128 (11/4/80).	Jan. 5, 1981.
80-280	Generic name: Hydrogen zeolites	45 FR 74562 (11/10/80).	Jan. 7, 1981.
80-281	Polymer of: Propylene glycol, neopentyl glycol, isophthalic acid, Empol 1022 dimeric fatty acid, trimellitic anhydride polymer.	45 FR 73131 (11/4/80).	Jan. 8, 1981.
80-282	Aminoalkanol salt, as a 25% aqueous solution	45 FR 75752 (11/17/80).	Jan. 12, 1981.
80-283	Generic Name: Styrene methacrylate acrylate polymer	45 FR 74993 (11/13/80).	Jan. 13, 1981.
80-284	Generic name: Polymer of alkanediols and carbomonocyclic anhydrides.	45 FR 75752 (11/17/80).	Jan. 14, 1981.
80-286	N(4-Diazo phenyl) morpholine hexafluorophosphate	45 FR 74993 (11/13/80).	Jan. 19, 1981
80-287	Polymer of: Tall oil fatty acid, isophthalic acid, terephthalic acid, pentaerythritol, benzoic acid, and trimethylol propane.	45 FR 77125 (11/21/80).	Do.
80-288	Polymer of: Soybean oil, pentaerythritol, isophthalic acid, benzoic acid, terephthalic acid.	do	Do.
80-289	Amines, isopropyl, distillation residues	45 FR 75750 (11/17/80).	Jan. 21, 1981.
80-290	Amines, ethyl, distillation residues	do	Do.
80-291	Polymer of: Epoxy resin, bisphenol A, paraformaldehyde, dibutylamine, and diethanolamine.	45 FR 79150 (11/28/80).	Do.
80-292	Generic name: Disubstituted carbopolycyclic derivative	do	Do.
80-293	Generic name: Dimethyl alkylmethyl silicone glycol copolymer.	45 FR 79157 (11/28/80).	Jan. 25, 1981.
80-294	Generic name: Siloxane, alkoxylated aminoalkyl	do	Do.
80-295	Generic name: Disubstituted nitrobenzene	45 FR 78791 (11/26/80).	Do.
80-296	Generic name: Ethyl, substituted, (((sulfopropyl) heteropolycyclic) methyl) alkenyl heteropolycycle.	do	Do.
80-297	Generic name: Ethyl, substituted, methylheteropolycycle tosylate.	do	Do.
80-298	Generic name: Substituted, methylheteropolycycle	do	Do.
80-299	Generic name: Disubstituted benzene	do	Do.
80-300	Generic name: Bis(Nitro, substituted phenyl)substituent	do	Do.
80-301	Cyclohexane, 1,1'-methylene bis [4-isocyanato-, reaction products with 1,3-isobenzofurandione, polymer with 1,6-hexanediol, alpha-hydro-omega-hydroxypolyoxy[1,4-butanediyl], and (2-hydroxyethyl)-2-propenoate.	45 FR 79152 (11/28/80).	Do.
80-302	Generic name: Modified Polyester based on carbomonocyclic anhydride and alkanediols.	45 FR 80354 (11/4/80).	Jan. 26, 1981.
80-303	Generic name: Substituted alkyl peroxycarbonate	45 FR 80351 (12/4/80).	Jan. 27, 1981.
80-304	Generic name: Alkyl substituted chlorocarbonic acid	do	Do.
80-305	Generic name: Elastomeric urethane	In preparation	Jan. 26, 1981.
80-306	Generic name: Urea/carbamate lacquer	do	Jan. 27, 1981.
80-307	Polymer of tall oil fatty acids, neopentyl glycol, trimethylol ethane, phthalic anhydride.	do	Do.
80-310	Butanenitrile, 2-methyl, 2,2'-azobis	45 FR 80350 (12/4/80).	Jan. 28, 1981.
80-311	Butanenitrile, 2-methyl, 2-amino	In preparation	Do.
80-312	N-Isocyanatotolyl-abietamide	do	Do.

III. Premanufacture Notices for Which the Review Period Has Ended During the Month: (Expiration of the notice review period does not signify that the chemical has been added to the inventory)

80-189	Bisphenol A-epoxy resin, 1,4-butanediol, para amino benzioc acid, and phthalic anhydride polymer.	45 FR 54854 (8/18/80).	Nov. 2, 1980.
80-190	Copolymer from dimethyl terephthalate, alpha, omega-hydroxy terminated aliphatic hydrocarbons; and a polyalkylene glycol.	45 FR 56429 (8/25/80).	Do.
80-191	Polymer of: Methylene bis (4-4-cyclohexyl isocyanate), poly propylene glycol, hydroxy ethyl acrylate, and polyoxy propylene diamine.	45 FR 59196 (9/8/80).	Nov. 3, 1980.
80-192	Generic name: Very short oil non-oxidizing alkyd resin	45 FR 58201 (9/2/80).	Do.
80-193	Neopentyl glycol, 1,6-hexanediol, adipic acid, phthalic anhydride, and trimellitic anhydride.	45 FR 58194 (9/2/80).	Do.
80-194	2,2,4-Trimethyl-1,3-pentanediol, 1,6-hexanediol phthalic anhydride.	do	Do.
80-195	Generic name: Substituted alkyl oxamide	do	Do.
80-196	Generic name: Trimethyl monocyclic ethyl alkenal	45 FR 59198 (9/8/80)	Nov. 5, 1980.
80-197	Generic name: Trimethyl monocyclic ethyl alkenol	do	Do.
80-198	Generic name: Styrene acrylic terpolymer	45 FR 58194 (9/2/80)	Nov. 6, 1980.
80-199	Generic name: Methyl aminoheteropolycycle	45 FR 60003 (9/11/80).	Do.
80-200	Generic name: 1-Substituted-1-(*p*-substitutedphenyl)ethane	do	Do.
80-201	Generic name: 1-Substituted-1-(4-(substituted<heteromonocyclic)phenyl)ethane.	do	Do.
80-202	Generic name: 1-Substituted-1-(4-(substituted<heteromonocyclic)phenyl)ethane.	do	Do.
80-203	Generic name: *p*-(Methylsubstituted) (substitutedbenzene), triethylammonium salt.	do	Do.
80-204	Generic name: 1-Substituted-4-(methyl-substituted) benzene.	do	Do.
80-205	Generic name: 1-Methylsubstituted)-4-(substituted<heteromonocyclic)benzene.	do	Do.
80-208	2-Oxepanone, polymer with 1,4-butanediol, 1,3-diisocyanatomethyl benzene, and (2-hydroxyethyl)-2-propenoate.	45 FR 59200 (9/8/80).	Nov. 9, 1980.
80-209	Generic name: Bis(1-polyamino-2-alkyl imidazoline)	45 FR 60006 (9/11/80).	Nov. 11, 1980.
80-210	Generic name: Bis(1-polyamino-2-alkyl imidazolene)	do	Do.
80-211	Generic name: Polytetramethylene glycol, aliphatic polyglycol, and alkyl diisocyanate.	do	Do.
80-212	Generic name: Adduct of polytetramethylene glycol, aliphatic polyglycol, aliphatic diisocyanate, and an alkyl diisocyanate.	do	Do.
80-213	Generic name: Halogenated copolyester resin	45 FR 60008 (9/11/80)	Nov. 16, 1980.
80-214	Generic name: Polyester of aliphatic polyols and aromatic diacids.	45 FR 60009 (9/11/80)	Do.
80-215	Generic name: Styrene-acrylate copolymer	45 FR 61023 (9/15/80)	Nov. 17, 1980.
80-216	Generic name: Methyl fatty acid ester	45 FR 61021 (9/15/80)	Do.
80-217	Generic name: Aromatic trisazo dye	do	Nov. 18, 1980.
80-218	Generic name: Aromatic trisazo diester dye	do	Do.
80-219	Generic name: An aliphatic ester	45 FR 62194 (9/18/80)	Do.
80-220	Generic name: Polybasic acid ester of mixed short alkyl mono alcohol and a polyol.	45 FR 62985 (9/22/80)	Nov. 19, 1980.
80-221	Cyclohexanecarbonitrile, 1,1-azobis	45 FR 62195 (9/18/80)	Nov. 24, 1980.
80-222	Cyclohexanecarbonitrile, 1-amino	do	Do.
80-223	Polymer of: 1,6-Hexanediol, terphthalic acid, neopentyl glycol, trimelletic anhydride, adipic acid, and isophthalic acid.	45 FR 61019 (9/15/80)	Do.
80-224	Polymer of: Isophthalic acid, (tall fatty acid, trimelletic anhydride, terephthalic acid, neopentyl glycol, and trimethyl propane.	do	Do
80-225	Generic name: Mono di, and tri esters of polybasic acids	45 FR 62985 (9/22/80)	Do.
80-226	Dimethyl 1,4-cyclohexanedicarboxylate, maleic anhydride, neopentyl glycol phthalic anhydride, trimethylol ethane polymer.	45 FR 61022 (9/15/80)	Nov. 19, 1980.
80-227	Benzoic acid fatty acids C_{14-19} unsaturated, maleic anhydride,and pentaerythritol polymer.	do	Nov. 24, 1980.
80-228	Benzene propanoic acid, 3,5-bis(1,1-dimethylethyl)-4-hydroxy-(1,2-dioxo-1,2-ethanediyl) bis (imino-2, 1-ethandiyl) ester.	45 FR 62194 (9/18/80)	Do
80-229	Generic name: Dichloro dimethoxy diethyl amino, azobenzene, sodium salt.	45 FR 62987 (9/22/80)	Do.
80-230	Generic name: Fatty acid ester	45 FR 62898 (9/22/80)	Nov. 25, 1980.
80-231	Napthalene, 1,2,3,4-tetrahydro-1,2,4,4-tetramethyl	45 FR 62197 (9/18/80)	Nov. 26, 1980.
80-232	2-Napthalene ethanol, 5,6,7,8-tetrahydrobeta, 5,5,8,8-penta methyl.	45 FR 65664 (10/3/80)	Do.
80-233	Polymer of adipic acid, benzoic acid, neopentyl glycol, phthalic anhydride, propylene glycol, trimethylol ethane, tall oil fatty acids.	45 FR 65662 (10/3/80)	Do.
80-234	Adipic acid, dimethyl 1,4-cyclohexane dicarboxylate, maleic anhydride, neopentyl glycol, phthalic anhydride, trimellitic anhydride, trimethylol ethane polymer.	45 FR 63343 (9/24/80)	Nov. 27, 1980.

IV. New Substances Added to the Inventory During the Month

PMN No.	Manufacturer	Chemical identity	FR citation
80-33	Sherwin Williams Company	Generic name: Vegetable oil fatty acid ester.	45 FR 23510 (4/7/80).
80-38	Claims confidential business information (CBI)	Generic name: Alkyl ammonium salt of a halogen oxyacid.	45 FR 23511 (4/7/80).
80-50	CBI	Generic name: Nitrogen base salt of an inorganic oxidizing acid.	45 FR 23511 (4/7/80).
80-103	Monsanto	Polymer of Styrene maleic anhydride methyl methacrylate.	45 FR 41063 (6/17/80).
80-109	CBI	Generic name: 3-(1-Amino-2-sulfo-4-anthraquinonyl-amino)-benzene sulfon-8-substituted anilide.	45 FR 41063 (6/17/80).
80-144	Spencer Kellogg, Division of Textron	Generic name: Amine extended *d-w* hydroxy-poly [oxy-(methyl-1,2-ethandyl)] polymer with 1,3-diisocyanatomethylbenzene	945 FR 49149. (7/23/80).
80-179	du Pont de Nemours	Generic name: Polymer of mixed alkyl acrylates.	45 FR 53866 (8/13/80).
80-187	CBI	Generic name: 1-Amino-4-substituted-9,10-dihydro-9-10-dioxo-2-anthracenesulfonic acid, monosodium salt.	45 FR 54854 (8/18/80).

[FR Doc. 81-930 Filed 1-9-81; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51196; TSH-FRL 1723-8]

Diisodecyl Dimerate; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences.

Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by January 30, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Rachel Diamond, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St., SW., Washington, DC 20460 (202-426-3980).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558—Initial) and July 29, 1980 (45 FR 50544—Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is addded to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before January 30, 1981, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51196]" and the PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 6, 1981.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-342

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 1, 1981.

Manufacturer's Identity. Emery Industries, Inc., 4900 Este Avenue, Cincinnati, OH 45232.

Specific Chemical Identity. Diisodecyl dimerate.

Use. Lubricant base stock.

Production Estimates.

	Kilogram per year	
	Minimum	Maximum
1st year	45,450	227,270
2d year	45,450	227,270
3d year	45,450	227,270

Physical/Chemical Properties.
Acid value—1.6 maximum.
Hydroxyl value—5.0 maximum.
Viscosity at 210°F—17.0-17.6 centistokes.
Viscosity at 100°F—131-137 centistokes.
Flash point—585°F minimum.

Toxicity Data. No data were submitted on diisodecyl dimerate. The manufacturer states that the raw materials are low in toxicity based on LD_{50} data.

Exposure

Activity exposure route(s)	Maximum Number exposed	Maximum duration		Concentration	
		Hours/day	Days/year	Average	Peak
Manufacturing: Dermal	2-3	8	12		
Disposal: Dermal	1-2	2	12		

The manufacturer states that exposure will occur only when workers remove samples from the reactor to observe progress of reaction, and by accidental spillage during packaging of final product.

Environmental Release/Disposal. The manufacturer states that byproduct water to sewer would contain a trace of isodecyl alcohol. Release to landfill would be a non-hazardous mixture of dicalite filter aid and product.

[FR Doc. 81-934 Filed 1-9-81; 8:45 am]

BILLING CODE 6560-31-M

[OPP-50512; PH-FRL 1724-1]

Elanco Products Co.; Extension of Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has issued an extension of an experimental use permit to the following applicant. Such permits are in accordance with and subject to the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-351, 401 M St. SW., Washington, D.C. 20460 (202-755-1397).

1471-EUP-63. Elanco Products Co., PO Box 1750, Indianapolis, IN 46206. This experimental use permit allows the use of 1,343 gallons of the active ingredient ethalfluralin *N*-[ethyl-*N*-(2-methyl-2-propenyl]-2,6-dinitro-4-(trifluoromethyl) benzenamine] on seed and pod vegetables, and peanuts to evaluate control of weeds. A total of 2,579 acres are involved. This program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and Utah. This permit is effective from April 16, 1981, to April 16, 1982. Temporary tolerances for the residues of the active ingredient in or on seed and pod vegetables, forage legumes, peanuts, and peanut hulls have been extended.

Persons wishing to review the experimental use permit are referred to the Product Manager. Inquiries regarding this permit should be directed to the person given above. It is suggested that interested persons call before visiting the EPA Headquarters Office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended (7 U.S.C. 136))

Dated: January 5, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-935 Filed 1-9-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50448A; PH-FRL 1724-2]

Shell Chemical Co.; Issuance of Experimental Use Permit; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice amends experimental use permit 201-EUP-65 for use of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzenacetate on celery to evaluate control of various insects.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-341, 401 M St. SW., Washington, D.C. 20460 (202-755-1150).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of January 11, 1980 (45 FR 2390) that Shell Chemical Co., Washington, D.C. 20036 had been issued an experimental use permit for use of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate on celery to control various insects.

This amendment increases the acreage from 180 to 190 acres. The program is authorized only in the States of California, Florida, Michigan, and New York. The program is effective from November 6, 1979 to November 6, 1981.

Persons wishing to review the experimental use permit are referred to the product manager. Inquiries regarding this permit should be directed to the person given above. It is suggested that interested persons call before visiting the EPA headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: January 5, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-936 Filed 1-9-81; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-51197; TSH-FRL 1723-6]

Acryliamid-Methacrylic Copolymer; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by January 24, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-206, 401 M St., SW., Washington, DC 20460 (202-426-2601).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before January 24, 1981, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51197]" and the PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 5, 1981.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-337:

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period:

February 23, 1981.

Manufacturer's Identity:

Abcor, Incorporated, 850 Main Street, Wilmington, MA 01887.

Specific Chemical Identity:

Claimed confidential business information. Generic name provided: Acrylamid-methacrylic copolymer.

Use:

The manufacturer states that the new polymeric material is cast into thin films, which are then fabricated into suitable shapes to fit mechanical equipment(s) designed for housing them.

Production Estimates:

Claimed confidential business information.

Physical/Chemical Properties:

The manufacturer states that the new substance is nonvolatile and nonsoluble in water.

Toxicity Data:

No data were submitted.

Exposure:

No data were submitted.

Environmental Release/Disposal.

The manufacturer states that polymeric membranes which are no longer useful will be returned by customers to Abcor for disposal in accordance with the Resource Conservation Recovery Act (RCRA).

[FR Doc. 81-932 Filed 1-9-81; 8:45 am]
BILLING CODE 6560-31-M

[OPP-30195; PH-FRL 1723-5]

Certain Pesticide Products; Receipt of Applications To Register Pesticide Products Containing New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register certain pesticide products containing new active ingredients.

DATE: Comments must be received on or before February 11, 1981, and should bear a notation indicating the EPA registration number.

ADDRESS: Written comments to the Product Manager cited in each application at the address below: Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: The Product Manager given in each specific application.

SUPPLEMENTARY INFORMATION: EPA gives notice that certain companies have submitted applications to register pesticide products containing new active ingredients. These applications are made pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6). Notice of receipt of these applications does not indicate a decision by the agency on the applications.

EPA File Symbol 10392-U. Sterwin Labs. New York, N.Y. Product Name: Tetra-sect Powder, containing the new active ingredient Erythrosine B at 100 percent. The application proposes that

the product be classified for general use to control house flies in poultry manure in caged layer facilities. (PM-15, George T. LaRocca, Rm. E-329, 202-426-9490).

EPA File Symbol 40810-E. Ciba-Geigy Corp., Ardsley, NY 10502. Product Name: Belclene 310, containing the new active ingredient 2-(methylthio)-4-(ethylamino)-6-[1,2-dimethylpropyl)amino]-*s*-triazine at 96 percent. The application proposes that the product be classified for general use for use only by manufacturers of cooling tower formulations. (PM 23, Richard F. Mountfort, Rm. E-351, 202-755-1397).

Interested persons are invited to submit written comments on the applications referred to in this notice.

Notice of approval or denial of these applications will be announced in the Federal Register. Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended, and the regulations thereunder, the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the Federal Register if an application is approved.

(Sec. 3(c), 86 Stat. 972, (7 U.S.C. 136a))

Dated: January 5, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-931 Filed 1-9-81; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-51198; TSH-FRL1723-7]

N,N'-Nonanedioyl-Bis [3,4,5,6-Tetrahydro-2(1H)Pyrimidinone]; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by January 30, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-210, 401 M St., SW., Washington, DC 20460 (202-426-3936).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558—Initial) and July 29, 1980 (45 FR 50544—Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an admended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before January 30, 1981, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51198]" and the PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 6, 1981.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-341:

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period:

March 1, 1981.

Manufacturer's Identity:

The Upjohn Co., 7000 Portage Road, Kalamazoo, MI 49001.

Specific Chemical Identity:

N,N'-Nonanedioyl-bis [3, 4, 5, 6-tetrahydro-2(1*H*)pyrimidinone].

Use

Power coatings	30 percent of production.
Solvent-based coatings	40 percent of production
Polyurethanes	30 percent of production.

Production Estimates

	Kg/yr	
	Minimum	Maximum
1981	300	600
1982	600	1,200
1983	1,200	

Physical Properties

Melting point	98-101°C.
Solubility	Very soluble in polar solvents; insoluble in water.

Toxicity Data.

Acute oral LD_{50} (male and female rats)—>5.0 g/kg.

Primary eye irritation (albino rabbits)—Mild irritant.

Dermal irritation (albino rabbits)—Non-irritant.

Exposure

Activity and exposure route(s)	Maximum number exposed	Maximum duration		Concentration	
		Hours/day	Days/year	Average	Peak
Processing: Inhalation, Dermal	No data were submitted.				0-1
Manufacture: Dermal, Inhalation	4	8	30		1-10

Environmental Release/Disposal. The manufacturer states that less than 10 kilograms of the PMN substance will be released to the environment per year; waste material will be disposed of by landfill.

[FR Doc. 81-933 Filed 1-9-81; 8:45 am]

BILLING CODE 6560-31-M

[RCRA Section 3010 Public Notice; SWH-FRL 1723-1]

Notification to EPA of Hazardous Waste Activities; Availability of Information

January 6, 1981.

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of information.

SUMMARY: The Environmental Protection Agency (EPA) announces that a report will be published at the end of January 1981 titled *Notification to EPA of Hazardous Waste Activities.* The report is a compilation of information EPA received during the period of May 19, 1980 to November 19, 1980 from persons who complied with the requirements of § 3010 of the Resource Conservation and Recovery Act (RCRA) and notified EPA that they were involved in hazardous waste activity. The report contains information from approximately 56,000 notifiers including generators and transporters of hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities. The report has ten volumes, one volume for each of EPA's ten regions. You may purchase the report form the Government Printing Office.

FOR FURTHER INFORMATION CONTACT: For additional information on the availability of this report contact the public Information and Participation Branch, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 755-9157.

For additional information on the content of this report contact Arthur Glazer, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 755-9150.

SUPPLEMENTARY INFORMATION: Section 3010 of the Resource Conservation and Recovery Act of 1976 (RCRA) requires any person who generates or transports hazardous waste or who owns operates a facility for the treatment, storage, or disposal of hazardous waste to notify EPA of their hazardous waste activity within 90 days of the promulgation or revision of regulations under Section 3001 of RCRA for identifying or listing hazardous waste. EPA promulgated regulations under Section 3001 of RCRA on May 19, 1980, and published revisions to those regulations on July 16, 1980. EPA received approximately 59,000 notification forms during the period of May 19, 1980 to November 19, 1980. This report contains information from approximately 56,000 of these. Several hundred notifiers requested that their information be held confidential. The Agency is still processing some of these requests, and has not included the information from these notifiers in this report. The Agency did not process the remaining 2,600 or so notifications in time to include information from them in this report. The notification forms asked for the following items of information: name and location of the hazardous waste facility, the type of activity (i.e., generate, transport, treat, store, or dispose of hazardous waste), a listing of the hazardous wastes which the facility handles, the name of the owner of the facility, whether or not the facility is Federally or privately owned, and whether or not there is an underground injection well located at the facility.

You may purchase the report form the Government Printing Office in Washington, D.C. by writing to the Superintendent of Documents, U.S. GPO, Washington, D.C. 20402, or by calling (202) 783-3238. You may also purchase the report from the Government Printing Office bookstores throughout the country. The following list contains the title, area covered, stock number, and cost of each volume.

Title	Area covered	Stock No. and cost
Notification to EPA of Hazardous Waste Activities, Region 1.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.	055-000-00200-2; $10.
Notification to EPA of Hazardous Waste Activities, Region 2.	New Jersey, New York, Virgin Islands, Puerto Rico.	055-000-00201-1; $12.
Notification to EPA of Hazardous Waste Activities, Region 3.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.	055-000-00202-9; $11.
Notification to EPA of Hazardous Waste Activities, Region 4.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.	055-000-00203-7; $14.
Notification to EPA of Hazardous Waste Activities, Region 5.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.	055-000-00204-5; $14.
Notification to EPA of Hazardous Waste Activities, Region 6.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	055-000-00205-3; $14.
Notification to EPA of Hazardous Waste Activities, Region 7.	Iowa, Kansas, Missouri, Nebraska	055-000-00206-1; $8.50.
Notification to EPA of Hazardous Waste Activities, Region 8.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.	055-000-00207-0; $6.50.

Title	Area covered	Stock No. and cost
Notification to EPA of Hazardous Waste Activities, Region 9	Arizona, California, Hawaii, Nevada, Guam, American Samoa, Commonwealth of the Northern Marianas.	055-000-00208-8; $10.
Notification to EPA of Hazardous Waste Activities, Region 10.	Alaska, Idaho, Oregon, Washington	055-000-00209-6, $6.50.

Dated: January 6, 1981.

Steffen W. Plehn,

Deputy Assistant Administrator for Solid Waste (WH-562).

[FR Doc. 81-928 Filed 1-9-81; 8:45 am]

BILLING CODE 6560-30-M

[SA-FRL 1723-2]

Science Advisory Board, Executive Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board. The meeting will be held January 28-29, 1981, starting at 9:15 am of each day, in Room 1101 West Tower, EPA Headquarters, 401 M Street, SW, Washington, D.C.

The agenda for the meeting will include a briefing/discussion with the co-chairmen of the Drinking Water Research Committee, status report of the Research Outlook Subcommittee, status report on Pollution Control Guidance Documents for emerging synthetic fuel technologies, scientific and technological achievement awards for outstanding research publications by Agency employees, and items of member interest.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Richard M. Dowd, Director, Science Advisory Board (202) 755-0263 or Terry F. Yosie, Staff Officer, Science Advisory Board (202) 755-6634 by close of business January 21, 1981.

Richard M. Dowd,

Director, Science Advisory Board.

January 6, 1981.

[FR Doc. 81-929 Filed 1-9-81; 8:45 am]

BILLING CODE 6560-34-M

FEDERAL MARITIME COMMISSION

[Docket No. 81-1; Independent Ocean Freight Forwarder License No. 394-R]

Universal Transcontinental Corp. and J. S. Stass Co., Division of Universal Transcontinental Corp.; Order of Investigation and Hearing

On November 22, 1966, Universal Transcontinental Corporation and J. S. Stass Co., Division of Universal Transcontinental Corporation (UTC), 325 Spring Street, New York, New York 10013, were issued Independent Ocean Freight Forwarder License FMC No. 394-R.

UTC is a wholly owned subsidiary of a holding company, Transway International Corporation (Transway). Subsequent to the licensing of UTC, Tropigas International Corporation was acquired by Transway. Tropigas International Corporation admits it is a shipper and consignee of shipments to foreign countries.

Information submitted by UTC shows the licensee handled 289 export shipments for Tropigas International Corporation in 1976, 346 shipments in 1977 and 273 shipments in 1978, and received carrier compensation on all these shipments.

Both section 44 of the Shipping Act, 1916, and § 510.5 of the Commission's General Order 4 require complete independence of an ocean freight forwarder from shipper interest. More specifically, both the Shipping Act, 1916 and General Order 4 define an independent ocean freight forwarder as a "person carrying on the business of forwarding for a consideration who is not a shipper or consignee or a seller or purchaser of shipments to foreign countries, nor has any beneficial interest therein, nor directly or indirectly controls or is controlled by such shipper or consignee or by any person having such a beneficial interest."

Since Universal Transcontinental Corporation and J. S. Stass Co., Division of Universal Transcontinental Corporation, holders of FMC License No. 394-R, are owned by Transway International Corporation which in turn owns Tropigas International Corporation, a company which is engaged as a shipper and consignee of export shipments from the United States, the licensee appears to be directly or indirectly controlled by and affiliated with an export shipper and consignee. Thus, it would appear that the licensee no longer qualifies as an independent ocean freight forwarder pursuant to sections 1 and 44 of the Shipping Act, 1916, and §§ 510.2(a) and 510.5 of the Commission's General Order 4. Moreover, UTC's relationship with an exporter may be of such a nature that UTC's receipt of any "forwarder compensation" on the exporter's shipments may amount to a violation of section 16, Initial Paragraph, in that UTC on behalf of its shipper principal obtained transportation by water at less than the applicable rate or charges.

Further, in reply to the Commission's section 21 order, *Independent Ocean Freight Forwarders—Payment Received for the Securing or Booking of Cargo in Excess of the Effective Common Carrier Tariff on File with the Federal Maritime Commission,* served January 18, 1979, the licensee admitted by affidavit that it had entered into arrangements with various ocean carriers for the receipt of payments of compensation in excess of that provided for in the applicable ocean carrier tariffs. Under the arrangements the licensee received $125,260.56 in excess compensation during the year 1976 from seven ocean carriers and/or their agents. Payments received by UTC from the first carrier totalled $3,320.02; payments from the second carrier totalled $17,812.40; payments from the third carrier totalled $90,387.89; payments from the fourth carrier totalled $1,187.06; cash payments from three carriers which were commingled totalled $11,403.90; and payments from unknown ocean carriers totalled $1,149.29.

The receipt of payments from ocean carriers in excess of the ocean freight forwarder compensation by UTC and/or its officers raises the possibility that UTC may have violated section 15 and section 16, Initial Paragraph, of the Shipping Act, 1916. Section 15 may have been violated if the payments were made pursuant to an unfiled agreement between UTC and the respective carriers. It is likewise believed that UTC may have violated section 16, Initial Paragraph, by directly or indirectly passing any part of these payments through to its shipper principals and thereby permitting its principals to obtain ocean transportation at less than the applicable rates or charges. Moreover, even if UTC did not pass any or all of the payments on to its shipper clients, if the payments represent a portion of the carriers' ocean freight revenues for UTC shipments, the excess

payments may have resulted in such shipments moving at less than the applicable rates and charges.

Now, therefore, it is ordered, that pursuant to sections 1, 15, 16, 22, 32, and 44 (46 U.S.C. 801, 814, 815, 821, 831 and 841(b)) of the Shipping Act, 1916, and § 510.9 of General Order 4 (46 CFR 510.9), a proceeding is hereby instituted to determine:

1. Whether UTC's relationship with an export shipper is of such a nature that UTC no longer qualifies as an independent ocean freight forwarder.

2. Whether UTC's relationship with an export shipper is of such a nature that UTC violated section 16, Initial Paragraph, by collecting "compensation" on the exporter's shipments, thereby obtaining transportation by water for property at less than the rates or charges which would otherwise be applicable.

3. Whether UTC violated section 15 of the Shipping Act, 1916, by entering into and implementing unapproved section 15 agreements providing for the receipt of payments from ocean carriers in excess of the amount of ocean freight forwarder compensation specified in the ocean carriers' applicable tariffs.

4. Whether, even if there is no relationship between UTC and an export shipper to disquality UTC as an independent ocean freight forwarder, UTC violated section 16, Initial Paragraph, by directly or indirectly passing on to its shipper principals any portion of monies received by it or its officers from ocean carriers in excess of authorized ocean freight forwarder compensation thus obtaining ocean transportation—on behalf of its shippers—at less than the applicable rates or charges.

5. Whether, even if there is no relationship between UTC and an export shipper to disqualify UTC as an independent ocean freight forwarder, UTC violated section 16, Initial Paragraph, by obtaining transportation by water at less than the applicable rates and charges by receiving "compensation" in excess of that authorized by the carriers' tariffs, even if it did not pass any or all of these monies to its shipper principals.

6. Whether civil penalties should be assessed against UTC pursuant to section 32(e) of the Shipping Act, 1916, for violations of sections 15 and 16 of the Shipping Act, 1916, and/or the Commission's rules and regulations, and, if so, the amount of any such penalty which should be imposed.

7. Whether UTC's independent ocean freight forwarder license should be suspended or revoked pursuant to section 44(d) of the Shipping Act, 1916, for:

a. Willful violations of sections 15 or 16, Initial paragraph, of the Shipping Act, 1916,

b. Change of circumstances whereby the licensee no longer qualifies as an independent ocean freight forwarder, or

c. Such conduct as the Commission finds renders UTC unfit to carry on the business of forwarding in accordance with § 510.9(e) of General Order 4.

It is further ordered, that Universal Transcontinental Corporation and J. S. Stass Co., Division of Universal Transcontinental Corporation, be named Respondents in this proceeding.

It is further ordered, that this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge, but in any event, shall commence within the time limits specified in Rule 61 (46 CFR 502.61) of the Commission's Rules of Practice and Procedure. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matters in issue are such that an oral hearing and cross-examination are necessary for the development of an adequate record.

It is further ordered, that in accordance with Rule 42 of the Commission's Rules of Practice and Procedure (46 CFR 502.42), the Commission's Bureau of Investigation and Enforcement (BIE) shall be a party to this proceeding.

It is further ordered, that notice of this Order be published in the Federal Register and a copy thereof and notice of hearing be served upon Respondents, Universal Transcontinental Corporation and J. S. Stass Co., Division of Universal Transcontinental Corporation.

It is further ordered, that any person other than Respondents and BIE having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 (46 CFR 502.72) of the Commission's Rules of Practice and Procedure.

It is further ordered, that all future notices issued by or on behalf of the Commission, including notice of time and place of hearing, or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 81-947 Filed 1-9-81; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) the Centers for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Date: January 26, 1981.

Place: Room 207, Building 1, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Time: 8:30 a.m.

Type of Meeting: Open.

Contact Person: H. Bruce Dull, M.D., Executive Secretary of Committee, Building 1, Room 2413, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Telephones: FTS: 236-3553; Commercial: 404/329-3553.

Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents.

Agenda: The Committee will discuss the pneumococcal vaccine statement, finalize revisions on rubella, distribute for review revisions on diphtheria and tetanus toxoids and pertussis vaccine, and other matters of interest to the Committee. Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: January 6, 1981.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 81-1106 Filed 1-9-81; 8:45 am]

BILLING CODE 4110-86-M

Inhalation Toxicology and Animal Husbandry Support Services, and Reducing Stress in Video Display Tasks; Open Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health of the Centers for Disease Control and will be open to the public for observation and participation, limited only by space available:

Inhalation Toxicology and Animal Husbandry Support Services

Date: January 22, 1981.

Time: 8:30 a.m. to 2:30 p.m.

Place: Robert A. Taft Laboratories, 4676 Columbia Parkway, Room 117, Cincinnati, Ohio 45226.

Purpose: To discuss project protocol for modernizing the inhalation toxicology and animal husbandry support services.

Additional information may be obtained from: William D. Wagner, Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: (513) 684–8433.

Reducing Stress in Video Display Tasks

Date: February 2, 1981.
Time: 10:00 a.m. to noon.
Place: Robert A. Taft Laboratories, 4676 Columbia Parkway, Room 117, Cincinnati, Ohio 45226.
Purpose: To discuss details of a research investigation concerning stress reduction in the video display terminal workplace.

Additional information may be obtained from: Marvin Dainoff, Division of Biomedical, and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: (513) 684–8291.

Dated: January 6, 1981.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 81-4107 Filed 1-9-81; 8:45 am]

BILLING CODE 4110-87-M

Office of Human Development Services

White House Conference on Aging, Technical Committee; Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Pub. L. 92–463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Health and Social Aspects of Long Term Care will hold their next meeting on Wednesday, January 21, 1981 from 9 a.m. until 5 p.m. at the Dallas Home for Jewish Aged, 2525 Centerville Road, Dallas, Texas, 75228.

The purpose of the meeting will be to discuss the first draft of the committee's technical report.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue SW., Washington, D.C. 20201, telephone (202) 245–1914. Technical Committee meetings are open for public observation.

Dated: January 7, 1981.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 81-1001 Filed 1-9-81; 8:45 am]

BILLING CODE 4110-92-M

White House Conference on Aging, Technical Committee; Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Pub. L. 92–463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Health Services will hold their next meeting on Thursday, January 15, 1981, Friday, January 16, 1981, and Saturday, January 17, 1981 from 9 a.m. until 5 p.m. all three days. The meeting will be held at the Hotel Maison DuPuy Conference Room, New Orleans, Louisiana.

The purpose of the meeting will be to discuss the final drafts of the subcommittees and to develop the final recommendations for the Technical Committee Report.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue SW., Washington, D.C. 20201, telephone (202) 245–1914. Technical Committee meetings are open for public observation.

Dated: January 7, 1981.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 81-1002 Filed 1-9-81; 8:45 am]

BILLING CODE 4110-92-M

White House Conference on Aging, Technical Committee; Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Pub. L. 92–463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Older Persons as a Growing National Resource will hold their next meeting on Tuesday, January 27, 1981 from 9:30 am until 3:30 pm in Room 5542 of the HHS-North Bldg., 330 Independence Avenue, S.W., Washington, D.C. 20201.

The purpose of the meeting will be to review the final draft of the committee report.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 245–1914. Technical Committee meetings are open for public observation.

Dated: January 7, 1981.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 81-1003 Filed 1-9-81; 8:45 am]

BILLING CODE 4110-92-M

White House Conference on Aging, Technical Committee; Change in Meeting

Agency Holding the Meeting: Department of Health and Human Services, Office of Human Development Services, White House Conference on Aging, Technical Committee on Creating an Age-Integrated Society—Implications for the Economy.

Federal Register Citation of Previous Announcement: 45 FR 84153.

Previously Announced Time and Date of the Meeting: Tuesday, January 13, 1981 from 9 a.m. until 4 p.m. at 1660 L Street NW., Suite 1100, Washington, D.C.

Changes in the Meeting: The date of this meeting has been changed to Thursday, January 22, 1981 from 10 a.m. until 4 p.m. and will be held at the Travelers Insurance Company, Hartford, Connecticut.

Dated: January 6, 1981.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 81-927 Filed 1-9-81; 8:45 am]

BILLING CODE 4110-92-M

Public Health Service

Privacy Act of 1974; New System of Records

AGENCY: Department of Health and Human Services, Public Health Service.

ACTION: Notification of new system of records, Mental Health Epidemiologic and Biometric Research Data, HHS/ADAMHA/NIMH, 09-30-0036.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a proposal to initiate a new system of records in the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), National Institute of Mental Health (NIMH), entitled, "Mental Health Epidemiologic and Biometric Research Data, HHS/ADAMHA/NIMH."

The purpose of the new system will be to maintain a data base for biometric and epidemiologic research in the area of mental health and mental illness. This system will allow the statistical analysis of research data to test hypotheses about relationships among the various items of information and generate new hypotheses to guide future research.

PHS invites interested persons to submit comments on the proposed routine uses on or before February 11, 1981.

DATES: PHS has sent a Report of New System to the Congress and to the Office of Management and Budget on December 23, 1980, PHS has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and Congress. If this waiver is granted, PHS will publish a notice to that effect in the Federal Register.

ADDRESS: Comments should be addressed to the Director, Division of Biometry and Epidemiology, NIMH, Room 18C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Comments received will be available for inspection in Room 18C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, from 8:15 a.m. to 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Director, Division of Biometry and Epidemiology, National Institute of Mental Health, 5600 Fishers Lane, Room 18C-26, Rockville, Maryland 20857; telephone 301-443-3648.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services is currently reexamining the applicability of the Privacy Act to records maintained by organizations under contract with the Department. It is recognized that the proposal to apply the provisions of the Privacy Act to these records may later be found to provide broader coverage than is required by the Act.

The purpose of this system of records will be to collect and maintain a variety of data for research activities of the Division of Biometry and Epidemiology (DBE) of the National Institute of Mental Health (NIMH). This system will allow the statistical analyses of research data to test hypotheses about relationships among the various items of information and generate new hypotheses to guide future research. The generation of information and statistical analyses will ultimately lead to a better description and understanding of mental disorders, their treatment and prevention, and the promotion of mental health. Records in this system will not be used for determination of individual eligibility or qualification for personal or property rights. Statistical analyses of these data will involve groups of individuals with given characteristics and will not refer to specific individuals.

Personal identifiers will be needed only for authorized research purposes, such as retrieving medical record data, or merging and coordinating records from several sources which pertain to a particular individual.

Contract provisions will be established to provide for prompt removal of individual identifiers when they are no longer needed for research purposes. The information that will be collected will be consistent with legislation and regulations for informed consent, confidentiality, and the protection of human subjects. The amount of personal data maintained will be the minimum feasible to accomplish the purpose of each study.

The routine uses proposed for this system do not conflict with the purpose of the system. The primary routine uses concern research: to disclose records to DHHS contractors, collaborating researchers, and their staffs, who are conducting research with or on behalf of DHHS; provided certain conditions are met, to researchers whom the System Manager deems qualified, to carry out specific research that is compatible with the purpose for which the records were obtained; and to DHHS contractors hired to collate, analyze, aggregate, or otherwise refine data contained in the system of records. To facilitate such research and research-related activities is the impetus for establishing this system of records. Recipients of records under these routine uses will be required to safeguard identifiable data in accordance with the Privacy Act, 5 U.S.C. 522a, the Department's implementing regulations (45 CFR Part 5b); and, when applicable, other confidentiality statutes (42 U.S.C. 4582, 21 U.S.C. 1175, and 42 U.S.C. 242a) and regulations 42 CFR Parts 2 and 2a.

The proposed routine use permitting disclosure to a congressional office does not violate the subject's privacy because such disclosure would be made only at the subject's request.

The proposed routine use permitting disclosure to the Department of Justice under certain conditions in the event of litigation reserves the right of the Government to use the records to defend itself or its employees in cases that may arise in connection with research programs.

The proposed routine use permitting disclosure to the Department of Justice for Freedom of Information Act (FOIA) determinations affords additional protection to the privacy of individuals by ensuring against unwarranted release of personal information under FOIA.

Dated: December 23, 1980.

Jack N. Markowitz,

Acting Director, Office of Management.

09-30-0036

SYSTEM NAME:

Mental Health Epidemiologic and Biometric Research Data, HHS/ADAMHA/NIMH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at the research facilities which collect or provide research data for this system under contract to the agency. Contractors may include: research centers, clinics, hospitals, universities, research foundations, and coordinating centers. Records may also be located at the research facilities of the Division of Biometry and Epidemiology, National Institute of Mental Health. A current list of sites is available by writing to the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subjects of research in epidemiologic, clinical, methodologic, and longitudinal research studies of mental health and mental disorders. These individuals are selected as representative of the general population or of special groups. Special groups might include, but are not limited to: clients referred for or receiving medical or mental health services; providers of health/mental health services; demographic sub-groups as

applicable, such as age, sex, ethnicity, race, occupation, geographic location; and groups exposed to hypothesized risks, such as relatives of individuals with disorders, individuals who have experienced life stresses, or individuals with previous history of illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains varying items about the individual as relevant to a particular research study. Examples include, but are not limited to, items about the health/mental health of the individual, demographic data, past and present life experiences, personality characteristics, social functioning, utilization of health/mental health services, family history, physiological measures, and characteristics and activities of health/mental health care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301 of the Public Health Service Act, 42 U.S.C. 241, General Research and Investigation Authorities.

PURPOSE(S):

The purpose of the system of records is to collect and maintain a data base for research activities of the Division of Biometry and Epidemiology (DBE) of the National Institute of Mental Health (NIMH). Analyses of these data involve groups of individuals with given characteristics and do not refer to specific individuals. The generation of information and statistical analyses will ultimately lead to a better description and understanding of mental disorders, their treatment and prevention, and the promotion of mental health.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record may be disclosed for a research purpose, when the Department:

(a) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; e.g., disclosure of alcohol or drug abuse patient records will be made only in accordance with the restrictions of confidentiality statutes and regulations 42 U.S.C. 4582, 21 U.S.C. 1175, and 42 CFR, Parts 2 and 2a, and where applicable, no disclosures will be made inconsistent with an authorization of confidentiality under 42 U.S.C. 242a and 42 CFR Part 2a;

(b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; and

(d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from a congressional office made at the written request of that individual.

3. In the event of litigation, where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee; the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected (e.g., disclosure may be made to the Department of Justice in defending claims against the United States when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of the individual's participation in activities of a Federal Government-supported research project.)

4. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

5. Disclosure may be made to DHHS contractors, collaborating researchers, and their staff who are conducting a specific study and preparing scientific reports, in order to accomplish related research activities of the Department. The recipients will be required to maintain Privacy Act safeguards with respect to such records.

6. The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records are stored in various ways including file folders, computer cards, computer tapes or disks, microfiche, audio or video tapes, and index cards. Normally, the factual data, with study code numbers, are stored on computer tape or disc, while the key to personal identifiers is stored separately, without factual data, in paper files.

RETRIEVABILITY:

During data collection stages and followup, if any, retrieval by personal identifier (e.g., name or medical record number) is necessary. During the data analysis stage, data are normally retrieved by the variables of interest (e.g., diagnosis, age, occupation).

SAFEGUARDS:

(a) *Physical:* Physical security is achieved by storing records in locked rooms, locked file cabinets, and/or secure computer facilities. Access to personal identifiers is safeguarded by locked files and by separating data from identifiers as much as possible. Data stored in computers is secured in various ways, including access through the use of key words known only to authorized personnel.

(b) *Procedural:* Collection and maintenance of the information is done in a manner consistent with legislation and regulations in the protection of human subjects, informed consent, and confidentiality.

(c) *Authorized Personnel:* Access to identifiers and to the code which

matches study numbers with them is strictly limited to the authorized personnel whose duties require such access. Procedures for determining authorized access to identified data are established as appropriate for each location. Personnel who may be so authorized include those directly involved in data collection and in the design of research studies, e.g., interviewers and interviewer supervisors; project managers; statisticians involved in designing sampling plans. When DBE or a contractor provides anonymous data to research scientists for analysis, study numbers which can be matched to personal identifiers will be eliminated or replaced by the Division or the contractor with random numbers which cannot be so matched.

The safeguards described for computerized records are in accordance with Part 6, Systems Security, of the Department's ADP Systems Manual. The safeguards described for nonautomated records are in accordance with Chapter 45-13, in the General Administration Manual, and the supplementary PHS chapter.

RETENTION AND DISPOSAL:

Identifiers are retained only as long as they are needed for the purposes of the current research project, and for follow-on studies generated by the present study. Disposal of identifiers is done according to the storage medium (e.g., erase computer tape, shred or burn index cards, etc.). A staff person designated by the System Manager will oversee and will describe and confirm the disposal in writing.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Biometry and Epidemiology, National Institute of Mental Health, Alcohol, Drug Abuse and Mental Health Administration, Parklawn Building, Room 18C-26, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. Provide individual's name; current address; date of birth; date, place and nature of participation in specific research study; name of individual or organization administering the research study (if known); name or description of the research study (if known); address at the time of participation; and a notarized statement by two witnesses attesting to the individual's identity.

RECORD ACCESS PROCEDURES;

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state corrective action sought.

RECORD SOURCE CATEGORIES:

The system contains information obtained directly from the subject individual by interview (face-to-face or telephone), by written questionnaire, or by other tests, recording devices or observations, consistent with legislation and regulations regarding informed consent and protection of human subjects. Information is also obtained from other sources, such as health and mental health care providers, relatives, guardians, and clinical medical research records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 81-1017 Filed 1-9-81; 8:45 am]
BILLING CODE 4110-38-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Delegation of Authority

The following material is a portion of the Geological Survey Manual, listing the redelegations of the Director's authority found in Part 35 of Title 43 of the Code of Federal Regulations. The numbering system used is that of the Manual commencing at SM 220.2.8.

Dated: January 5, 1981.

H. William Menard,

Director.

.8 Authorities under regulations in 43 CFR Part 35—Non-Discrimination Against Minority and Women-Owned Business Enterprises in Outer Continental Shelf Leasing Activities. The authorities of the Director, Geological Survey, and those of the authorized officer that are set forth in 43 CFR Part 35 are delegated through the Chief, Conservation Division, and the Deputy Division Chief, Offshore Minerals Regulation, to the Conservation Managers of the Alaska OCS Region, the Atlantic OCS Region, the Gulf of Mexico OCS Region, and the Pacific OCS Region. The Conservation Managers may further redelegate these authorities with the approval of the Deputy Division Chief, Offshore Minerals Regulation.

[FR Doc. 81-1007 Filed 1-9-81; 8:45 am]
BILLING CODE 4310-10-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A. Inc.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Chevron U.S.A. Inc., Unit Operator of the Main Pass Block 40 Federal Unit Agreement No. 14-08-001-3847, submitted on December 16, 1980, a proposed supplemental plan of development/production describing the activities it proposed to conduct on the Main Pass Block 40 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837-4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in development and production plans available to affected

States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 31, 1980.

E. A. Marsh,

Staff Assistant for Operations.

[FR Doc. 81-1010 Filed 1-9-81; 8:45 am]

BILLING CODE 4310-31-M

Heritage Conservation and Recreation Service

Approval of the Lower Little Miami River as a State-Administered Component of the National Wild and Scenic Rivers System

AGENCY: Heritage Conservation and Recreation Service.

ACTION: Notice of secretarial approval.

SUMMARY: As required by Section 4(c) of the Wild and Scenic Rivers Act, this notice announces that the Lower Little Miami River has been approved by the Secretary of the Interior for inclusion in the National Wild and Scenic Rivers System.

The text of the Secretary's approval is printed below.

Dated: December 31, 1980.

Chris Therral Delaporte,

Director, Heritage Conservation and Recreation Service.

Lower Little Miami National Recreational River

Approval for Designation as a State Administered Component of the National Wild and Scenic Rivers System

Pursuant to the authority granted the Secretary of the Interior by Section 2 of the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1271 et seq.) and upon proper application of the Governor of the State of Ohio, the lower Little Miami River, Ohio is designated a State administered component of the National Wild and Scenic Rivers System.

The segment of the Little Miami River designated is from Glen Island, just below Foster, Ohio, downstream to its confluence with the Ohio River. The segment is approximately 28 miles long and is classified as Recreational pursuant to Section 2(b) of the Act.

The State has fulfilled the requirements of Section 2(a)(ii) of the Act by designating the Little Miami River as a scenic river under the provisions of the State Scenic Rivers Act; developing and implementing a management plan for the river; and by initiating an acquisition and development program for appropriate lands and waters along the Little Miami River.

Notice is hereby given that as of January 11, 1981, the lower Little Miami River, as described herein, was approved for inclusion in the National Wild and Scenic Rivers System as a recreational river area to be administered by the State of Ohio.

Prior to undertaking this action the proposal was circulated to affected Federal Agencies for a ninety day period of review. Comments received during the period have been carefully considered.

Dated: January 11, 1981.

Cecil D. Andrews,

Secretary of the Interior.

[FR Doc. 81-925 Filed 1-9-81; 8:45 am]

BILLING CODE 4310-03-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-No. 46F)]

Baltimore and Ohio Railroad Co.—Abandonment—Near Springfield and Coal Shaft, in Sangamon County, IL; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided December 24, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in Oregon Short Line R. Co.—Abandonment Goshen, 360 I.C.C. 91 (1979), the present and future public convenience and necessity permit the abandonment and discontinuance of service on the following line of railroad know as: Springfield Subdivision: between railroad valuation stations 9571+55.5 and 9578+63.7, a distance of 0.13 miles, at or near Springfield, Sangamon County, IL; between railroad valuation station 9578+63.7 and 9635+26.1, a distance of 1.07 miles of line jointly owned by this carrier and the Illinois Central Gulf Railroad Company (ICG), at or near Springfield, Sangamon County, IL; and between railroad valuation station 9635+26.1, at or near Springfield, Sangamon County, IL, and railroad valuation station 9738+00, at or near Coal Shaft, Sangamon County, IL, a distance of 1.95 miles. A certificate of public convenience and necessity permitting abandonment and discontinuance of service was issued to the Baltimore and Ohio Railroad Company. Since the investigation has been completed, the requirement of Section 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. The offer, as filed, shall contain information required pursuant to Section 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-992 Filed 1-9-81; 8:45 am]

BILLING CODE 7035-01-M

Change in Cycle of Practitioners' Examination

AGENCY: Interstate Commerce Commission.

ACTION: Proposal to change the cycle of non-attorney practitioners' examination in 1982.

SUMMARY: For various administrative reasons outlined below, the Commission is considering several alternative proposals to change the cycle of the semi-annual Non-attorney Practitioner's Examination, to be effective in 1982.

DATES: Written comments should be filed with the Secretry 60 days from Federal Register publication.

ADDRESSES: Send an original and, if possible, one copy of comments to: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: James H. Bayne, (202) 275-7646.

The examination program for non-lawyer applicants to practice before this commission was initiated in 1939. In 1943, the Commission decided to hold the examination semi-annually, on the first Tuesday in April and October, respectively.

In 1948, at the request of the Association of Interstate Commerce

Commission Practitioners, the Commission decided that the examination for admission to practice should be conducted on the second Tuesday in February and July of each year. This change was apparently made to coincide with the academic year, so that training for the examination could take place during the regular semesters of the school year. For this reason, we believe no permanent change should be made in the examination schedule without the opportunity for public comment.

Our continued policy of holding the examination in February and July presents certain administrative problems, as follows:

(1) The uneven cycle for the examination is unfair to the applicants. Those individuals failing the July examination have seven months before the next examination. Those planning to retake the examination in July have a maximum period of five months to prepare themselves. Since it takes approximately 60 days to grade the examination, the intervening time becomes even more critical for the July examination.

(2) The present cycle puts the grading examiners and the Employee Board on Education and Practice under a stringent deadline to grade the examination, and provide results to the Secretary so that unsuccessful February applicants can be notified and given sufficient time to reapply for the July examination.

(3) Holding the examination in July creates problems, both for the applicants and the Commission's staff, because of vacation schedules.

We propose the following alternative cycles, in order of preference

(1) April and October

(2) May and November

(3) June and December

In order to avoid any holiday conflicts, we propose the first Tuesday of each of the above months as the standard examination date.

We propose to implement any changes in the examination cycle in calendar year 1982.

The Commission previously announced that the February 1981 examination would be cancelled; and that the next examination will be held July 14, 1981. This notice makes no change in that determination.

Decided: December 31, 1980.

By the Commission. Robert C. Gresham, Vice Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-920 Filed 1-9-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: January 6, 1981.

In our decision of December 23, 1980, a 14.5-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figure set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 15.1 percent. Accordingly, we are authorizing that the surcharge for this traffic be increased to 15-percent. All owner-operators are to receive compensation at this level.

In addition, the surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators is increased to 2.6-percent, that for the bus carriers to 5.6-percent, and that for United Parcel Service to 1.6-percent.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commission or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

It is ordered:

This decision shall become effective Friday, 12:01 a.m., January 9, 1981.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Sec

Appendix.—*Fuel surcharge*

Base date and price per gallon (including tax)

January 1, 1979 .....

Date of current price measurement and price per gallon (including tax)

January 5, 1981 .....

Transportation performed by—	(1) Owner operator[1]	(2) Other[2]	(3) Bus carrier	(4) UPS
Average percent fuel expenses (including taxes) of total revenue	16.9	2.9	6.3	3.3
Percent surcharge developed	15.1	2.6	5.6	2.4
Percent surcharge allowed	15.0	2.6	5.6	1.6

[1] Apply to all truckload rated traffic.

[2] Including less-than-truckload traffic.

[3] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).

[4] The developed surcharge is reduced 0.8 percnet to reflect fuel-related increases already included in UPS rates.

[FR Doc. 81-921 Filed 1-9-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, Federal Register at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed by Motor Carriers Under 49 U.S.C. §§ 11344 and 11349.* These rules provides among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable

provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: December 30, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor and Williams. Board member Krock not participating in MC-F-14523 and MC-F-14525.

MC-F-14523F, filed December 8, 1980. NEW PENN MOTOR EXPRESS, INC. (New Penn) (P.O. Box 630, Lebanon, PA 17042)—CONTINUANCE IN CONTROL—LEBARNOLD, INC. (Lebarnold) (P.O. Box 630, Lebanon, PA 17042). Representative: Jeremy Kahn, 1511 K Street, N.W., Washington, D.C. 20005. New Penn seeks authority to continue in control of Lebarnold upon the institution by Lebarnold of operations, in interstate or foreign commerce, as a motor contract carrier. By the same application Edward H. Arnold and Virginia A. Phillips, who control New Penn by stock ownership, seek authority to acquire control of said rights and property through the transaction. New Penn, a common carrier by motor vehicle, is authorized under No. MC-70832 and sub-numbers thereunder, to transport *general commodities,* usual exceptions, in interstate or foreign commerce, in PA, greater New York City, New England, and Northern and Southern NJ and DE. By permit served November 25, 1980, in MC-150170 (Sub-No. 1F), Lebarnold was granted authority to operate as a contract carrier, transporting *such commodities* as are dealt in or used by retail distributors of wearing apparel, between points in the U.S., under continuing contract(s) with Kinney Service Corporation, of Harrisburg, PA.

Note.—Lebarnold should be cautioned not to begin operations in MC-150710 (Sub-No. 1F), until common control has been approved.

MC-F-14524F, filed December 10, 1980. EASTER ENTERPRISES, INC., d.b.a. ACE LINES, INC. (ACE) (5320 N.E. 54th Avenue, Des Moines, IA 50305)—CONTROL—HOFFMAN TRANSFER, INC. (Hoffman) (1019 Cheyenne, Kansas City, KS). Representative: Thomas E. Leahy, 1980 Financial Center, Des Moines, IA 50309. Ace seeks authority to acquire control of Hoffman through the purchase of stock. Easter is controlled by the Board of Directors: L. D. Easter, Dennis Easter, R. L. Easter, and T. C. Miller. As a condition to the approval of this transaction they will be required to join in this application. The operating rights to be controlled are contained in Permits issued to Hoffman in MC-106200 and MC-106200 (Sub-No. 5), which authorize the transportation, as a motor contract carrier, over irregular routes, of (1) *soap, soap powder, cleaning and washing compounds, lard substitute, vegetable oil shortening, and advertising matter and premiums* used in connection with the sale of such commodities, from Kansas City, KS, to points in NE and those in IA on and west of US Hwy 218, and (2)(a) *foodstuffs* (except lard substitute and vegetable shortenings), and in connection therewith, *premiums and advertising material,* from Kansas City, KS, to points in NE and points in IA on and west of US Hwy 218, and (b) *unclaimed, unsalable, and returned shipments* of the above-specified commodities, from points in NE and points in IA on and west of US Hwy 218, to Kansas City, KS, under continuing contracts with Procter & Gamble Distributing Company. Ace is authorized to operate as a motor common carrier pursuant to certificates issued in MC-61231 and sub-numbers thereunder. Condition: Approval and authorization of this transaction is conditioned upon the prior receipt by the Commission of an affadivit signed by L. D. Easter, Dennis Easter, R. L. Easter, and T. C. Miller, stating that they are persons in control of transferee and that they join in this application.

Note.—Application for temporary authority has been filed.

MC-F-14525F, filed December 10, 1980. INDUSTRIAL CARTAGE COMPANY, INC. (Industrial) (7701 West Jefferson Avenue, Detroit, MI 48209)—CONTINUANCE IN CONTROL—GEEM TRANSPORT LTD (Geem) (Canada Trust Building, Windsor, Ontario, Canada N9A 5P2). Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Industrial seeks authority to continue in control of Geem upon the institution by Geem of operations, in interstate or foreign commerce, as a motor contract carrier. Piggy Back Services, Inc., a non-carrier, and sole stockholder of Industrial, and in turn Robert B. Shearer, William T. Shearer, Evan A. Adams, and Mary C. Schoolenberg, through equal ownership of all of its outstanding stock, jointly control Piggy Back Services, Inc., seek authority to acquire control of said rights and property through the transaction. Industrial holds no interstate operating rights. Industrial owns 100% of the issued and outstanding capital stock of (1) International Carriers, Inc., (MC-136807) and (2) I.C.L. International Carriers Limited (MC-86247). Geem has an application pending before the Commission in MC-148557F, seeking authority to operate in interstate or foreign commerce, as a contract carrier, to transport *parts, materials, supplies and equipment* used in the manufacturing, production, distribution and servicing of motor vehicles and transportation construction equipment, between the International Boundary line at all port of entry, between the United States and Canada, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with General Motors of Canada, Ltd.

Note.—Piggy Back Services, Inc., shall continue to be considered a carrier within the meaning of 49 U.S.C. 11348, and it shall continue to be subjected to the accounting, reporting, and securities provisions of 49 U.S.C. 11142, 11144, 11145, and 11302.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-924 Filed 1-9-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP4-176]

Motor Carriers; Permanent Authority Decisions

Decided: December 22, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the

Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any applications, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before February 26, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 2, Members Lieberman, Eaton, Chandler.

Agatha L. Mergenovich,
Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 42487 (Sub-1010F), filed December 15, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), serving points in Delaware and Dubuque Counties, IA, as intermediate and off-route points in connection with carrier's otherwise authorized regular-route operations.

MC 42487 (Sub-1011F), filed December 11, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Over regular routes, transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), (1) between Memphis and Union City, TN, over U.S. Hwy 51; (2) Between Memphis and Paris, NT, over U.S. Hwy 79; (3) between Union City, and Paris, TN: from Union City over TN Hwy 22 to junction TN Hwy 54, then over TN Hwy 54 to Paris, and return over the same route; (4) between Union City and Humboldt, TN, over U.S. Hwy 45W; (5) Between Humboldt, TN and Corinth, MS: from Humboldt over U.S. Hwy 45W to junction U.S. Hwy 45, then over U.S. Hwy 45 to Corinth, and return over the same route; (6) between Brownsville and Jackson, TN, over U.S. Hwy 70; (7) between Memphis, TN and junction U.S. Hwy 45 and U.S. Hwy 64, over U.S. Hwy 64; (8) Between St. Louis MO and junction U.S. Hwy 51 and Interstate Hwy 155: from St. Louis over U.S. Hwy 61 to junction Interstate Hwy 155, then over Interstate Hwy 155 to junction U.S. Hwy 51 and Interstate Hwy 155, and return over the same route; and (9) serving in connection with routes (1) through (8) described above all intermediate points and the off-route points of Dyersburg, Grand Junction, Halls, Moscow, Ripley and Tiptonville, TN.

MC 42487 (Sub-1012F), filed December 16, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), serving points in Salt Lake County, UT, as off-route points in connection with carrier's otherwise authorized regular-route operations.

MC 112617 (Sub-475F), filed December 16, 1980. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, Louisville, KY 40221. Representative: Edward J. Kiley, 1730 M St. NW., Washington, D.C. 20036. Transporting *commodities* in bulk, between points in the U.S. (except AK and HI).

MC 113267 (Sub-371F), filed December 16, 1980. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 3215 Tulane Rd., P.O. Box 30130 AMF, Memphis, TN 38130. Representative: Lawrence A. Fischer (same address as applicant). Transporting *such commodities* as are dealt in by grocery and food business houses, (a) between Plymouth, WI, on the one hand, and, on the other, points in TX, (b) between Van Wert, OH, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MS, NC, SC, TN, and TX; (c) between Rock Hill and Chester, SC, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, KY, LA, MS, MO, OH, TN, TX, and WI, and (d) between Birmingham, AL, on the one hand, and, on the other, points in AR, FL, GA, IL, IN, KY, LA, MS, MO, NC, OH, SC, TN, TX, and WI.

MC 120737 (Sub-74F), filed December 16, 1980. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting *such commodities* as are dealt in or used by agricultural, construction, and industrial equipment manufacturers and dealers (except commodities in bulk), between Grandville, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 124887 (Sub-124F), filed December 16, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Rt. 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Transporting (1) *fabricated metal products,* and (2) *materials, equipment, and supplies* used in the manufacture of fabricated metal products, between points in Florence County, SC, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 128837 (Sub-25F), filed December 15, 1980. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting *glass containers,* between points in Logan County, IL, on the one hand, and, on the other, points in San Joaquin County, CA,

and McKinley County, NM, and points in FL and MA.

MC 134197 (Sub-15F), filed December 15, 1980. Applicant: JACKSON AND JOHNSON, INC., West Church St., P.O. Box 327, Savannah, NY 13146. Representative: Raymond A. Richards, 35 Curtice PK, Webster, NY 14580. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in CT, DE, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, VA, VT, WV, and DC.

MC 141357 (Sub-9F), filed December 16, 1980. Applicant: SHANUS, INC., 232 1st St., North Minneapolis, MN 55401. Representative: Samual Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *coal and coke,* between points in IA, MN, and WI.

MC 141867 (Sub-25F), filed December 8, 1980. Applicant: SEPCIALIZED TRUCKING SERVICE, INC., 2301 Milwaukee Way, Tacoma, WA 98421. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of the United States Gypsum Company and its subsidiaries.

MC 145997 (Sub-32F), filed December 15, 1980. Applicant: J.E.M. EQUIPMENT, INC., P.O. Box 396, Alma, AR 72921. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *such commodities* as are dealt in or used by discount, variety, and grocery stores, between points in the U.S., restricted to traffic originating at or destined to the facilities of Wal-Mart Stores, Inc.

MC 146447 (Sub-5F), filed December 16, 1980. Applicant: TANBAC, INC., P.O. Box 22566, Ft. Lauderdale, FL 33335. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103. Transporting *such commodities* as are dealt in by manufacture or distributors of printed matter, between points in the U.S., under continuing contract(s) with A.D. Weiss Lithograph Company, Inc., of Hollywood, FL.

MC 146817 (Sub-10F), filed December 16, 1980. Applicant: GEORGE CAVES, d.b.a. CAVES TRUCKING, P.O. Box 29357, Lincoln, NE 68529. Representative: Max H. Johnston, P.O. Box 6597, Lincoln, NE 68506. Transporting *such commodities* as are dealt in or used by automotive supply stores (except commodities in bulk), between points in IL, KS, MO, OH, OK, TN, and NC, on the one hand, and, on the other, points in NE.

MC 146937 (Sub-6F), filed December 15, 1980. Applicant: ALL STAR AIR FREIGHT, INC., 7001 West 20th St., Hialeah, FL 33014. Representative: Richard B. Austin, 320 Rochester Bldg., 8390 N.W. 53rd St., Miami, FL 33166. Transporting (1) *replica automobiles,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S. under continuing contract(s) with Classic Motor Carriages, Inc., of Miami, FL.

MC 150177 (Sub-2F), filed December 11, 1980. Applicant: CONATSER TRUCKING, INC., 57 Berkshire Terrace, Amherst, MA 01002. Representative: Patrick A. Doyle, 60 Robbins Rd., Springfield, MA 01104. Transporting *such commodities* as are dealt in or used by the manufacturers and distributors of malt beverages (except commodities in bulk), between points in the U.S., under continuing contract(s) with Schoeling Brewing Company, of Cincinnati, OH.

MC 150567 (Sub-18F), filed December 16, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8918 Tesoro Dr., Suite 515, San Antonio, TX 78217. Transporting (1) *coffee, tea, cocoa, and non-drying creamer),* in containers, and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Hills Bros. Coffee, Inc., of San Francisco, CA.

[FR Doc. 81-916 Filed 1-9-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OP5-95]

Motor Carriers; Permanent Authority Decisions

Decided: December 24, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrents a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before February 26, 1981, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

Agatha L. Mergenovich,

Secretary.

Note.—all applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those

where service is for a named shipper "under contract".

MC 19778 (Sub-114F), filed December 9, 1980. Applicant: THE MILWAUKEE MOTOR TRANSPORTATION COMPANY, a corporation, 10800 Franklin Ave., Franklin Park, IL 60131. Representative: Robert F. Munsell (same address as applicant). Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 119988 (Sub-269F), filed December 10, 1980. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Larry Norwood (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between Richmond, IL, Genoa City, Lake Geneva and Pell Lakes, WI, Blocker, Deputy, LaCrosse, Lovett, Paris, Wanatah and Wilders, IN, Alum Rock, Foxboro, Parker, St. Petersburg and Turkey City, PA, Terrill, Ayrshire, Curlew, Langdon, Leon and Garden Grove, IA, Cheviott, Dent, Miamitown and Gerald, OH, Diamond Springs, Dunmor, Lewisburg, Pine Grove and Rosewood, KY, Albany, Bethany, Blythedale, Helena, King City, New Hampton and Ridgeway, MO, Hollister, Humphreys and Tipton, OK, Yolo Bypass, CA, Clifton and Franklinton, LA, and Barto, Conerly, Davo, Fernwood, Lexie, Kokomo, Mesa and Tylertown, MS, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier service for complete abandonment of rail carrier service.

MC 141579 (Sub-3F), filed December 5, 1980. Applicant: SECURITY DELIVERY SERVICE, INC., 33 Rector St., New York, NY 10006. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 152938F, filed November 18, 1980. Applicant: ROBERT A. FORMAN, 1401 Cedar Springs, Dallas, TX 75202. Representative: Robert K. Frisch, 2711 Valley View Lane, Suite 101, Dallas, TX 75234. To operate as a *broker*, in arranging for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 153118F, filed December 3, 1980. Applicant: ROBERT E. SPEARMAN d.b.a. RTS ENTERPRISES, 8625 Gazelle, El Paso, TX 79925. Representative: Robert E. Spearman (same as applicant). Transporting *food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners and agricultural fertilizers*, by the owner of the motor vehicle in such vehicle, (except in emergency situations), between points in the U.S.

[FR Doc. 81-917 Filed 1-9-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before February 26, 1981, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authoriy granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP5-691

Decided: December 26, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 52979 (Sub-23F), filed November 28, 1980. Applicant: HUNT TRUCK LINES, INC., West High St., Rockwell City, IA 50579. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Over *regular* routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission and commodities in bulk) between Rockwell City, IA, and Des Moines, IA, from Rockwell City over U.S. Hwy 20 to junction Interstate Hwy 35, then over Interstate Hwy 35 to Des Moines, and return over the same route, serving all intermediate points, and serving Sioux City, IA, Omaha, NE, and those points in IA on, north and west of a line beginning at the NE-IA State line, and extending along U.S. Hwy 6 to junction U.S. Hwy 65, and then along U.S. Hwy 65 to the IA-MN State line.

MC 56679 (Sub-175F), filed October 22, 1980, previously noticed in Federal Register issue of November 26, 1980. Applicant: BROWN TRANSPORT CORP., 352 University Ave., SW., Atlanta, GA 30310. Representative: Leonard S. Cassell (same address as applicant). General commodities (except Classes A and B explosives and household goods, as defined by the Commission), over the following regular routes: (1) Between Houston, TX and Des Moines, IA, from Houston over Interstate Hwy 45 (also over U.S. Hwy 75) to Dallas, then over Interstate Hwy

35 to Des Moines, and return over the same route. (2) Between Baton Rouge, LA and Galveston, TX, from Baton Rouge, over Interstate Hwy 10 to Houston, TX, then over U.S. Hwy 75 to Galveston, and return over the same route; (3) Between Jackson, MS and Ft. Worth, TX over Interstate Hwy 20; (4) Between Dallas, TX and Knoxville, TN, from Dallas, over Interstate Hwy 30 to Little Rock, AR, then over Interstate Hwy 40 to Knoxville, and return over the same route; (5) Between Little Rock, AR and Oklahoma City, OK over Interstate Hwy 40; (6) Between Oklahoma City, OK and Chicago, IL, from Oklahoma City over Interstate Hwy 44 (also over U.S. Hwy 66) to St. Louis, MO, then over Interstate Hwy 55 (also over U.S. Hwy 66) to Chicago, and return over the same route; (7) Between Kansas City, MO and Omaha, NE over Interstate Hwy 29; (8) Between Baton Rouge, LA and Kansas City, MO, from Baton Rouge over U.S. Hwy 190 to junction U.S. Hwy 71, then over U.S. Hwy 71 to Kansas City, and return over the same route; (9) Between Kansas City, KS and Chattanooga, TN, from Kansas City, over Interstate Hwy 70 to St. Louis, MO, then over Interstate Hwy 64 to junction U.S. Hwy 41, then over U.S. Hwy 41 (also over Interstate Hwy 24) to Chattanooga, TN and return over the same route; (10) Between Decatur, AL and Indianapolis, IN over Interstate Hwy 65; (11) Between Memphis, TN and St. Louis, MO over Interstate Hwy 55; (12) Between St. Louis, MO and Davenport, IA over U.S. Hwy 61; (13) Between junction U.S. Hwy 65 and Interstate Hwy 70 and junction U.S. Hwy 65 and Interstate Hwy 20 over U.S. Hwy 65; (14) Between Houston, TX and Texarkana, AR over U.S. Hwy 59; (15) Between Indianapolis, IN and St. Louis, MO over Interstate Hwy 70; (16) Between Cincinnati, OH and Evansville, IN, from Cincinnati over Interstate Hwy 71 to Louisville, KY and then over Interstate Hwy 64 to Evansville, and return over the same route; (17) Between Louisville, KY and Knoxville, TN, from Louisville over Interstate Hwy 64 to Lexington, KY, then over Interstate Hwy 75 to Knoxville, and return over the same route; (18) Between Bridgeport, OH, and Pittsburgh, PA, from Bridgeport over Interstate Hwy 70 to junction Interstate Hwy 79, then over Interstate Hwy 79 to Pittsburgh, and return over the same route; (19) Between Norfolk and Salem, VA, from Norfolk over Interstate Hwy 64 to junction U.S. Hwy 360, then over U.S. Hwy 360 to junction U.S. Hwy 460, then over U.S. Hwy 460 to Salem, and return over the same route; (20) Between Baltimore, MD, and Pittsburgh, PA, from Baltimore over Interstate Hwy 70 to junction Interstate Hwy 76, then over Interstate Hwy 76 to Pittsburgh, and return over the same route; (21) Between Chicago, IL, and Toledo, OH, over U.S. Hwy 20; (22) Between Toledo, OH, and Detroit, MI, over Interstate Hwy 75; (23) Between Chicago, IL, and Newark, NJ, from Chicago over U.S. Hwy 6 to Cleveland, OH, then over Interstate Hwy 90 to Albany, NY, then over Interstate Hwy 87 to Sufferen, NY, then over NY Hwy 17 to the NY–NJ State line, then over NJ Hwy 17 to Newark and return over the same route; (24) Between Syracuse, NY, and Harrisburg, PA, over Interstate Hwy 81; (25) Between Scranton, PA, and Newark, NJ, from Scranton over Interstate Hwy 380 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction PA Hwy 33 to junction Interstate Hwy 78, then over Interstate Hwy 78 to junction Interstate Hwy 287, then over Interstate Hwy 287 to junction Interstate Hwy 95, then over Interstate Hwy 95 to Newark, and return over the same route; (26) Between Scranton, PA, and Knoxville, TN, from Scranton over Interstate Hwy 81 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Knoxville, and return over the same route, serving all intermediate points in routes (1) through (26) and serving (a) Port Arthur, TX, Peoria, IL, Topeka, KS, Beaver Falls, PA, Boston, MA, Hot Springs, AR, Mobile, and Phoenix City, AL, and (b) points within 20 miles of the points named in (a), as off route points in routes (1) through (26) above.

Note.—This republication corrects routes (18) and (20). Applicant intends to tack with its otherwise authorized operations.

MC 99149 (Sub-17F), filed December 5, 1980. Applicant: MIDWAY MOTOR FREIGHT LINES, INC., 8400 New Benton Hwy, Little Rock, AR 72219. Representative: Charles J. Lincoln II, 1550 Tower Bldg., Little Rock, AR 72201. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between "Y" City, AR and Fort Smith, AR over U.S. Hwy 71, serving all intermediate points.

Note.—Applicant intends to tack the above authority with its presently held regular-route authority at "Y" City, AR.

MC 105269 (Sub-91F), filed October 6, 1980, initially published in the Federal Register on October 22, 1980. Applicant: GRAFF TRUCKING COMPANY, INC., 2110 Lake St., Kalamazoo, MI 49005. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in IL, IN, IA, KY, MI, MN, MO, OH, PA, WV, and WI. This application is republished so as to remove the restriction to the supporting shipper's facilities.

MC 106798 (Sub-10F), filed November 28, 1980. Applicant: GARDEN STATE COACHWAYS, INC., 690 Pearl St., Bridgeton, NJ 08032. Representative: Basil D. Beck, Jr., 230 East Commerce St., Bridgeton, NJ 08302. Transporting *passengers* and their baggage, in the same vehicle with passengers, in charter operations, beginning and ending at points in the Philadelphia, PA, commercial zone and those in Burlington County, NJ, and New Castle County, DE, and extending to points in the United States including Alaska (but excluding Hawaii).

MC 107478 (Sub-80F), filed December 3, 1980. Applicant: OLD DOMINION FREIGHT LINE, INC., 1791 Westchester Dr., P.O. Box 2006, High Point, NC 27261. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting (a) *material-handling equipment,* (b) machinery, except electrical, as defined in Item 35 of the Standard Transportation Commodity Code, and (c) *electrical machinery equipment, and supplies* as defined in Item 36 of the Standard Transportation Commodity Code, between points in Jefferson County, AL, Los Angeles and Tulare Counties, CA, Denver, El Paso and Mesa Counties, CO, Jefferson and McHenry Counties, IL, La Porte County, IN, Sullivan County, NH, Erie and Queen Counties, NY, Lenoir and Wilson Counties, NC, Cuyahoga and Tuscarawas Counties, OH, Cambria, Indiana, and Washington Counties, PA, Ellis and Harris Counties, TX, Carbon and Salt Lake Counties, UT, Scott and Tazewell Counties, VA, and Clark and Ohio Counties, WV, on the one hand, and, on the other, points in the U.S., (except AK and HI).

MC 110988 (Sub-435F), filed December 2, 1980. Applicant: SCHNEIDER TANK LINES, INC. 4321 W. College Ave., Appleton, WI 54911. Representative: Patrick M. Byrne, P.O. Box 2298, Green Bay, WI 54306. Transporting *such commodities* as are dealt in or used by manufacturers or distributors of catalyst, between points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 112989 (Sub-136F), filed November 21, 1980. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99

South, Eugene, OR 97405. Representative: John W. White, Jr. (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., restricted to traffic originating at or destined to the facilities of General Refractories Company.

MC 115648 (Sub-37F), filed December 2, 1980. Applicant: LOCK TRUCKING, INC., P.O. Box 278, Wheatland, WY 82201. Representative: Ward A. White, P.O. Box 568, Cheyenne, WY 82001. Transporting *building materials*, from points in ID, OR, and WA, to points in CO and UT.

MC 115669 (Sub-202F), filed December 1, 1980. Applicant: DAHLSTEN TRUCK LINE, INC., 101 W. Edgar St., P.O. Box 95, Clay Center, NE 68933. Representative: Vayle Hayes (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by Processed Minerals, Inc., its divisions and subsidiaries.

MC 126679 (Sub-26F), filed November 28, 1980. Applicant: DENNIS TRUCK LINES, INC., P.O. Box 189, Vidalia, GA 30474. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. Transporting *lumber, millwork, particleboard, building materials, concrete products, and pallets*, (a) from points in DE, MD, NJ, NY, PA, and VA, to points in AL, FL, and GA, (b) between points in NC, SC, and VA, on the one hand, and, on the other, points in DE, MD, NC, NJ, NY, PA, SC, TN, VA, and DC, and (c) between points in AR, IL, IN, KY, LA, MO, MS, OH, OK, and TX, on the one hand, and, on the other, those points in that part of the U.S. on and east of a line beginning at the mouth of the Mississippi River and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN to the international boundary line between the U.S. and Canada.

MC 135678 (Sub-26F), filed November 17, 1980. Applicant: MIDWESTERN TRANSPORTATION, INC., 20 S.W. 10th, Oklahoma City, OK 73125. Representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. Transporting *salt, in packages, pepper, in packages, film, dry plates, sugar, in packages, dry chemicals, in sheets, salt substitutes, in packages, liquid table sauces, cheese, sugar substitutes, dry swing compounds, paper, tissues, data processing machines, parts for data processing machines, dining kits, paper napkins, plastic articles, cream-substitute powder, in packages, sodium bisulphite, fertilizing compounds, in packages, and dry beverage preparations*, between points in OK, on the one hand, and, on the other, points in AZ, CA, CO, NM, NV, TX, and UT.

MC 136818 (Sub-118F), filed December 1, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Rd., P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Rd., Suite 320, Phoenix, AZ 85008. Transporting (1) *clothing and woolen products*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1), between Las Cruces, NM, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Furtex, Inc.

MC 142559 (Sub-163F), filed December 5, 1980. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Ave., Cleveland, OH 44114. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. Transporting *such commodities* as are dealt in by the manufacturers and distributors of filters (except commodities in bulk), between points in Vance County, NC, on the one hand, and, on the other, points in the U.S.

MC 143638 (Sub-6F), filed December 4, 1980. Applicant: JOHNSON'S TRUCKING INC., Route 1, Box 31, Inola, OK 74036. Representative: Troy Johnson (same address as applicant). Transporting *commodities in bulk*, between points in AR, CO, IA, KS, LA, MO, NE, NM, OK, TX, and WY.

MC 150568 (Sub-2F), filed December 2, 1980. Applicant: CASE CARRIAGE CO., a corporation, 715 S. Sugar St., Celina, OH 45822. Representative: James W. Muldoon, 50 W. Broad St., Columbus, OH 43215. Transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, and household goods as defined by the Commission), between Chicago, IL, Indianapolis, IN, Louisville, KY, Detroit, MI, Minneapolis, MN, St. Louis, MO, Carteret, NJ, Columbus and Evendale, OH, and Ft. Worth, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151959 (Sub-3F), filed December 5, 1980. Applicant: JOHN SPINELLA AND PAUL MCDERMOTT, d.b.a. TRANS-COPPER-EXPRESS CO., 512-514 State Fair Blvd., Syracuse, NY 13204. Representative: Donald G. Hichman, R.D. #1, Box 7, Union Springs, NY 13160. Transporting (a) *fabricated metal products*, (b) *parts and accessories* for fabricated metal products, and (c) *materials and supplies* used in the manufacture, assembly, and distribution of fabricated metal products, between points in Onondaga County, NY, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

Volume No. OP5-092

Decided: December 26, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 5888 (Sub-56F), filed December 9, 1980. Applicant: MID-AMERICAN LINES, INC., 127 West Tenth Street, Kansas City, MO 64105. Representative: Tom Zaun (same address as applicant). Transporting *wrought steel pipe and tubing and wrought iron pipe and tubing*, between Chicago, IL, and points in AR and OK.

MC 6598 (Sub-3F), filed December 8, 1980. Applicant: STERNS EXPRESS, INC., 100 Franklin St., Whitman, MA 02382. Representative: Russell S. Callahan, P.O. Box 1806, Brockton, MA 02403. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between New York, NY, points in Albany, Columbia, Dutchess, Greene, Orange, Putnam, Rensselaer, Rockland, Schenectady, Ulster and Westchester Counties, NY, and points in CT, MA, ME, NH, RI, and VT.

MC 25869 (Sub-175F), filed December 8, 1980. Applicant: C.O.D.E., INC., 4800 North Colorado Blvd., Denver, CO 80216. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Monroe County, NY, DuPage County, IL, and Weld County, CO.

MC 71079 (Sub-2F), filed December 10, 1980. Applicant: R.S.J. LEASING, INC., 127-36 Northern Blvd., Flushing, NY 11368. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting *iron and steel articles*, between points in the U.S.

MC 99069 (Sub-6F), filed December 9, 1980. Applicant: SOUTHGATE TRUCKING COMPANY, a corporation, P.O. Box 840, Norfolk, VA 23501. Representative: Harry C. Ames, Jr., 805 McLachlan Bank Bldg., 666 Eleventh St.,

NW., Washington, DC 20001. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between Norfolk, VA, on the one hand, and, on the other, Charleston, SC, Baltimore, MD, New York, NY, and points in NC and VA.

MC 106398 (Sub-1088F), filed December 8, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., P.O. Box 3329, Tulsa, OK 74101. Representative: Paul D. Borghesani, 300 Communicana Bldg., 421 South Second St., Elkhart, IN 46516. Transporting (1)(a) *forest products and lumber or wood products,* as described in Items 08 and 24 of the Standard Transportation Commodity Code Tariff, (b) *building materials,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commoditied in (1) between points in the U.S.

MC 108859 (Sub-86F), filed December 10, 1980. Applicant: CLAIRMONT TRANSFER CO., a corporation, 1803 Seventh Ave., North, Escanaba, MI 49829. Representative: Elmer J. Wery, P.O. Box 3548, Green Bay, WI 54303. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and liquid commodities in bulk), between St. Louis, MO, points in Clinton, Muscatine and Scott Counties, IA, Boone, Campbell, Daviess, Henderson, Jefferson and Kenton Counties, KY, Anoka, Carver, Dakota, Goodhue, Hennepin, LeSueur, Olmsted, Ramsey, Rice, Scott, Wabasha, Washington, Winona, and Wright Counties, MN, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, and Warren Counties, MO, and points in IL, IN, MI, OH, and WI.

MC 109818 (Sub-90F), filed November 24, 1980. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52808. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Transporting (1)(a) *automotive equipment,* (b) *automobile accessories, automobile parts, storage tanks, iron and steel articles, trailers, truck bodies, aluminum articles, and farm equipment,* (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1), and (3) *refuse containers, refuse compactors, hoists, balers, shredders, and waste handling equipment,* between points in Scott County, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 111238 (Sub-11F), filed December 10, 1980. Applicant: DOLLISON TRUCK LINES, INC., 308 Second Ave., South Charleston, WV 25303. Representative: J. W. Dollison, 1333 West Seventh Street, Cincinnati, OH 45203. Transporting *printed matter* between points in the U.S., under continuing contract(s) with Time, Inc., of Chicago, IL, and Triangle Publications, Inc., of Radnor, PA.

MC 113658 (Sub-42F), filed December 10, 1980. Applicant: SCOTT TRUCK LINE, INC., 5280 Newport Street, Commerce City, CO 80022. Representative: Richard J. Loose (same address as applicant). Transporting *such commodities* as are dealt in or used by the manufacturers of chocolate products (except commodities in bulk) from Baltimore, MD, New York, NY, Philadelphia, PA, Newport News, VA, and Norfolk, VA, to Chicago, IL.

MC 117068 (Sub-136F), filed December 4, 1980. Applicant: MIDWEST SPECIALIZED TRANSPORTATION, INC., P.O. Box 6418, Rochester, MN 55901. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. Transporting (1) *tractors (except truck-tractors), lift trucks, excavators, motor graders, scrappers, engines, generators, generators and engines combined, road rollers, pipe layers and dump trucks,* and (2) *parts, attachments, and accessories* for the commodities in (1), from points in IL, OH, OR, and IA, to points in ND.

MC 118468 (Sub-69F), filed December 9, 1980. Applicant: UMTHUN TRUCKING CO., a Corporation, 910 South Jackson St., Eagle Grove, IA 50533. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting *chemicals and detergents,* and *materials and supplies* used in the manufacture and distribution of chemicals and detergents, between points in the U.S., under a continuing contract(s) with Overton Chemical Sales, Inc., of Sumner, IA.

MC 119428 (Sub-3F), filed December 5, 1980. Applicant: NAP & PAUL'S BOAT TRANSPORT, LTD., 385 Main St., East Hartford, CT 06118. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123. Transporting *boats and boating equipment,* and *materials and supplies* used in their manufacture between points in the U.S. (including AK, but excluding HI).

MC 124676 (Sub-132F), filed December 8, 1980. Applicant: C. R. ENGLAND AND SONS, INC., 975 West 2100 South, Salt Lake City, UT 84119. Representative: Michael L. Bunnell (same address as applicant). Transporting *paper and paper products,* between points in Snohomish County, WA, on the one hand, and, on the other, points in UT.

MC 126899 (Sub-133F), filed December 4, 1980. Applicant: USHER TRANSPORT, INC., P.O. Box 3156, Paducah, KY 42001. Representative: George M. Catlett, Suite 708, McClure Building, Frankfort, KY 40601. Transporting (1) *lumber or wood products;* except furniture, as described in Item 24 and (2) *fabricated metal products;* except ordnance, as described in Item 34, of the Standard Transportation Commodity Code, between point in Jefferson County, KY, on the one hand, and, on the other, points in AR, IL, IN, MO, OH, TN and WV.

MC 133689 (Sub-351F), filed December 2, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples Street NE., Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting (1) *power generating equipment, and accessories for power generating equipment,* and (2) *materials, supplies and equipment used in the manufacture of commodities in (1) above,* between the facilities of Onan Corporation in (a) Hennepin County, MN, and (b) Madision County, AL, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

Volume No. OP5–093

Decided: December 24, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 136818 (Sub-117F), filed December 1, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Rd., P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Rd., Suite 320; Phoenix, AZ 85008. Transporting *chemicals and minerals,* between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Molycorp, Inc.,

MC 138328 (Sub-128F), filed December 8, 1980. Applicant: CLARENCE L. WERNER, d.b.a. WERNER ENTERPRISES, I–80 & Hwys 50, P.O. Box 37308, Omaha, NE 68137. Representative: Donna Ehrlich (same address as applicant). Transporting *lumber or wood products,* (except furniture), as described in Item 24 of the Standard Transportation Commodity Code Tariff, from points in Otero and McKinley Counties, NM, Garfield County, UT, and Sheridan County, WY, to points in the U.S.

MC 138438 (Sub-98F), filed December 8, 1980. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N.

Button, 580 Northern Ave., Hagerstown, MD 21740. Transporting (1) (a) *pipe, pipe fittings, couplings, roofing materials, building materials, and insulating materials,* (b) *materials and supplies* used in the installation of the commodities in (1)(a), and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by CertainTeed Corporation.

MC 138469 (Sub-258F), filed December 10, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting *such commodities* as are dealt in or used by manufacturers of food seasoning (except in bulk) between points in Los Angeles County, CA, on the one hand, and, on the other, points in IL, NJ, NY, PA, and TX.

MC 140459 (Sub-21F), filed December 8, 1980. Applicant: FRITZ TRUCKING, INC., East Highway 7, Clara City, MN 56222. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *citrus juices and citrus juice concentrates,* from points in FL to Minneapolis, MN.

MC 140709 (Sub-17F), filed December 12, 1980. Applicant: FRANKHAUSER BROS INC., 139 Hillside, El Dorado, KS 67042. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *liquid feed ingredients* (a) between points in Wichita County, KS, on the one hand, and, on the other, points in MO and CO, and (b) between points in Jasper County, MO, on the one hand, and, on the other, points in AR, OK, and KS.

MC 141869 (Sub-2F), filed December 3, 1980. Applicant: ROYAL COACH LINES, INC., 1600 Junction Ave., Racine, WI 53403. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402. Over regular routes, transporting *passengers and their baggage* and *express and newspapers* in the same vehicle with passengers, between Sheboygan, WI and The O'Hare International Airport at Chicago, IL, from Sheboygan over Interstate Hwy 43 (also over U.S. Hwy 41) to junction Interstate Hwy 94, then over Interstate Hwy 94 to O'Hare Field, and return over the same route, serving points in Sheboygan, Ozaukee and Washington Counties, WI as intermediate and off-route points.

MC 142449 (Sub-12F), filed December 5, 1980. Applicant: SPEEDWAY HAULERS, INC., P.O. Box 1463, South Bend, IN 46624. Representative: Paul D. Borghesani, 300 Communicana Bldg., 421 South Second St., Elkhart, IN 46516. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in Cook, Du Page, Kane, Kendall, Lake, Mc Henry, and Will Counties, IL, and Lake and Porter Counties, IN, on the one hand, and, on the other, those points in MI on and south of MI Hwy 46, and points in IN. Condition: Any certificate issued in this proceeding is subject to prior or coincidental cancellation, at applicant's written request, of its authority in MC-142449 Subs 1, 3, and 11.

MC 143059 (Sub-147F), filed December 1, 1980. Applicant: MERCER TRANSPORTATION CO., a corporation, P.O. Box 35610, Louisville, KY 40232. Representative: Janice K. Taylor (same address as applicant). Transporting *such commodities* as are dealt in or used by (1) manufacturers of (a) iron and steel articles and (b) fallout shelters, and (2) distributors of fallout shelter supplies, between points in Sullivan County, PA and Trumbull County, OH, on the one hand, and, on the other, points in the U.S.

MC 143328 (Sub-38F), filed December 8, 1980. Applicant: EUGENE TRIPP TRUCKING, P.O. Box 2730, Missoula, MT 59806. Representative: David A. Sutherlund, 1150 Connecticut Ave., NW., Suite 400, Washington, DC 20036. Transporting (1) *beverages,* and (2) *such products* as are dealt in by grovery stores, food business houses, and food service houses, between points in CA and CO.

MC 143488 (Sub-2F), filed December 10, 1980. Applicant: LAUREN L. DYE, d.b.a. LAUREN L. DYE & SON TRUCKING, 10342 South 400 West, Union Mills, IN 46382. Representative: Bruce R. Bancroft, Sixth Floor, First Bank Bldg., South Bend, IN 46601. Transporting *malt beverages,* in containers, between points in the U.S., under continuing contract(s) with Brumm Distributing Co., Inc., of Highland, IN.

MC 144269 (Sub-1F), filed December 10, 1980. Applicant: MESSA ENTERPRISES, INC., P.O. Box 2000, Wise, VA 24293. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting *commodities* which, because of size or weight, require the use of special equipment, *construction equipment, and heavy machinery,* between points in AL, AR, FL, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, WV, and DC.

MC 144498 (Sub-3F), filed December 9, 1980. Applicant: HIX TRANSPORT, INC., 4129 N-500 E., Van Buren, IN 46991. Representative: Robert W. Loser, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204. Transporting *such merchandise* as is dealt in or used by wholesale, retail, and chain grocery and food business houses, between points in the U.S., under continuing contract(s) with The Kroger Co., of Cincinnati, OH.

Volume No. OP5-094

Decided: December 24, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 16639 (Sub-3F), filed November 26, 1980. Applicant: STODDARD TRANSFER AND FUEL, INC., Atlas Road, Coeur d'Alene Industrial Park, Coeur d'Alene, ID 83814. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. Transporting *Household goods as defined by the Commission,* between points in ID, WA, OR, MT, NV, CA, AZ, WY, UT, CO, and NM.

MC 144879 (Sub-9F), filed November 25, 1980. Applicant: D AND J TRANSFER COMPANY, a corporation, Highway 4 North, Sherburn, MN 56171. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in Marion County, IN, and points in IL, IA, MN, NE, and SD, on the one hand, and, on the other, those points in the U.S. in and east of MT, WY, CO, OK and TX.

MC 144969 (Sub-25F), filed December 9, 1980. Applicant: WHEATON CARTAGE CO., a corporation, 3rd and G Streets, Millville, NJ 08322. Representative: Laurence J. DiStefano, Jr., 1101 Wheaton Ave., Millville, NJ 08332. Transporting *general commodities* (except commodities in bulk, those of unusual value, classes A and B explosives, and household goods as defined by the Commission), between Davenport, IA, Chatsworth and West Chicago, IL, Rice Lake, WI, Harrisburg, PA, Atlanta, GA, Carrollton, San Antonio, and Long View, TX, and Hollywood, Tampa, Orlando, and Jacksonville, FL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 144999 (Sub-3F), filed December 5, 1980. Applicant: JEM TRUCKING COMPANY, INC., P.O. Box 217, Wilkesboro, NC 28697. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. Transporting (1)

architecutral wood and plastic laminated doors, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with Buell Door Company, of Dallas, TX.

MC 145018 (Sub-19F), filed December 8, 1980. Applicant: NORTHEAST DELIVERY, INC., P.O. Box 127, Taylor, PA 18517. Representative: Edward F. V. Pietrowski, 3300 Birney Ave., Moosic, PA 18507. Transporting (1) *plastic film, plastic bags, and and plastic sheeting,* and (2) *materials and supplies* used in the manufacture of the commodities in (1), between Pottsville, PA, on the one hand, and, on the other, points in CA and TX.

MC 145108 (Sub-33F), filed November 21, 1980. Applicant: BULLET EXPRESS, INC., 5600 First Ave., Brooklyn, NY 11220. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting (1) *bakery supply products and foodstuffs,* and (2) *materials, equipment, and supplies* used in the manufacture and sale of the commodities in (1), (except commodities in bulk), between points in the U.S., under continuing contract(s) with J. W. Allen & Company, of Wheeling, IL.

MC 145149 (Sub-11F), filed December 2, 1930. Applicant: MATADOR SERVICE, INC., P.O. Box 2256, Wichita, KS 67201. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *coke,* in dump vehicles, from Decatur, Florence, Guntersville and Sheffield, AL, and Chattanooga and Knoxville, TN, to points in AL, GA, MS, and TN, restricted to traffic having a prior movement by water.

MC 145738 (Sub-23F), filed December 1, 1980. Applicant: EAST–WEST MOTOR FREIGHT, INC., P.O. Box 607, Hwy 45 South, Selmer, TN 38375. Representative: Sonny Curtner (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between Nashville, Lebanon, Millersville, Greenbriar, Cookeville, Murfreesboro and McMinnville, TN, on the one hand, and, on the other, points in CA, OR, WA, CO, NV, UT, AZ, ID, and WY, restricted to traffic originating at or destined to the facilities of Mid-South Shippers Association, Inc.

MC 145828 (Sub-3F), filed December 2, 1980. Applicant: RONALD L. JONES, d.b.a. ALGOMA FARMS, 1762 Leonard Road North, Oshkosh, WI 54901. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. Transporting (1) *fabricated steel products* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) between points in the U.S., under continuing contract(s) with John Mathwig & Sons, Inc., of Oshkosh, WI.

MC 150398 (Sub-2F), filed December 2, 1980. Applicant: BLUE EXPRESS, INC., P.O. Box 292, Canton, SD 57013. Representative: Rick A. Rude, Suite 611, 1730 Rhode Island Ave. NW., Washington, DC 20036. Transporting *such commodities* as are dealt in or used by (1) retail gift and curio shops, catalogue distribution centers, and (2) manufacturers of foodstuffs and animal foods, between points in Dane and Green Counties, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 150398 (Sub-3F), filed December 3, 1980. Applicant: BLUE EXPRESS, INC., P.O. Box 292, Canton, SD 57013. Representative: Rick A. Rude, Suite 611, 1730 Rhode Island Ave NW., Washington, DC 20036. Transporting *meats, meat products, meat by-products, and articles distributed by meat-packing houses,* between points in the U.S., under continuing contract(s) with Dalson Foods, Inc., of Maplewood, MN.

MC 151989 (Sub-1F), filed December 10, 1980. Applicant: TODD TRANSPORTATION COMPANY, a corporation, 421 Garrard Street, Covington, KY 41011. Representative: Stephen D. Strauss, 2613 Carew Tower, Cincinnati, OH 45202. Transporting *general commodities,* (except classes A and B explosives and household goods as defined by the Commission) between points in the U.S., under continuing contract(s) with H. J. Hosea and Sons Company of Newport, KY, and MegNa Forwarding, Inc. of Wilder, KY.

Volume No. OPS–096

Decided: December 24, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 78228 (Sub-183F), filed October 26, 1980. (Republication) Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr, 2310 Grant Building, Pittsburgh, PA 15219. Transporting *iron and steel articles,* and *materials, equipment, and supplies* used in the manufacture of iron and steel articles, between Beaver Falls, Ambridge, and Koppel, PA, and Alliance, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—This republication corrects the territorial description.

MC 119399 (Sub-142F), filed December 8, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Blvd., Joplin, MO 64801. Representative: Don D. Lacy (same as applicant). Transporting (1) *cheese and cheese product* and (2) *Materials and supplies* used in the production and distribution of (1) above (except in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by L. D. Schreiber Cheese Co., Inc.

MC 123048 (Sub-489F), filed December 3, 1980. Applicant: DIAMOND TRANSPORTATION SYSTEMS, INC., 5021 21st Street, Racine, WI 53406. Representative: Carl S. Pope (same address as applicant). Transporting *such commodities* as are dealt in, or used by agricultural equipment and industrial equipment dealers and manufacturers (except commodities in bulk), between points in the U.S., restricted to traffic originating at or destined to the facilities of Class of America, Inc., and its dealers.

MC 136818 (Sub-119F), filed December 1, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Road, P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. Transporting *general commodities,* (except those of unusual value, classes A and B explosives, and household goods as defined by the Commission), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Van Waters & Rogers.

MC 145978 (Sub-8F), filed December 3, 1980. Applicant: R & S TRUCKING, INC., 527 E. 52nd St. N., Sioux Falls, SD 57104. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Avenue, Sioux Falls, SD 57101. Transporting *chemicals and cleaning supplies* (except commodities in bulk), from points in MN, IL, and WY to points in SD.

MC 146078 (Sub-36F), filed December 5, 1980. Applicant: CAL-ARK, INC., 854 Moline, P.O. Box 610, Malvern, AR 72104. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. Transporting *metal containers,* from the facilities of Thompson Can Company, at or near Dallas, TX, to points in AR, OK, MS, LA, and TN.

MC 150339 (Sub-20F), filed December 1, 1980. Applicant: PIONEER

TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same address as applicant). Transporting (1) *rubber scrap,* and (2) *such commodities* as are used in the recycling of rubber scrap, between points in the U.S., under continuing contract(s) with Baker Rubber, Inc., of South Bend, IN.

MC 150859 (Sub-1F), filed December 9, 1980. Applicant: H & L HOUSEHOLD MOVERS, INC., 14674-I Southlawn Lane, Rockville, MD 20850. Representative: Edward E. Harrison (same address as applicant). Transporting *household goods* as defined by the Commission, between points in MD, VA, and DC, on the one hand, and, on the other, points in the U.S. Condition: The person or persons who appear to be engaged in common control of applicant and other regulated carriers must either file an application for approval of common control under 49 U.S.C. §11343 or submit an affidavit indicating why such approval is unnecessary.

MC 150939 (Sub-5F), filed December 9, 1980. Applicant: GEMINI TRUCKING, INC., 1533 Broad St., Greensburg, PA 15601. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting (1) *automobile accessories,* and (2) *such commodities* as are used in their manufacture and distribution, between points in the U.S., under a continuing contract(s) with Mark Fore Vatco, Division of Beatrice Foods Co., of Chelsea, MA. Condition: The person or persons who appear to be engaged in common control of applicant and other regulated carriers must either file an application for approval of common control under 49 U.S.C. § 11343 or submit an affidavit indicating why such approval is unnecessary.

MC 150939 (Sub-7F), filed December 9, 1980. Applicant: GEMINI TRUCKING, INC., 1533 Broad St., Greensburg, PA 15601. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *synthetic fibers, synthetic textiles, plastics, and plastic products,* between points in the U.S. under continuing contract(s) with Celanese Fibers Company, Celanese Fibers Marketing Company, Fibers Industries, Inc., Amcel Company, Pan Amcel Company, and Pama Manufacturing Company, all of Charlotte, NC. Condition: The person or persons who appear to be engaged in common control of applicant and other regulated carriers must either file an application for approval of common control under 49 U.S.C. § 11343, or submit and affidavit indicating why such approval is unnecessary.

MC 152239 (Sub-2F), filed December 8, 1980. Applicant: C-B BROKERS, INC., P.O. Box 10, Hanover, VA 23069. Representative: J. D. Brown (same address as applicant). Transporting (1) *paper and paper products, pulp board, wood pulp,* and *particle board* from West Point, VA, to points in the U.S., and (2) *materials, equipment and supplies* used in the manufacture of the commodities in (1), in the reverse direction.

MC 152629 (Sub-1F), filed December 9, 1980. Applicant: ATLAS WAREHOUSE COMPANY, a corporation, P.O. Box 456, Burlington, IA 52601. Representative: Michael D. Bromley, 805 McLachlen Bank Bldg., 666 11th St., NW., Washington, DC 20001. Transporting (1) *bakery goods,* from the facilities of Midwest Biscuit Company, at Burlington, IA, to points in the U.S. (except AK and HI), and (2) *materials, equipment, and supplies* used in the manufacture and distribution thereof, in the reverse direction.

MC 152989F, filed December 2, 1980. Applicant: SHELBY BUS COMPANY, INC., 219 North Broadway, Shelbyville, IL 62565. Representative: Dove & Dove, 143 East Main St., Shelbyville IL 62565. Transporting *passengers and their baggage,* in round-trip charter operations beginning and ending at Shelbyville, IL, and extending to points in MO, IA, IN, and MI.

Volume No. OP0-097

Decided: December 29, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 22509 (Sub-33F), filed December 15, 1980. Applicant: MISSOURI-NEBRASKA EXPRESS, INC., 5310 St. Joseph Ave., St. Joseph, MO 64506. Representative: Harry Ross, 58 South Main St., Winchester, KY 40391. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI).

MC 98088 (Sub-22F), filed November 21, 1980. Applicant: LINDLEY TRUCKING SERVICE, INC., 1701 Grand Ave., Granite City, IL 62040. Representative: Richard Chasteen (same address as applicant). Transporting (1) *metal, and metal articles,* and (2) *materials and supplies* used in the manufacture and distribution of metal articles, between points in IL and MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 99208 (Sub-16F), filed November 10, 1980. Applicant: SKYLINE TRANSPORTATION, INC., 131 Quincy Ave., P.O. Box 3569, Knoxville, TN 37917. Representative: W.H. Reed, Sr. (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in AL, AR, FL, GA, KY, LA, MS, NC, SC, TN, TX, and VA.

Note.—Applicant intends to tack this authority with its existing authorities.

MC 113158 (Sub-48F), filed November 12, 1980. Applicant: TODD TRANSPORT COMPANY, INC., Secretary, MD 21664. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113. Transporting *malt beverages,* between points in Monroe County, NY and Forsyth County, NC, on the one hand, and, on the other, points in MD.

MC 114829 (Sub-25F), filed December 3, 1980. Applicant: GENERAL CARTAGE COMPANY, INC., P.O. Box 417, Sterling, IL 61081. Representative: Bernard J. Kompare, Suite 1600, 10 S. LaSalle St., Chicago, IL 60603. Transporting *such commodities* as are dealt in or used by manufacturers of metal products, wood products and fiberglass products, between points in the U.S., under continuing contract(s) with Frantz Manufacturing Company of Sterling, IL.

MC 119789 (Sub-723F), filed December 8, 1980. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as applicant). Transporting (1) *foodstuffs* (except frozen foodstuffs, and in bulk), from Opelousas, LA, to points in the U.S. (except AK and HI), and (2) *materials, equipment, and supplies* used in the production and distribution of the commodities in (1), in the reverse direction. Condition: Any certificate issued in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of authority in MC 119789 (Subs-306, 348, and 647).

MC 123048 (Sub-488F), filed November 20, 1980. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st St., Racine, WI 53406. Representative: John L. Bruemmer, 121 West Doty St., Madison, WI 53703. Transporting *such commodities* as are dealt in or used by dealers and manufacturers of machinery (except commodities in bulk), between points in the U.S., restricted to traffic originating at or destined to the facilities used by Cincinnati Milacron Inc., and its dealers.

MC 129378 (Sub-1F), filed December 11, 1980. Applicant: JENNINGS TRUCKING SERVICE, INC., Route 1, Box 72, Gotebo, OK 73041. Representative: James L. Jennings (same address as applicant). Transporting (1) *sand, rock, and gravel,* (2) *gypsum and gypsum products,* and (3) *limestone,* between points in OK, on the one hand, and, on the other, points in TX.

MC 134038 (Sub-8F), filed December 9, 1980. Applicant: MAJORS TRANSIT, INC., P.O. Box 7, Caneyville, KY 42721. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. Over *regular* routes, transporting *general commodities,* (except classes A and B explosives) between Louisville, KY and Nashville, TN, (1) from Louisville over Interstate Hwy 65 to Nashville and return over the same route, and (2) from Lousiville over U.S. Hwy 31–W to Nashville and return over the same route, serving the intermediate points in Bowling Green, KY and the intermediate points in Elizabethtown, KY for purposes of joinder only.

MC 135419 (Sub-3F), filed October 15, 1980, previously noticed in the Federal Register issue of November 4, 1980. Applicant: CONTAINER CARRIER CORPORATION, P.O. Box 48, Fort Smith, AR 72902. Representative: William D. Hendrix (same address as applicant). Transporting *motor vehicles,* in containers between Houston and Dallas, TX, restricted to traffic having a prior or subsequent movement by water.

Note.—Purpose of republication is to modify the authority as above.

MC 139559 (Sub-2F), filed December 12, 1980. Applicant: B & H CARTAGE, INC., 52 Summit St., Newark, OH 43055. Representative: William L. Weese (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in OH, restricted to traffic having a prior or subsequent movement by rail.

MC 146438 (Sub-8F), filed December 11, 1980. Applicant: ETV, INC., P.O. Box 393, Comstock Park, MI 49321. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226. Transporting (1) *materials and supplies* used in the production and distribution of infants' and children's wear, from points in NC and TN to the facilities of H. H. Cutler Co., in MI, NC, and TN, and (2) *infants' and children's wear,* from the facilities of H. H. Cutler Co., in MI, NC, and TN, to points in the U.S. (except AK and HI).

MC 149418 (Sub-2F), filed November 4, 1980 (republication). Applicant: BATESVILLE CASKET COMPANY, INC., Batesville, IN 47006. Representative: Edward F. Schiff, 1333 New Hampshire Ave., NW., Suite 400, Washington, DC 20036. Transporting (1) *metal fireplaces* and (2) *equipment and accessories* for metal fireplaces, between points in the U.S., under continuing contract(s) with Marco Manufacturing, Inc., of Louisville, KY.

Note.—This republication shows the territorial description.

MC 151249 (Sub-1F), filed December 8, 1980. Applicant: NICHOLAS COROMELAS, d.b.a. INDEPENDENT TRANSPORT OF CALIFORNIA, 3520 Fern Circle, Seal Beach, CA 90740. Representative: Nicholas Coromelas (same address as applicant). Transporting *plastic and plastic articles* and *materials* used in the manufacture of plasic and plastic articles, between points in the U.S., under continuing contract(s) with Filon, Division of Vistron Corporation, of Hawthorne, CA.

MC 153119F, filed December 8, 1980. Applicant: ROBERT FLEEGE, d.b.a. FLEEGE DISTRIBUTING CO., P.O. Box 273, Foley, MN 56329. Representative: Robert Fleege (same address as applicant). Transporting *millwork, hardware, building products, and deminsion lumber,* between points in the U.S., under continuing contract(s) with Woodcraft Industries, Inc., of St. Cloud, MN, and its subsidiaries.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-918 Filed 1-9-81; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-37F)]

Seaboard Coast Line Railroad Co.—Abandonment Near Craggs and Bell, FL; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided December 24, 1980, a finding which is administratively final was made by the Commission, Review Board Number 5 stating that the public convenience and necessity permit the abandonment by the Seaboard Coast Line Railroad Company of the following portions of a line of railroad extending from milepost SN-722.2 near Craggs, FL, a total distance of 8.6 miles in Gilchrist County, FL, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment Goshen,* 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Seaboard Coast Line Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 15 days from the date of publication, the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice; and

(2) it is likely that such proffered assistance would:

(a) cover the difference between the revenues which are attributable to such line railroad and the avoidable cost of providing of rail freight service on such line, together with a reasonable return on the value of such line, or

(b) cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after notice is published. Upon notification to the Commission of the execution of an assitance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96–448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-923 Filed 1-9-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

Important Notice

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with

the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-85

The following applications were filed in region I.

Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 153333 (Sub-1-1TA), filed December 30, 1980. Applicant: COOPER-JARRETT, INC., Hanover Plaza, Morristown, NJ 07960. Representative: William J. Hanlon, Esq., Hanover Plaza, Morristown, NJ 07960. *Contract carrier:* irregular routes: *Beverages and such commodities as are dealt in by a distributor of beverages* between the facilities of Consolidated Distribution Services in Alameda and San Francisco Counties, CA and all points in the US, under a continuing contract with Consolidated Distribution Services of Union City, CA. Supporting shipper: Consolidated Distribution Services, 33589 Central Avenue, Union City, CA 94587.

MC 11727 (Sub-1-1TA), filed December 30, 1980. Applicant: JAMES H. RUSSELL, INC., Three Rock Hill Road, Smithfield, RI 02917. Representative: Charles R. Reilly, 391 Davisville Road, North Kingstown, RI 02852. *Beverages and related materials used in the manufacture and distribution of beverages,* between New Haven, CT, and points in DE, ME, MD, MA, NH, NJ, NY, PA, and RI, and between Portland, ME, and points in CT, DE, MD, MA, NH, NJ, NY, PA, and RI. Supporting shipper: Cott Corporation, 197 Chatham Street, New Haven, CT 06513.

MC 82101 (Sub-1-1TA), filed December 30, 1980. Applicant: WESTWOOD CARTAGE, INC., 62 Everett Street, Westwood, MA 02090. Representative: John P. Tynan, 201 Juno Street, P.O. Box 777, Jupiter, FL 33458. *Contract carrier:* irregular routes: *Department store merchandise, and material, equipment and supplies,* between points in MA and NH, under continuing contract with Lechmere Sales Co., Inc. Supporting Shipper: Lechmere Tire & Sales Co., Inc., 275 Wildwood Street, Woburn, MA 01801.

MC 151639 (Sub-1-7TA), filed December 29, 1980. Applicant: COMMAND TRNSPORTATION, INC., 280 Eastern Avenue, Chelsea, MA 02150. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *Stationery, greeting cards, wrapping paper, office furnishings and materials, equipment, and supplies used in the manufacture of greeting cards and stationery,* from Dedham, MA to West Chester, PA. Supporting shipper: Rust Craft Greeting Cards, Inc., Rust Craft Road, Dedham, MA 02026.

MC 151639 (Sub-1-8TA), filed December 29, 1980. Applicant: COMMAND TRANSPORTATION, INC., 280 Eastern Avenue, Chelsea, MA 02150. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *Gloves and glove findings,* between Norwood, MA and New York, NY. Supporting shipper: Safety House of New England, Inc., 930 Washington, Street, Norwood, MA 02062.

MC 59720 (Sub-1-4TA), filed December 29, 1980. Applicant: KENMORE TRANSPORTATION COMPANY, 22 Eskow Road, Worcester, MA 01604. Representative: James C. Hardman, 33 N. La Salle Street, Chicago, IL 60602. *Plastic materials,* between Leominster, MA, Copley, OH, and Forest City, NC , on the one hand, and, on the other, points in the U.S. east of the Mississippi River. Supporting shipper: Polysar Incorporated, 29 Fuller St., Leominster, MA.

MC 150987 (Sub-1-6TA), filed December 22, 1980. Applicant: DOWN EAST TRUCKING INC., MRC 156, Bangor, ME 04401. Representative: R. Emery Clark, 366 Executive Building, 1030 Fifteenth St. NW., Washington, D.C. 20005. *Lumber,* from Greenville Junction, ME to points in CT, MA, NJ, NY, NH, PA, RI, and VT. Restricted to traffic originating at and/or destined to the facilities of Boulette Lumber Company. Supporting shipper: Boulette Lumber Company, P.O. Box 303, Greenville, Junction, ME 04442.

MC 93147 (Sub-1-10TA), filed December 23, 1980. Applicant: DELTA TRANSPORT CORPORATION, P.O. Box 546, 840 Union Street, West Springfield, MA 01089. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. *Lawn and garden products, equipment, materials and supplies used in the manufacture, sale and distribution of such commodities,* between points in NJ and points in the US. Supporting shipper: Melnor Industries, 1 Carol Place, Moonachie, NJ 07074.

MC 93147 (Sub-1-9TA), filed December 23, 1980. Applicant: DELTA TRANSPORT CORPORATION, P.O. Box 546, 840 Union Street, West Springfield, MA 01089. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 10013. *Glass and glass products, and equipment, materials and supplies used in the manufacture, sale and distribution of such commodities,* between points in PA and points in the US. Supporting shipper: General Glass International Corp., 270 North Avenue, New Rochelle, NY 10801.

MC 148958 (Sub-1-1TA), filed December 24, 1980. Applicant: EVCCO TRANSPORTATION, INC., Route 22, Box 535, Lebanon, NJ 08833. Representative: George A. Olsen, P.O. Box 357, Gladstone NJ 07934. *Contract carrier:* irregular routes: *(1) Paper, paper products, plastic, plastic products, and hospital supplies; and (2) materials, equipment, and supplies used in the manufacture, sale, and distribution of the commodities named in (1) above,* between points in the US. Supporting shipper(s): Whitestone Products, 40 Turner Place, Piscataway, NJ 08854.

MC 118803 (Sub-1-7TA), filed December 23, 1980. Applicant: ATLANTIC TRUCK LINES, INC., 168 Town Line Road, Kings Park, NY 11754. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *Plastic articles, and equipment and material and supplies used in the manufacuture and distribution of plastic*

articles, between points in the US. Restricted to traffic originating at or destined to facilities or Mobil Chemical Co., under contract(s) with Mobil Chemical Co., Macedon, NY. Supporting shipper: Mobil Chemical Co., Macedon, NY 14502.

MC 140986 (Sub-1–2TA), filed December 23, 1980. Applicant: GREAT NORTHERN TRUCK LINES, INC., Bank Street, Netcong, NJ 07857. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract Carrier:* irregular routes: *Adhesives, building materials, composition boards, gypsum products, gypsum board paper, mineral fiber products, paint and paint products and materials and supplies used in the packaging, installation or distribution thereof, except in bulk* between Mobile, AL, Plainfield, IL, Cloquet, MN, Greenville, MS, Barrington, NJ, Gypsum, Newark and Talmadge, OH, and Walworth, WI, on the one hand, and, on the other, points in the US. Supporting shippers: Kamco Supply Corp., Brooklyn, NY, Kamco Supply Corp., New England and Kamco Supply Corp., Boston, 4002–15th Avenue, Brooklyn, NY 11218.

MC 152999 (Sub-1–1TA) filed December 18, 1980. Applicant: LYNDONVILLE VINEGAR, INC., 247 West Avenue, Lyndonville, NY 14098. Representative: William J. Hirsch, Esq., 125 Convention Tower, 43 Court Street, Buffalo, NY 14202. *Contract carrier:* irregular routes: *General commodities, with the usual exceptions,* between Lyndonville, NY, on the one hand, and, on the other, all points in CT, IL, IN, KS, MA, MD, MI, MO, NH, NJ, NY, OH, OK, PA, RI, WI and WV. Supporting shipper. The Pillsbury Company, LeSueur, MN 56058.

MC 113041 (Sub-1–1TA) filed December 29, 1980. Applicant: A–C BERWICK TRANSPORTERS, INC., 155 Smith Street, Keasbey, NJ 08832. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. *Fatty amide, in bulk, in tank vehicles equipped with burners,* from Memphis, TN to Lawrenceville, IL. Supporting shipper: Humko Chemical, Div. Witco Chemical Corp., P.O. Box 125, Memphis, TN 38101.

MC 141516 (Sub-1–3TA) filed December 24, 1980. Applicant: RICHARD L. HODGES, INC., P.O. Box 141, Unity, ME 04988. Representative: John C. Lightbody, Esq., Murray, Plumb & Murray, 30 Exchange Street, Portland, ME 04101. *Non-exempt foods or kindred products from point in ME to points in IA, KS, NB and OK.* Supporting shipper: A. K. F. Foods, Inc., d.b.a. Potato Service, P.O. Box 809, Presque Isle, ME 04769.

MC 133841 (Sub-1–10TA) filed December 24, 1980. Applicant: DAN BARCLAY, INC., P.O. Box 426, 362 Main St., Lincoln Park, NJ 07035. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Wooden poles,* between points in the U.S. east of and including the states of WI, IL, MO, AR, and LA, restricted to the transportation of shipments originating at or destined to the facilities owned, operated, or utilized by Escambia Treating Company. Supporting shipper: Escambia Treating Company, P.O. Box 17108, Pensacola, FL 32522.

MC 153320 (Sub-1–1TA) filed December 24, 1980. Applicant: KLEEN-BRITE CHEMICAL COMPANY, INC., 10 Moore Street, P.O. Box 485, Rochester, NY 14602. Representative: Herbert M. Canter, Esq., Benjamin D. Levine, Esq., 305 Montgomery Street, Syracuse, NY 13202. *(1) Such commodities as are dealt in or used by chain grocery or food business houses and (2) materials, equipment and supplies used in the manufacture and distribution of such commodities in (1), above.* From points in CT, DC, DE, MA, MD, ME, MI, NJ, NH, NY, OH, PA, RI, VA, VT and WV to points in NY north of Sullivan, Dutchess and Ulster Counties. Supporting shippers: Niagara Frontier Services, Inc., 60 Dingens St., Buffalo, NY 14206; Wegman's Food Markets, Inc., 1500 Brooks Ave., Rochester, NY 14624 and Robfogel Mill-Andrews Corporation, 20 Jet View Dr., Rochester, NY 14623.

MC 153294 (Sub-1–1TA), filed December 23, 1980. Applicant: A YANKEE LINE, INC., P.O. Box 281, Allston, MA 02134. Representative: Michael Eby, Esq., 10 Post Office Square, Boston, MA 02109. *Passengers and their baggage in the same vehicle, in special operations,* between points in MA, CT, RI, HN, on the one hand, and, on the other, points in the following Florida counties: Brevard, Broward, Dade, Hillsborough, Orange, Volusia. Supporting shipper: Beachcomber Tours, Inc., 1325 Millersport Hwy., Williamsville, NY 14221.

MC 50307 (Sub-1–2TA), filed December 24, 1980. Applicant: INTERSTATE DRESS CARRIERS, INC., 215 County Avenue, Secaucus, NJ 07094. Representative: Arthur Liberstein, P.C., 888 Seventh Avenue, New York, NY 10106. *Wearing apparel and materials, supplies and equipment used in the manufacture of wearing apparel, except commodities in bulk,* between New York, NY, Perkasie, PA and Youngstown, OH. Supporting shipper: Harve Bernard, Ltd., 205 West 39th Street, New York, NY 10018.

MC 59457 (Sub-1–4TA), filed December 30, 1980. Applicant: SORENSEN TRANSPORATION COMPANY, INC., 6 Old Amity Road, Bethany, CT 06525. Representative: Gerald A. Joseloff, P.O. Box 3258, Hartford, CT 06103. *Printed matter and equipment, materials and supplies used in the manufacture, distribution and sale thereof* between Franklin, KY, on the one hand, and, on the other, ME, NH, VT, CT, MA, RI, NY, PA, DE, MD, DC, VA, WV, OH, NJ, IN, IL, TN, NC, SC, GA, and FL. Supporting shipper: Select Magazines, Inc., 229 Park Avenue, So., New York, NY 10003.

MC 48956 (Sub-1–4TA), filed December 29, 1980. Applicant: JAMES FLEMING TRUCKING, INC., East Street, Suffield, CT 06078. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. *Contract Carrier,* irregular routes, *such merchandise as is dealt in by wholesale, retail and chain grocery stores, and equipment, supplies and materials used to conduct such businesses,* between CT and NJ, on the one hand, and, on the other, ME, MA, NY, RI and VT, under contract to Hunt Wesson Foods, Inc., Rossford, OH. Supporting shipper: Hunt Wesson Foods, Inc., P.O. Box 127, Rossford, OH 43460.

MC 112750 (Sub-1–10TA), filed December 29, 1980. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, NY 11042. Representative: Elizabeth L. Henoch, 3333 New Hyde Park Road, New Hyde Park, NY 11042. *Contract carrier:* irregular routes: *Commercial papers, documents and written instruments (except currency and negotiable securities) as are used in the business of banks and banking institutions,* between Atlanta, GA, on the one hand, and, on the other, points in NC. Supporting shipper: Federal Home Loan Bank of Atlanta, 260 Peachtree St., P.O. Box 56527, Atlanta, GA 30343.

MC 105369 (Sub-1–1TA), filed December 29, 1980. Applicant: N.Y. AND N.J. FREIGHTWAYS, INC., 47–10 Grand Avenue, Maspeth, NY 11378. Representative: Bruce J. Robbins, Esq., Robbins & Newman, P.C., 118–21 Queens Blvd., Forest Hill, NY 11375. *Such commodities as are dealt in by door-to-door sale, catalogue sale, and mail order houses (except commodities in bulk)* (1) between Dayton, NJ, on the one hand, and, on the other, the facilities of N.Y. & N.J. Freightways, Inc. in the commercial zones of New York, NY and

Philadelphia, PA, and (2) between points named in (1) above, on the one hand, and, on the other, points in CT, ND, VA, WV and DC. Supporting shipper: Amway Corporation, Monmouth Junction Road, Box 900, Dayton, NJ 08810.

MC 45414 (Sub-1-1TA), filed December 29, 1980. Applicant: HUB BUS LINES, INC., 100 Boylston Street, Boston, MA 02116. Representative: Bikofsky, Walker & Tuttle, 281 Pleasant Street, Framingham, MA 01701. *Passengers and their baggage in the same vehicle* between Logan Airport, Boston, MA, on the one hand, and on the other hand, Worcester, MA, Springfield, MA, and Hartford, CT. Supporting shippers: There are 10 statements in support which may be examined at ICC Regional Office, Boston, MA.

The following applications were filed in Region 2. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. 7th St., Room 620, Philadelphia, PA 19106.

MC 142824 (Sub-II-1TA), filed December 22, 1980. Applicant: CENTURY MOTOR FREIGHT, INC., 162 Columbus Road, Mt. Vernon, OH 43050. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. *Contract; irregular: glass containers and materials, equipment and supplies* used in the manufacture and distribution of glass containers between points in Knox County, OH, on the one hand, and, on the other, points, in NC, SC, GA, and MD under continuing contracts with Chattanooga Glass Co of Chattanooga, TN for 270 days. Supporting shipper: Chattanooga Glass Co., 400 W. 45th St., Chattanooga, TN 37410.

MC 110563 (Sub-II-5TA), filed December 22, 1980. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, Sidney, OH 45365. Representative: Victor J. Tambascia (same address as applicant). *Frozen bakery goods, NOI and foodstuffs, materials and supplies used in the processing or distribution of foodstuffs,* between the fac. of Mrs. Smith's Frozen Foods Co., on the one hand, and, on the other, all points in the U.S., for 270 days. Supporting shipper: Mrs. Smith's Frozen Foods Co., P.O. Box 298, Pottstown, PA 19464.

MC 153286 (Sub-II-1TA), filed December 22, 1980. Applicant: RICHARD G. CONAWAY, R.D. No. 1, Box 106, Frenchville, PA 16836. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfield, PA 16830. (1) *Coal,* from the facilities of Waroquier Coal, Inc. in Clearfield Co., PA to Niagara Falls and Buffalo, NY, (2) *Machinery and parts,* from Buffalo, NY, to points in Clearfield Co., PA. An underlying ETA seeks 120 days authority. Supporting shippers: Waroquier Coal, Inc., 133 W. 5th St., Clearfield, PA 16830; J. E. Hoffman Coal, Co., Inc., d.b.a. Hoffman Equipment, Karthaus, PA 16845.

MC 8842 (Sub-II-1TA), filed December 22, 1980. Applicant: DAWSON BUS SERVICE, INC., 405 East Camden-Wyoming Ave., Camden, DE 19934. Representative: Charles E. Creager, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. *Passengers and their baggage, in the same vehicle with passengers, in round-trip and one-way charter operations,* between points in DE on the one hand, and, on the other, pts. in and east of MN, IA, MO, AR and LA. An underlying ETA seeks 120 days authority. Supporting shipper(s): University of Delaware, Delaware Field House, Newark, DE 19711; Bank of Delaware, 901 Market St., P.O. Box 2413, Wilmington, DE 19899; Eastern Ski Tours, Inc., 821 West St., Wilmington, DE 19891.

MC 153287 (Sub-II-1TA), filed December 22, 1980. Applicant: DRESSER TRANSPORTATION SERVICES, INC., 400 W. Wilson Bridge Rd., Worthington, OH 43085. Representative: Frank W. Whiteside (same as applicant). Contract, irregular: *clay, NOI, crushed, ground, or pulverized, TL in packages or in bulk and sand, NOI, crushed, ground, or pulverized, TL in packages or in bulk,* from Kosse, TX, Waco, TX, Ft. Worth, TX, Houston, TX, to Huron, OH, Columbus, OH, Memphis, TN, Buffalo, NY, Chicago, IL, Trenton, NJ, Baltimore, MD, Jamica, NY, Mt. Vernon, IL, Kansas City, KY, Elk Ridge, MD, Belle Meade, NJ, Pennsauken, NJ, Salem, NJ, Greensboro, NC, and their commercial zones for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Texas Industrial Minerals Co., Rt. 7, P.O. Box 98, Kosse, TX 76653.

MC 140889 (Sub-II-10TA), filed December 22, 1980. Applicant: FIVE STAR TRUCKING, INC., 4720 Beidler Rd., Willoughby, OH 44094. Representative: Ignatius B. Trombetta, 1220 Williamson Bldg., Cleveland, OH 44114. Contract, Irregular; *Absorbent cotton and synthetic fibers in packages* from facilities in Cuyahoga County, OH to points in LA, TX, AZ, CA, OR, WA, FL, GA, and NJ; under a continuing contract or contracts with Megas Manufacturing, Inc., of Brooklyn Hts., OH., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Megas Manufacturing, Inc., 4800 Van Epps Rd., Brooklyn Hts., OH 44131.

MC 150522 (Sub-II-7TA), filed December 22, 1980. Applicant: VIRGINIAN ELECTRIC CO., d.b.a. VIRGINIAN POWER TRANSPORT, 530 29th St., Parkersburg, WV 26101. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. *Malt beverages and used containers,* Between Franklin County, OH; Kenton County, KY; and Atlantic County, NJ, on the one hand, and, on the other, Belmont County, OH for 270 days. Underlying ETA seeks 120 days authority. Supporting shipper(s): Muxie Distributor, 50th and Guernsey Sts., Bellaire, OH 43906.

MC 153269 (Sub-II-1TA), filed December 19, 1980. Applicant: JAMES BURKE, dba, BURKE TRUCKING, 1945 Willow Run Rd., Grove City, OH 43123. Representative: E. H. van Deusen, P.O. B. 97, 220 W. Bridge St., Dublin, OH 43017. *Waste sludge, in dump vehicles,* from Hilliard, OH to point in Wayne County, MI, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Systech Liquid Treatment Corp., 245 N. Valley Rd., Xenia, OH 45385.

MC 150511 (Sub-II-6TA), filed December 17, 1980. Applicant: BETTER HOMES DELIVERIES, INC., 3700 Park East Drive, Cleveland, OH 44122. Representative: J.A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Contract carrier, irregular: *Such merchandise as is dealt in by retail department stores, and equipment, materials and supplies used in the conduct of such business,* between Tempe, AZ, on the one hand, and, on the other, Albuquerque, NM and Las Vegas, NV, under continuing contract(s) with Broadway Southwest Division of Carter-Hawley-Hale Stores, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Broadway Southwest, Division of Carter-Hawley-Hale Stores, Inc., 4000 Fiesta Mall, Mesa, AZ 85202.

MC 60253 (Sub-II-1TA), filed December 22, 1980. Applicant: ARLINGTON TRUCK COMPANY, 524 Oregon Rd., Northwood, OH 43619. Representative: Richard A. Chase, 525 Security Bldg., Toledo, OH 43604. Contract, irregular: *Glass and glass products, materials, supplies and equipment used in the manufacture, sale and distribution thereof,* except in bulk, from the facilities of Libbey-Owens-Ford at Todedo, OH, on the one hand, and, on the other, points in the United States (except AK and HI), for 270 days. Supporting shipper: Libbey-Owens-Ford Co., 811 Madison Ave., Toledo, OH 43695.

MC 135556 (Sub-II-1TA), filed December 24, 1980. Applicant: CARPENTER BROTHERS TRUCKING, INC., 3282 R.S. 98 Bucyrus, OH 44820.

Representative: Gerald P. Wadkowski, 85 E. Gay St., Columbus, OH 43215. Contract, irregular: *Rubber and plastic hose, clay, plastic resin, and crude synthetic rubber,* having a prior or subsequent movement by rail, between pts. in OH, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Swan Hose Div., Amerace Corp., P.O. Box 311, Bucyrus, OH 44820.

MC 151264 (Sub-II-1TA), filed December 29, 1980. Applicant: CHESAPEAKE & NORTHERN TRANSPORTATION CORP., 5604 Capelle Rd., Portsmouth, VA 23703. Representative: James Riffe (same address as applicant). Contract, irregular: *Passengers and baggage in the same vehicle with passengers,* from Elizabeth City, NC and Exmore, Cape Charles, Virginia Beach, Norfolk, Portsmouth, Chesapeake, Suffolk, Franklin, Smithfield, Windsor, Wakefield, Surry, Newport News, Hampton, Williamsburg, Emporia, Petersburg, Richmond, and Poquoson, VA to pts. in WV, MD, PA, NC, NY, VT, NH, FL, TN, LA, NJ, MI, DE, CA, GA, SC, DC & AL, for 180 days. An underlying ETA seeks 120 days authority. Supporting shipper: The American Travel Club, 429 Villnovia Ave., Chesapeake, VA 23324.

MC 99408 (Sub-II-2TA), filed December 29, 1980. Applicant: CITY DELIVERY SERVICE, INC., 1 Passan Dr., Laflin Borough, PA 18702. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *General Commodities, (except Classes A and B Explosives, commodities in bulk, and those requiring special handling and equipment),* Between the facilities of Valley Distributing & Storage Company located at Scranton and Wilkes-Barre, PA, on the one hand, and, on the other, points in the US (except AK, HI, MI, OH, CT, MA, VA, NJ, IL and MD). Restriction: Restricted to transportation originating at or destined to Valley Distributing & Storage Company for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Valley Distributing & Storage Co., 1 Passan Dr., Laflin Borough, PA 18702.

MC 139583 (Sub-II-1TA), filed December 29, 1980. Applicant: DEDICATED FREIGHT SYSTEMS, INC., 5800 Grant Ave., Cleveland, OH 44105. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Contract, irregular: *Automotive parts and materials, accessories and supplies used in the manufacture of automotive parts and automotive vehicles,* between Commercial Zone of Detroit, MI and Commercial Zones of Dallas and Houston, TX, New Orleans, LA and Kansas City, KS; between Commercial Zone of Kansas City, KS and Commercial Zones of Dallas and Houston, TX and St. Louis, MO; from Commercial Zone of Dallas, TX to Commercial Zone of New Orleans, LA, under continuing contract(s) with Ford Motor Company, Dearborn, MI, for 270 days. Supporting shipper: Ford Motor Co., One Parkland Boulevard, Ste. 200 Parkland Twrs. E, Dearborn, MI 48126.

MC 123405 (Sub-II-4TA), filed December 29, 1980. Applicant: FOOD TRANSPORT, INC., R.D. No. 1, Thomasville, PA 17364. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101. Contract, irregular: *Non-exempt food or kindred products,* between points in Mecklenburg County, NC, on the one hand, and, on the other, points in AL, GA, MS, TN, SC, NC, FL, LA, PA, NJ and VA, for 270 days, restricted to transportation to be performed under a continuing contract with Heinz USA, Division of H. J. Heinz Company. An underlying ETA seeks 120 days authority. Supporting shipper(s): Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230.

MC 113666 (Sub-II-15TA), filed December 23, 1980. Applicant: FREEPORT TRANSPORT, INC., P.O. Drawer A, 1200 Butler Road, Freeport, PA 16229. Representative: R. Scott Mahood (same address as applicant). *Xanthate,* except in bulk, from ports of entry on the U.S.-Canada International Boundary Line located in MI and NY, to points in NM and ID. An underlying ETA seeks 120 days authority. Supporting shipper: Cyanamid Canada, Inc., 2255 Sheppard Avenue, East, Willowdale, Ontario, M2J 4Y5.

MC 133133 (Sub-II-1TA), filed December 24, 1980. Applicant: FULLER MOTOR DELIVERY CO., 802 Plum St., Cincinnati, OH 45202. Representative: Norbert B. Flick, 715 Executive Bldg., Cincinnati, OH 45202. *Salt* from Uhrichsville, OH to points in IN, KY, PA (on and East of U.S. Highway 15) and WV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Cargill, Inc., P.O. Box 9300, Minneapolis, MN 55440.

MC 2788 (Sub-1TA), filed December 18, 1980. Applicant: GLOVER TRUCKING CORP., P.O. Box 7206, Holland Station, Suffolk, VA 23437. Representative: Charles Ephraim, Suite 406, 918 16th Street NW., Washington, DC 20006. *Waste paper,* from Grifton, NC to Norfolk, VA and its Commercial Zone restricted to traffic in containers having a subsequent movement via water. An underlying ETA seeks 120 days authority. Supporting shipper: Europam Paper Co., 923 Dixie Terminal Bldg., Cincinnati, OH.

MC 146656 (Sub-II-7TA), filed December 22, 1980. Applicant: KEY WAY TRANSPORT, INC., 820 So. Oldham St., Baltimore, MD 21224. Representative: William F. Lamperelli, 820 So. Oldham St., Baltimore, MD 21224. *(1) automotive hand tools,* and (2) *those commodities used in the manufacturing and distribution of automotive hand tools* between Anaheim, CA, Norcross, GA, Dorsey, MD, Lancaster, PA, Sparks, NV, Walterboro, SC and Arlington, TX under a continuing contract(s) with K-D Manufacturing Co., Lancaster, PA, for 270 days. An underlying ETA seeks 90 days authority. Supporting shipper: K-D Manufacturing Co., Lancaster, PA.

MC 153123 (Sub-II-1TA), filed December 18, 1980. Applicant: W. P. JOHNSON, d.b.a. W. P. JOHNSON EQUIPMENT AND MATERIALS Star Route 24E (Bedford County), Vinton, VA 24179. Representative: David Earl Tinker, Esq., 1000 Connecticut Ave. NW., Suite 1200, Washington, DC 20036. *Chemicals, and materials, equipment, and supplies used in the manufacture and/or distribution of chemicals,* between points in the United States, under continuing contract(s) with Wen-Don Corporation of Roanoke, VA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Wen-Don Corporation, 326 Albermarle Ave., Roanoke, VA 24013.

MC 147311 (Sub-II-1TA), filed December 22, 1980. Applicant: T & S TRANSPORTATION, INC., 7420 Ranco Road, Richmond, VA 23228. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Contract;* irregular routes, transporting: *Malt beverages* (except in bulk), from Winston-Salem, NC, to the facilities of Howard Distributing Company, Inc., at or near Greendale, VA, restricted to the transportation of shipments on a continuing contract or contracts with Howard Distributing Company, Inc. for 270 days. Supporting shipper(s): Howard Distributing Company, Inc., P.O. Box 9409, Richmond, VA 23229.

MC 61825 (Sub-II-13TA), filed December 22, 1980. Applicant: ROY STONE TRANSFER CORPORATION, V.C. DRIVE, P.O. Box 385, Collinsville, VA 24078. Representative: John D. Stone (same as applicant). *Furniture parts,* from Grand Rapids, MI to Verona, MS, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper:

Sackner Products, Inc., 901 Ottawa NW., Grand Rapids, MI 49503.

MC 115078 (Sub-II-2TA), filed December 23, 1980. Applicant: SINDALL TRANSPORT, INC., 102 N. Custer Ave., New Holland, PA 17557. Representative: Jeremy Kahn, 1511 K St., NW., Suite 733 Investment Bldg., Washington, DC 20005. *Lumber,* from (1) points in ME, including ports of entry on U.S. Canada Boundary Line; and (2) from ports of entry on U.S. Canada Boundary Line in NY, to points in PA, NY, DE, NJ, MD, VA, and WV, restricted in (2) to traffic moving in foreign commerce originating at facilities of Empire Wholesale Lumber Co., at Niagara Falls, Ontario, Canada for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Empire Wholesale Lumber Co., P.O. Box 249, Akron, OH 44309.

MC 153271 (Sub-II-1TA), filed December 19, 1980. Applicant: PRUDENTIAL ASSOCIATES, INC., d. b.a. UNITED STATES MESSENGER SYSTEMS, INC., 4825 Tuckerman Lane, Suite #204, Potomac MD 20854. Representative: Arthur M. Kravetz (same as applicant). *Classified material and documents* producted by the United States Government and by private companies that have contracted with the United States Government on an as needed basis, between Washington, DC; the MD counties of Montgomery, Frederick, Prince Georges, Howard, and Anne Arundel, MD and Baltimore City, MD; and the VA counties of Arlington and Fairfax and all inclusive cities and jurisdictions lying within, cities of Alexandria, Falls Church, and the town of Vienna, Dulles International Airport, and the United States Marine Corps Reservation, Quantico, VA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Singer Company, 11800 Tech Rd, Silver Spring, MD 20904.

MC 150954 (Sub-II-9TA), filed December 29, 1980. Applicant: TRAVIS TRANSPORTATION, Inc., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8918 Tesoro Drive, Suite 515, San Antonio, TX 78217. *Aloe vera juice, in drums or glass containers, in packages,* between Santa Rosa (Camaron County), TX on the one hand and on the other, Tempe, AZ and Los Angeles, CA, for 270 days. Underlying ETA seeks 120 days operating authority. Applicant intends to interline within the scope of operations of Alamo Express, Inc., MC 107727. Supporting shipper: The Golden Aloe Co., Inc., P.O. Drawer C, Santa Rosa, TX 78593.

MC 65941 (Sub-II-6TA), filed December 29, 1980. Applicant: TOWER LINES, INC., 3rd & Warwood Ave., Wheeling, WV 26003. Representative: James R. Stevick (same as applicant). (1) *Glass containers, glass container tops, and corrugated boxes,* and (2) *equipment, materials and supplies used in the manufacture of the commodities named in (1) above,* between Danville, VA and Clarion County, PA on the one hand and Gerber Products Co at or near Asheville, NC on the other for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Gerber Products Co., P.O. Box 2689, Asheville, NC 28802.

MC 117565 (Sub-II-10TA), filed December 22, 1980. Applicant: MOTOR SERVICE CO., P.O. Box 448, Coshocton, OH 43812. Representative: John R. Hafner (same as applicant). *Paper and Paper board Products,* between points in IL, KY, MI, NC, TN and all points North and East thereof, for 270 days. Supporting shipper: Arco Trading Corp., 615 Iron City Dr., Pittsburgh, PA 15205.

MC 145018 (Sub-II-4TA), filed December 29, 1980. Applicant: NORTHEAST DELIVERY, INC. P.O. Box 127, Taylor, PA 18517. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Rubber and Plastic Articles and Tennis Balls,* From Mercer County, NJ to St. Louis, MO; Kansas City, KS; Denver, CO; Casper, WY; Salt Lake City, UT; Sacramento, San Francisco, & Los Angeles, CA; Atlanta, GA; Jacksonville, Miami, Tampa, FL; Houston, TX; and New Orleans, LA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Goodall Rubber Co., P.O. Box 8237, Trenton, NJ 08650.

MC 117565 (Sub-II-11TA), filed December 22, 1980. Applicant: MOTOR SERVICE CO., INC., P.O. Box 448, Coshocton, OH 43812. Representative: John R. Hafner (same as applicant). *(1) Truck Equipment, Truck bends, Truck bodies, accessories and component parts, and (2) Accessories and supplies used in the manufacture, maintenance, installation and distribution of (1) above,* Between Galion, OH, Durant, OK, Winesburg, OH, Mt. Vernon, OH and Huntington Beach, CA on the one hand, and on the other, points in the U.S. for 270 days. Supporting shipper: Peabody International Corp., P.O. Box 607, Galion, OH 44833.

MC 153290 (Sub-II-1TA), filed December 22, 1980. Applicant: E. R. POSEY, d.b.a. POSEY TRUCKING, 9911 E. Idlewood Dr., Twinsburg, OH 44087. Representative: Ralph R. Roberts, 8508 Garfield Blvd., Cleveland, OH 44125. *Contract; irregular: Aluminum and Iron/ Steel Plate and Sheet* between Cleveland, OH; Bristol, PA; and Houston, TX for 270 days. Supporting shipper: Childers Products Co. 23350 Mercantile Rd., Beachwood, OH 44122.

MC 139638 (Sub-II-2TA), filed December 22, 1980. Applicant: N. L. MONTGOMERY, INC., P.O. Box 626, Rocky Mount, VA. Representative: D. R. Beeler, 1261 Columbia Ave., Franklin, TN 37064. *Oil and grease absorbants and clay products* from the facilities of Aiken Chemical Co. at Pinewood, SC and Wrens, GA to points in VA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Aiken Chemical Co., Box 1904, Greenville, SC 29602.

MC 126551 (Sub-II-1TA), filed December 23, 1980. Applicant: PHILBORO COACH CORP., 1065 Belvoir Rd., Norristown, PA 19401. Representative: William P. Jackson, Jr. Post Office Box 1240, Arlington, VA 22210. *Passengers and their baggage,* in round trip charter operations, beginning and ending at points in Montgomery and Delaware Counties, PA, and extending to points in the US (except AK and HI) for 180 days. Supporting shipper: There are 10 supporting shippers. Their statements may be examined at the ICC Regional Office, Philadelphia, PA.

MC 95304 (Sub-II-1TA), filed December 29, 1980. Applicant: NORTHERN NECK TRANSFER, INC., Box 168 King George, VA 22485. Representative: L. C. Major, Jr., Suite 400, Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. *Iron and steel articles, and materials, equipment and supplies used in the manufacture, distribution and sales of such articles,* between Middlesex County, NJ, on the one hand, and, on the other, pts. in NC, VA, DE, MD, PA, and DC for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Raritan River Steel Co. P.O. Box 309 Perth Amboy, NJ 08862.

MC 150339 (Sub-2-26TA), filed December 29, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same as applicant). *Contract; irregular: Lawn furniture,* from Peoria, IL, and Pine Bluff, AR to points in AL, AR, CO, CT, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NJ, NY, NC, ND, NH, OH, OK, PA, RI, SC, SD, TN, TX, VA, WV, WI, and DC, under a continuing contract(s) with Jordan Manufacuring Co., Inc., 1625 W. Altorfer Dr., Peoria, IL for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Jordan

Manufacturing Co., 1625 W. Altorfer Dr., Peoria, IL 61615.

MC 147751 (Sub-II-1TA), filed December 24, 1980. Applicant: NIGHT HAWK MOTOR TRANSPORT, INC., 738 Ohio Pike, Cincinnati, OH 45245. Representative: James W. Muldoon, 50 W. Broad St., Columbus, OH 43215. *(1) Such commodities as are used in the manufacture or distribution of automobiles,* between the facilities of BGS Warehousing, Inc, at or near Dayton, OH; Flint, MI; and Indianapolis, IN on the one hand, and, on the other, point in IL, IN, KY, MD, MI, NJ, NY, OH and PA; and *(2) such merchandise as is dealt in by wholesale or retail food business houses, foodstuffs, materials, equipment and supplies used in the conduct of such business,* between Chicago, IL, on the one hand, and, on the other, points in OH for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): BGS Warehousing, Inc., 3265 Dryden Rd., Dayton, OH 45439; Topco Associates, Inc., 7711 Gross Point, Skokie, IL 60077.

MC 107012 (Sub-II-123TA), filed December 31, 1980. Applicant: NORTH AMERICAN VAN LINES, INC. 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Parts, materials, supplies, and accessories used in the manufacture of furniture* between the facilities of Lullabye Corp. at or near Stevens Point, WI, on the one hand, and, on the other, South Range, MI; High Point, NC; and Los Angeles, CA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Lullabye Corp., Division of Questor 1017 3rd St. Stevenes Point, WI 54481.

Note.—Common control may be involved.

MC 107012 (Sub-II-122TA), filed December 19, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. HWY. 30 WEST, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Boats and parts and accessories for boats* from Valdosta, GA to points in the US (except AK and HI) for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: North American marketing Corp., d.b.a. Bass Hunter Boats, 2224 Cypress St., P.O. Box 1514, Valdosta, GA 31601.

Note.—Common control may be involved.

MC 152230 (Sub-2-1TA), filed December 18, 1980. Applicant: THEODORE F. MILLER, d.b.a. T. & L. MILLER, 36 West Eighth St., Bloomsburg, PA 17815. Representative: David C. Venable, Suite 805, 666 11th St., N.W., Washington, DC 20001. *Canned foodstuffs* from Northumberland and Palm, PA, to points in FL, GA, SC, and NC for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Furman Canning Co., RD 2, Northumberland, PA 17857.

MC 148859 (Sub-II-2TA), filed December 17, 1980. Applicant: MID-STATE TRADING CO., P.O. Box 3275, 2525 Trenton Ave., Williamsport, PA 17701. Representative: Sander M. Bieber, Ninth Floor, 1100 Connecticut Ave., N.W., Washington, DC 20036. *Contract irregular: Industrial chemical wastes,* between the facilities of Mack Trucks, Inc., at Allentown, PA; TRW, Inc., at Danville, PA; and Ceco Corp., at New Columbia, PA, and points. in NY, OH, DE, MD, and NJ under continuing contract(s) with Mack Trucks, Inc., TRW, Inc., and Ceco Corp. for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Mack Truck, Inc., 2100 Mack Boulevard, Allentown, PA 18105; TRW, Inc., 601 East Market St., Danville, PA 17821; Ceco Corp., P.O. Box 31, New Columbia, PA 17856.

MC 14702 (Sub-II-2TA), filed December 17, 1980. Applicant: OHIO FAST FREIGHT, INC., P.O. Box 808, Warren, OH 44482. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. *Such commodities as are manufactured, distributed or sold by food and drug manufacturers or distributors (except commodities in bulk)* between facilities owned or used by Beecham Products Co. at or near Clifton, NJ; Morrisville, Charleroi and Belle Vernon, PA; Rockwood, MI; Milwaukee, WI; Minneapolis, MN; and Chicago, IL for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Beecham Products Co., P.O. Box 1467, Pittsburgh, PA 15230.

MC 107012 (Sub-II-120TA), filed December 17, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Evaporative coolers and parts and accessories for evaporative coolers* from Phoenix, AZ to Salt Lake City, UT for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Phoenix Manufacturing, Inc., 415 S. 7th St., Phoenix, AZ 85036.

Note.—Common control may be involved.

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 31675 (Sub-3-32TA), filed December 24, 1980. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, NC 28234. Representative: Jay R. Hanson (same address as above). *Chemicals, textile softeners, beverage stabilizing or chill proofing compounds, bread making compounds, drugs or medicines, rennet extract, calcium chloride, yeast extract and products related to the production, packaging and transportation of the foregoing* between Kingstree, S.C. and points in the U.S. except AK and HI. Supporting shipper(s): G. B. Fermentation Industries, Inc., P.O. Box 5000, Kingstree, S.C. 29556.

MC 135760 (Sub-3-2TA), filed December 24, 1980. Applicant: COAST REFRIGERATED TRUCKING CO., INC., P.O. Box 188, Holly Ridge, NC 28445. Representative: Herbert Alan Dubin, Baskin and Sears, 818 Connecticut Avenue, NW, Washington, DC 20006. *Contract* carrier: irregular: *Foodstuffs (except in bulk) and materials, equipment, and supplies used in the manufacturing, packaging, and distribution of foodstuffs* between points in the U.S. (restricted to facilities of and public warehouses used by William Underwood Company), under continuing contract or contracts with William Underwood Company. Supporting shipper: William Underwood Company, One Red Devil Lane, Westwood, MA 02090.

MC 75840 (Sub-3-37TA), filed December 24, 1980. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Such commodities as are dealt in or used by a processor of clay,* between the facilities of Filtrol Corporation, at or near Jackson, MS, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, KY, LA, MD, MA, MS, NY, NJ, NC, OH, PA, RI, SC, TN, TX, VA, WV, and DC. Supporting shipper: Filtrol Corporation, 600 East McDowell Road, Jackson, MS 39204.

MC 121811 (Sub-3-3TA), filed December 24, 1980. Applicant: McCLELLAN'S ENTERPRISES, INC., Highway 41 South, Tifton, Georgia 31794. Representative: Arthur L. McClellan (same address as above). *Lumber and Plywood* from points in GA to points in AL, FL, NC, SC, and TN. Supporting shippers: Woodkraft—Division of Georgia Kraft Company, P.O. Box 2489, Peachtree City, GA 30269; Griffin Lumber Company, Inc., P.O. Box 237, Cordele, GA 31015; Trammel Lumber Company, P.O. Box 428, LaGrange, GA.

MC 114334 (Sub-3-18TA), filed December 24, 1980. Applicant: BUILDERS TRANSPORTATION COMPANY, 3710 Tulane Road,

Memphis, TN 38116. Representative: Dale Woodall, 900 Memphis Bank Building, Memphis, TN 38103. *Iron and steel and iron and steel articles* from Jewett, TX to points in AR, TN and AL, on the one hand, and, on the other, from Houston, TX to points in AR, TN and AL. Supporting shipper: Barg Steel & Pipe, Inc., P.O. Drawer 1057, Forrest City, AR 72335.

MC 144082 (Sub-3-15TA), filed December 24, 1980. Applicant: DIST/TRANS MULTI-SERVICES, INC., d.b.a. TAHWHEELALEN EXPRESS, INC., 1333 Nevada Boulevard, P.O. Box 7191, Charlotte, NC 28217. Representative: Wyatt A. Smith (same as above). *Contract carrier,* irregular routes; *Televisions, citizen band radios, car radios, land mobile radios, communication equipment,* from Kansas City, MO to points in NC, SC, GA, MN, IL, IN, WI, MD, VA, OH, restricted to service performed under a continuing contract(s) with Midland Electronics. Supporting shipper: Midland Electronics, 1690 North Topping Avenue, Kansas City, MO 64120.

MC 144082 (Sub-3-16TA), filed December 24, 1980. Applicant: DIST/TRANS MULTI-SERVICES, INC., d.b.a. TAHWHEELALEN EXPRESS, INC., 1333 Nevada Boulevard, P.O. Box 7191, Charlotte, NC 28217. Representative: Wyatt A. Smith (same as above). *Contract carrier,* irregular routes; *Envelopes,* from Kansas City, MO to points in NC, SC, GA, MN, IL, IN, WI, MD, VA, OH, restricted to service performed under a continuing contract(s) with Tension Envelope, Inc. Supporting shipper: Tension Envelope, Inc., 819 East 19th Street, Kansas City, MO 64108.

MC 128520 (Sub-3-TA), filed December 24, 1980. Applicant: THE ROBINSON FREIGHT LINES, INC., P.O. Box 10234, Knoxville, TN 37919. Representative: Glen L. Gissing (same as above). *Lime, limestone and limestone products,* between Union County, and Knox County, TN and points in AL, FL, GA, KY, MS, NC, OH, SC, VA and WV. Supporting shipper: Tenn-Luttrell Lime Company, P.O. Box 69, Luttrell, TN 37779 and Williamson Lime Mfg. Co., Inc., 3534 Island Home Pike, Knoxville, TN 37920.

MC 148016 (Sub-3-2TA), filed November 19, 1980. Republication—Originally published in Federal Register of 12-01-80, page 79604, volume 45, No. 232. Applicant: McWHORTER-GRAY ENTERPRISES, INC., 1010 Highway 15, North, Ripley, MS 38663. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. *Contract carrier,* irregular routes; *Hazardous waste materials,* from Braintree, MA to Emelle, AL, under a continuing contract or contracts with Recycling Industries, Inc. Supporting shipper: Recycling Industries, Inc., 385 Quincy Ave., Braintree, MA 02184.

MC 98039 (Sub-3-1TA), filed October 3, 1980. Republication—Originally published in Federal Register of 11-25-80, page 78252, volume 45, No. 229. Applicant: LENOIR TRANSFER COMPANY, INC., P.O. Box 696, Lenoir, NC 28645. Representative: C. Douglas Woods (same as above) *New furniture, parts and materials and supplies used in the manufacturing of furniture and furniture parts (except commodities in bulk),* from points in NC to Caldwell and Catawba Counties, NC, for subsequent movement in interstate commerce. Supporting shippers: Cook's Transfer & Storage Co., Inc., Lenoir, NC; Terminal Freight Cooperative Assoc., 1430 Branding Lane, Lane-Downers Grove, IL 60515 and Singer Furniture Co., P.O. Box 5337, Roanoke, VA 24012.

Note: Applicant intends to interline with other carriers at Caldwell and Catawba Counties, NC.

MC 121654 (Sub-3-12TA), filed October 6, 1980. Republication—Originally published in Federal Register of 11-25-80, page 78253, volume 45, No. 229. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, 3390 Peachtree Rd. NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *General commodities, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission and commodities in bulk in tank vehicles),* between points in the states of AL, AR, CT, DE, LA, NH, NC, FL, GA, MD, MA, MS, NJ, NY, OH, PA, RI, SC, TN, TX, VT, VA, WV and DC. Restricted to transportation of shipments originating at or destined to facilities of Owens-Corning Fiberglas Corporation. Supporting shipper: Owens-Corning Fiberglas Corporation, Fiberglas Tower, Toledo, OH 43659.

MC 146343 (Sub-3-3TA), filed October 27, 1980. Republication—Originally published in Federal Register of 11-17-80, page 75791, volume 45, No. 223. Applicant: SOUTHERN EXPRESS CORPORATION, 505 South Ocean Blvd., Pompano, FL 33062. Representative: S. Christopher Stowe, Jr., 2028 Warwick Ave., Warwick, RI 02889. *Contract carrier,* irregular routes: *Vegetable shortening, refined lard, salad oils, refined beef shortening, machinery, equipment and supplies and related materials incidental to the manufacture and distribution of the commodities listed above,* between Pawtucket, RI and points in AR, AL, CT, DC, DE, FL, GA, IA, IN, IL, KY, LA, MA, ME, MD, MI, MN, MO, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WI and WV. Restriction: The operations authorized above are limited to a transportation service to be performed under a continuing contract or contracts with Colfax, Inc., a RI corporation. Supporting shipper: Colfax, Inc., 38 Colfax Street, Pawtucket, RI 02860.

MC 144303 (Sub-3-7TA), filed December 15, 1980. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 1048, Fletcher, NC 28732. Representative: Henry B. Stockinger (same address as above). *Contract carrier:* irregular; (1) *Fibres, synthetic, NOI, staple or other than staple; Tops, synthethic fibre; Waste, processed synthethic staple fibre, synthetic fibre or synthetic fibre yarn or mixture thereof; Yarn, synthetic fibre, NOI, or synthetic fibre mixed with cotton, the synthetic content to exceed 50 percent or more by weight; having a density of 15 pounds or more per cubic foot;* and (2) *materials, equipment* and *supplies used in the manufacture or distribution of the commodities in (1),* between Escambia and Santa Rosa Counties, FL on the one hand, and, on the other, points in the US, under continuing contract(s) with American Cyanamid Company. Supporting shipper: American Cyanamid Company, Wayne, NJ 07470.

MC 31675 (Sub-3-31TA), filed December 16, 1980. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, NC 28234. Representative: Jay R. Hanson (same as above). *Native Faced Plywood and products used in the manufacture thereof* between Charlotte, NC, and points in and east of ND, SD, NE, KS, OK and TX. Supporting shipper(s): Vanply Inc., P.O. Box 668289, Charlotte, NC 28266.

MC 75840 (Sub-3-22TA), filed December 15, 1980. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, AL 35202. Representative: Royce Glass, Malone Freight Lines, Inc., 3400 Third Avenue South, Birmingham, AL 35222. *Crushed and Ground Stone Products,* between Pickens County, GA, on the one hand, and, on the other, points in the state of TX. Supporting shipper: Georgia Marble Company, 2575 Cumberland Parkway NW., Atlanta, GA 30339.

MC 146369 (Sub-3-3TA), filed December 15, 1980. Applicant: CARRIER FREIGHT LINES, INC., P.O. Box 813, Hickory, NC 28601. Representative: William P. Farthing, Jr., 1100 Cameron Brown Building, Charlotte, NC 28204. *Contract carrier:* irregular: *transformers*

and related accessories, and parts, supplies and equipment used in the manufacturing of transformers, between points in Catawba County, NC, on the one hand, and, on the other, points in WI, OH, MI, IN, and IL under continuing contract with General Electric Company. Supporting shipper: General Electric Company, P.O. Box 2188, Hickory, North Carolina 28601.

MC 138308 (Sub-3-18TA), filed December 16, 1980. Applicant: KLM, INC., P.O. Box 6098, Jackson, MS 39208. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Prepared frozen foods* from the facilities of Chef's Pantry, Inc. at or near Caryville, TN to points in the U.S. (except AK, HI, MT, ND, SD, and WY). Supporting shipper: Chef's Pantry, Inc., 1031 Pierce Street, Sandusky, OH 44870.

MC 144303 (Sub-3-8TA), filed December 16, 1980. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 1048, Fletcher, NC 28732. Representative: Henry B. Stockinger (same address as above). *Contract Carrier;* irregular; (1) *Beverages, Carbonated, Flavored or Phosphated, Non-Alcoholic; in glass or metal cans, in barrels, boxes, cartons or crates, and* (2) *materials, equipment and supplies used in the manufacture or distribution of (1),* from Orlando, FL to Asheville, NC, under continuing contract(s) with Seven Up Asheville Company, Inc. Supporting shipper: Seven Up Asheville Company, Inc., Asheville, NC 28813.

MC 75840 (Sub-3-23TA), filed December 16, 1980. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Such commodities as are dealt in or utilized by a manufacturer of fertilizer (except in bulk),* between the facilities of Vertac Chemical Company, at or near Vicksburg, MS, on the one hand, and, on the other, points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA, and DC. Supporting shipper: Vertac Chemical Company, Post Office Box 3, Vicksburg, MS 39180.

MC 75840 (Sub-3-24TA), filed December 16, 1980. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Such commodities as are used, dealt in or distributed by a manufacturer of cans (except in bulk),* between the facilities of Independent Can Company, at or near Baltimore, MD, on the one hand, and, on the other, points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA, and DC. Supporting shipper: Independent Can Company, 1001 South Lakewood Avenue, Baltimore, MD 21224.

MC 144303 (Sub-3-9TA), filed December 16, 1980. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 1048, Fletcher, NC 28732. Representative: Henry B. Stockinger (same address as above). *Contract Carrier:* irregular; (1) *Clothing, Home Fashions and Recreational Materials; in bales, boxes or canvas hampers; and,* (2) *materials, equipment and supplies used in the manufacture or distribution of the commodities* in (1), between points in the United States under continuing contract(s) with Ashley Outlet Store Group, a Division of Kellwood Company. Supporting shipper: Ashley Outlet Store Group, Kellwood Company, 118 Industrial Road, New Haven, MO 63068.

MC 115841 (Sub-3-33TA), filed December 15, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same as above). *General Commodities (except Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities of unusual value), having a prior or subsequent movement by water,* between Charleston, SC and Savannah, GA on the one hand, and, on the other, points in SC, VA, NC, GA, FL, TN, and AL. There are nine statements in support to this application which may be examined at the ICC Regional office in Atlanta, GA.

MC 115841 (Sub-3-34TA), filed December 15, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same as above). *Electroless nickel solution in drums, steel and plastic tanks in crates,* from Nashville, TN to points in AZ, IL, IN, MN, NV, NY, OH, OK, PA, RI and TX. Supporting shipper: Elnic, Inc., 657 Massman Drive, Nashville, TN 37210.

MC 139822 (Sub-3-4TA), filed December 15, 1980. Applicant: FOOD CARRIER, INC., P.O. Box 2287, Savannah, GA 31402. Representative: Edward G. Villalon, Suite 1032 Pennsylvania Building, Pennsylvania Ave. and 13th St. NW., Washington, DC 20004. *General commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and articles requiring special equipment,* between the facilities of Transales Corporation at Atlanta, GA, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, KS, OK and TX. Supporting shipper: Savannah Foods & Industries, Inc., P.O. Box 339, Savannah, GA 31402.

MC 153189 (Sub-3-1TA), filed December 15, 1980. Applicant: T-90 TRUCKS, INC., P.O. Box 7917, Louisville, KY 40207. Representative: Paul Lynch, Sr., 209 So. 5th St., Suite 400, Louisville, KY 40217. *Iron or Steel, and items or products thereof, machines, machinery and parts for machines, material, equipment, and supplies used in the manufacture, processing or distribution of the above commodities,* between Clark County, IN and Jefferson County, KY and points in the US (except AK and HI). Supporting shipper: Eagle Machine Company, Inc., 2737 Helm Street, Louisville, KY 40209.

MC 126436 (Sub-3-84TA), filed December 12, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, Esq., 3390 Peachtree Rd., NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Contract:* Irregular—*Automotive axle assemblies and materials, equipment and supplies used in the production or distribution thereof* between the plantsite of A. O. Smith Corporation at or near Milan, TN on the one hand, and, on the other, points in the U.S. in and east of MN, IA, NE, KS, OK and TX, under contract or continuing contract(s) with A. O. Smith Corporation of Milwaukee, WI. Supporting shipper: A. O. Smith Corporation, P.O. Box 529, Milan, TN 38358.

MC 138157 (Sub-3-38TA), filed December 12, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (same as above) *Carpeting and materials, equipment, and supplies used in the manufacture, production, and distribution of carpeting* between Mobile and Escambia Counties, AL and Whitfield County, GA on the one hand and, on the other, points in the U.S. Restricted against the transportation of commodities in bulk and further restricted to traffic moving for the account of C. H. Masland & Sons. Supporting shipper: C. H. Masland & Sons, P.O. Box 11467, Mobile, AL 36611.

MC 138635 (Sub-3-5TA), filed December 15, 1980. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (same address as applicant). *Such*

merchandise as is dealt in by food business houses and materials, ingredients and supplies used in their manufacture and distribution between points in the states of OH and SC, on the one hand, and, on the other, points in the states of AL, AR, AZ, CA, CO, CT, DC, DE, FL, GA, ID, KY, LA, MA, MD, ME, MS, MT, NC, NH, NJ, NM, NV, NY, OH, OK, OR, PA, RI, SC, TN, TX, VT, VA, WA, WV, and WY restricted to traffic originating at or destined to the facilities of Stouffer Foods Corporation. Supporting shipper: Stouffer Foods Corporation, 5750 Harper Road, Solon, OH 44139.

MC 140389 (Sub-3-19TA), filed November 18, 1980. Republication—Originally Published in Federal Register of 12-3-80, Page 80198, Volume 45, No. 234. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 304, Conley, GA 30027. *General Commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* from the facilities of Can Go Shippers Warehouse, Seattle, WA, to points in CO, ID, MT, OR, UT, WA, and WY. Supporting shipper(s): Can Go Shippers Warehouse, 1701 First Avenue, South Seattle, WA 98234.

MC 128720 (Sub-3-14TA), filed November 18, 1980. Republication—Originally Published in Federal Register of 12-1-80, Page 79603, Volume 45, No. 232. Applicant: MERCHANTS FREIGHT LINE, INC., 1185 Omohundro Drive, Nashville, TN 37210. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. *General Commodities (except those of unusual value, classes A&B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between Simpson County, KY, on the one hand, and points in MI, on the other. *Note:* Applicant intends to tack with its existing authority under MC-128720 and subs at Simpson County, KY and interline at Memphis, Nashville, Chattanooga, and Knoxville, TN; and Detroit, Saginaw, Grand Rapids, Muskegon, Port Huron, Traverse City, Kalamazoo, and other points in MI. Supporting shippers: There are 30 certificates of support submitted with this application which may be examined at the ICC Regional Office, Atlanta, GA.

MC 153112 (Sub-3-1TA), filed December 11, 1980. Applicant: KENNETH L. HORTON, 30 Peach Tree Drive, Spartanburg, SC 29303. Representative: P. Bradley Morrah, Jr., 300 E. Coffee Street, Greenville, SC 29601. *Contract carrier,* irregular routes; *iron and steel articles,* between points in SC and points and places in the U.S. lying East of the Mississippi River and South of New York State. Supporting shipper: Edgcomb Metals Company, 1 White Horse Road, Greenville, SC.

MC 138157, (Sub-3-37TA), filed December 12, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chatanooga, TN 37410. Representative: Patrick E. Quinn (same as above). *Materials, equipment, and supplies used in the manufacture, production, and distribution of refrigerated bottle and can vending machines* from points in IA, IL, MI, and OH to Chattanooga, TN. Restricted to traffic destined to the facilities of Cavalier Corp. Supporting shipper: Cavalier Corp., 1100 E. 11th Street, Chattanooga, TN, 37403.

MC 153132 (Sub-3-1TA), filed December 11, 1980. Applicant: TOW-LO EXPRESS, INC., One Notre Dame Drive, Greenville, SC 29609. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Textiles and textile products; power tools; automobile passenger tires and truck tires; home furnishings; and material; equipment and supplies* used in the manufacture and distribution of the above between pts. in Greenville, Pickens, Anderson, Spartanburg, Lexington, and Greenwood Counties, SC. Restricted to transportation of trafic having immediate prior or subsequent movement by mail. Supporting shippers: Michelin Tire Corp., P.O. Box 2846, Greenville, SC; J. P. Stevens and Company, Inc., Whitehore Road Industrial Park, Greenville, SC; commercial Affiliates, Inc., P.O. Box 3707, Greenville, SC; Woodside Division, Dan River, Inc., P.O. Box 6126, Station B, Greenville, SC; and Singer Manufacturing Corp., Pickens, SC.

MC 75840 (Sub-3-21TA), filed December 12, 1980. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Such commodities as are dealt in and distributed by a manufacturer of aluminum and aluminum articles (except in bulk),* from the facilities of Republic Foil, a unit of National Aluminum Corporation, at or near Salisbury, NC, to points in the United States in and east of the states of MN, IA, MO, AR and TX. Supporting shipper: National Aluminum Corporation, 2800 Grant Building, Pittsburgh, PA 15219.

MC 113528 (Sub-3-3TA), filed December 12, 1980. Applicant: MERCURY FREIGHT LINES, INC., P.O. Box 1247, Mobile, AL 36633. Representative: Joy Stephenson (same address as applicant). *Common* carrier, regular routes: *General commodities (with the usual exceptions),* serving all points in Hinds and Rankin Counties, MS as intermediate and off route points in connection with carrier's otherwise authorized regular route operation. Applicant intends to tack, and interline at Jackson, MS. Supporting shipper: Sweetheart Cup Corp. of Texas, 4444 West Ledbetter Dr., Dallas, TX.

MC 145375 (Sub-3-1TA), filed December 12, 1980. Applicant: H. D. EDGAR TRUCKING, INC., Route 1, Box 48, Opp, AL 36467. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St. NW., Washington, D.C. 20005. *Trailer axles and component parts,* from Montgomery, AL to points in TX, NM, CO, UT, CA, OR and WA. Supporting shipper: Dana Corporation, 2250 Selma Hwy., Montgomery, AL 36196.

MC 115840 (Sub-3-6TA), filed December 12, 1980. Applicant: COLONIAL FAST FREIGHT LINES, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same address as above). *Iron and steel articles,* between Charlotte and Oakboro, NC, on the one hand, and, on the other, Jacksonville and Tampa, FL; Eufaula and Mobile, AL; Alcoa and Jackson, TN; New Haven and Bridgeport, CT; New Castle, DE; and points in GA, VA, SC, and PA. Supporting shippers: Flame Refractories, Inc., P.O. Box 24, Oakboro, NC 28219 and Marmon Keystone, P.O. Box 7447, Charlotte, NC 28217.

MC 75840 (Sub-3-20TA), filed December 12, 1980. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. *Such commodities as are dealt in or used by a manufacturer of water and air treatment chemicals and equipment (except in bulk),* between the facilities of Calgon Corporation; at or near Hawthorne, NJ; Frisco and Pittsburgh, PA; Huntington, WV; Catlettsburg, KY; and Bayport, TX, on the one hand, and, on the other, points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA, and DC. Supporting shipper: Calgon Corporation, P.O. Box 1346, Pittsburgh, PA 15230.

MC 121821 (Sub-3-8TA), filed January 2, 1981. Applicant: TENNESSEE MOTOR LINES INC., P.O. Box 100363, Nashville, TN 37210. Representative: Mark S. Gray,

P.O. Box 872, Atlanta, GA 30301. *(1) Covers, cabinets or shelves for duplicating and business machines, computers, typewriters and fuse boxes and (2) materials, equipment and supplies used in the manufacture of the commodities described in (1) above* between points in the U.S., restricted to traffic originating at or destined to facilities owned or used by the EX-CELL-O Corporation. Supporting shipper: EX-CELLO-O Corporation, P.O. Box 909, Athens, TN 37303.

MC 153272 (Sub-3–1TA), filed January 2, 1981. Applicant: S & H CONTRACTORS, INC., Box 186, Walton, KY 41094. Representative: Rudy Yessin, 113 West Main Street, Frankfort, KY 40601. *Machinery, contractors' materials and supplies, and commodities the transportation of which by reason of size and weight require the use of special equipment:* Between all points and places in the Continental United States. Supporting shippers: There are 111 shippers. Their statements may be examined at the Atlanta Regional Office.

MC 124306 (Sub-3–8TA), filed January 2, 1981. Applicant: KENAN TRANSPORT COMPANY, INCORPORATED, P.O. Box 2729, Chapel Hill, NC 27514. Representative: W. David Fesperman, P.O. Box 2729, Chapel Hill, NC 27514. *Plastic pellets,* from Kingsport, TN to Columbia, SC. Supporting shipper: In Con, 10109 Two Notch Road, Columbia, SC 29206.

MC 75840 (Sub-3–40TA), filed January 2, 1981. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, Alabama 35202. Representative: Raymond Hamilton, Malone Freight Lines, Inc., 3400 Third Avenue South, Birmingham, Alabama 35222. *Floor Coverings and Materials and Supplies used in the installation thereof,* from the plantsite and storage facilities of Congoleum Corporation, from Mercer County, NJ and Delaware County, PA to points in the state of TX. Supporting shipper: Congoleum Corporation, 195 Belgrove Drive, Kearney, NJ 07032.

MC 118561 (Sub-3–2TA), filed January 2, 1981. Applicant: HERBERT B. FULLER, d.b.a. FULLER TRANSFER COMPANY, 212 East Street, Maryville, TN 37801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. *(1) Foodstuffs, prepared frozen foods and frozen meat products, and (2) Materials, equipment and supplies used in the manufacture, sale and distribution of commodities in (1) above* between points in TN, on the one hand, and, on the other, points in the United States in and east of the states of ND, SD, NE, KS, OK, and TX. Supporting shipper: Chef's Pantry, Inc.; 1031 Pierce Street; Sandusky, OH 44870.

MC 146782 (Sub-3–9TA), filed January 2, 1981. Applicant: ROBERTS CONTRACT CARRIER CORPORATION, 300 First Avenue, South, Nashville, TN 37201. Representative: STEPHEN L. EDWARDS 806 Nashville Bank & Trust Building, Nashville, TN 37201. *(1) iron and steel articles; wire, wire products, fencing, and other fencing materials and, (2) materials, equipment, and supplies used in the manufacture of (1) above (except commodities in bulk)* between points in Crawford County, AR, on the one hand, and, on the other, points in and east of MN, IA, MO, AR and TX.

MC 109026 (Sub-3–6TA), filed January 2, 1981. Applicant: MANNING MOTOR EXPRESS, INC., P.O. Box 685, Glasgow, KY 42141. Representative: Henry E. Seaton, 929 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. *General Commodities (except Classes A and B explosives and household goods, as defined by the Commission, commodities in bulk, and those requiring special equipment),* between points in Barren County, KY on the one hand, and on the other, points in U.S. except AK and HI. Supporting Shipper(s): There are 15 certificates of support submitted with this application that can be reviewed at the Atlanta, GA regional office. Applicant intends to tack with its existing authority under MC–109026 and subs at Barren County, KY and interline at all authorized points.

MC 105813 (Sub-3–7TA), filed January 2, 1981. Applicant: BELFORD TRUCKING CO., INC., 1759 S.W. 12th Street, P.O. Box 270, Ocala, FL 32670. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Alcoholic Beverages and Wines* from Jacksonville, FL and New Orleans, LA to points in IL, IN, MN and WI. Supporting shipper: Wine and Spirits Shippers Association, Inc., 11800 Sunrise Valley Drive, Reston, VA 22091.

MC 75840 (Sub-3–41TA), filed January 2, 1981. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Such commodities as are used, manufactured or distributed by a manufacturer of chemicals (except in bulk),* between the facilities of Neville Chemical Corporation, located at or near Pittsburgh, PA, on the one hand, and, on the other, points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA, and DC. Supporting shipper: Neville Chemical Corporation, Neville Island, Pittsburgh, PA 15225.

MC 124154 (Sub-3–12TA), filed January 2, 1981. Applicant: WINGATE TRUCKING COMPANY, INC., P.O. Box 645, Albany, GA 31703. Representative: W. D. Wingate, P.O. Box 645, Albany, GA 31703. *Home care products; Food and beverage preparations; Animal health and feed products; Health and beauty aids; Advertising material* between Winona, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Watkins Incorporated, 150 Liberty Street, Winona, MN 55987.

MC 124154 (Sub-3–11TA), filed January 2, 1981. Applicant: WINGATE TRUCKING COMPANY, INC., P.O. Box 645, Albany, GA 31703. Representative: W. D. Wingate, P.O. Box 645, Albany, GA 31703. *General commodities (except Classes A and B explosives and household goods as defined by the Commission),* between points in the U.S. (except AK and HI) restricted to shipments originating at or destined to United Freight, Inc.'s warehouses, customers and suppliers. Supporting shipper: United Freight, Inc., 1260 Southern Road, Morrow, GA 30260.

MC 124154 (Sub-3–10TA), filed January 2, 1981. Applicant: WINGATE TRUCKING COMPANY, INC., P.O. Box 645, Albany, GA 31703. Representative: W. D. Wingate, P.O. Box 645, Albany, GA 31703. *Clay, in bags, materials, supplies and equipment used in their processing* between points at or near Quincy and Havana, FL and Ochlocknee, GA, on the one hand, and, on the other, points in the United States (except AK and HI). Supporting shipper: The Floridin Company, Berkeley Springs, WV 25411.

MC 112617 (Sub-3–13TA), filed January 2, 1981. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, Louisville, KY 40221. Representative: Larry W. Thompson (same address as applicant). *Oxidized asphalt, in bulk, in tank vehicles equipped with propane burners,* from Exxon Company, USA at or near Baton Rouge, LA to Ennis, TX. Supporting shipper: Exxon Company USA, P.O. Box 2180, Houston, Texas 77001.

MC 31675 (Sub-3–34TA), filed January 2, 1981. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, NC 28234. Representative: Jay R. Hanson (same address as above). *Barium Carbonate, Barium Chloride, Barium Sulfide, Sodium Silicate (Dry), Sodium Sulfide, Strontium Carbonate* from Catersville, GA to LA. Supporting shipper(s): Chemical Products

Corporation, P.O. Box 449, Cartersville, GA 30120.

MC 31675 (Sub-3-33TA), filed January 2, 1981. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, NC 28234. Representative: Jay R. Hanson (same address as above). *Aluminum, Brass, Bronze, Copper or Lead Scrap* between all points in the U.S. except AK and HI, restricted to traffic moving for the account of Continental Commodities Inc. Supporting shipper(s): Continental Commodities, Inc., 8 Woodlawn Green, Suite 227, Charlotte, NC. 28210.

MC 145541 (Sub-3-4TA), filed January 2, 1981. Applicant: SUNWAY CORPORATION, 118 West Main Street, Thomasville, NC 27360. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Building, Charlotte, NC 28204. *Contract carrier:* irregular: *new furniture and such other products as are purchased, sold, distributed or dealt with by Levitz Furniture Corporation (except those requiring special equipment),* between all points in the United States, under continuing contract with Levitz Furniture Corporation. Supporting shipper: Levitz Furniture Corporation, 1317 NW 167th St., Miami, FL.

MC 145274 (Sub-3-2TA), filed January 2, 1981. Applicant: SERVICEWAY MOTOR FREIGHT, INC., P.O. Box 243, Alcoa, Tennessee 37701. Representative: J. Greg Hardeman, 618 United American Bank Building, Nashville, TN 37219. *Containers and container closures and materials and supplies used in the manufacture and distribution of these commodities* between Chattanooga, TN, on the one hand, and points in and east of WI, IL, KY, TN, and MS, on the other. Supporting shipper: Cumberland Corporation, P.O. Box 1446, Chattanooga, Tennessee 37401.

MC 153380 (Sub-3-1TA), filed January 2, 1981. Applicant: ROWAN FREIGHT CO., INC., P.O. Box 1571, Salisbury, NC 28144. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Building, Charlotte, NC 28204. *General commodities (except those in bulk or those requiring special equipment),* having a prior or subsequent interstate movement, between points in Mecklenburg and Rowan Counties, NC, on the one hand, and, on the other, points in NC. NOTE—Applicant intends to interline at Rowan and Mecklenburg Counties, NC. Supporting shipper: Arkansas Best Freight, 5104 N. Graham St., Charlotte, NC.

MC 153180 (Sub-3-1TA), filed January 2, 1981. Applicant: M & T DRUM SERVICE, INC., Route 4, Box 1230, Huntersville, NC 28078. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Building, Charlotte, NC 28204. *Chemical waste materials (hazardous and non-hazardous),* from points in VA, NC, and SC to Emelle, AL. There are twenty-one statements of support which may be examined at the ICC Regional Office, Atlanta, GA.

MC 153379 (Sub-3-1TA), filed January 2, 1981. Applicant: FRANK LACKEY TRUCKING, Route 4, Tuscumbia, AL 35674. Representative: Gerald D. Colvin, Jr., 603 Frank Nelson Bldg., Birmingham, AL 35203. Contract; irregular, *dry granular fertilizer* from the facilities of International Minerals & Chemicals Corp., at points in AL to points in TN and MS under continuing contract with International Minerals & Chemical Corp. Supporting shipper: International Minerals & Chemical Corp., P.O. Box 158, Florence, AL 35630.

MC 144300 (Sub-3-1), filed January 2, 1981. Applicant: J & D TRUCKING, INC., P.O. Box 1187, Marietta, GA 30061. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmingham, AL 35209. *Electrical appliances, equipment, parts, supplies and materials used in the manufacture, sale and distribution of electrical appliances;* between the facilities of Gibson-Metallux, located in or near Americus, GA and Eufaula, AL on the one hand and on the other all points in the U.S. Supporting shipper: Gibson-Metallux, Southerfield Road, Americus, GA 31709.

MC 153379 (Sub-3-1TA), filed January 2, 1981. Applicant: G. M. DURRANCE TRUCKING INC., Route No. 1, Box 143, Lake City, FL 32055. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. *Contract:* irregular: *Equipment used by wholesale and retail grocery chains and materials and supplies used in the manufacture thereof,* between Jacksonville, FL, on the one hand, and on the other, points in GA, NC, SC, VA, WV, MD, DE, NJ, PA, CT, AL, MS, TN, IN, IL, OH, NH, LA, AR, TX, MN, and NM. Supporting shipper: Load King Manufacturing Co., 1357 W. Beaver St., Jacksonville, FL 32203.

MC 153376 (Sub-3-1TA), filed January 2, 1981. Applicant: THOMAS HEADRICK, d.b.a., HEADRICK TRUCKING, Route One, Crandall, GA 30711. Representative: Thomas Headrick (same as above). *Contract carrier,* irregular routes; *crushed limestone rock,* from Chattanooga, TN Hwy. 153 to I-75 to Hwy. 41 to Dalton, GA, then east on Hwy. 76 to Chatsworth, GA (50 miles). Supporting shipper: Latex Filler & Chemical Co., Inc., P.O. Box 1546, Dalton, GA 30720; Georgia Talc Company, P.O. Box 370, Chatsworth, GA 30705; H & S Industries, Inc., P.O. Box 601, Dalton, GA 30720.

MC 152427 (Sub-3-3TA), filed December 30, 1980. Applicant: NASHVILLE & ASHLAND CITY TRUCK LINE, INC., 2400 Heiman Street, Nashville, TN 37208. Representative: William Prentice Cooper, 18th Floor, Third National Bank Bldg., Nashville, TN 37219. *General commodities, with usual exceptions, in trailers or containers,* between Memphis, TN and points in Caldwell, Christian, Jefferson, Simpson, Trigg and Warren Counties, KY, and in Anderson, Bedford, Blount, Bradley, Cheatham, Coffee, Cumberland, Dickson, Giles, Hamilton, Hawkins, Henderson, Hickman, Knox, Lawrence, Lewis, Madison, Marion, Marshall, Maury, Montgomery, Perry, Putnam, Robertson, Rutherford, Sullivan, Sumner, Trousdale, Warren, White, Williamson and Wilson Counties, TN; restricted to the transportation of shipments having a prior or subsequent movement of rail. Supporting shippers: Metro Shippers, Inc., 600 Higgens Road, Park Ridge, IL 60068 and Sunbelt Consolidators, Inc., P.O. Box 201044, Dallas, TX 75220.

MC 138157 (Sub-3-40TA), filed January 2, 1981. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC, d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (same as above). *General commodities (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities which by reason of size or weight require the use of special equipment)* from points in the United States to King and Pierce Counties, WA. Restricted to traffic moving for the account of A&D Transco. Supporting shipper: A&D Transco, 1762 6th Street, Suite 123, Seattle, WA 98134.

MC 121667 (Sub-3-1TA) filed January 2, 1981. Applicant: SMALLEY TRANSPORTATION COMPANY, P.O. Box 5175, Tampa, FL 33675. Representative: Ansley Watson, Jr., P.O. Box 1531, Tampa, FL 33601. *Common* carrier: regular routes: *General commodities (except those of unusual value, Classes A and B explosives, commodities in bulk, those requiring special equipment, commodities in vehicles equipped with mechanical refrigeration, household goods as defined by the Commission, and building and construction materials in truckload lots on flatbed trailers):* (1) between Key West, FL, and junction U.S. Hwy 1 and S.W. 184th St., south of

Miami, FL, over U.S. Hwy 1, serving all intermediate points; (2) between Perry, FL, and Pensacola, FL, over U.S. Hwy 98, serving all intermediate points; (3) between Inglis, FL, and Tallahassee, FL, from Inglis over Hwy 9 to Capps, FL, then over U.S. Hwy 27 to Tallahassee and return, serving all intermediate points; (4) between Ocala, FL, and Lake City, FL, over U.S. Hwy 441, serving all intermediate points; (5) between Jacksonville, FL, and Pensacola, FL, over Interstate Hwy 10, serving all intermediate points; (6) between Jacksonville, FL, and Tallahassee, FL, over U.S. Hwy 90, serving all intermediate points; (7) between Tallahassee, FL, and Pensacola, FL, over U.S. Hwy 90, serving all intermediate points; (8) between Ocala, FL, and junction Interstate Hwys 75 and 10 near Lake City, FL, over Interstate Hwy 75, serving all intermediate points; (9) between Tallahassee, FL, and Panama City, FL, from Tallahassee over FL Hwy 20 to junction U.S. Hwy 231, then over U.S. Hwy 231 to Panama City and return, serving all intermediate points; (10) between Jacksonville, FL, and Sanford, FL, over U.S. Hwy 17, serving all intermediate points; and (11) serving all points in Florida not served on a regular route as off-route points. All regular routes sought to be served are to be joined or tacked to other routes sought to be served and to all regular routes presently authorized to be served, at common points, to provide through service. Applicant intends to interline at Pensacola, and Jacksonville, FL. There are 8 supporting shipper statements attached to this application which may be examined at the ICC Regional office in Atlanta, GA.

MC 151375 (Sub-3–2TA), filed January 2, 1981. Applicant: COMPUTER TRANSPORT OF GEORGIA, INC., 3914 Shirley Dr., SW., Atlanta, GA 30336. Representative: John C. Fudesco, Suite 960, 1333 New Hampshire Ave., NW., Washington, DC 20036. *Duplicating machines, computers, typewriters, x-ray equipment, and similar instruments, and parts and supplies used in connection with the foregoing commodities,* between points in AL, FL, GA, MS, SC and TN. Supporting shippers: There are six (6) supporting statements which can be examined in the offices of the Commission at Atlanta, GA.

MC 115841 (Sub-3–8TA), filed January 2, 1981. Applicant: COLONIAL REFRIGERATED TRANSPORATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (Same address as above). *Particle board panels (finished and/or unfinished),* between Mocksville, NC on the one hand, and, on the other, points in AL, AR, DE, FL, GA, IL, IN, KY, LA, MA, MD, MI, MN, MO, MS, NJ, NY, OH, OK, PA, SC, TN, TX, VA, and WI. Supporting Shipper: Funder America, Inc., P.O. Box 907, Mocksville, NC 27028.

MC 151894 (Sub-3–3TA), filed January 2, 1981. Applicant: VENTURE EXPRESS, INC., P.O. Box 100300, Nashville, TN 37210. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. *General commodities (except household goods and classes A&B explosives)* between the facilities sof Ozburn-Hessey Storage Co., In Davidson County, TN, on the one hand, and, on the other, points in the U.S. Supporting Shipper(s): Ozburn-Hessey Storage Co., 402 Murfreesboro Road, Nashville, TN 37210.

MC 115841 (Sub-3–36TA), filed January 2, 1981. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same as above). *Sucker sticks* from Cattaraugus, NY to Covington, TN. Supporting Shipper: Charms Company, Halls Mill Road, Freehold, NJ 07728.

MC 115840 (Sub-3–7TA), filed January 2, 1981. Applicant: COLONIAL FAST FREIGHT LINES, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same as above). *Coiled sheet steel* from Hainesport, NJ to Gastonia, NC. Supporting Shipper: Doolan Steel Corporation, 303 Harper Drive, Moorestown, NJ 08057.

MC 152266 (Sub-3–2TA), filed January 2, 1981. Applicant: ABC EXPRESS, INC., 300 Sunrise Circle, Mt. Juliet, TN 37122. Representative John A. Crawford, 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between points in Bartow, Catoosa, Clayton, Cobb, De Kalb, Douglas, Fulton, Gordon, Gwinnett, Rockdale and Whitefield Counties, GA, on the one hand, and, open the other, points in KY and TN. NOTE: Applicant intends to interline at Atlanta, GA and points within its commercial zone. Supporting shippers: There are 15 statements in support of this application which may be examined at the I.C.C. Regional Office, Atlanta, GA.

MC 115841 (Sub-3–35TA), filed January 2, 1981. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same as above). *Dry bread crumbs in fifty pound bags,* from Jacksonville, FL to points in DE, MD, NJ, NY, and PA. Supporting shipper: Duval Bakery Products, 1733 Evergreen Avenue, Jacksonville, FL 32206.

MC 145555 (Sub-3–1TA), filed January 2, 1981. Applicant: WALKER'S INC., Route 1, Box 86, Greenville, FL 32331. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Building and Construction Materials, Fertilizer and Fertilizer Materials, Hardware and Pallets (except commodities in bulk, and lumber and wood by-products between points in FL and GA),* between points in FL, GA, AL and SC. Supporting shippers: There are twenty-nine (29) statements in support which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 116254 (Sub-3–26TA), filed January 2, 1981. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35631. Representative: Mr. M. D. Miller (same address as above). *1. Scrap Metals, Ferrous and Non-Ferrous; 2. Metal Products,* between all points in the United States in and east of MN, IA, MO, AR, and LA. Supporting shipper: There are 40 statements in support of this application which may be examined at the I.C.C. Regional Office, Atlanta, GA.

MC 153381 (Sub-3–1TA), filed January 2, 1981. Applicant: TCX, INC., 1797 Florida Street, Memphis, TN 38109. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *General Commodities (with the usual exceptions)* between Memphis, TN and its commercial zone, and Davidson County, TN, on the one hand, and, on the other, points in CA, WA, OR, AZ, NM and TX; restricted to the handling of traffic delivered to or received from a rail carrier moving in trailer-on-flat-car service. Applicant proposes to interline at Memphis, TN; Nashville, TN; Dallas-Ft. Worth, TX; Albuquerque, NM; Phoenix, AZ; Los Angeles, CA; San Francisco, CA; Portland, OR; and Seattle, WA. There are 10 statements of support which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 150942 (Sub-3–2TA), filed January 2, 1981. Applicant: STAGE COACH LEASING CO., INC., d.b.a., STAGE COACH CHARTERING SERVICES CO., 3536 Windermere Drive, Hephzibah, GA 30815. Representative: Jeffrey Kohlman, Suite 508, 1447 Peachtree Street NE., Atlanta, GA 30309. *Passengers and their baggage, in charter and special operations,* extending, in round-trip service, from points in Richland County, SC to points in the United States in and

east of MN, IA, MO, AR and LA. Supporting shipper(s): There are seven statements in support of this application which may be examined at the I.C.C. Regional Office, Atlanta, GA.

MC 143059 (Sub-3-29TA), filed January 2, 1981. Applicant: MERCER TRANSPORTATION CO., 1128 W. Main St., P.O. Box 35610, Louisville, KY 40232. Representative: Janice K. Taylor (same as above). *General commodities, usual exceptions,* between Houston, TX (and its respective commercial zone) and points in WA, CA, WY, CO, NM, ND, SD, NE, KS, OK, AR, LA, IL, MS, MI, IN, KY, AL, FL, NY, MA, OH, PA, WV, VA, NC and SC. Supporting shipper(s): Krueger Engineering & Manufacturing Company, P.O. Box 11308, Houston, TX 77016.

MC 152544 (Sub-3-7TA), filed January 2, 1981. Applicant: CYPRESS TRUCK LINES, INC., 1746 East Adams Street, Jacksonville, FL 32202. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *General Commodities (except household goods as defined by the Commission, classes A and B explosives, liquid and petroleum products and liquid chemicals, in bulk), as described in Item 51 of the Standard Transportation Commodity Code Tariff, restricted to traffic originating or terminating at the facilities of C & C Bulk Liquid Transfer, Inc.,* between Jacksonville, FL on the one hand, and, on the other, points in the U.S. (except HI). Supporting shipper: C & C Bulk Liquid Transfer, Inc., 401 Bryan Street, Jacksonville, FL 32202.

MC 75840 (Sub-3-38TA), filed January 2, 1981. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. *Such commodities as are dealt in or utilized by a distributor of chemicals (except in bulk),* between the facilities of or utilized by J.F. Henry Chemical Co., Inc., at or near East Rutherford, Newark, Fairfield, Paterson, and Hawthorne, NJ, Brooklyn, NY, and Orlando, FL, on the one hand, and, on the other, points in TX, AR, LA, MS, TN, GA, FL. AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA, and DC. Supporting shipper: J.F. Henry Chemical Co., Inc., 245 Park Avenue, East Rutherford, NJ 07073.

MC 151204 (Sub-3-1TA), filed January 2, 1981. Applicant: 321 EQUIPMENT LEASING CO., 712 West Airline Avenue, Gastonia, NC 28052. Representative: Rebecca P. Dalton (same address as above). *(1) Such commodities as are dealt in or used by department store business houses, and (2) materials, equipment and supplies used in the manufacturing, sale and distribution of the commodities listed in (1) above (except in bulk),* between points in AL, AR, CT, DE, DC, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MS, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and WI. Supporting shippers: Cato Corporation, 8100 Denmark Road, Charlotte, NC 28210, Family Dollar Stores, Inc., P.O. Box 25800, Charlotte, NC 28212, Pic N' Pay Stores, Inc., P.O. Box 3400, Charlotte, NC 28205, Savannah Wholesale Co., 102 Fahm St., P.O. Box 2407, Savannah, GA 31402.

MC 146402 (Sub-3-10TA), filed January 2, 1981. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles W. Teske (address same as applicant). *Structural wall panels, agriculture building panels and racketball court wall panels of fiberglass, aluminum, aspenite, and polystyrene and materials and supplies used in the manufacture, sales and distribution thereof.* Between the facilities of Pantek Corp. at Dayton, OH on the one hand, and, on the other, points in AL, AR, IL, IN, KY, MI, MS, MO, PA, TN, and WV. Supporting shipper: Pantek Corporation, P.O. Box 93, Dabel Station, Dayton, OH 45420.

MC 75840 (Sub-3-39TA), filed January 2, 1981. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, AL 35202. Representative: Raymond Hamilton, Malone Freight Lines, Inc., 3400 Third Avenue South, Birmingham, AL 35222. *Roofing materials and supplies,* between Birmingham (Jefferson County), AL, on the one hand, and, on the other, points in the State of FL. Supporting shipper: Jim Walter Corporation on behalf of Celotex Corporation, P.O. Box 22601, Tampa, FL 33622.

MC 125037 (Sub-3-5TA), filed January 2, 1981. Applicant: DIXIE MIDWEST EXPRESS, INC., P.O. Box 372, Greensboro, AL 36744. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmingham, AL 35209. *General commodities (except household goods as defined by the Commission and classes A and B explosives)* from Winona, MN to points in the U.S. Supporting shipper: Watkins Incorporated, 150 Liberty, Winona, MN 55987.

MC 125037 (Sub-3-6TA), filed January 2, 1981. Applicant: DIXIE MIDWEST EXPRESS, INC., P.O. Box 372, Greensboro, AL 36744. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmingham, AL 35209. *Milk food liquid, plastics and rubber articles in straight or mixed shipments* from Sturgis, MI; Columbus, OH, and Altavista, VA, to all points in and east of TX, OK, KS, NE, SD, and ND and CA. Supporting shipper: Ross Laboratories, Division of Abbott Laboratories, 625 Cleveland Avenue, Columbus, OH 43216.

MC 125037 (Sub-3-7TA), filed January 2, 1981. Applicant: DIXIE MIDWEST EXPRESS, INC., P.O. Box 372, Greensboro, AL 36744. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmingham, AL 35209. *Glass products, the materials, equipment and supplies used in the manufacture, sale and distribution of glass products (except in bulk)* between points in the U.S., restricted to shipments originating at or destined to the facilities of Guardian Industries Corporation, Corsicana, TX. Supporting shipper: Guardian Industries Corporation, P.O. Box 10001, Corsicana, TX 75110.

MC 111839 (Sub-3-2TA), filed January 2, 1981. Applicant: BEE LINE EXPRESS, INC., Post Office Box 388, Albertville, AL 35950. Representative: Mr. Don Upton, Bee Line Express, Inc., Post Office Box 388, Albertville, AL 35950. *Common carrier,* regular routes: *General commodities* (except explosives and commodities requiring special equipment) (1) between Huntsville, AL and Birmingham, AL: (a) From Huntsville over US Hwy 231 to Junction of AL Hwy 79, thence over AL Hwy 79 to Brimingham, and return over the same route: (b) from Huntsville over US Hwy 231 to junction of AL Hwy 160, then over AL Hwy 160 to the junction of US Hwy 231, thence over US Hwy 231 to Birmingham, and return over the same route; (c) from Huntsville over US Hwy Alt 72 and/or I/S 565 to junction of I/S Hwy 65, thence over I/S 65 to Birmingham, and return over the same route serving no intermediate points; (2) between Scottsboro, AL and Birmingham, AL: From Scottsboro over US Hwy 72 to Huntsville, thence over US Hwy 231 to the Junction of AL Hwy 79, thence over AL Hwy 79 to Birmingham, AL and return over the same route; (3) Between Chattanooga, TN and Birmingham, AL: From Chattanooga over I/S 59 and/or US Hwy 11 to Birmingham, and return over the same route serving the intermediate point of Gadsden, AL; (4) Between Chattanooga, TN and Huntsville, AL: From Chattanooga over US Hwy 72 to Huntsville, and return over the same route: (5) Between Albertville, AL and Arab, AL: From Albertville over US Hwy 431 to the junction of AL Hwy 69; thence over AL Hwy 69 to Arab, and

return over the same route. Applicant intends to interline at Birmingham, Chattanooga and Huntsville, and to tack with its existing authority at Scottsboro, Collinsville, Ft. Payne, and Albertville, AL. Applicant presently holds authority between Birmingham, AL and Chattanooga, TN; and authority in intrastate commerce between Birmingham, Huntsville, and Gadsden, AL. Supporting shippers: There are 45 statements in support of this application which may be examined at the I.C.C. Regional Office, Atlanta, GA.

MC 151526 (Sub-3-4TA), filed December 30, 1980. Applicant: TRIAD TRANSPORTATION SERVICES, INC., P.O. Box 20714, Greensboro, NC 27420. Representative: Jerald A. Honeycutt (same address as applicant), *Contract,* irregular routes: *Paper products and materials, supplies and equipment used in the manufacture and distribution of paper products, except in bulk,* between Guilford County, NC and Delaware County, PA, on the one hand, and, on the other points in the US except AK and HI, under a continuing bilateral contract(s) with Mathias Paper Corporation 460 Penn St.; Yeadon, PA. Supporting shipper: Mathias Paper Corp., 460 Penn St., Yeadon, PA.

MC 150883 (Sub-3-3TA), filed December 30, 1980. Applicant: PDR TRUCKING, INC., P.O. Box 609, Gastonia, NC 28052. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, N.W., Washington, DC 20005. *Plastic products, and materials and supplies used in the manufacture, distribution and sale thereof,* between points in the U.S., restricted to traffic originating at or destined to the facilities of Robintech, Inc. Supporting shipper: Robintech, Inc., 1900 II Tandy Center, Ft. Worth, TX 76101.

MC 146251 (Sub-3-4TA), filed December 30, 1980. Applicant: CLAXTON TRANSPORT, INC., Route 3, Box 135, Wrightsville, GA 31096. Representative: Ronald K. Kolins, Suite 3100, One IBM Plaza, Chicago, IL 60611. (1) *Malt beverages and related advertising materials; and (2) Equipment, materials, and supplies used in the sale, manufacture and distribution of malt beverages,* (1) From Detroit, MI and Fostoria, OH to points in GA, NC and SC; (2) From points in GA, NC and SC to Detroit, MI and Fostoria, OH. Supporting shipper: Stroh Brewing Co., One Stroh Dr., Detroit, MI 48226.

The following protests were filed in Region 4. Send protests to: CONSUMER ASSISTANCE CENTER, INTERSTATE COMMERCE COMMISSION, 219 SOUTH DEARBORN STREET, ROOM 1304, CHICAGO, IL 60604.

MC 142204 (Sub-4-3TA), filed December 30, 1980. Applicant: GUNVILLE TRUCKING, INC., d.b.a. GUNVILLE TRUCKING, P.O. Box 74, Niagara, WI 54151. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 53703. *Foundry furnace/cupola dust* from Kingsford, MI to Germantown, WI. Supporting shipper(s): Grede Foundries, Inc., P.O. Box 26499, Milwaukee, WI 53226.

MC 142204 (Sub-4-2TA), filed December 30, 1980. Applicant: GUNVILLE TRUCKING, INC., d.b.a. GUNVILLE TRUCKING, P.O. Box 74, Niagara, WI 54151. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 53703. *Such commodities as are dealt in or used by foundries* between points in Reno and Sedgwick Counties, KS; Dickinson County, MI; Milwaukee, Sauk and Waukesha Counties, WI on the one hand, and, on the other, points in AL, GA, FL, IL, IN, IA, KS, KY, MI, MN, MO, NE, NY, OH, PA, SC, SD, TN, WV and WI restricted to traffic originating at or destined to the facilities of Grede Foundries, Inc. Supporting shipper: Grede Foundries, Inc., P.O. Box 26499, Milwaukee, WI 53226.

MC 145636 (Sub-4-7TA), filed December 30, 1980. Applicant: BOB BRINK, INC., 165 Steuben St., Winona, MN 55987. Representative: Edward H. Instenes, 128½ Plaza East, P.O. Box 676, Winona, MN 55987. *Plywood and particleboard* moving in temperature controlled equipment from Rocklin, CA; Columbia Falls, MT; Missoula, MT; Elgin, OR; La Grande, OR; and Klamath Falls, OR to Arcadia, WI. Supporting shippers: Ashley-Arcadia Furniture Company, Arcadia, WI.

MC 151048 (Sub-4-2TA), filed December 29, 1980. Applicant: MODERN EXPRESS, INC., 2091 Kasota Ave., St. Paul, MN 55108. Representative: David R. St. Croix, 2328 Kings Circle, Woodbury, MN 55125. *General commodities* (except those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk and those which because of size or weight require the use of special equipment) between all points and places in MN, WI, ND, SD, MI (Upper Peninsula), IL (No. of Hwy 70), MO (No. of Hwy 70), IA, and NE (East of Hwy 81). Supporting shippers There are 34 statements of support attached.

MC 125708 (Sub-4-19), filed December 22, 1980. Applicant: THUNDERBIRD MOTOR FREIGHT LINES, INC., 1473 Ripley Road; P.O. Box 5216, Lake Station, IN 46405. Representative: A. C. Goebel, 109 Velma, South Roxana, IL 62087. *Steel Pipe* from Pine Bluff, AR to points in OK, TX, NM, AZ, LA, NE, CO, WY, MO, and IL. An underlying ETA seeks 120 days authority. Supporting shipper(s): SRL Metals of Texas, Inc., 1530 Lee Trevino, Suite B, El Paso, TX 79936.

MC 149546 (Sub-4-6), filed December 24, 1980. Applicant: D & T TRUCKING CO., INC., 498 First Street N.W., New Brighton, MN 55112. Representative: Samuel Rubenstein, Post Office Box 5, Minneapolis, MN 55440. *General commodities* (except household goods as described by the Commission and Class A and B explosives), between points located in the states of NY, IL, MN and WI. Supporting shipper: Eastman Kodak Company, Rochester, NY.

MC 55896 (Sub-4-11TA), filed December 29, 1980. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: George E. Batty (same as applicant). *Shipping drums, fiberboard and metal combined, tops and bottoms,* from Darlington, PA to points in OH. Supporting shipper: Greif Bros. Corporation, P.O. Box 341, Darlington, PA 16115.

MC 112801 (Sub-4-3TA), filed December 30, 1980. Applicant: TRANSPORT SERVICE CO., 15 Salt Creek Lane, Hinsdale, IL 60521. Representative: David C. Venable, Suite 805, 666 Eleventh Street, NW., Washington, DC 20001. *Corn syrup,* in bulk, in tank vehicles, from Cleveland,OH, to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, and VA. An underlying ETA seeks 120 days authority. Supporting shipper: A. E. Staley Manufacturing Co., P.O. Box 151, Decatur, IL 62525.

MC 127187 (Sub-4-1TA), filed December 30, 1980. Applicant: FLOYD DUENOW, INC., P.O. Box 86, Savage, MN 55378. Representative: William J. Gambucci, Suite M-20, 400 Marquette Ave., Minneapolis, MN 55401. *(1) Non-exempt animal and poultry feed and animal and poultry feed ingredients;* and *(2) pet food and pet supplies, and (3) materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) and (2) above,* between the United States' facilities of Hubbard Milling Company, on the one hand, and, on the other, points in the U.S. Supporting shipper: Hubbard Milling Company, 524 North Front Street, Mankato, MN 56001.

MC 115651 (Sub-4-13TA), filed December 30, 1980. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Road, P.O. Box 39, Rockford, IL 61105. Representative: E.

Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh St., N.W., Washington, D.C. 20001. *Liquefied petroleum gas,* in bulk, in tank vehicles, from Iowa City, IA to points in IL, WI, and MN. Supporting shipper: Petrolane, Inc., P.O. Box 410, St. Charles, IL 60174.

MC 84273 (Sub-4-1TA), filed December 29, 1980. Applicant: JONES TRUCKING CO., INC., 3020 Bay View Dr., Green Bay, WI 54301. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. *Contract;* Irregular; *Such commodities as are dealt in or used by wholesale, retail, and chain grocery stores (except commodities in bulk)* between points in WI on the one hand, and, on the other, points in the U.S. (except AK and HI) under a continuing contract(s) with Topco Associates, Inc. A underlying ETA seeks 120 days authority. Supporting shipper: Topco Associates, Inc., 7711 Gross Point Rd., Skokie, IL 60077.

MC 144293 (Sub-4-4TA), filed December 29, 1980. Applicant: DUANE McFARLAND, P.O. Box 1006, Austin, MN 55912. Representative: Thomas J. Beener, 67 Wall Street, New York, NY 10005. *Such commodities as is dealt in by food business houses, and materials, ingredients and supplies used in their manufacture and distribution* between points in OH on the one hand and on the other points in IA, IL, IN, KS, MI, MN, MO, ND, NE, SD, OH and WI. Restricted to traffic originating at or destined to the facilities utulized by the Stouffer Corporation. Supporting shipper: Stouffer Foods Corporation, 5750 Harper Road, Solon, OH 44139.

MC 119583 (Sub-4-1TA), filed December 29, 1980. Applicant: L. E. BOLING, INC., 719 Commercial Street, Kewanee, IL 61443. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *Contract: Irregular: Boilers and Parts and Accessories used in the manufacture thereof* between the facilities of Kewanee Boiler Corporation, Kewanee, IL, on the one hand, and, on the other, points in the U.S. (Except AK and HI). Supporting shipper: Kewanee Boiler Corporation, 101 Franklin Street, Kewanee, IL 61443.

MC 133689 (Sub-4-58TA), filed December 29, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples Street, N.E., Blaine, MN 55434. Representative: Anthony E. Young, 29 South LaSalle Street, Suite 350, Chicago, IL 60603. *General commodities (except those of unusual value, Class A & B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* from the facilities of Allied Shippers & Receivers Association at Chicago, IL to points in OH. An underlying ETA seeks 120 days authority. Supporting shipper: Allied Shippers & Receivers Association, 2029 West Hubbard Street, Chicago, IL.

MC 52680 (Sub-4-3TA), filed December 29, 1980. Applicant: D. A. EXPRESS, INC., 11937 S. Page Avenue, Calumet Park, IL 60643. Representative: Stephen H. Loeb, Suite 2027, 33 N. LaSalle Street, Chicago, IL 60602. *Metals and metal products,* between points in IL, IN, IA, KY, MD, MI, MN, MO, NE, NJ, NY, OH, PA, TN, VA, WV, WI, and DC. Supporting shipper: Metalock Corporation, 4640 W. Fifth Avenue, Chicago, IL 60644.

MC 111812 (Sub-4-21TA), filed December 29, 1980. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: Lamoyne Brandsma (same address as applicant) *Alcoholic beverages (except commodities in bulk),* from Jacksonville, FL to Minneapolis/St. Paul, MN. An underlying ETA seeks 120 days authority. Supporting shippers: Griggs Cooper & Co., Inc. & Eagle Wine Co., 489 North Prior Avenue, St. Paul, MN 55104; The Liquor House, 259 North 9th Avenue, Minneapolis, MN 55401; Old Peoria Co., Inc., 7125 Sanburg Road, Minneapolis, MN 55422; Ed Phillips & Sons Co., 2345 N.E. Kennedy, Minneapolis, MN 55413.

MC 19945 (Sub-4-2TA), filed December 23, 1980. Applicant: BEHNKEN, TRUCK SERVICE, INC., Route 13, New Athens, IL 62264. Representative: Joseph R. Behnken (same as applicant). *Ammonium Nitrate,* in bulk from Seneca, IL to Universal, Jasonville, Dugger, Carlisle, Lynville, IN and Boonville, TN. Supporting shipper: Peabody Coal Co., 301 North Memorial Drive, St. Louis. MO.

MC 145842 (Sub-4-7TA), filed December 23, 1980. Applicant: SUNDERMAN TRANSFER, INC., P.O. Box 63, Windom, MN 56101. Representative: Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. *Fresh meat* suspended and/or in boxes, from West Fargo, ND, to points in CA, IL, KS, MI, MN, OH, OK and WI. Supporting shipper: Held Beef Industries, Stockyards Road, West Fargo, ND 58078.

MC 142310 (Sub-4-7TA), filed December 23, 1980. Applicant: H. O. WOLDING, INC., Box 56, Nelsonville, WI 54458. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. *Paper and paper products* from points in Portage and Wood Counties, WI to points in MN. Supporting shipper: Consolidated Papers, Inc., 231 N. 1st. Ave. So., Wisconsin Rapids, WI 54494.

MC 149170 (Sub-4-22TA), filed December 29, 1980. Applicant: ACTION CARRIER, INC., 1000 E. 41st Street, Sioux Falls, SD 57105. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *Meat, meat products, meat by-products and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (Except hides and commodities in bulk)* Between all points in the U.S. (Except AK, HI, ID, MT, WA and WY), restricted to traffic originating at or destined to the facilities of John Morrell & Company. Supporting shipper: John Morrell & Co., 208 South LaSalle, Chicago, IL 60604.

MC 149170 (Sub-4-23TA), filed December 29, 1980. Applicant: ACTION CARRIER, INC., 1000 East 41st Street, Sioux Falls, SD 57105. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *General Commodities (Except Commodities in Bulk, Classes A and B Explosives & Household Goods as Defined by the Commission)* Between Mattoon, IL, on the one hand, and, on the other, all points in the U.S. (Except AK & HI), restricted to traffic originating at or destined to the facilities of R. R. Donnelley & Sons Company. Supporting shipper: R. R. Donnelley & Sons Company, North Route 45, Mattoon, IL 61938.

MC 143002 (Sub-4-16-TA), filed December 30, 1980. Applicant: C.D.B., INCORPORATED, 155 Spaulding, S.E., Grand Rapids, MI 49506. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Contract irregular general commodities* between points and places in the U.S. except AK and HI under contract to Outboard Marine Corporation and its subsidiaries. Supporting shipper: Outboard Marine Corporation, 100 Sea-Horse Drive, Waukegan, IL 60085.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 35320 (Sub-5-41), filed January 2, 1981. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). *General Commodities, except household goods as defined by the Commission, and Classes A and B explosives* between all points in the United States, (except AK. and HI.), restricted to traffic originating at or destined to the facilities

of Warehouse Services, Inc. Supporting shipper: Warehouse Services, Inc., Jackson, MS.

Note.—Applicant intends to tack and interline.

MC 107496 (Sub-5–51TA) filed January 2, 1981. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Petroleum and petroleum products,* (a) From Natrona County, WY to Decker, MT; (b) From Billings, MT to Decker, MT; (c) From Sheridan County, WY to Decker, MT. Supporting shipper: Peter Kiewit Sons' Company, 1000 Kiewit Plaza, Omaha, NE 68131.

MC 109818 (Sub-5–6TA), filed January 2, 1981. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52808. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Foodstuffs,* from the facilities of or used by Ragu' Foods, Inc. at or near Atlanta, GA, to points in AL, FL, and SC. Supporting shipper: Ragu Foods, Inc., 33 Benedict Place, Greenwich, CT 06830.

MC 115724 (Sub-5–3TA), filed January 2, 1981. Applicant: J. W. PHILLIPS, INC., 4500 North Sewell, Suite No. 5, Oklahoma City, OK 73154. Representative: Max G. Morgan, P.O. Box 1540, Edmond, OK 73034. Contract; irregular. *(1) Air handling equipment and (2) equipment, materials and supplies used in the manufacture of (1),* between points in the U.S. Supporting shipper: Temtrol, Inc., 15 East Oklahoma, Okarche, OK 73762.

MC 123993 (Sub-5–28TA), filed January 2, 1981. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Byron Fogleman, P.O. Box 1504, Crowley, LA 70526. *General commodities (except household goods as defined by the Commission and Class A & B explosives),* between points in the U.S. (except AK and HI), restricted to traffic having prior or subsequent movement by rail or water. Supporting shipper: Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, LA 70130.

MC 136553 (Sub-5–4TA), filed January 2, 1981. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, IA 52001. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *General commodities, except classes A and B explosives,* between Dubuque, IA, and points in the Dubuque commercial zone, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shippers: Dubuque Hydraulic & Industrial Supply Company, P.O. Box 1250, Dubuque, IA 52001; The Adams Company, 100 East 4th Street, Dubuque, IA 52001; William C. Brown Company, 2460 Kerper Blvd., Dubuque, IA 52001; and Theisen Distributing Company, Inc., 260 Dodge Street, Dubuque, IA 52001.

MC 138469 (Sub-5–32TA), filed January 2, 1981. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73147. Representative: Jack H. Blanshan, 205 W. Touhy Ave., Suite 200, Park Ridge, IL 60068. *Lift trucks and related articles, parts racks, bins and shelving,* (1) From Chicago, IL; Cleveland, Oh; Dallas, TX; Greenville, NC; Horsham, PA; Northeast, PA; Philadelphia, PA; Salem, VA; Sioux City, IA; Waco, TX and points in their commercial zones to points in OK, TX and NM (2) From Oklahoma City and Tulsa, OK to points in TX and NM. Restricted in (1) and (2) to shipments originating at or destined to the facilities of Medley Material Handling, Inc., or its suppliers. Supporting shipper: Medley Material Handling, Inc., 4201 Will Rogers Parkway, Oklahoma City, OK 73108.

MC 141255 (Sub-5–1TA), filed January 2, 1981. Applicant: TANDY TRANSPORTATION, INC., 2560 E. Long Avenue, Fort Worth, TX 76111. Representative: Roy Beans, 2560 E. Long Avenue, Fort Worth, TX 76111. Contract; Irregular. *Alcoholic Beverages and Malt Beverages (except commodities in bulk),* between Evansville, IN and Belleville, IL, on the one hand, and on the other, Fort Worth, TX and Dallas, TX, and their commercial zones. Supporting shipper: B & S Distributing Company, 1401 Northpark, Fort Worth, TX 76102.

MC 141865 (Sub-5–15TA), filed January 2, 1981. Applicant: ACTION DELIVERY SERVICE, INC., 2401 West Marshall Drive, Grand Prairie, TX 75050. Representative: A. William Brackett, 1108 Continental Life Building, Fort Worth, TX 76102. Contract; Irregular. *Paper and paper products and materials, equipment and supplies used in the manufacture and distribution of paper and paper produts,* between points in the U.S. (except AK and HI). Restricted to the transportation of traffic either originating at or destined to the facilities of Manville Forest Products Corporation. Supporting shipper: Manville Forest Products Corporation, P.O. Box 488, West Monroe, LA 71291.

MC 142716 (Sub-5–1TA), filed January 2, 1981. Applicant: C & L TRUCKING, INC., 1609 27th Street, N.W., Cedar Rapids, IA 52405. Representative: Ronald R. Adams, 600 Hubbell Building, Des Moines, IA 50309. *Meat by-product commodities as are dealt in or used by meat packinghouses, in bulk, in tank-type vehicles,* from Estherville, and Sioux City, IA, and Sioux Falls, SD, to points in AR, IL, KS, LA, MN, MO, NE, OK, SD, TX, and WI. Supporting shipper: John Morrell & Co., 208 S. LaSalle, Chicago, IL 60604. Representative:

MC 144246 (Sub-5–1TA), filed January 2, 1981. Applicant: LARSEN TRUCKING, INC., 7703 Sunset Drive, Ralston, NE 68127. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *Foodstuffs,* from the facilities of PVO International Inc., St. Louis, MO to points in MN, IA, ND, SD, NE, KS, and CO. Supporting shipper: PVO International Inc., 3400 No. Wharf Street, St. Louis, Mo 63147.

MC 145032 (Sub-5–2TA), filed January 2, 1981. Applicant: NATIONAL TRANSPORTATION SERVICES, INC., P.O. Box 3291, Lubbock, TX 79410. Representative: Wilmer B. Hill, Suite 805, 666 Eleventh Street, NW., Washington, DC 20001. *(1) Trailers, trailer chassis, and containers (except those designed to be drawn by passenger automobiles), in truckaway service, and (2) Parts for the commodities named in (1) above,* between Macon, GA and South Hill, VA, on the one hand, and, on the other, points in the U.S. Supporting shipper: Watkins Manufacturing Co., Inc., Box 370, South Hill, VA 23970.

MC 146051 (Sub-5–3TA), filed January 2, 1981. Applicant: WITTENBURG TRUCK LINE, INC., Box 98, Readlyn, IA 50668. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Chemicals in containers* from CA, IL, NV, and WY, to points in IA, MN and WI and from Sumner, IA, to points in MN, NE, SD and WI. Supporting shipper: Overton Chemical Sales, Inc., Box 297, Sumner, IA 50674.

MC 150999 (Sub-5–3TA), filed January 2, 1981. Applicant: GENE F. LACAEYSE, d.b.a. G. F. LACAEYSE TRANSPORT, R.F.D. Box 110, Montezuma, IA 50171. Representative: Ronald R. Adams, 600 Hubbell Building, Des Moines, IA 50309. *Meat, meat products, and meat by-products, and articles distributed by meat packinghouses,* (except commodities in bulk), from Marshall County, IA, to points in NC, SC, FL, MS, and TX. Supporting shipper: Tama Meat Packing Corporation, P.O. Box 209, Tama, IA 52339.

MC 151637 (Sub-5–5TA), filed January 2, 1981. Applicant: LARRY BREEDEN TRUCKING, INC., Post Office Box 1065, Fayetteville, AR 72956. Representative: Don Garrison, Esq., 1301 Fayetteville Road, Van Buren, AR 72701. *Such commodities as are dealt in by chain grocery and food business houses*

(except in bulk, in tank vehicles)—From points in CA To Van Buren, AR. Supporting shipper: Griffin Wholesale Grocery Dist., Post Office Box 126, Van Buren, AR 72956.

MC 152021 (Sub-5–13TA), filed January 2, 1981. Applicant: IMPALA TRANSPORTATION SERVICES, INC., 1705 E. Irving Blvd, P.O. Box 678, Irving, TX 75060. Representative: Larry P. Cardin, President, 1705 E. Irving Blvd., P.O. Box 678, Irving TX 75060. Contract: Irregular. *Caulking Compounds Class 55 Materials,* between Dallas, TX and all points in the continental U.S. Supporting shipper: H. B. Fuller Company, 10212 Denton Drive, Dallas, TX 75220.

MC 152921 (Sub-5–1TA), filed January 2, 1981. Applicant: HOU-TEX TRANSPORTATION, INC., P.O. Box 38591, Houston, TX 77088. Representative: Clayte Binion, 1108 Continental Life Building, Fort Worth, TX 76102. *Machinery, equipment materials and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas, and petroleum and their products and by-products,* Between points in Harris, Brazoris, Nueces, Calhoun, Aransas, Matagorda, Galveston, Polk and Colorado Counties, TX; on the one hand, and, on the other, points in LA, OK and NM. Supporting shippers: There are six.

MC 153392 (Sub-5–1TA), filed January 2, 1981. Applicant: CENTRAL TRACTOR FARM & FAMILY CENTER, INC., 1515 East Euclid, Des Moines, IA 50316. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Contract; Irregular. *Materials and supplies used in the manufacture of dairy products,* from points in the U.S. to Waterloo and Cedar Rapids, IA. Supporting shipper: Mississippi Valley Milk Producers Association, Inc., 325 Washington Street, Waterloo, IA 50701.

MC 153393 (Sub-5–1TA), filed January 2, 1981. Applicant: T.B.S. TRUCKING, INC., 3008 East Grauwyler Road, Irving, TX 75061. Representative: James W. Hightower, Hightower, Alexander and Cook, P.C., 5801 Marvin D. Love Freeway, No. 301, Dallas, TX 75237. *Magazines and books,* From Dallas, TX to points in AR, LA, MS, OK, and TX. Supporting shipper: Lone Star Magazine Shipping Association, 3008 East Grauwyler Road, Irving, TX 75061; and Curtis Circulation Company, 841 Chestnut Street, Philadelphia, PA 19105.

MC 153394 (Sub-5–1TA), filed January 2, 1981. Applicant: FULLER BROS., INC., 3912 Oakbrook Drive, Oklahoma City, OK 73115. Representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. *Petroleum and Petroleum Products, in bulk and in packages,* Between points in OK, on the one hand, and on the other, West Memphis, AR; Roxana, IL; Kansas City, KS; New Orleans, LA; Kansas City and St. Louis, MO; Dallas, Houston and Port Arthur, TX. Supporting shippers: Tex-T Liquid Gas Co., Inc., P.O. Box 378, Pauls Valley, OK 73075; Tulco Oils, Inc., P.O. Box 51375, Tulsa, OK 74151; T & J Oil Products, Inc., 531 N. Portland, Oklahoma City, OK 73147.

MC 153395 (Sub-5–1TA), filed January 2, 1981. Applicant: CHAR-LINE CORPORATION, 816 E. Funston, Wichita, KS 67211. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. *Plastic articles and materials and supplies used in the manufacture of such items,* Between points and places in AR, KS, OK and TX. Supporting shipper(s): Ritricia Plastic Corporation, 816 E. Funston, Wichita, KS 67211.

MC 5227 (Sub-5–13TA) filed December 29, 1980. Applicant: ECKLEY TRUCKING, INC., P.O. Box 201, Mead, NE 68041. Representative: A. J. Swanson, Quaintance & Swanson, P.O. Box 1103, 226 N. Phillips Avenue, Sioux Falls, SD 57101. *Malt beverages,* from Shelby County, TN to Denver, CO and pts in its commercial zone. Supporting shipper: Murray Bros. Distributing Co., 1505 West 3rd Avenue, Denver, CO 80223.

MC 29910 (Sub-5–75TA) filed December 29, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber (address same as applicant). *Iron or steel articles (except in bulk),* between Oakland, CA; Los Angles, CA; Portland, OR; Seattle, WA; Tacoma, WA; on the one hand, and, on the other, points in and west of MN, IA, MO, OK, and TX. Supporting shipper: Sumitomo Corporation of America, 1 California St., San Francisco, CA

MC 29910 (Sub-5–76TA) filed December 29, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber (address same as applicant). *Roofing, building materials and supplies (except in bulk),* between Tuscaloosa, AL; Phillipsburg, KS; Denver, CO; Frederick, MD; Joplin and Kansas City, MO; Omaha, NE Tulsa, OK and Knoxville, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Tamko Asphalt Products, Inc., 220 West 4th Street, Joplin, MO 64801

MC 29910 (Sub-5–77TA) filed December 29, 1980. Applicant: ABF FREIGHT SYSTEM, INC., P.O. Box 48, Fort Smith, AR 72902. Representative: Joseph K. Reber (address same as above applicant). Common, Regular. *General Commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* between Phoenix and Tucson, AZ over Interstate Highway 10, serving all intermediate points and all intermediate and off-route points in Pima, Graham, Greenlee, Pinal, Gila, Maricopa, Cochise and Santa Cruz Counties, AZ. Applicant intends to tack and interline. Supporting shipper: 10 supporting shippers.

MC 41116 (Sub-5–30TA) filed December 29, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Byron Fogleman; P.O. Box 1504; Crowley, LA 70526. Contract; Irregular, *(1) Paper and paper products (except in bulk), (2) materials, equipment and supplies used in manufacture or sale of (1) (except in bulk),* between pts in the U.S. (except AK & HI) under continiuing contract(s) with Angleboard, Inc. Supporting shipper: Angleboard, Inc., 8901 Blue Ash Road, Cincinnati, OH 45242.

MC 61396 (Sub-5–11TA), filed December 29, 1980. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68101. Representative: Scott E. Daniel, 800 Nebraska Savings Building, 1623 Farnam, Omaha, NE 68102. *Kiln dust, in bulk,* between points in TX, LA, OK, MS, and AR. Supporting shipper(s): Solididust, Inc., 8114 Misty Vale, Houston, TX 77075.

MC 67234 (Sub-5–12TA), filed December 29, 1980. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105, 314–727–0777. *Machinery and Supplies* between points and places in the U.S. Supporting shipper(s): Packaging Machinery Division of F.M.C. Corporation, 975 Lumbardi Avenue, Green Bay, WI 54305; Minster Machine Company, 240 West Fifth Street, Minster, OH 45865; Oliver Instrument Company, 1406 East Maumee, P.O. Box 189, Adrian, MI 49221; Ram Sag Machinery Sales Corp., and Seaberg Precision Rebuilding Corp., 165 Field Street, West Babylon, NY 11704.

MC 88368 (Sub-5–11TA), filed December 29, 1980. Applicant: CARTWRIGHT VAN LINES, INC., 11901

Cartwright Avenue, Grandview, MO 64030. Representative: C. Max Steward (same address as applicant). *Conveyor systems, including parts and accessories,* from Grandview, MO to Borger, TX. Supporting shipper: Industrial Bearing and Transmission, Inc., 2450 Summit St., Kansas City, MO 64141.

MC 99919 (Sub-5-1TA), filed December 29, 1980. Applicant: FREMONT EXPRESS, INC., 620 E. Factory Street, Fremont, NE 68025. Representative: Scott T. Robertson, P.O. Box 94748, Lincoln, NE 68509. *Tires, electric motors, motor controls, and materials and supplies used in the manufacture, sale and distribution thereof* from Conshohoken and Frazer, PA; Elsah and Batavia, IL; McMinnville and Memphis, TN; Grafton and Wausau, WI; Kansas City, KS; Denver, CO; Dallas, TX; Minneapolis, MN; and Des Moines, IA, and points in their respective commercial zones, to the facilities of Fremont Tire Co. or P & H Electric, Inc. at or near Fremont, NE, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Fremont Tire Co., R.R. No. 5, Fremont, NE; and P & H Electric, Inc., 1210 17th Street, Fremont, NE.

MC 107064 (Sub-5-3TA), filed December 29, 1980. Applicant: STEERE TANK LINES, INC., P.O. Box 220998, Dallas, TX 75222. Representative: Hugh T. Matthews, 555 Griffin Square, Ste. 850, Dallas, TX 75202. *Chemicals,* in bulk, between Galveston and Brazoria Counties, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shippers: Schenectady Chemicals, Inc., P.O. Box 2830, Freeport, TX 77541; Chemical Processing and Production, Inc., 625 Sixth St. N., Texas City, TX 77590.

MC 107496 (Sub-5-48TA), filed December 29,, 1980. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Oil,* from Tulsa, OK to Trinidad, CO. Supporting shipper: Amato Bros., 224 Godding, Trinidad, CO.

MC 107496 (Sub-5-49TA), filed December 29, 1980. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Methyl alcohol, in bulk,* from Baltimore, MD to Golden, CO. Supporting shipper: Jay T. Knutson, 8637 W. 75th Way, Arvada, CO 80005.

MC 110581 (Sub-5-2TA), filed December 29, 1980. Applicant: G & H MOTOR FREIGHT LINES, INC., P.O. Box 239, Greenfield, IA 50349. Representative: Mr. Russell H. Wilson, 4400 Merle Hay Road, Des Moines, IA 50310. (1) *glass,* from Greenfield, IA, and Bayport and Minneapolis, MN, to points in the us (except AK and HI) *(2) materials, equipment and supplies used in the manufacture and distribution of glass (except commodities in bulk)* between points in the U.S. (except AK and HI.) Supporting shipper: Cardinal Insulated Glass Co., P.O. Box 99, Highway 25 North, Greenfield, IA 50849.

MC 111401 (Sub-5-27TA), filed December 29, 1980. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., P.O. Box 632, Enid, OK 73701. Representative: Victor R. Comstock, Vice President, Traffic, (same address as applicant). *Lubricating oil, in bulk, in tank vehicles,* from Wichita, KS to Truro, IA. Supporting shipper: Universal Motor Oils, P.O. Box 4449, Wichita, KS, 67204.

MC 114273 (Sub-5-38TA), filed December 29, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core, Corporate Counsel. Same as above. *(1) Drugs, medicines, chemicals, agricultural feed supplements, toilet preps, plastic materials, and related commodities (except in bulk); (2) materials, equipment and supplies used in the sale, distribution and manufacture of commodities in (1) above,* from Chicago, IL to Columbus, OH; Indianapolis, IN: Grand Rapids, MI; Milwaukee, WI; and Minneapolis, MN (including points in their respective commercial zones). Restricted to traffic originating at or destined to the facilities of American Cyanamid Company. Supporting shipper: American Cyanamid Co., 859 Berdan Ave., Wayne, NJ 07470.

MC 118959 (Sub-5-11TA), filed December 29, 1980. Applicant: JERRY LIPPS, INC., 130 S. Frederick St., Cape Girardeau, MO 63701. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. *Cleaning and washing compounds, and liquids, soap and soap products, textile softeners, food products, toilet preparations and mouthwash, and materials, equipment and supplies used in the manufacture, sale or distribution thereof,* between the facilities of Lever Brothers Company at or near St. Louis, MO; Hammond, IN; Clearing, IL, on the one hand, and, on the other, points in CA, CO, FL, GA, IL, IN, LA, MD, MI, MN, MO NJ, NY, NC, OH, OR, RI and TX. Supporting shipper: Lever Brothers Company, Lever House, 390 Park Ave., New York, NY 10022.

MC 121718 (Sub-5-1TA), filed December 29, 1980. Applicant: MURPHY BONDED WAREHOUSE, INC., 4002 Mansfield Road, P.O. Box 3722, Shreveport, LA 71103. Representative: Edward A. Winter, 235 Rosewood Drive, Metairie, LA 70005. *General Commodities, in trailer loads.* Between the railroad ramps in Shreveport, LA and points within 125 miles of Shreveport, LA, not served by ramps, restricted to traffic having a prior or subsequent movement by rail in Interstate Commerce. Supporting shipper: Illinois Central Gulf Railroad, 233 N. Michigan, Chicago, IL 60601.

MC 124174 (Sub-5-35TA), filed December 29, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811 "L" Street, Omaha, NE 68137. *(1) Pipe, wire, cable, cord sets, plastic materials and equipment and supplies used in the manufacture of such commodities; and (2) Insulated electric copper and aluminum wire and cable,* from (1) Los Angeles, San Francisco, and Pittsburg, CA to pts in the USA and (2) between Santa Maria, CA; Passaic, Paterson and North Brunswick, NJ; and Richmond, KY, on the one hand, and pts in the USA (except HI), on the other hand. Restricted to the traffic of the supporting shippers. Supporting shipper(s): Triangle PWC, Inc., 1666 Willow Pass Road, Pittsburg, CA 94565; The Okonite Company, 100 Hilltop Road, Ramsey, NJ 07446.

MC 126118 (Sub-5-45TA), filed December 29, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, same as applicant. *Paper and paper products,* from Little Falls, MN and its commercial zone to pts in the US (except AK and HI). Supporting shipper: Hennepin Paper Company, Jay Bailey, Shipping Supervisor, Second Street, S.W., Little Falls, MN 56345.

MC 126118 (Sub-5-46TA), filed December 29, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, same as applicant. *Plastic and steel articles, equipment, and supplies,* between pts in CO, GA, IN, and KS, on the one hand, and, on the other, pts in the US (except AK and HI). Supporting shipper: Hoover Universal, Inc., Thomas E. Gould, Corporate Traffic Manager, Route 2, Tri Port Road, Georgetown, KY 40324.

MC 126822 (Sub-5-42TA), filed December 29, 1980. Applicant: WESTPORT TRUCKING COMPANY, 15580 South 169 Highway, Olathe, KS 66061. Representative: John T. Pruitt (same as applicant). *Iron and Steel, and iron and steel products* between Clay

County, MO on the one hand, and points in the U.S. on the other, restricted to traffic moving for the account of Arrowhead Grating and Metalworks. Supporting shipper: Arrowhead Grating and Metalworks, 411 East 10th Avenue, N. Kansas City, MO.

MC 133194 (Sub-5-7TA), filed December 29, 1980. Applicant: WOODLINE MOTOR FREIGHT, INC., Airport Road, P.O. Box 1047, Russellville, AR 72801. Representative: Scotty D. Douthit, Sr., Airport Road, P.O. Box 1047, Russellville, AR 72801. Common; Regular. *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* (1) Between Dardanelle, AR and Danville, AR; From Dardanelle, AR, over U.S. Hwy 27 to the Junction of U. S. Hwy 10, then to Danville, AR, and return over the same route serving all intermediate points. (2) Between Dardanelle, AR and Rover, AR; From Dardanelle, AR, over U. S. Hwy 7 to Junction of U. S. Hwy 28, over Hwy 28 to the Junction of U. S. Hwy 27, then over Hwy 27 to Rover, AR, and return over the same route serving all intermediate points. (3) Between Ola, AR and Danville, AR; From Ola, AR over U. S. Hwy 10 to Danville, AR, and return over the same route serving all intermediate points. Applicant intends to tack and interline. 7 Supporting shippers.

MC 134134 (Sub-5-8TA), filed December 29, 1980. Applicant: MAINLINER MOTOR EXPRESS, INC., 4202 Dahlman, P.O. Box 7439, Omaha, NE 68107. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. *Alcoholic beverages (except in bulk)* from pts in the states of NY, NJ, MI, KY, MD, IL, IN to (a) the facilities of Peter Hauptman Co., Inc., at or near St. Louis, MO; (b) the facilities of Manhatten Distributing Company, at or near Maryland Heights, MO; and (c) the facilities of Missouri-Conrad Liquor Company, at or near Kansas City, MO. Supporting shippers: Peter Hauptman Co., Inc., 2340 59th Street, St. Louis, MO 63110; Manhattan Distributing Company, Inc., 11675 Fairgrove Industrial Drive, Maryland Heights, MO 63043; and Missouri-Conrad Liquor Company, 1512 Atlantic, North Kansas City, MO 64116.

MC 134134 (Sub-5-9TA), filed December 29, 1980. Applicant: MAINLINER MOTOR EXPRESS, INC., 4202 Dahlman, P.O. Box 7439, Omaha, NE 68107. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. *Alcoholic beverages (except in bulk)* between the facilities of Montebello Brands, Inc., at or near Baltimore, MD, on the one hand, and, on the other pts in the states of PA, WV, MI, OH, IL, WI, MN, KS, MO, TX and NE; and (2) from the facilities of Majestic Distilling Co., Inc., at or near Lansdowne, MD, to points in AR, CO, IL, KS, MN and MO. Supporting shippers: Montebello Brands, Inc., Bank Street and Central Avenue, Baltimore, MD 21202 and Majestic Distilling Company, Inc., P.O. Box 7372, Baltimore, MD 21227.

MC 135007 (Sub-5-11TA), filed December 29, 1980. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" Street, Omaha, NE 68127. Representative: Arthur J. Cerra, 2100 CharterBank Center, 920 Main Street, P.O. Box 19251, Kansas City, MO 64141. *Contract,* irregular: *Such commodities, materials and supplies dealt in, used and sold by retail building material stores,* Between pts in the U.S., Supporting shipper: Payless Cashways Inc., 3100 Broadway, Kansas City, MO 64111.

MC 141197 (Sub-5-4TA), Filed December 29, 1980. Applicant: APPLICANT-BABCOCK, INC., 4108 Mattox Road, Riverside, MO 64151. Representative: Tom B. Kretsinger, Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068.

Coal in bulk in dump vehicles, from Labette County, KS to Springfield, MO. Supporting shipper: Cherokee Coal Company, 5200 S. Yale Ave., Tulsa, OK 74135.

MC 141523 (Sub-5-1TA), Filed December 29, 1980. Applicant: C. R. KIDD PRODUCE, INC., P.O. Box 364, Springdale, AR 72764. Representative: Connie R. Kidd, P.O. Box 364, Springdale, AR 72764. *Such commodities as are dealt in or used by wholesale and retail discount and variety stores, (except in bulk),* between points in AL, AR, IL, KS, KY, LA, MO, MS, OK, TN and TX. Restricted to traffic originating at or destined to the facilities of Wal-Mart Stores, Inc. Supporting shipper: Wal-Mart Stores, Inc., P.O. Box 116, Bentonville, AR 72712.

MC 141865 (Sub-5-14TA), Filed December 29, 1980. Applicant: ACTION DELIVERY SERVICE, INC., 2401 West Marshall Drive, Garand Prairie, TX 75050. Representative: A. William Brackett, 1108 Continental Life Building, Fort Worth, TX 76102. Contract; Irregular. *Such commodities as are dealt in or used by manufacturers and distributors of paint, chemicals and related articles,* between points in the U.S. Supporting shipper: The Sherwin-Williams Company, 2802 West Miller, Garland, TX 75040.

MC 144166 (Sub-5-5TA), Filed December 29, 1980. Applicant: BILL STARR TRUCKING, INC., 1041 S. Vista Dr., Independence, MO 64056. Representative: Alex M. Lewandowski, 1221 Baltimore Ave., Ste. 600, Kansas City, MO 64105. *Contract;* Irregular. *Toilet preparations and other articles moving in mixed loads with toilet preparations,* Between Kansas City, MO, on the one hand, and, on the other, Denver and Boulder, CO and their respective commerical zones. Supporting shipper: Avon Products, Inc., 83rd and College, Kansas City, MO 64141.

MC 144603 (Sub-5-34TA), Filed December 29, 1980. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Drive, Maryland Heights, MO 63043. Representative: Laura C. Berry (same address as applicant). *Chemicals or allied products (except commodities in bulk, in tank vehicles)* between points in St. Louis, MO; St. Louis, St. Charles and Jefferson Counties, MO; Madison and St. Clair Counties, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Simmler Inc., 3755 Forest Park, St. Louis, MO 63108.

MC 145384 (Sub-5-11TA), filed December 29, 1980. Applicant: ROSE-WAY, INC., P.O. Box 4644, Des Moines, IA 50306. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Millwork and moulding,* from Corning, CA to points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Supporting shipper(s): Corning Moulding Corporation, P.O. Box 187, Corning, CA 96021.

MC 145441 (Sub-5-38TA), filed December 29, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, P.O. Box 5130, North Rock, AR 72119. *Shelving, Steel and Wood combined and Hardware accessories thereof* from Jacksonville, IL to points in the U.S. Supporting shipper: Lundia, Myers Industries, Inc., Distribution Manager, 600 Capitol Way, Jacksonville, IL 62650.

MC 145526 (Sub-5-1TA), filed December 29, 1980. Applicant: CTC TRANSPORTATION, INC., 514 North Clairborne Avenue, New Orleans, LA 70112. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *General Commodities (except those of unusual value, classes A and B explosives, commodities in bulk, commodities requiring special equipment, household goods as defined by the Commission), in containers or trailers having an immediately prior or subsequent movement by water,* between Savannah, GA, Jacksonville, FL

and Charleston, SC, on the one hand, and, on the other, points in FL, GA and SC, and between New Orleans, LA, on the one hand, and, on the other, points in LA, MS and TX. Supporting shippers: 8.

MC 146055 (Sub-5-10TA), filed December 29, 1980. Applicant: DOUBLE "S" TRUCKLINE, INC., 731 Livestock Exchange Bldg., Omaha, NE 68107. Representative: Mr. James F. Crosby, James F. Crosby & Associates, 7363 Pacific St., Oak Park Office Bldg., Suite 210B, Omaha, NE 68114. *Meats, and packinghouse products,* between the facilities used by W & G Marketing Co., Inc., Sidney Sheep and Lamb Division, Fremont and Polk Counties, IA and Douglas County, NE, on the one hand, and, on the other points in the U.S. (except AK and HI). Supporting shipper: W & G Marketing Co., Inc., P.O. Box 236, Sidney, IA 51652

MC 149235 (Sub-5-4TA), filed December 29, 1980. Applicant: C. MAXWELL TRUCKING CO., INC. 9108 Reeds Dr., Overland Park, KS 66207. Representative: Alex M. Lewandowski, 1221 Baltimore Ave., St. 600, Kansas City, MO 64105. *Contract;* Irregular. *General commodities (except household goods as defined by the Commission and Classes A and B explosives),* between Wyandotte County, KS, on the one hand, and, on the other, points in CO. Supporting shipper: Procter & Gamble Distributing Co., P.O. 599, Cincinnati, OH 45201.

MC 150102 (Sub-5-6TA), filed December 29, 1980. Applicant: MUSTANG TRANSPORTATION, INC., 1101 Rue Corton, Slidell, LA 70458. Representative: Albert T. Riddle (same as applicant). Contract—Irregular: *Rubber articles and materials and clay* between Natchez MS and all pts in LA and TX. Supporting shipper: The Armstrong Rubber Company, 500 Sargent Drive New Haven, CT 06507.

MC 150578 (Sub-5-20TA), filed December 29, 1980. Applicant: STEVENS TRANSPORT, A DIVISION OF STEVENS FOODS, INC., 2944 Motley Drive, Suite 302, Mesquite, TX 75150. Representative: E. Lewis Coffey, 2944 Motley Drive, Suite 302, Mesquite, TX 75150. *Alcoholic beverages and wine, in packages* between pts in OH, CT, and SC, on the one hand, and, on the other, pts in TX, AR, LA, and AZ. Supporting shipper: Glazer's Wholesale Drug Co., Inc., 508 Park Avenue, Dallas, TX 75201.

MC 150578 (Sub-5-21TA), filed December 29, 1980. Applicant: STEVENS TRANSPORT, A DIVISION OF STEVENS FOODS, INC., 2944 Motley Drive, Suite 302, Mesquite, TX 75150. Representative: E. Lewis Coffey 2944 Motley Drive, Suite 302, Mesquite, TX 75150. *Such merchandise as is dealt in by wholesale and retail department stores* from Dallas, TX to pts in the U.S. (except AK, HI, and TX). Supporting shipper: Lumar Quilting, Inc., 153 Leslie Street, Dallas, TX.

MC 151649 (Sub-5-2TA), filed December 29, 1980. Applicant: SOONER TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. Contract, irregular; *Commodities distributed by retail stores,* from IA, MN, NE & SD to Polk County, IA. Supporting shipper: Super Valu Stores, Des Moines Div., 3919-109th St., Des Moines, IA 50322.

MC 152942 (Sub-5-1TA), filed December 29, 1980. Applicant: TOGO TRUCKING CO., Route 3, St. Joseph, MO 64505. Representative: James H. Counts, 320 Robidoux Center, St. Joseph, MO 64501. Contract, irregular: *Corn flour (non-edible) for gypsum binder glue,* from: Krause Milling Co., St. Joseph, MO to: Gypsum, OH, East Chicago, IN, Shoals, IN. Supporting shipper: Krause Milling Co., P.O. Box 1156, Milwaukee, WI 53201.

MC 153319 (Sub-5-1TA), filed December 29, 1980. Applicant: C F C TRANSPORT, INC., 339 S.W. 6th Street, Des Moines, IA 50309. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Contract, Irregular: *general commodities (except explosives and commodities in bulk),* between pts in the U.S. under continuing contracts with Continental Fiberglass Corp., Ameron, Inc., and Gore Creek Distributing Co. Supporting shippers: Continental Fiberglass Corp., 339 S.W., 6th Street, Des Moines, IA 50309; Gore Creek Distributing Co., 101 E., 2nd, Des Moines, IA 50309; Ameron, Inc., P.O. Box 9610, Little Rick, AR.

MC 16334 (Sub-5-1TA), filed December 29, 1980. Applicant: DEBRICK TRUCK LINE COMPANY, R.R. #2, Paola, KS 66071. Representative: D. L. Debrick (same as applicant). *Pre-cast concrete manholes* from Miami, OK, to points in AR, IA, KS, MO, NE, and TX. Supporting shipper: Hardwall Fabricators, Inc., P.O. Box 257, N. Miami, OK 74358.

MC 52460 (Sub-5-24TA), filed December 31, 1980. Applicant: ELLEX TRANSPORTATION, INC., 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. Representative: Don E. Kruizinga, 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. *Such commodities as dealt in by cold storage houses,* between points in AL, AR, FL, KS, LA, MS, MO, OK, NE, TN and TX. Supporting shipper: York Cold Storage—Commerce St. & Division Ave.—York, NE 68467.

MC 100666 (Sub-5-11), filed December 31, 1980. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Paul L. Caplinger (same address as applicant). *Roofing and roofing products* from Joplin, MO and Phillipsburg, KS to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY. Supporting shipper: TamKo Asphalt Products, Inc., 220 West 4th Street, Joplin, MO 64801.

MC 107496 (Sub-5-50TA), filed December 31, 1980. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Grain products,* between points in Towner County, ND, on the one hand, and, on the other, points in the U.S. Supporting shipper: Noodles by Leonardo, Cando, ND 58324.

MC 112713 (Sub-5-25TA), filed December 31, 1980. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr., P.O. Box 7270, Overland Park, KS 66207. Common; Regular. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), which are at the time moving on bills of lading of freight forwarders under 49 U.S.C. 10102(8),* serving Kissimee and St. Cloud, FL, as off-route points in connection with carrier's otherwise authorized operations. Applicant intends to tack the authority sought with its authority in MC-122713. Supporting shipper: Yellow Forwarding Co., 10990 Roe Avenue, Overland Park, KS 66207.

MC 118959 (Sub-5-13TA), filed December 31, 1980. Applicant: JERRY LIPPS, INC., 130 S. Frederick St., Cape Girardeau, MO 63701. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. *Pulpboard and fibreboard boxes and such commodities as are manufactured, distributed or dealt in by manufacturers or convertors of paper and paper products (except commodities in bulk or hazardous materials),* from Hattiesburg, MS, to Pineville, LA. Supporting shipper: Inland Container Corporation, 151 N. Delaware St., Indianapolis, IN 46206.

MC 119399 (Sub-5-39), filed December 31, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, Missouri 64801. Representative: Thomas P. O'Hara (address same as applicant). *(1) Paper and Paper Products; (2) Equipment,*

materials and supplies used in the manufacture of such commodities (except in bulk) between the facilities of Containers Corporation of America at Muskogee, OK on the one hand, and, on the other, points in AR, KS, MO, LA, TX, FL, AL and UT. Supporting shipper: Container Corporation of America, Fort Worth, TX 76102.

MC 119399 (Sub-5-40), filed December 31, 1980. Applicant: CONTRACT FREIGHTERS, INC., 2900 Davis Boulevard, P.O. Box 1375, Joplin, MO 64801. Representative: Thomas P. O'Hara (address same as applicant). *(1) Corrugated fiberboard partitions, KDF; (2) Materials and Supplies used in the manufacture of such commodities;* (1) from the facilities of Four-M Corporation at North Kansas City, MO to Omaha and Kearney, NE and Tulsa, OK; (2) from Tulsa, OK to the facilties of Four-M Corporation at North Kansas City, MO. Supporting shipper: Four-M Corporation, North Kansas City, Mo.

MC 119988 (Sub-5-30TA), filed December 31, 1980. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Kenneth W. Haskins, P.O. Box 1384, Lufkin, TX 75901. *Corrosion-resistant products (except in bulk): pipe, piping, hand rails, duct, coatings, grating, tanks, scrubbers, and plastics.* Between Los Angeles, CA; New Orleans, LA; Houston, TX; and Nashville, TN, on the one hand, and, on the other, pts in the U.S. (except AK and HI). Supporting shipper(s): Corrosion Specialties, Inc., 1412 N. Batania Avenue, Orange, CA 92667.

MC 143594 (Sub-5-7TA), filed December 31, 1980. Applicant: NATIONAL BULK TRANSPORT, INC., P.O. Box 402535, Dallas, TX 75240. Representative: Patrick M. Byrne, P.O. Box 2298, Green Bay, WI 54306. (1) *Sodium dichromate* from Amarillo, TX to Chandler and Sacaton, AZ; and (2) *Sulfuric acid* from Hayden, AZ to Amarillo, TX. Supporting shipper: Wayne Chemical Corp., 546 S. Water St., Milwaukee, WI 53204

MC 144622 (Sub-5-66TA), filed December 30, 1980. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *Charcoal briquettes and the materials, equipment, and supplies used in the manufacture and distribution thereof* from Cotter, AR to points in TX. Supporting shipper: Cotter Charcoal Company, P.O. Box 100, Cotter, AR 72626.

MC 146675 (Sub-5-1TA), filed December 31, 1980. Applicant: KINCAID COACH LINES, INC., 5639 Merriam Drive, Merriam, KS 66203. Representative: Mike Kincaid, 5639 Merriam Drive, Merriam, KS 66203. Contract, irregular; *passengers and baggage of passengers for charter operations* beginning and ending at Wichita, Topeka, Emporia and Cheney, KS and extending to Vail, Breckenridge, Steamboat, Crested Butte, Dillin and Winterpark, CO. Supporting shipper: Education Overland II, Inc., P.O. Box 4309, Wichita, KS 67204.

MC 147552 (Sub-5-5TA), filed December 30, 1980. Applicant: CAJUN CARTAGE & WAREHOUSING CORP., Suite 130, 10575 Katy Freeway, Houston, TX 77024. Representative: C. Neal Carson, Suite 130, 10575 Katy Freeway, Houston, TX 77024. *Commodities in bulk, in tank vehicles,* between Jefferson County, TX and Lake Charles, LA. Restriction: The above authority is restricted to the transportation of commodities having a subsequent movement via water. Supporting shipper: Texaco International Trader Inc., P.O. Box 52332, Houston, TX 77052.

MC 148843 (Sub-5-1TA), filed December 31, 1980. Applicant: B. G. HOOKER TRANSPORT COMPANY, East Highway 84 (P.O. Box 428), Tenaha, TX 75947. Representative: Jack L. Coke, Jr., Phinney, Hallman, Pulley & Coke, 4555 First National Bank Building, Dallas, TX 75202. *Liquefied Petroleum Gases, Pentanes, Natural Gasoline, Butadiene, Butenes and Liquefied Petroleum Gas Mixtures, in bulk, in tank vehicles,* between all points in TX on the one hand, and on the other, all points in LA. Supporting shippers: Petro-Tex Chemical Corporation, 8600 Park Place Boulevard, Houston, TX 77017; United L.P. Gas Marketing, Inc., 2829 West Northwest Highway, Suite 227, Dallas, TX 75220; Firestone Synthetic Rubber & Latex Co., Louisiana Highway 108—P.O. Drawer 1361, Lake Charles, LA 70602; Sergeant Oil & Gas Company, Inc., 3813 Buffalo Speedway, Houston, TX 77001; Olympia Petroleum, Inc., 1700 West Loop South, Suite 930, Houston, TX 77027.

MC 150578 (Sub-6-22TA), filed December 31, 1980. Applicant: STEVENS TRANSPORT, A DIVISION OF STEVENS FOODS, INC., 2944 Motley Drive, Suite 302, Mesquite, TX 75150. Representative: E. Lewis Coffey, 2944 Motley Drive, Suite 302, Mesquite, TX 75150. *Meat, meat products, and meat by-products* between points in the U.S. in and east of TX, OK, KS, IA, and WI. Restricted to traffic originating at or destined to facilities of Galaxy International, Inc. Supporting shipper: Galaxy International, Inc., 1717 Penn Avenue, Pittsburgh, PA 15221.

MC 150578 (Sub-5-23), filed December 31, 1980. Applicant: STEVENS TRANSPORT, A DIVISION OF STEVENS FOODS, INC., 2944 Motley Drive, Suite 302, Mesquite, TX 75150. Representative: E. Lewis Coffey, 2944 Motley Drive, Suite 302, Mesquite, TX 75150. *General Commodities (except commodities in bulk) between pts in the U.S. restricted to traffic originating at or destined to Long Mile Rubber Co. Supporting shipper: Long Mile Rubber Co., 155 South Court—Exchange Park, Dallas, TX 75245.*

MC 150578 (Sub-5-24TA), filed December 31, 1980. Applicant: STEVENS TRANSPORT, A DIVISION OF STEVENS FOODS, INC., 2944 Motley Drive, Suite 302, Mesquite, TX 75150. Representative: E. Lewis Coffey, 2944 Motley Drive, Suite 302, Mesquite, TX 75150. *Bananas* from Galveston, TX and Gulfport, MS to points in MT, WY, CO, NM, ND, SD, NE, KS, OK, TX, MN, IA, MO, AR, LA, WI, IL, MS, AL, TN, KY, IN, OH, and MI. Supporting shipper: Castle & Cooke Foods, 2900 Veterans Blvd., Metairie, LA 70002.

MC 150783 (Sub-5-27TA), filed December 31, 1980. Applicant: SCHEDULED TRUCKWAYS, INC., Post Office Box 757, Rogers, AR 72756. Representative: Ronnie Sleeth, Post Office Box 757, Rogers, AR 72756. *Animal foods and animal by-products.* El Paso, TX and Muscatine, IA to the 48 States, restricted to traffic for Star Kist Foods, Inc. Supporting shipper: Star Kist Foods, Inc., 582 Tuna Street, Terminal Island, CA 90731.

MC 150783 (Sub-5-28TA), filed December 31, 1980. Applicant: SCHEDULED TRUCKWAYS, INC., Post Office Box 757, Rogers, AR 72756. Representative: Ronnie Sleeth, Post Office Box 757, Rogers, AR 72756. *Candy, confectionery, and display and advertising materials relating thereto.* From the facilities of Tootsie Roll Industries, Inc., at or near Chicago, IL to Dallas, TX.; Atlanta, GA; Boston, MA; Birmingham, AL; Buffalo, NY; Charlotte, NC; Cleveland, OH; Cincinnati, OH; Balitmore, MD; Denver, CO; Des Moines, IA; Detroit, MI; Grand Rapids, MI; Jacksonville, FL; Jersey City, NJ; Kansas City, MO; Los Angeles, CA; Memphis, TN; Nashville, TN; New Orleans, LA; Omaha, NE; Pittsburgh, PA; Salt Lake, UT; San Francisco, CA and points in their respective commercial zones. Supporting shipper: Tootsie Roll Industries, Inc., 7401 South Cicero Avenue, Chicago, IL 60629.

MC 153137 (Sub-5-1TA), filed December 30, 1980. Applicant: G&H TRANSPORTATION, INC., 711 Pearl, Houston, TX 77029. Representative:

Charles H. Grindstaff (same address as applicant). *Plastic granules in bags or in bulk,* between Brazoria County, TX, on the one hand; and Harris and Galveston Counties, TX, on the other. Supporting shipper: Shintech, Inc., 5618 E. Highway 332, Freeport, TX 77541.

MC 153334 (Sub-5-1TA), filed Decembr 30, 1980. Applicant: JOHN NEWTON STONE d.b.a., SOUTHWESTERN EXPRESS, 9335 Ronda Lane, Houston, TX 77074. Representative: Timothy J. Herman, Attorney at Law, 522 First Federal Plaza, Austin, TX 78701. *Machinery and Supplies, moving in one ton trucks and less,* between points in Harris County, TX, on the one hand, and, on the other, points in LA. Supporting shippers: Nine (9).

MC 153341 (Sub-5-1TA), filed December 31, 1980. Applicant: CUSTOM BUS LEASING, INC., 645 Highway 1378, Wylie, TX 75098. Representative: Robert O. Stanton, 3800 Republic Bank Tower, Dallas TX. 75201.*Passengers and their luggage on sleeper buses; round trip pleasure tours and charter operations and proposed,* between pts within Dallas and Tarrant Counties, TX, on the one hand, and, on the other, pts within Taos, Lincoln and Colfax Counties, NM and pts within Summit County, CO. Supporting shippers: 5.

The following applications were filled in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 110689 (Sub-6-2TA), filed December 23, 1980. Applicant: AIRWAY TRUCKING CO., 4239 Newton Rd., Stockton, CA 95204. Representative: Bobbie F. Albanese, 13215 E. Penn St., Ste. 310, Whittier, CA 90602. *Glass and glass products and commodities used in the distribution thereof,* between Lathrop, CA, on the one hand, and, on the other, points in CO, NM, TX, and UT for 270 days. Supporting shipper: Libbey-Owens-Ford Company, 811 Madison Avenue, Toledo, OH 43695.

MC 152671 (Sub-6-4 TA), filed December 23, 1980. Applicant: ALL FREIGHT TRANSPORTATION, INC., P.O.B. 837, Boise, ID 83701. Representative: David E. Wishney, P.O.B. 6699, Boise, ID 83707. *Contract carrier,* irregular routes; *petroleum products,* except liquid commodities in bulk, from points in CA, Portland, OR, Seattle, WA and Denver, CO, and the commercial zones thereof, to the facilities utilized by Cowboy Oil Company at or near Boise, ID, Pocatello, ID and Salt Lake City, UT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Cowboy Oil Company, P.O. Box L, Pocatello, ID 83201.

MC 153299 (Sub-6-1TA), filed December 22, 1980. Applicant: AMITCO, INC., 1731 Old Hwy. S., Mount Vernon, WA 98273. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Contract carrier,* irregular routes: (1) *fabricated and non-fabricated iron and steel articles* between U.S.-Canada ports of entry on the one hand, and points in WA, OR, CA, and AZ on the other hand; and (2) *lumber and wood products* from Bellingham, WA, to points in NE, KA, WY, CO, UT, AZ, and CA, for 270 days. Supporting shippers: Fincraft Fabricators Ltd., 2538 Barnet Hwy., Coquitlam, B.C., Canada V3H 1W3; Frank Brooks Mfg., Co., P.O.B. 7, Bellingham, WA 98225.

MC 153312 (Sub-6-1TA), filed December 23, 1980. Applicant: BAMFORD LAND COMPANY, P.O. Box 215, Haxtun, CO 80731. Representative: J. Kent Bamford, Route #2, Haxtun, CO 80731. *Contract carrier,* irregular routes: *Dry potash compounds, boron compounds, and other dry liquid fertilizers,* from points in Eddy and Lea Counties, NM; Douglas County, NE; and Woodbury County, IA; to points in Phillips, Logan, Sedgwick, and Yuma Counties, CO; for the account of Dudden Elevator Co., Venango, NE; and Kenton Agri Service, Haxtun, CO, for 270 days. Supporting shippers: Dudden Elevator Co., Venango, NE; and Kenton Agri Service, Haxtun, CO.

MC 148158 (Sub-6-12TA), filed December 22, 1980. Applicant: CONTROLLED DELIVERY SERVICE, INC., P.O. Box 1299, City of Industry, CA 91749. Representative: Robert L. Cope, Suite 501, 1730 M St. NW., Washington, D.C. 20036. *Contract,* irregular; *general commodities (except household goods as defined by the Commission and Classes A and B explosives)* between UT, on the one hand, and, on the other, CA, ID, IL, NV, OR, WA under continuing contract(s) with National Distribution Systems, Inc., of Clearfield, UT, for 270 days. Supporting shipper: National Distribution Systems, Inc., 1051 South Industrial Parkway, Clearfield, UT 84015.

MC 152115 (Sub-6-3TA), filed December 29, 1980. Applicant: G. K. DISTRIBUTING CO., 13924 Maryton, Santa Fe Springs, CA 90670. Representative: George Kuiphof (same address as applicant). *Water heaters; solar collectors; steel pipe; pipe fittings and other parts and equipment necessary or incidental to the operation or installation of water heaters or solar collectors* between points in the Los Angeles Commercial Zone, CA and points in AZ and NV for 270 days. An underlying ETA seeks 120 days. Supporting shipper: Rheem Manufacturing Company, 7600 S. Kedzie, Chicago, IL 60652.

MC 153300 (Sub-6-1TA), filed December 22, 1980. Applicant: DONALD W. HENDERSON d.b.a. HENDERSON TRUCKING, 942 Kenston Drive, Clayton, CA 94517. Representative: Donald W. Henderson, (same address as applicant). *General Commodities* (except those of unusual value, Class A and B explosives, commodities in bulk and those requiring special equipment), between points in the Los Angeles and Oakland, CA commercial zones (as defined by the Commission) on the one hand, and, on the other, points in OR and WA. Restriction: Restricted to traffic moving on bills of lading of freight forwarders operating under 49 U.S.C., Section 10102(8) and further restricted to traffic moving on bills of lading of Rocky Mountain Express, Inc. Supporting shipper: Rocky Mountain Express, Inc., 730 11th Ave., Oakland, CA 94606.

MC 33641 (Sub-6-5TA), filed December 22, 1980. Applicant: IML FREIGHT, INC., P.O. Box 30277, Salt Lake City, UT 84130. Representative: Eldon E. Bresee (same address as applicant). *Common Carrier,* Regular routes: *General Commodities (except those of unusal value, Classes A and B explosives, household goods as defined by the Commission,* commodities in bulk, and those requiring special equipment), serving Freeport Gold Mine Site (Jerritt Canyon) located in Elko County, NV as an off-route point in connection with carrier's authorized regular route operations, for 270 days. Applicant intends to tack and interline. Supporting shippers: Freeport Gold Co., P.O. Box 1132, Elko, NV 89801; Davy McKee Corporation, 2700 Campus Dr., San Mateo, CA 94403.

MC 119639 (Sub-6-4TA), filed December 17, 1980. Applicant: INCO EXPRESS, INC., 3600 S. 124th St., Seattle, WA 98168. Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101. *Furniture and rattan products,* from points in CA to points in WA, OR, NV, AZ, and UT, for 270 days. Supporting shipper: Paul Marshall Products, 2131 West Willow St., Long Beach, CA 90810.

MC 134599 (Sub-6-46TA), filed December 29, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Contract Carrier:*

Irregular routes: (1) *Candy and confectionery* (except in bulk), from Ft. Worth and Dallas, TX, and points in their commercial zones, to Centralia, IL; Los Angeles, CA; Atlanta, GA and Edison, NJ and points in their commercial zones, under continuing contract(s) with Hollywood Brands Candy for 270 days. Supporting shippers: Hollywood Brands Candy, 836 S. Chestnut St., Centralia, IL 62801.

MC 139906 (Sub-6-50TA), filed December 24, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127 Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Locks, lock sets and parts* (except in bulk) between San Francisco, CA and Rocky Mt., NC and points in their respective commercial zones, restricted to shipments orignating at or destined to the facilities of Schlage Lock Co. a division of Ingersoll-Rand Co. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ingersoll-Rand, 277 Park Avenue, New York, NY 10017.

MC 147832 (Sub-6-6TA), filed December 29, 1980. Applicant: JIM EDDLEMAN, d.b.a. J & J CATTLE COMPANY, 3395 Wright St., Wheat Ridge, CO 80033. Representative: Truman A. Stockton, Jr., 1365 Logan St., Suite 100, Denver, CO 80203. *Frozen bakery goods, NO, and foodstuffs, materials and supplies* used in the processing or distribution of foodstuffs between the plants and distribution warehouses of Mrs. Smith's Frozen Foods Co. at or near Pottstown, Philadelphia, Fogelsville and Lake Winola, PA, Blue Anchor and Jersey City, NJ, San Jose, San Francisco and Los Angeles, CA, McMinnville and Portland, OR, Atlanta, GA, Zeeland, MI, Syracuse, NY, Tampa, FL, Dallas, TX, Lyons, IL and Denver, CO and points in U.S. for 270 days. Supporting shipper: Mrs. Smith's Frozen Foods Co., Box 298, Pottstown, PA 19464.

MC 153325 (Sub-6-1TA), filed December 29, 1980. Applicant: LOUNGE CAR TOURS CHARTER COMPANY, INC., 21133 Victory Blvd., Suite 205, Canoga Park, CA 91303. Representative: Earl Glantz, 76 Freeport Mall, Freeport, NY 11520. *Passengers and their baggage* in the same vehicle with passengers over irregular routes, between points in CA on one hand, and, on the other, points in AZ, NV and UT for 270 days. Supporting shipper: California Touring, Inc., 5710 Hannum Avenue, Culver City, CA 90230.

MC 153314 (Sub-6-1TA), filed December 22, 1980. Applicant: M & D TRANSPORTATION, INC., 6538 North 57th Avenue, Box 775, Glendale, AZ 85311. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 53703. (1) *Floor coverings* from Los Angeles, CA and Phoenix, AZ to points in the U.S.; (2) *shower doors, fiberglass shower units, and fiberglass products* from Tempe, AZ to points in the U.S.; and (3) *sealing compound,* from Sparks, NV, to points in the U.S., and, on return, *equipment, materials and supplies used in the manufacture and distribution of sealing compound;* and (4) *insulation* from Phoenix, AZ to points in CA, CO, NM, NV, and UT, and, on return, *chemicals* (except in bulk) from points in CA to Phoenix, AZ, for 270 days. Supporting shippers: Adams Bros. Interiors, 2711 North 24th Street, Phoenix, AZ 85008; Weathercheck Insulation of Arizona, Inc., 1908 East Buchanan Street, Phoenix, AZ 85034; Superior Products Co., 445 Coney Island Drive, South, Sparks, NV 89431; Venus Mfg. Co., 2424 West University, Tempe, AZ 85281.

MC 153314 (Sub-6-2TA), filed December 22, 1980. Applicant: M & D TRANSPORTATION, INC., 6538 North 57th Avenue, Box 775, Glendale, AZ 85311. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 53703. *Paper and paper products* from points in AL, AR, CA, LA, MI, MN, NC, OH, OR, TX, WA, and WI to points in AZ, and from Phoenix, AZ to points in CA, for 270 days. Supporting shippers: Butler Paper Co., 2841 West Clarendon, Phoenix, AZ 85017 and Carpenter/Offutt Paper, Inc., 1919 North 22nd Avenue, Phoenix, AZ 85009.

MC 153314 (Sub-6-3TA), filed December 22, 1980. Applicant: M & D TRANSPORTATION, INC., 6538 North 57th Avenue, Box 775, Glendale, AZ 85311. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 53703. *Chemicals* (except in bulk), (1) from Phoenix, AZ to points in the U.S., (2) from Boron, CA to Phoenix, AZ, and (3) from Baltimore, MD; Bakerstown and Wilkes-Barre, PA; Conley, GA; and Castlehayne, NC to Newark, CA, for 270 days. Supporting shippers: Jones-Hamilton Co., 8400 Enterprise Drive, Newark, CA 94560; HJH Chemicals, Inc., 2229 East Magnolia, Phoenix, AZ 85034; International United Chemical Co., Inc., 645 East 60th Street, Los Angeles, CA 90001.

MC 153314 (Sub-6-4TA), filed December 22, 1980. Applicant: M & D TRANSPORTATION, INC., 6538 North 57th Avenue, Box 775, Glendale, AZ 85311. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 53703. (1) *Such commodities as are dealt in or used by manufacturers or distributors of spas, pool products, plastic products and refuse containers* between Phoenix, AZ and Tustin and Union City, CA, on the one hand, and, on the other points in the U.S.; (2) *aluminum and aluminum products, and steel conduit* from Los Angeles, CA to points in the U.S., and, on return, *equipment, material and supplies* to the named origin; and (3) *material handling equipment* (a) from Philadelphia, PA; Greenville, NC; Salem, VA; LaGrange, GA; Oakland, CA; and points in FL, IL, IN, LA, and OH, to points in Maricopa and Pima Counties, AZ and (b) from the destinations in (a) to points in CA, for 270 days. Supporting shippers: ALFLEX Corp., 2630 El Presido Street, Long Beach, CA 90810; Kern Products, Inc., 2802 Dow Avenue, Tustin, CA 92626; Heil Rotomold, Inc., 108 East Pioneer Street, Phoenix, AZ 85040; and Thayer Corporation, 522 East Buckeye Road, Phoenix, AZ 85306.

MC 144953 (Sub-6-3 TA), filed December 22, 1980. Applicant: MULLEN TRUCKING LTD., 6204-A Burbank Rd., S.E., Calgary, Alberta, Canada T2H 2C2. Representative: John T. Wirth, 717—17th St., Ste. 2600, Denver, CO 80202. *Oil field commodities,* from ports of entry on the International Boundary between the U.S. and Canada located in MT to points in MT and WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Wilson Oil Field Supply, 5240 1A St., SE, Calgary, Alberta, Canada T2h 1J1; Nomac Oil Well Equipment Ltd., 8217 C, 31st St. SW, Calgary, Alberta, Canada T2C 1H9; Shelby Drilling, Inc., 400, 1550—5th SW, Calgary, Alberta, Canada T2R 1K3; and, Baltic Drilling (1979) Ltd., 901, 7015 Macleod Trail SW, Calgary, Alberta, Canada.

MC 146464 (Sub-6-2TA), filed December 29, 1980. Applicant: NEVADA GENERAL TRANSPORTATION, INC., P.O. B. 1181, Lamoille, NV 89828. Representative: David E. Wishney, P.O. B. 837, Boise, ID 83701. *Mining equipment, materials, supplies, ore and barite,* between points in UT on the one hand, and on the other, points in AZ, CA, CO, ID and WY, for 270 days, an underlying ETA seeks 120 days authority. Supporting shippers: Petro-Chem, Inc., 543 S 2165 W, Salt Lake City, UT 84104; Uni-Chem Minerals, Inc., 230 W 4th S, Salt Lake City, UT 84101.

MC 143144 (Sub-6-1TA), filed December 29, 1980. Applicant: PACIFIC DUMP TRUCKS, INC., 1507 E. Illinois, Bellingham, WA 98225. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Contract carrier,* irregular routes: (1)

Wine, from points in CA to Bellingham, WA, (2) *sanitary paper products and lignin pitch,* from Bellingham, WA, to points in CA for 270 days. Supporting shippers: Bell-Rainier Distributors, Inc., 2007 Iowa, Bellingham, WA 98225; Georgia Pacific Corporation POB 1236, Bellingham, WA 98225.

MC 134201 (Sub-6-4TA), filed December 22, 1980. Applicant: JIM PALMER TRUCKING, INC., 9730 Derby Dr., Missoula, MT 59801. Representative: John T. Wirth, 717—17th St., Ste. 2600, Denver, CO 80202. *Contract carrier,* irregular routes: *Oilfield exploration, drilling and production machinery and equipment,* from points in Brown, Marathon and Rock Counties, WI to points in TX, OK, WY, NE, ND, SD, MT, ID, KS, CO, NM and UT under a continuing contract(s) with Central Fabricators, Inc. of Rothschild, WI, for 270 days. Supporting shipper: Central Fabricators, Inc., P.O. B. 96, Rothschild, WI 54474.

MC 134201 (Sub-6-5TA), filed December 24, 1980. Applicant: JIM PALMER TRUCKING, INC., 9730 Derby Dr., Missoula, MT 59801. Representative: John T. Wirth, 717—17th St., Ste. 2600, Denver, CO 80202. *Contract Carrier,* irregular routes: *Lumber and wood products,* from points in ID, MT, OR and WA to points in AR, IA, IL, KS, MO and OK under a continuing contract(s) with Broadview Lumber Co., Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Broadview Lumber Co., Inc., P.O.B. 816, Carthage, MO 64836.

MC 143060 (Sub-6-1TA), filed December 29, 1980. Applicant: PENN-PACIFIC, INC., 20815 Currier Road, Walnut, CA 91789. Representative: William, J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Such commodities as are utilized by fast-food restaurants,* between points in the U.S., restricted to traffic destined to the facilities used by Burger King Corporation and its affiliates, for 270 days. Supporting shipper: Burger King Corporation, P.O. Box 520843, Miami, FL 33152.

MC 138875 (Sub-6-39TA), filed December 24, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Rd., Boise, ID 83709. Representative: Patricia A. Russell (same as applicant). *Meat, meat products, meat by-products and related products* distributed by meat packing houses (except commodities in bulk), from Philadelphia and West Chester, PA to points in CT, IL, IN, MA, MI, NH, NY, OH, RI and WI. Restricted to the facilities used by Gagliardi Brothers, Inc., for 270 days. Supporting shipper: Ore-Ida Foods, Inc., P.O. Box 10, Boise, ID 83707.

MC 138875 (Sub-6-40TA), filed December 24, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Rd., Boise, ID 83709. Representative: Patricia A. Russell (same as applicant). *Brick, stone, lime, lime products and masonry materials and supplies* (except commodities in bulk), from Box Elder, Weber, Salt Lake and Tooele Counties, UT to ID in and south of Adams, Lemhi and Valley Counties and Malheur and Baker Counties, OR, for 270 days. Supporting shipper: The Masonry Center, Inc., P.O. Box 7825, Boise, ID 83707.

MC 138875 (Sub-6-41TA), filed December 24, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Rd., Boise, ID 83709. Representative: Patricia A. Russell (same as applicant). *(1) Canned goods* (except in bulk); (2) materials and supplies used in the selling, distribution and manufacture of canned goods, from the facilities used by Joan of Arc Company at Princeville and Hoopeston, IL to points in AZ, CA, CO, ID, NV, OR, UT and WA, and from the facilities used by Joan of Arc at Belledeau and St. Francisville, LA to points in AZ, CA on and south of Highway 50, CO, NV and UT, for 270 days. Supporting shipper: Joan of Arc Company, 2231 W. Altorfer, Peoria, IL 61615.

MC 153097 (Sub-6-1TA), filed December 29, 1980. Applicant: SHULTZ TRUCKING, INC., 7695 Aumsville Highway S.E., Salem, OR 97301. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. *Foodstuffs,* in vehicles equipped with mechanical refrigeration, from points in WA to points in OR. An underlying ETA seeks 120 days authority. Supporting shipper: Crown Brokerage Co., 49 S.E. Clay, Portland, Or 97214.

MC 148737 (Sub-6-10TA), filed December 29, 1980. Applicant: SUNSET EXPRESS CORP., P.O. Box 27043, Salt Lake City, UT 84125. Representative: Carl I. Sundeaus (same as applicant). *Canned goods* from Madera, Modesto, Stockton, Turlock and Volta CA to NJ, for 270 days. Supporting shipper: Tri-Valley Growers, Inc., 100 California St., San Francisco, CA 94106.

MC 148737 (Sub-6-11TA), filed December 29, 1980. Applicant: SUNSET EXPRESS CORP., P.O. Box 27043, Salt Lake City, UT 84125. Representative: Carl I. Sundeaus (same as applicant). *General commodities* (except classes A and B explosives, commodities in bulk, and household goods as defined by the Commission) between Chicago, IL, Philadelphia, PA and Secaucus, NJ on the one hand, and points in the U.S. on the other, restricted to traffic moving on freight forwarder bills, for 270 days. Supporting shipper: West-Coast Shippers Association, 2000 South 71st St., Philadelphia, PA 19142.

MC 153313 (Sub-6-1TA), filed December 23, 1980. Applicant: TROJAN TRANSPORTATION, INC., 6280 Artesia Blvd., Buena Park, CA 90620. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. (1) *Building materials,* and (2) *Materials, equipment and supplies* used in the sale and distribution of commodities in (1) above (except commodities in bulk), between points in CA, on the one hand, and, on the other, points in AZ, NV and TX, restricted to traffic originating at or destined to the facilities of Modern Materials, Inc., for 270 days. Supporting shipper: Modern Materials, Inc., 6280 Artesia Blvd., Buena Park, CA, 90620.

MC 146577 (Sub-6TA), filed December 23, 1980. Applicant: UNITED HAULING CORPORATION, 3rd and Railroad, Caldwell, ID 83605. Representative: David E. Wishney, P.O. B. 837, Boise, ID 83701. *Contract carrier,* irregular routes; *such commodities as are dealt in or used by manufacturers of mobil homes or prefabricated housing,* from points in CA, OR and WA to points in ID under continuing contract(s) with Idaho Western, Inc., for 270 days. Supporting shipper: Idaho Western, Inc., P. O. Box 5185, Boise, ID 83705.

MC 140313 (Sub-6-5TA), filed December 24, 1980. Applicant: VIKING INTERNATIONAL, INC., 1434 S.W. 137th, Seattle, WA 98166. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Furnaces, furnace fittings and parts, air conditioners and air conditioner parts,* between points in OH, on the one hand, and points in the U.S., on the other hand, for 270 days. Supporting shipper: Williamson & Company, 3500 Madison Rd., Cincinnati, OH 45209.

MC 152833 (Sub-6-1TA), filed December 24, 1980. Applicant: JOHN GILLINGHAM JR., d.b.a. WESTERN REFUSE, 1805-4th ST., Cheney, WA. 99004. Representative: R. John Gillingham, Jr. (same as above). *Chrome hydroxide sludge,* from Spokane Co., WA to Gillian Co., OR., for 270 days. An underlying E.T.A. seeks 120 days authority. Supporting shipper: Kaiser Aluminum & Chemical Corp., P.O. Box 15108, Spokane, WA 99215.

MC 141738 (Sub-6-1TA), filed December 29, 1980. Applicant: PORTER TRUCK LINES, INC., P.O. Box 313, McMinnville, OR 97128. Representative:

John A. Anderson, Suite 1600—One Main Place, 101 SW Main St., Portland, OR 97204. *Contract carrier*, irregular routes: (1) *foodstuffs* and (2) *materials, equipment and supplies used in the manufacture and distribution of foodstuffs*, between points in the U.S. under continuing contract(s) with Mrs. Smith's Frozen Foods Co., Pottstown, PA, for 270 days. Supporting shipper: Mrs. Smith's Frozen Foods Co., POB 298, Pottstown, PA 19464.

MC 148158 (Sub-6-12TA), filed December 29, 1980. Applicant: CONTROLLED DELIVERY SERVICE, INC., P.O. Box 1299, City of Industry, CA 91749. Representative: Patricia M. Schnegg, 707 Wilshire Blvd., 1800 United California Bank Bldg., Los Angeles, CA 90017. *Dehydrated potatoes, onions, and garlic* from the facilities of Ampco Foods, Inc., located throughout points in the US, except AL & HI, on the one hand, and, on the other, all points in the US except AL & HI, for 270 days. Supporting shipper: Rogers Potato, Division of Ampco Foods, Inc., P.O. Box 2200, Idaho Falls, ID 83401.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-996 Filed 1-9-81; 8:45 am]

BILLING CODE 7035-10-M

FOUNDATION FOR THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

January 7, 1981.

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92-563, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at 806 15th Street, NW., Washington, D.C. 20506:

Date: January 27, 1981.

Time: 12 noon to 5 p.m.

Room: 1134.

Program: This meeting will review applications submitted for the Media Humanities Projects Program, Division of Public Programs, for projects beginning after March 15, 1981.

The proposed meeting are for the purpose of Panel review, discussion, evaluation and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose,

(1) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), (6) and and (9)(B) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724-0367.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 81-900 Filed 1-9-81; 8:45 am]

BILLING CODE 7536-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0145]

Frontenac III Corp.; License Surrender

Notice is hereby given that Frontenac III Corporation, 208 South La Salle Street, Chicago, Illinois 60604, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Frontenac III Corporation was licensed by the Small Business Administration on December 31, 1979.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on December 29, 1980, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 6, 1981.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 81-1034 Filed 1-9-81; 8:45 am]

BILLING CODE 8025-01-M

Schedule for Awarding Senior Executive Service Bonuses

Office of Personnel Management guidelines require that each agency publish a notice in the Federal Register of the agency's schedule for awarding Senior Executive Service Bonuses at least 14 days prior to the date on which the awards will be paid. The Small Business Administration intends to award Senior Executive Service Bonuses for the performance rating cycle of March 1, 1980, through September 30, 1980, with payouts scheduled by January 25, 1981.

Dated: January 6, 1981.

A. Vernon Weaver,

Administrator.

[FR Doc. 81-878 Filed 1-9-81; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Active Beacon Collision Avoidance System (BCAS) Conference

The Department of Transportation hereby announces the Active Beacon Collision Avoidance System (BCAS) Conference. This 2-day conference will commence at 9 a.m. on January 27, 1981, at the Dulles Marriott Hotel, Dulles International Airport, Washington, D.C. 20041.

The purpose of this conference is to describe the system—through presentation, demonstrations, and general discussion—and aid the aviation community in the preparation of comments on the recently published National Aviation Standard for Active BCAS. This standard was issued October 27, 1980, with its objective to receive comments from the aviation community. The comment period closes February 27, 1981.

Active BCAS uses air-air transmissions for the purpose of aircraft separation assurance in low-to-medium density airspace. It is intended to satisfy the operational need for an airborne separation assurance service and to ensure compatibility with all elements of the National Airspace System. Its operation does not depend upon the existence of any of these other elements except Air Traffic Control Radar Beacon System (ATCRBS) transponders with altitude encoders or Discrete Address Beacon System (DABS) transponders with altitude encoders in other aircraft. The Standard defines the system including technical parameters of its subsystems.

The first session will include FAA discussions on the background, history

and description of BCAS as well as an overview of what is involved in implementation of a system like BCAS. The first afternoon session will include discussions of the technical and operational performance of Active BCAS. The second day of the conference will provide an overview of Active BCAS system architecture, a description of its surveillance and collision threat processing and a summary of test results to date.

Although the meeting is open to the public (space permitting) the hotel levies a registration fee of $18 which covers refreshments for the 2-day conference and a luncheon on the first day.

Further information concerning the conference may be obtained from the Federal Aviation Administration, Systems Research and Development Service, Executive Staff, ARD-10, Washington, D.C. 20591, telephone 202-426-3548.

Neal A. Blake,

Deputy Associate Administrator for Engineering and Development, AED-1.

[FR Doc. 81-680 Filed 1-9-81 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-81-1]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: February 2, 1981.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 2, 1981.

John H. Cassady,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No	Petitioner	Regulations affected	Description of relief sought
21145	Air Transport Association	14 CFR 121.424	Petitioner requests an exemption from the night landing and takeoff requirements for SIC pilots upgrading to PIC in the same airplane type and for SIC pilots transitioning to another type airplane.
21168	Executive Air Fleet	14 CFR 135.297(a)	To permit petitioner's pilots after receiving an annual instrument proficiency check, to train to proficiency in an approved airplane simulator in lieu of the next 6-month proficiency check.
21108	Sunstrand Data Control	14 CFR 91.7	To allow non-pilot engineering personnel to occupy the copilot seat during portions of test and deomonstration flights conducted in connection with various flight safety and guidance systems manufactured by Sunstrand.
20866	International Air Services Co	14 CFR 135.261	To allow petitioner's pilots to operate when they may not be able to meet the 10-consecutive hours of rest required in any 24-hour period due to possible delays at the turn-around point or at intermediate stops.
21063	Denver Jet, Inc	14 CFR 135.243(a)	To allow Mr. Lessing to serve as pilot-in-command for Denver Jet without holding an airline transport pilot certificate. Mr. Leasing has not reached his 23d birthday.
19893	USAir	14 CFR 141.55	Petitioner requests an extension of Exemption No. 2916 to extend the expiration date beyond February 28, 1981. Exemption No. 2916 permits USAir to submit a course of training, for approval under Part 141 that does not meet the minimum curriculum for that course prescribed in the appropriate appendix of Part 141.
12227	National Business Aircraft Association	14 CFR 91.169, 121, 123, 129, 135, and 137.	To reconsider Exemption No. 1637H, a partial denial, in view of the additional information presented by NBAA.
19910	Canadian Warplane Heritage, Inc	14 CFR 91.27(a)(1)	To enable certain Canadian-registered aircraft that do not hold an airworthiness certificate to attend various airshows in the U.S. during the Calendar Year 1981.

Dispositions of Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
20845	Braniff Airways	14 CFR 121	To allow petitioner to conduct training and checking as permitted in a Phase II simulator as described in Appendix H of Part 121 if the simulator meets all the Phase II requirements except the continuous field of view. *Granted 12/1/80.*
20313	Bell Helicopter	14 CFR 29.1323 (c)(1) and (c)(2)	To permit the following: For multi-engine rotorcraft, the airspeed error of the installation, excluding the airspeed indicator instrument error, may not exceed three percent or five knots, whichever is greater, throughout the speed range in level flight at forward speeds equal to the minimum power required speed and above; and ten knots throughtout the speed range from 30 knots to the speed for minimum power, and throughout the speed range in climb from 10 knots below takeoff safety speed to 10 knots above the best rate of climb speed. *Granted 12/18/80.*

Dispositions of Petitions for Exemptions—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
20585	Cochise Airlines, Inc	14 CFR 121.291(a)(1)	To permit petitioner to operate Convair 440 aircraft configured with 47 passenger seats without first conducting a full seating capacity emergency evacuation demonstration. *Granted 12/18/80.*
21061	Air Methods, Inc	14 CFR 135.261(b)	To allow petitioner to assign a flight crewmember and to permit a flight crewmember to accept an assignment, without compliance with the 10 consecutive hour rest period requirement during the 24-hour period preceding the planned completion of the assignment. *Granted 12/24/80.*
20523	Cochise Airlines	14 CFR 121.313(d)	To permit two Convair 440 aircraft to operate without a means of indicating the adequacy of the power being supplied to the gyroscopic turn and bank indicators and the gyroscopic direction indicators. *Withdrawn 12/19/80.*
20817	United States Parachute Association	14 CFR 105.43	To allow foreign participants to utilize and repack parachutes which do not comply with the equipment and packing requirements during the period of October 25, 1980, to January 10, 1981, at Zephyrhills Municipal Airport. *Granted 12/17/80.*
20816	Zephyrhills Parachute Center	14 CFR 91.47	To allow petitioner to have a total of 43 persons aboard DC-3/C-47 airplanes and 23 persons aboard L-18 airplanes for parachute jump operations. *Granted 12/17/80.*
20406	Lockheed-California Co	14 CFR 21.183, 21.305, 25.1303(c)(1), 25.631, and 25.1581.	To permit the two Lockheed aircraft leased to Gulf Air to remain in CAA/UK configuration to match the rest of the four purchased aircraft in their fleet. (Aircraft are to be on U.S. registry.) *Granted 12/12/80.*
17324	Gulf Air	14 CFR Parts 61 and 63	Requests an amendment to Exemption No. 2468, as amended. The exemption covers petitioner's airmen obtaining U.S. airman certificates and maintenance of leased aircraft. *Granted 12/9/80.*
20163	Mr. Gene E. Humphrey	14 CFR 135.243 (b)(2) and (c)(2)	To allow him to serve as a pilot-in-command (PIC) for VFR and IFR operations without meeting the minimum flight time requirements. *Denied 12/16/80.*
19650	North States Aviation, Inc	14 CFR 91.33(d)(3)	To permit the petitioner to install an R. C. Allen electric bank and pitch indicator with inclinometer to replace the standard turn coordinator in a Piper Aerostar 601P airplane. *Denied 12/16/80.*
20845	Pilgrim Airlines	14 CFR 121.360	To permit petitioner to operate a Fokker F27-100 aircraft until Feb. 15, 1981, without a ground proximity warning system installed. *Granted 12/1/80.*
20491	Terry Hanson	14 CFR 63.37(b)(4)	To permit a substitution of similator or CPT training time for required airplane flight time. *Denied 12/12/80.*
20508	Falcon Jet	14 CFR 21.195	Issuance of experimental Certificates for Market Survey to other than a U.S. Manufacturer. *Granted 12/15/80.*
18104	Flight Safety International (FSI)	14 CFR 61.57(a)(1)	Amendment of Exemption No. 2592B, to delete the specific simulator type designation and allow future types as they become operational and approved. Exemption 2592B permits pilots to complete their biennial flight review in specified motion base visual simulators. *Granted 12/18/80.*
20422	Sun Land Airlines	14 CFR 121.291	Amendment to Exemption No. 3008 to permit petitioner to commence service in a DC-8-31 aircraft in a 183 passenger seat configuration without conducting a full-seating capacity ditching demonstration. *Granted 12/19/80.*
20666	Continental Airlines	14 CFR 121.310(e)	Extension of the December 1, 1980 compliance date until March 6, 1981, to install required flashlights. *Withdrawn 12/22/80.*
20634	American Airlines	14 CFR 121.291	To allow the operation of petitioner's aircraft with 168 passengers without first conducting a full-seating capacity emergency evacuation and ditching demonstration. *Granted 12/18/80.*
20478	S.B.S. Aero Center	14 CFR 141.27(c)(2)	To permit petitioner to obtain a provisional pilot school certificate in less than 180 days after the date of their previously expired certificate. *Denied 12/29/80.*
13199	American Airlines Training Corp	14 CFR 61.63	Requests renewal of Exemption No. 2064C which allows the substitution of check requirements when testing private and commercial pilots for a CE-500 type rating. *Granted 12/29/80.*
20583	Tenneco, Inc	14 CFR 61.58(c)	To permit petitioner's pilots to complete their entire 24-month proficiency checks in an approved simulator. (This request would apply to those pilots who are current in the aircraft at the time of pilot-in-command check.) *Granted 12/29/80.*
21170	Air California	14 CFR 91.307	To allow operation in the United States under a service to small communities exemption specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1985—16 B-737's. *Granted 12/24/80.*
21171	Piedmont Airlines	14 CFR 91.307	To allow operation in the United States under a service to small communities exemption specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1985—12 B-737's; and until not later than January 1, 1988—9 B-737's. *Granted 12/24/80.*
21172	Republic Airlines, Inc	14 CFR 91.307	To allow operation in the United States under a service to small communities exemption specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988—53 DC-9's. *Granted 12/24/80.*
21173	Handlingair Estab	14 CFR 91.307	To allow operation in the United States under a service to small communities exemption specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988—1 DC-9. *Granted 12/24/80.*
21151	Eastern Air Lines, Inc	14 CFR 91.307	To allow operation in the United States under a service to small communities exemption specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988—58 DC-9's. *Granted 12/24/80.*

Dispositions of Petitions for Exemptions—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
21175	Ozark Air Lines, Inc	14 CFR 91.307	To allow operation in the United States under a service to small communities exemption specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988—42 DC-9's. *Granted 12/24/80.*
21174	Texas International Airlines, Inc	14 CFR 91.307	To allow operation in the United States under a service to small communities exemption specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1985—6 DC-9's; and until not later later than January 1, 1988—18 DC-9's. *Granted 12/24/80.*
21191	Republic Airlines West, Inc	14 CFR 91.307	To allow operation in the United States under a service to small communities exemption specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988—42 DC-9's. *Granted 12/24/80.*
21223	Evergreen International Airlines, Inc	14 CFR 91.307	To allow operation in the United States under a service to small communities exemption specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988—3 DC-9's. *Granted 12/24/80.*
21224	United Air Lines, Inc	14 CFR 91.307	To allow operation in the United States under a service to small communities exemption specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1985—49 B-737's. *Granted 12/24/80.*

[FR Doc. 81-748 Filed 1-9-81; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP80-14; Notice 1]

Dunlop Tire and Rubber Corporation; Receipt of Petition for Determination of Inconsequential Noncompliance

The Dunlop Tire and Rubber Corporation of Buffalo, New York has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (the Act) (15 U.S.C. 1381, *et seq.*) for an apparent noncompliance with 49 CFR 575.104, Uniform Tire Quality Grading Standards. The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the Act (15 U.S.C. 1417) and does not represent any agency decision or exercise of judgment concerning the merits of the petition.

Paragraph (d)(1)(i)(B) of the Uniform Tire Quality Grading (UTQG) Standards requires that each passenger car tire subject to the regulation, other than an original equipment tire, have affixed to the tire tread surface a label containing the tire's UTQG grades and other information. Paragraphs (d)(1)(i)(A) and (d)(1)(ii) require that the applicable grades be molded on the tire sidewall and be indicated in printed materials available to prospective purchasers at the point of sale. Dunlop states in its petition that, due to a change in the Temperature Resistance grade assigned to its Dunlop Gold Seal Radial, Remington Cushion-Aire Radial and Centennial Radial 78 lines, approximately 41,210 tires of these lines were inadvertantly affixed with tread labels bering a Temperature Resistance grade of "B", when the correct grade for those tires is "C". The correct Temperature Resistance grade of "C" was molded on the tires' sidewall and is used in Dunlop's point of sale information.

Dunlop contends that this use of erroneous Temperature Resistance grade on tread labels is inconsequential as it relates to motor vehicle safety, since accurate information is supplied on both the tire sidewall of the improperly labeled tires and printed materials available where the tires are offered for sale. Dunlop argues that consumers are more likely to rely on point of sale materials in making a purchasing decision, rather than on tread labels or sidewall molding, which may be accessible only in the storage area of the tire store. Dunlop also contends that no practical means exist for replacing the incorrect labels, since the tires in question are scattered throughout its distribution system.

Interested persons are invited to submit written data, views, and arguments on the petition of Dunlop Tire and Rubber Corporation described above. Comments should refer to the docket number and be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: February 11, 1981.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: January 5, 1981.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81-703 Filed 1-9-81; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 81-8; Customs Delegation Order No. 62]

Order Establishing an Order of Succession of Persons to Act as Commissioner of Customs

January 6, 1981.

By virtue of the authority vested in me by Treasury Department Order No. 129, Revision No. 2, dated April 22, 1955 (20 FR 2875), it is hereby ordered that the following officers of the U.S. Customs Service in the order of succession enumerated, shall act as Commissioner of Customs, in the event of an enemy attack or during the absence or disability of the Commissioner of

Customs, or when there is a vacancy in such office:

1. The Deputy Commissioner of Customs.
2. The Assistant Commissioner (Border Operations).
3. The Assistant Commissioner (Commercial Operations).
4. Comptroller.
5. Assistant Commissioner (Management Integrity).

By virtue of authority vested in me by said Treasury Department Order No. 129 (Revision No. 2), and Treasury Department Order No. 165, Revised (T.D. 53654; 19 FR 7241), there is hereby delegated to the regional commissioners of Customs, district directors of Customs, and port directors of Customs, in the event of an enemy attack on the continental United States, authority to perform any function of the Commissioner of Customs which is necessary to insure continuous performance of essential functions otherwise assigned to such officers. This delegation of authority will remain in effect until notice has been received from proper authority that it has been terminated.

This order supersedes Customs Delegation Order No. 60, dated February 7, 1980 (T.D. 80-75).

William T. Archey,

Acting Commissioner of Customs.

[FR Doc. 81-945 Filed 1-9-81; 8:45 am]

BILLING CODE 4510-22-M

[521654]

Extension of Time for Comments Concerning Proposed Change of Practice Relating to the Classification of Three-Wheel All-Terrain Vehicles

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

ACTION: Notice of extension of time for comments.

SUMMARY: This document extends the period of time permitted for the submission of comments in response to the recent proposed change of practice relating to the classification of three-wheel all-terrain vehicles. This extension will permit the preparation and submission of more detailed comments by interested members of the public.

DATE: Comments must be received on or before February 27, 1981.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations and Information Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202-566-5558).

SUPPLEMENTARY INFORMATION:

Background

On November 28, 1980, the Customs Service published in the Federal Register (45 FR 79221), notice that the Service is reviewing a uniform and established practice concerning the classification of three-wheel all-terrain vehicles. The Customs Service currently classifies the subject vehicles under the provision for other motor vehicles (except motorcycles) for the transport of persons or articles in item 692.10, Tariff Schedules of the United States (TSUS). The proposed change of practice would result in the reclassification of these vehicles under the provisions for motorcycles in item 692.50 (TSUS).

Comments

Customs has received a request for a motor vehicle manufacturer to extend the period of time for the submission of comments in order to prepare a more detailed response. Therefore, the period of time for submission of comments is extended to February 27, 1981.

Dated: December 22, 1980.

Donald W. Lewis,

Director, Office of Regulations and Rulings.

[FR Doc. 81-946 Filed 1-9-81; 8:45 am]

BILLING CODE 4510-22-M

Veterans Administration

Privacy Act of 1974; Additional Routine Use Statement

Notice is hereby given that the Veterans Administration is considering adding a new routine use statement to the following system of VA records set forth on page 49739 of the Federal Register of September 27, 1977.

24VA136 Patient Medical Records—VA.

It has been the policy of the VA to recognize next-of-kin for the purpose of giving substituted consent for disclosure of medical information on behalf of incompetent patients. The Privacy Act specifies that a legal guardian may give consent on behalf of individuals who have been declared incompetent by a court of competent jurisdiction. It does not, however, specify that any other individuals may give substituted consent. Many VA patients have not been declared legally incompetent, but have been determined medically to be unable to give an informed consent to disclose information from his/her record. Thus, in the absence of a Privacy Act exception or applicable routine use, there is no authority for a spouse, adult child, or parent to act or give substituted consent on behalf of a non-judicially declared incompetent patient. Accordingly, this routine use statement is proposed for inclusion in the system of records named above.

Interested persons are invited to submit comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420. All relevant material received before February 11, 1981 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until February 23, 1981. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in Room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

If no public comment is received during the thirty-day review period allowed for public comment or unless otherwise published in the Federal Register by the Veterans Administration, the new routine use statement included herein is effective January 5, 1981.

Approved: January 5, 1981.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

In the system identified as 24VA136, "Patient Medical Records—VA," appearing at 42 FR 49739, the following routine use statement is added to read as follows:

24VA136

SYSTEM NAME:

Patient Medical Records—VA.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

20. Any medical data concerning a nonjudicially declared incompetent patient may be disclosed by appropriate VA personnel to a third party upon the written authorization of the patient's next of kin in order for the patient, or, consistent with the best interest of the patient, a member of the patient's family, to receive a benefit to which the patient or family member is entitled, or, to arrange for the patient's discharge from a VA medical facility. Sufficient data to make an informed determination will be made available to such next of kin by appropriate VA personnel. If the patient's next of kin are not reasonably accessible, disclosure of medical data for these purposes may be made by the Chief of Staff, Director, or designee of the VA medical facility where the records are maintained.

* * * * *

[FR Doc. 81-1018 Filed 1-9-81; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 7
Monday, January 12, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Equal Employment Opportunity Commission	1
Federal Energy Regulatory Commission	2
Federal Home Loan Bank Board	3
National Labor Relations Board	5
Tennessee Valley Authority	4

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, January 13, 1981.

PLACE: Commission Conference Room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE DISCUSSED: Open to the public:

1. Freedom of Information Act Appeal No. 80-12-FOIA-566, concerning documents from an Age Discrimination in Employment Act file.
2. ADEA Case Processing Procedures * * * 90 Day Notice.
3. EPA Case Processing Procedures * * * 90 Day Notice.
4. Proposed Guidelines on Employment Discrimination and Reproductive Hazards.
5. Final Rule: Apprenticeship Programs Under the Age Discrimination in Employment Act.
6. Section 501 Transition Year Accomplishment Report.
7. Proposed Joint EEOC and Department of Justice Regulations on Procedures Concerning Complaint of Employment Discrimination Filed Against Recipients of Federal Funds.
8. Report on Commission Operations by the Executive Director.

Closed to the public:

1. Litigation Authorization; General Counsel Recommendations.
2. Proposed Decision, Charge No. TAT42101.
3. OFCCP Final Regulations, 41 CFR 60-1.11.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Acting Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued January 6, 1981.

[S-34-81 Filed 1-8-81; 11:43 am]

BILLING CODE 6570-06-M

2

FEDERAL ENERGY REGULATORY COMMISSION.

January 7, 1981.

TIME AND DATE: 10 a.m., January 14, 1981.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed n the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Power Agenda—476th Meeting, January 14, 1981, Regular Meeting (10 a.m.)

CAP-1. Project No. 120, Southern California Edison Co.
CAP-2. Project No. 2990, Ohio Edison Co.; Project No. 3218, City of Orrville, Ohio
CAP-3. Project No. 3005, W.P.B. Power, Inc.; Project No. 3139, Northern Wasco County People's Utility District
CAP-4. Docket No. ER76-320, Connecticut Light & Power Co.
CAP-5. Docket No. EL80-5, Town of Springfield, Vermont

Miscellaneous Agenda—476th Meeting, January 14, 1981, Regular Meeting

CAM-1. Docket No. QF81-4, Dickerson Lumber Co.
CAM-2. Docket No. RA80-31, George's Chevron Service
CAM-3. Docket No. RA80-51, Alameda Texaco
CAM-4. Docket No. GP81-8-000, Alternative fuel price ceilings for November

Gas Agenda—476th Meeting, January 14, 1981, Regular Meeting

CAG-1. Docket Nos. RP75-73 (AP79-4); TA80-1-17 (PGA80-2, IPR80-2, DCA80-1 and LaFUT80-1); and TA80-1-17 (AP80-2), RP75-73 (AP79-4); TA80-1-17 (PGA80-1, IPR80-2, DCA80-1, AP80-1 and LaFUT80-1), Texas Eastern Transmission Corp.
CAG-2. Docket No. RP80-75, Southern Natural Gas Co.
CAG-3. Docket Nos. RP74-89 and RP73-75 (AP76-1), RP73-35 and RP74-89 (PGA76-1 and AP76-2), RP73-35 and RP74-89 (PGA76-3 and AP76-3), Trunkline Gas Co.
CAG-4. Docket No. RP75-84 and RP72-91 (phase II), Southern Natural Gas Co.
CAG-5. Docket No. RP74-97 (PGA78-1), Montana-Dakota Utilities Co.
CAG-6. Docket No. CI81-12-000, Union Oil Co. of California; Docket No. CI80-519, Amoco Production Co.; Docket Nos. CI80-510, CI80-508 and CI80-509, Kerr-McGee Corp.; Docket No. CI80-440, Pogo Producing Co.; Docket Nos. CI80-441 and CI80-444, Pennzoil Oil & Gas, Inc.; Docket No. CI80-446, Pennzoil Producing Co.; Docket No. CI80-449, Pogo Producing Co.; Docket No. G-7144, Gulf Oil Corp.; Docket No. CI80-49, Mobil Oil Exploration & Producing Southeast, Inc.; Docket Nos. G-17412 and G-6169, the Superior Oil Co.; Docket Nos. CS71-659, et al., the Kilroy Co., a partnership and W. S. Kilroy, et al. (Kilroy Properties and W. S. Kilroy), et al.; Docket No. CI78-882, Exxon Corp.; Docket Nos. CI75-538 and CI76-734, Mobil Oil Exploration & Producing Southeast, Inc.; Docket No. CI81-3-000, Texoma Production Co.; Docket No. CI79-282, Tenneco Exploration, Ltd., et al.; Docket No. CI80-528, Texaco Inc.; Docket No. CI80-402, Quintana Oil & Gas Corp.; Docket No. CI80-371, Fin Oil, Inc.; Docket No. CI78-208, Chevron U.S.A. Inc.; Docket No. CI80-526, the Offshore Co.; Docket No. CI80-527, Sonat Exploration Co.; Docket No. CI81-5-000, Cities Service Co.
CAG-7. (A) Docket Nos. CI79-552 and CI79-553, Exxon Corp.; (B) Docket Nos. CI78-758, CI78-759, CI78-882, CI78-981, CI78-816 and CI78-1191, Exxon Corp.
CAG-8. Rate Schedule No. 45, Superior Oil Co.
CAG-9. Docket No. CP80-274, Mountain Fuel Supply Co. and Mountain Fuel Resources, Inc.; Docket No. CP80-275, Mountain Fuel Supply Co.; Docket No. CI80-233, Wexpro Co. and Celsius Energy Co.
CAG-10. Docket Nos. CP66-111, et al., Great Lakes Gas Transmission Co.
CAG-11. Docket No. CP79-432, Northern Natural Gas Co.
CAG-12. Docket No. CP80-457, East Tennessee Natural Gas Co.
CAG-13. Docket No. CP80-402, United Gas Pipe Line Co.
CAG-14. Docket No. CP80-460, United Gas Pipe Line Co.
CAG-15. Docket No. CP80-544, Natural Gas Pipeline Co. of America and Transcontinental Gas Pipe Line Corp.
CAG-16. Docket No. CP80-476, Transwestern Pipeline Co.
CAG-17. Docket No. CP81-27-000, Columbia Gas Transmission Corp.
CAG-18. Docket No. CP80-435, Alaskan Northwest Natural Gas Transportation Co.

CAG-19. Docket Nos. CP78-123, et al., Alaskan Northwest Natural Gas Transportation Co.

Power Agenda—476th Meeting, January 14, 1981, Regular Meeting

I. Licensed Project Matters

P-1. Reserved

II. Electric Rate Matters

ER-1. Docket No. ER81-132-000, Cincinnati Gas & Electric Co.
ER-2. Docket Nos. E-8586 and E-8587 (remand), Public Service Co. of Indiana, Inc.
ER-3. Docket Nos. ER76-149 and E-9537, Public Service Co. of Indiana, Inc.
ER-4 Docket No. ID-1818, George Fabian Brewer

Miscellaneous Agenda—476th Meeting, January 14, 1981, Regular Meeting

M-1. Docket No. RM79-39, regulations governing applications for license of major unconstructed and major modified projects
M-2. Docket No. RM81- , procedural and correctional revisions to regulations governing preliminary permits and licenses
M-3. Docket No. RM81- , regulations governing applications for license of minor water power projects and major water power projects 5 MW or less
M-4. Reserved
M-5. Reserved
M-6. Docket No. RM80-33, final rules for part 270, subpart B, sections 270.201, 270.202 and 270.204
M-7 (A). Docket No. RM79-76 (Texas—3), high-cost gas produced from tight formations; (B). Docket No. RM79-76 (Texas—4), high-cost gas produced from tight formations; (C). Docket No. RM79-76 (Texas—5), high-cost gas produced from tight formations

Gas Agenda—476th Meeting, January 14, 1981, Regular Meeting

I. Pipeline Rate Matters

RP-1. Reserved

II. Producer Matters

CI-1. Docket Nos. RI74-188 and RI75-21, Independent Oil and Gas Association of West Virginia

III. Pipeline Certificate Matters

CP-1. Docket No. RP75-79 (phase II), Lehigh Portland Cement Co. v. Florida Gas Transmission Co.; Docket No. CP77-44, Abitibi Corp. v. Florida Gas Transmission Co.
CP-2. Docket Nos. CP75-140, et al., Pacific Alaska LNG Co., et al.; Docket Nos. CP74-160, et al., Pacific Indonesia LNG Co., et al.; Docket No. CI78-453, Pacific Lighting Gas Development Co.; Docket No. CI78-452, Pacific Simpco partnership

Kenneth F. Plumb,
Secretary.

[S-33-81 Filed 1-8-81; 11:17 am]
BILLING CODE 6450-01-M

3

FEDERAL HOME LOAN BANK BOARD:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No 46, Issue No. 3, Page No. 1394, January 6, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Thursday, January 8, 1981.

PLACE: 1700 G Street NW., board room, sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

CHANGES IN THE MEETING:

SMSA Branching comment period
Amendments relating to officers and directors of Federal associations
No. 439, January 8, 1981.

[S-32-81 Filed 1-8-81; 10:08 am]
BILLING CODE 6720-01-M

4

[Meeting No. 1259]

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 10:15 a.m., e.s.t., Thursday, January 15, 1981.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

Action Items

A—Project Authorizations

1. Project Authorization No. 3546—Installation of sampling equipment in the turbine building at the Browns Ferry Nuclear Plant.

B—Purchase Awards

1. Req. No. 626513—Indefinite quantity term contract for genuine C. S. Johnson mixing plant repair parts, all models.
2. Req. No. 54114-2—Amendment to contract with Babcock and Wilcox Company for nuclear steam supply systems for Bellefonte Nuclear Plant.
3. Req. No. 827908—Construction of a railroad track and accessories at Yellow Creek Nuclear Plant.

C—Power Items

1. Bill of Sale and Quitclaim Deed covering conveyance to the City of Jackson, Tennessee, a 12.4-mile section of the South Jackson-Humboldt 46-kV Transmission Line and a 6.5-mile section of the South Jackson-Morris 46-kV Transmission Line.
2. Deed and Bill of Sale covering conveyance to the City of Fayetteville, Tennessee, complete 46-kV circuit breaker installation No. 474 and 2.01-mile section of TVA's Fayetteville District-Lynchburg 46-kV Transmission Line.

D—Personnel Items

1. Personal services contract with Dertbick and Henley, Architects, Chattanooga, Tennessee, for architectural and engineering services in connection with the Chattanooga Office Complex project. Requested by the Office of Engineering Design and Construction.
2. Renewal of consulting contract with Jack E. Gilleland, Signal Mountain, Tennessee, for advice and assistance in connection with TVA's power and energy-related programs. Requested by the Office of Power.

E—Real Property Transactions

1. Filing of eleven (11) condemnation suits.

F—Unclassified

1. Additional cost-of-living adjustment for Retirement System retirees and beneficiaries and amendment to Retirement System rules and regulations relating to election of Retirement Board members.
2. Agreement between TVA, South Atlantic Division, U.S. Army Corps of Engineers, and Southeastern Federal Regional Council; and agreement between TVA and Tennessee-Tombigbee Project Area Council covering the development and implementation of a project for the development of the area surrounding the Tennessee-Tombigbee Waterway.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to request for information about this meeting. Call (615) 632-3247, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: January 8, 1981.

[S-35-81 Filed 1-8-81; 3:24 pm]
BILLING CODE 8120-01-M

5

NATIONAL LABOR RELATIONS BOARD.

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 2:30 p.m., Tuesday, January 13, 1981.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Consideration of applicants qualified for appointment to Administrative Law Judge.

CONTACT PERSON FOR MORE INFORMATION: Robert Volger, Acting Executive Secretary, Washington, D.C. 20570, Telephone: (202) 254-9430.

Dated: Washington, D.C., January 8, 1981.
By direction of the Board.

Robert Volger,
Acting Executive Secretary.

[S-36-81 Filed 1-8-81; 8:45 am]
BILLING CODE 7545-01-M

federal register

Monday
January 12, 1981

Part II

Environmental Protection Agency

Hazardous Waste Management System: Addition of General Requirements for Treatment, Storage and Disposal Facilities (40 CFR Part 264); Amendment of Interim Status Standards Respecting Closure and Post-Closure Care and Financial Responsibility (40 CFR Part 265); and Conforming Amendments to the Permitting Requirements (40 CFR Part 122)

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 264, and 265

[SWH-FRL 1673-7a]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Consolidated Permit Regulations

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency is amending its regulations for the management of hazardous waste by: adding significant new sections to the standards applicable to the owners and operators of waste management facilities; adding financial requirements and amending closure and post-closure care requirements during the interim status periods for such facilities; and amending the permit regulations to comply with the facility regulations being published today.

Under the Resource Conservation and Recovery Act (RCRA) the Agency is required to establish a Federal hazardous waste management system. The first phase of that system was promulgated earlier this year. Today's publication, by setting forth requirements for location, closure and post-closure care, financial requirements, use and management of containers, and storage and treatment of hazardous waste in tanks, surface impoundments, and waste piles, will significantly improve the regulatory program by providing necessary standards around which permits may be granted for many treatment and storage operations. The additions to the permit regulations are necessary to enable the Agency's permitting officials to evaluate facility compliance with these regulations. The additions and changes to the interim status closure, post-closure care, and financial requirements were made to complete the interim status control program and in response to some public comments.

These regulations do not include the Part 264 requirements for ground-water monitoring, land treatment, landfills, incinerators, chemical, physical, and biological treatment units, thermal treatment facilities, injection wells, or the provisions for surface impoundments or waste piles used for disposal. These are still under preparation and will be issued at a later date.

DATES: Effective Date: These regulations, in the form published today, complete EPA's initial rulemaking on the subjects covered. They become effective on July 13, 1981, which is six months from the date of promulgation as RCRA Section 3010(b) requires.

Comment dates: EPA will accept public comments on these regulations as follows:

Deadline for Submission of Comments

All of these requirements are issued on an interim final basis. Comments on these regulations will be accepted until March 13, 1981. Comments in response to Requests in the Preamble will also be accepted until March 13, 1981.

ADDRESSES: Comments should be sent to Docket Clerk [Docket No. 3004], Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Docket: The public docket for these regulations is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. Among other things, the docket contains background documents which explain, in more detail than the preamble to this regulation, the basis for many of the provisions in this regulation.

Copies of Regulations: Single copies of these regulations will be available approximately 30 days after publication from Ed Cox, Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268 (513) 684-5362. Multiple copies will be available from the Superintendent of Documents, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA hazardous waste hotline, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (phone 800/424-9346, or in Washington, D.C., 554-1404).

For information on implementation of these regulations, contact the EPA regional offices below:

Region I

Dennis Huebner, Chief, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5775

Region II

Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-0503

Region III

Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-0980

Region IV

James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308 (404) 881-3016

Region V

Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6148

Region VI

R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 767-2645

Region VII

Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307

Region VIII

Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-2221

Region IX

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SUPPLEMENTARY INFORMATION:

Preamble Outline

I *Authority*
II *Structure of Subtitle C*
III *Status of the Subtitle C Rulemaking*
IV *Scope of Rulemaking*
V *Effect on Permitting*
VI *Regulation of Storage and Treatment Facilities*
A. Regulatory Approach to Storage
B. Regulatory Approach to Treatment
VII *Analysis of Rules*
A. General Facility Standards (Subpart B)
1. General Requirements for Ignitable, Reactive, or Incompatible Wastes (§§ 264.17 and 265.17)
2. Volatile Wastes
3. Location Standards (§ 264.18)
a. Seismic Considerations
b. Floodplains
c. Wetlands
d. Endangered and Threatened Species and Critical Habitats

e. Sole Source Aquifers
f. Buffer Zone
g. Regulatory Floodway
h. Coastal High Hazard Areas
i. Permafrost Areas

B. Closure and Post-Closure Care (Subpart G)

1. Interim Status Regulations (Part 265)
a. Deadline for Submission of Plans (§§ 265.112(a) and 265.118(a))
b. Maintaining Copies at the Facility (§§ 265.112(a) and 265.118(a))
c. Closure Plans and Amendments (§ 265.112)
d. Closure and Time Allowed for Closure (§ 265.113)
e. Post-closure Care and Use of Property (§ 265.117)
f. Post-closure Plan and Amendments (§ 265.118)
g. Notices (§§ 265.119 and 265.120)
2. General (Permitting) Regulations (Part 264)

C. Financial Requirements (Subpart H)

1. Financial Assurance for Closure and Post-Closure Care (Broad Issues)
a. Compliance Proceedings
b. Standby Trust Fund
c. Equity Among Mechanisms
d. Restricting Means of Financial Assurance
2. Trust Funds
3. Surety Bonds
4. Letters of Credit
5. Revenue Test for Municipalities
6. Financial Test and Guarantee
7. Variations in Use of Mechanisms
8. Other Mechanisms
9. Liability Requirements
10. Incapacity of Issuing Institutions
11. Applicability of State Financial Requirements
12. State Assumption of Responsibility

D. Containers (Subpart I)

1. Applicability (§ 264.170)
2. Condition of Containers (§ 264.171)
3. Containment (§ 264.175)
4. Compatibility (§§ 264.172 and 264.177)
5. Closure (§ 264.178)

E. Tanks (Subpart J)

1. Applicability (§ 264.190)
2. Design of Tanks (§ 264.191)
3. General Operating Requirements (§ 264.192)
4. Waste Analysis and Trial Tests
5. Inspections (§ 264.194)
6. Closure (§ 264.197)
7. Ignitable, Reactive, and Incompatible Wastes (§§ 264.198 and 264.199)
8. Secondary Containment
9. Tanks in the Water Table
10. Cathodic Protection
11. Air Emissions

F. Surface Impoundments (Subpart K)

1. Regulatory Approach
2. Applicability (§ 264.220)
3. General Design Requirements (§ 264.221)
4. General Operating Requirements (§ 264.222)
5. Containment Systems (§ 264.223)
6. Inspections and Testing (§ 264.226)
7. Containment System Repairs: Contingency Plans (§ 264.227)
8. Closure (§ 264.227)
9. Ignitable or Reactive Wastes (§ 264.229)
10. Incompatible Wastes (§ 264.230)
11. Freeboard (§ 264.221)
12. Liners and Lenchate Detection, Collection, and Removal (§ 264.223)
13. Waste Analysis and Trail Tests

G. Waste Piles (Subpart L)

1. Applicability (§ 264.250)
2. Objectives and Organization
3. General Design Requirements (§ 264.251)
4. General Operating Requirements (§ 264.252)
5. Containment Systems (§ 264.253)
6. Inspections and Testing (§ 264.254)
7. Containment System Repairs: Contingency Plans (§ 264.255)
8. Closure (§ 264.258)
9. Waste Analysis

H. Permitting Requirements (Part 122)

1. Permit Modification (§§ 122.15 and 122.17)
2. Application Requirements for Part B (§ 122.25)
3. Permit Conditions (§ 122.29)

VIII *Regulatory Analysis*
A. Economic Analysis
1. Benefits
2. Costs and Impacts
a. Tanks
b. Surface Impoundments
c. Waste Piles
B. Reports Analysis

IX *Relationship to Polychlorinated Biphenyl Management*

X *OMB Review*

XI *Supporting Documents*
A. Background Documents
B. Guidance Documents

I. Authority

These regulations are issued under the authority of Sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6905, 6912(a), 6924, and 6925.

II. Structure of Subtitle C

Subtitle C of RCRA creates a "cradle-to-grave" management system assuring that hazardous waste is safely stored, treated or disposed. Subtitle C creates a manifest system which is designed to track the movement of hazardous waste. Under regulations established by the Administrator of EPA, hazardous waste generators and transporters, as well as owners and operators of hazardous waste treatment, storage and disposal facilities are required to discharge certain responsibilities that insure the effective operation of the manifest system. In addition, owners and operators of treatment, storage and disposal facilities must comply with standards that "may be necessary to protect human health and the environment," which are established by EPA under Section 3004 of RCRA. These standards are generally implemented through permits, issued by EPA or authorized states, to owners and operators of hazardous waste treatment, storage and disposal facilities.

Section 3004 standards become effective 6 months after their promulgation by EPA. Under Section 3005(a), on the effective date of the Section 3004 standards, all treatment, storage and disposal of hazardous waste is prohibited except in accordance with a permit which implements the Section 3004 standards. Recognizing that not all permits would be issued within six months of the promulgation of Section 3004 standards, Congress created "interim status" in Section 3005(e) of RCRA. Owners and operators of existing hazardous waste treatment, storage and disposal facilities who qualify for interim status will be treated as having been issued a permit until EPA takes final administrative action on their permit application. Interim status does not relieve a facility owner or operator of complying with Section 3004 standards. The privilege of carrying on operations in the absence of a permit carries with it the responsibility of complying with appropriate portions of the Section 3004 standards (contained in 40 CFR Part 265).

To implement the various sections of Subtitle C EPA has issued several sets of regulations:

Part 260: Hazardous Waste Management System: general
Part 261: Hazardous Waste Management System: Identification and Listing of Hazardous Waste
Part 262: Standards for Generators of Hazardous Waste
Part 263: Standards for Transporters of Hazardous Waste
Part 264: Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities
Part 265: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities
Parts 122–125: Consolidated Permit Regulations (including permit regulations for hazardous waste facilities)

III. Status of the Subtitle C Rulemaking

The development of the hazardous waste regulations has been one of the most complicated rulemakings EPA has ever attempted. To give the reader an appreciation of the context surrounding today's promulgation it is useful to summarize EPA's rulemaking efforts of the last year:

1. Section 3010 Notice—This Notice was issued on February 26, 1980.

2. *Part 260*—This portion of the regulation, which includes general definitions used in the regulations and

procedures for petitioning EPA, was promulgated on May 19, 1980.

3. *Part 261*—Part 261, which defines through lists and characteristics the wastes which are considered hazardous under the program, was first promulgated on May 19, 1980. Many of the listings of wastes in the May 19 rulemaking were in "interim final" form. Final versions of those listings were completed in regulations issued on November 12, 1980 (45 FR 74884–74894) and November 25, 1980 (45 FR 532–78544). Another "interim final" and proposed list of hazardous wastes was issued on July 16, 1980 (45 FR 47832–47836). Additional amendments have been made to Part 261 to clarify issues raised by the May 19 regulations and to resolve problems concerning specific waste listings.

4. *Parts 262 and 263*—Portions of Part 262, which contains standards for generators of hazardous waste, and Part 263, which contains standards for transporters of hazardous waste, were issued on February 26, 1980 (45 FR 12722.) The remainder of Parts 262 and 263 were promulgated in the May 19, 1980 set of regulations. Additional modifications have been made to those regulations to clarify issues raised in the May 19 regulations.

5. *Part 264*—Portions of the Part 264 regulations, the standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities, were issued on May 19, 1980. Specifically Subparts A (General), B (General Facility Standards), C (Preparedness and Prevention), D (Contingency Plan and Emergency Procedures) and E (Manifest System, Recordkeeping and Reporting) were issued at that time. In that package, § 264.12 (Required Notices) was issued in "interim final" form. All of the other 264 Subparts were issued in final form.

6. *Part 265*—On May 19 EPA promulgated regulations applicable to facilities operating under interim status. Specifically it promulgated Subparts A (General), B (General Facility Standards), C (Preparedness and Prevention), D (Contingency Plan and Emergency Procedures), E (Manifest System, Recordkeeping and Reporting), F (Ground-Water Monitoring), G (Closure and Post-Closure), H (Financial Requirements), I (Containers), J (Tanks), K (Surface Impoundments), L (Piles), M (Land Treatment), N (Landfills), O (Incinerators), P (Thermal Treatment), Q (Chemical, Physical and Biological Treatment), and R (Underground Injection). Some subsections were in final form while others were in "interim final" form.

Two major proposed rules accompanied the May 19 set of regulations. One proposed significant additions to Subpart H, the financial responsibility requirements, while the other proposed significant additions to Subpart R, the requirements for underground injection. The proposed rules would have modified both Parts 265 and 264.

7. *Parts 122–125*—The Consolidated Permit Regulations, which set forth the permit regulations for several EPA programs including the hazardous waste program, were issued on May 19, 1980. All portions of those regulations affecting the hazardous waste program were issued in final form.

IV. Scope of Rulemaking

The regulations that EPA is issuing today comprise additions to Part 264. Subparts G–L are also being added to Part 264 for the first time. Location standards are being added to Subpart B of Part 264 as well. All the 264 regulations are being issued in "interim final" form.

Limited changes are being made to Part 265. Subpart H of Part 265 is being modified to accord with the Part 264 financial requirements. These modifications to Part 265, Subpart H are "interim final". Certain elements of Part 265, Subpart G were issued as "interim final" in the May 19 regulations. Some modifications based on comments are being made today, again on an interim final basis.

EPA is not finalizing any of the "interim final" portions of the Part 265 regulations. Moreover it is not yet adding Subparts F, M, N, O, P, Q or R to Part 264. The following chart summarizes the status of the various portions of Parts 264 and 265, based on the May 19 regulations, the regulations issued today, and recent amendments.

Regulatory Status

Part 264—General Standards

Subpart	Section	Action	Action date
A	264.1	Final	5/19/80
		Amended	11/17/80
		Amended	11/19/80
	264.3	Final	5/19/80
	264.4	Final	5/19/80
B	264.10	Final	5/19/80
		Amended	
	264.11	Final	5/19/80
	264.12	Interim Final	5/19/80
	264.13	Final	5/19/80
		Amended	
	264.14	Final	5/19/80
	264.15	Final	5/19/80
		Amended	
	264.16	Final	5/19/80
	264.17	Interim Final	
	264.18	Interim Final	
C	264.30	Final	5/19/80

Regulatory Status—Continued

Part 264—General Standards

Subpart	Section	Action	Action date
	264.31	Final	5/19/80
	264.32	Final	5/19/80
	264.33	Final	5/19/80
	264.34	Final	5/19/80
	264.35	Final	5/19/80
	264.36	Final	5/19/80
		Reserved	
	264.37	Final	5/19/80
D	264.50	Final	5/19/80
	264.51	Final	5/19/80
	264.52	Final	5/19/80
	264.53	Final	5/19/80
	264.54	Final	5/19/80
	264.55	Final	5/19/80
	264.56	Final	5/19/80
		Amended	
E	264.70	Final	5/19/80
	264.71	Final	5/19/80
	264.72	Final	5/19/80
	264.73	Final	5/19/80
		Amended	
	264.74	Final	5/19/80
	264.75	Final	5/19/80
		Amended	
	264.76	Final	5/19/80
	264.77	Final	5/19/80
		Amended	
G	264.110	Interim Final	
	264.111	Interim Final	
	264.112	Interim Final	
	264.113	Interim Final	
	264.114	Interim Final	
	264.115	Interim Final	
	264.116	Interim Final	
	264.117	Interim Final	
	264.118	Interim Final	
	264.119	Interim Final	
	264.120	Interim Final	
H	264.140	Proposed	5/19/80
		Interim Final	
	264.141	Proposed	5/19/8
		Interim Final	
	264.142	Interim Final	
	264.143	Proposed	5/19/80
		Interim Final	
	264.44	Interim Final	
	264.45	Proposed	5/19/80
		Interim Final	
	264.146	Proposed	5/19/80
		Interim Final	
	264.147	Proposed	5/19/80
		Interim Final	
	264.148	Interim Final	
	264.149	Proposed	5/19/80
		Interim Final	
	264.150	Interim Final	
	264.151	Interim Final	
I	264.170	Interim Final	
	264.171	Interim Final	
	264.172	Interim Final	
	264.173	Interim Final	
	264.174	Interim Final	
	264.175	Interim Final	
	264.176	Interim Final	
	264.177	Interim Final	
	264.178	Interim Final	
J	264.190	Interim Final	
	264.191	Interim Final	
	264.192	Interim Final	
	264.194	Interim Final	
	264.197	Interim Final	
	264.198	Interim Final	
	264.199	Interim Final	
	264.200	Proposed	
K	264.220	Interim Final	
	264.221	Interim Final	
	264.222	Interim Final	
	264.223	Interim Final	
	264.226	Interim Final	
	264.227	Interim Final	
	264.228	Interim Final	
	264.229	Interim Final	
	264.230	Interim Final	
L	264.250	Interim Final	

Regulatory Status—Continued

Part 264—General Standards

Subpart	Section	Action	Action date
	264.251	Interim Final	
	264.252	Interim Final	
	264.253	Interim Final	
	264.254(a)	Interim Final	
	264.254 (b+c)	Proposed	
	264.255	Interim Final	
	264.266	Interim Final	
	264.257	Interim Final	
	264.258	Interim Final	

Regulatory Status

Part 265—Interim Status Standards

Subpart	Section	Action	Action date
A	265.1	Final	5/19/80
		Amended	11/17/80
		Amended	11/19/80
	265.4	Final	5/19/80
B	265.10	Final	5/19/80
	265.11	Final	5/19/80
	265.12	Interim Final	5/19/80
	265.13	Final	5/19/80
	265.14	Final	5/19/80
	265.15	Final	5/19/80
	265.16	Final	5/19/80
	265.17	Interim Final	5/19/80
C	265.30	Final	5/19/80
	265.31	Final	5/19/80
	265.32	Final	5/19/80
	265.33	Final	5/19/80
	265.34	Final	5/19/80
	265.76	Final	5/19/80
	265.77	Final	5/19/80
D	265.50	Final	5/19/80
	265.51	Final	5/19/80
	265.52	Final	5/19/80
	265.53	Final	5/19/80
	265.54	Final	5/19/80
	265.55	Final	5/19/80
	265.56	Final	5/19/80
E	265.70	Final	5/19/80
	265.71	Final	5/19/80
	265.72	Final	5/19/80
	265.73	Final	5/19/80
	265.74	Final	5/19/80
	265.75	Final	5/19/80
F	265.90	Interim Final	5/19/80
	265.91	Interim Final	5/19/80
	265.92	Interim Final	5/19/80
	265.93	Interim Final	5/19/80
	265.94	Interim Final	5/19/80
G	265.110	Final	5/19/80
	265.111	Interim Final	5/19/80
		Final	
	265.112	Interim Final	5/19/80
		Amended	10/30/80
		Amended	
	265.113	Interim Final	5/19/80
		Amended	
	265.114	Final	5/19/80
	265.115	Final	5/19/80
	265.117	Interim Final	5/19/80
	265.118	Interim Final	5/19/80
	265.119	Final	5/19/80
		Proposed Amendment.	
	265.120	Final	5/19/80
		Proposed Amendment.	
H	265.140	Final	5/19/80
	265.141	Proposed	5/19/80
		Interim Final	
	265.142	Final	5/19/80
		Amended	10/30/80
	265.143	Proposed	5/19/80
		Interim Final	
	265.144	Final	5/19/80
		Amended	10/30/80
	265.145	Proposed	5/19/80
		Interim Final	
	265.146	Proposed	5/19/80
		Interim Final	
H	265.147	Proposed	5/19/80
		Interim Final	
	265.148	Interim Final	
	265.149	Proposed	5/19/80
		Interim Final	
	265.150	Interim Final	
	265.151	Interim Final	
I	265.170	Final	5/19/80

Regulatory Status—Continued

Part 264—General Standards

Subpart	Section	Action	Action date
	265.171	Final	5/19/80
	265.172	Final	5/19/80
	265.173	Final	5/19/80
	265.174	Final	5/19/80
	265.176	Interim Final	5/19/80
	265.177	Final	5/19/80
J	265.190	Final	5/19/80
	265.192	Final	5/19/80
	265.193	Final	5/19/80
	235.194(a)	Final	5/19/80
	265.194(b)	Proposed	
	265.197	Final	5/19/80
	265.198	Interim Final	5/19/80
	265.199	Final	5/19/80
K	265.220	Final	5/19/80
	265.222	Final	5/19/80
	265.223	Final	5/19/80
	265.225	Final	5/19/80
	265.226	Final	5/19/80
	265.228	Interim Final	5/19/80
	265.229	Final	5/19/80
	265.230	Final	5/19/80
L	265.250	Final	5/19/80
	265.251	Interim Final	5/19/80
	265.252	Interim Final	5/19/80
	265.253	Interim Final	5/19/80
	265.254	Proposed	
	265.256	Interim Final	5/19/80
	265.257	Interim Final	5/19/80
M	265.270	Final	5/19/80
	265.272	Interim Final	5/19/80
	265.273	Interim Final	5/19/80
	265.276	Interim Final	5/19/80
	265.278	Interim Final	5/19/80
	265.279	Final	5/19/80
	265.280	Interim Final	5/19/80
	265.281	Final	5/19/80
	265.282	Final	5/19/80
N	265.300	Final	5/19/80
	265.302	Final	5/19/80
	265.309	Final	5/19/80
	265.310	Interim Final	5/19/80
	265.312	Final	5/19/80
	265.313	Final	5/19/80
	265.314	Interim Final	5/19/80
	265.315	Interim Final	5/19/80
O	265.340	Final	5/19/80
	265.343	Interim Final	5/19/80
	265.345	Interim Final	5/19/80
	265.347	Interim Final	5/19/80
	265.351	Interim Final	5/19/80
P	265.370	Final	5/19/80
	265.373	Interim Final	5/19/80
	265.375	Interim Final	5/19/80
	265.377	Interim Final	5/19/80
	265.381	Interim Final	5/19/80
	265.382	Interim Final	5/19/80
Q	265.400	Final	5/19/80
	265.401	Final	5/19/80
	265.402	Final	5/19/80
	265.403	Final	5/19/80
	265.404	Final	5/19/80
	265.405	Interim Final	5/19/80
	265.406	Final	5/19/80
R	265.430	Interim Final	5/19/80

EPA had hoped to issue today Part 264 standards for all of the major hazardous waste management options. Unfortunately EPA has not been able to do so for several reasons. First, EPA's limited resources have been severely taxed by its efforts to implement the existing regulations. Many States have been seeking "interim authorization" to implement the hazardous waste program within their borders. (See 45 FR 33386 for an explanation of interim authorization under RCRA). Review of State applications and assisting the States in the development of their programs has proved to be a time-consuming task for EPA. Moreover EPA has had to devote substantial resources to explaining the complexities of the hazardous waste program to the public.

Second, EPA has had to face substantial legal challenge to its existing program. Approximately 52 petitions for review were filed on the May 19 regulations by various corporations, trade associations and environmental groups. Preliminary discussions with the petitioners have indicated that they may wish to negotiate modifications to some of the Part 265 regulations, particularly those involving some of the land disposal regulations. EPA has not yet decided to make *any* changes in Part 265 as a result of discussions with the petitioners. However, EPA is willing to explore with the petitioners, at least for some reasonable time period, the issues and regulatory options which they might suggest. Under these circumstances EPA believes that it should temporarily delay final promulgation of those Part 265 regulations, and the analogous elements of Part 264, that might be affected by the negotiations with the petitioners. This avoids the prospect of promulgating final regulations now which might have to be modified a few months later in further rulemaking.

Third, several of the Subparts which have not been included in today's promulgation will be affected by the Agency's decisions on the use of the "best engineering judgment" (BEJ) approach to hazardous waste permitting under RCRA. As indicated in the Preamble to the May 19 regulations (45 FR 33166), the BEJ approach is, in part, an effort to make EPA's regulations more adaptable to the wide range of wastes and management scenarios subject to the hazardous waste program. Essentially the BEJ approach relies on basic performance standards and a set of relevant technical factors that relate to those performance standards. Permitting authorities (EPA or the States) would then use these performance standards and technical factors as a structure for exercising their discretion on the acceptability of particular facilities, based on a thorough knowledge of the wastes managed at the facility, the facility design and the environment in which the facility is located.

In developing its regulations EPA is considering the use of several types of performance standards that will guide the BEJ analysis. For example, the Agency may use operational performance standards (*e.g.* 99.99% destruction and removal efficiency for organic constituents in incinerators), specific ambient health and environmental performance standards

(*e.g.* assuring maintenance of water quality levels contained in the National Interim Primary Drinking Water Regulations in the ground water downgradient from a land disposal facility), and non-narrative health and environmental performance standards (*e.g.* assuring no adverse effects on human health due to carcinogenicity, acute toxicity or mutagenicity). Currently EPA intends to employ a mix of these types of performance standards.

On October 8, 1980 EPA published a Supplemental Notice of Proposed Rulemaking (45 FR 66817–66823), which outlined its intended BEJ approach for assuring ground water protection at land disposal facilities. EPA received over 100 comments on the Notice, many of which raised substantial objections. In order to fully analyze and address the issues raised by those comments, EPA will have to take more time to promulgate the land disposal regulations. Moreover the Agency is currently considering whether to propose the key elements of these BEJ regulations.

Due to these considerations EPA decided to focus its limited resources on promulgating those portions of the 264 regulations which were not substantially affected by the pending litigation and the development of its BEJ strategy for land disposal. This approach allows for careful consideration and efficient promulgation of the remaining standards. At the same time this approach allows for the prompt permitting of a large number of hazardous waste management facilities. EPA estimates, for example, that there are over 13,000 facilities that store hazardous waste. Such facilities can begin to receive permits once the regulations promulgated today become effective.

EPA will make every effort to finalize the remaining portions of the Parts 264 and 265 regulations as soon as possible. As part of its finalization of the interim final portions of Part 264 that are issued today EPA will also finalize the Part 265 analogs of those provisions. The next major portion of the Part 264 standards will be the incinerator standards (Subpart O). EPA intends to issue those regulations in January of 1981. The land disposal regulations will be promulgated some time thereafter. At this time EPA is considering proposing the key elements of the BEJ land disposal regulations in January as well.

In its rulemaking on the hazardous waste regulations EPA has provided many opportunities for public comment. EPA will be responding to the major comments received on those proposed hazardous waste regulations of December 18, 1978 (43 FR 58982–59016) that concerned the Subparts being promulgated today. In addition EPA has responded to some of the comments submitted on the interim final portions of the Part 265 regulations issued on May 19. Such comments are discussed when they are directly related to decisions made on the Part 264 regulations.

V. Effect on Permitting

Once the regulations promulgated today become effective EPA will be able to issue permits for many hazardous waste management facilities. Specifically EPA, or authorized states, will be able to issue permits to owner and operators of container, tank, surface impoundment and pile facilities. In keeping with § 122.9 of EPA's Consolidated Permit Regulations, EPA will generally issue 10 year permits for these facilities. However, in appropriate situations the Director may establish shorter term permits. As will be discussed later, EPA expects that the regulations being issued today will be undergoing substantial refinement in the next few months. Modifications which are made promptly will be used as a basis for setting conditions in the first round of permits.

While these regulations will allow EPA to issue permits for most container, and tank, and many surface impoundment and pile facilities, certain limited types of storage facilities will not be covered by these regulations. For example, Section 264.190 excludes covered underground tanks from these regulations. As will be discussed later, EPA is seeking further information on this type of storage facility and thus is not ready to regulate such facilities at this time. Therefore no permits may be issued to such facilities until that component of the tank regulations has been issued.

In the case of surface impoundments and piles, the regulations give a choice to the permittee. Where impoundments and piles are to be used for "storage," namely the holding of waste for a temporary period, the permittee may seek and obtain a permit under the regulations issued today. Likewise EPA may call up and act on a permit for storage surface impoundments or piles under these regulations. However, if the permittee intends to leave the waste in place at closure, the facility must be treated for regulatory purposes as a disposal facility. For the reasons discussed earlier, EPA is not yet ready to issue its BEJ Standards for land disposal. Therefore, permits for surface impoundments and piles which discharge or that are not emptied at closure will have to await finalization of the remainder of the surface impoundment regulations.

EPA intends to issue the remaining portion of the surface impoundment and pile regulations as soon as possible, and it does not expect that the delay will present undue hardship for the regulated community. Owners and operators of new facilities will be able to receive permits allowing storage of hazardous waste for up to ten years. Those facilities which will eventually be seeking permits under the land disposal regulations can seek short-term permits. Moreover existing facilities that have properly qualified for interim status will be able to continue to operate providing that they comply with the interim status standards. Owners and operators of such facilities who intend to use their surface impoundments and piles for storage may receive a permit under these regulations. Those owners and operators who will be using existing surface impoundments and piles as the ultimate repositories of hazardous waste will be allowed to continue operation (providing that they comply with interim status standards) until the land disposal standards are promulgated.

It should also be pointed out that the regulations being issued today do not distinguish between new and existing facilities. While EPA clearly has authority to make such a distinction in setting Section 3004 standards, EPA does not believe that it is appropriate to distinguish between new and existing storage facilities. As will be discussed later, EPA believes that all storage facilities should be designed to essentially contain hazardous waste constituents. Disposal facilities may be regulated in a somewhat different manner, however, and it may be appropriate to draw distinctions between new and existing facilities in that context.

VI. Regulation of Storage and Treatment Facilities

Subparts I–L of these regulations establish the requirements for container, tank, surface impoundment and pile facilities, the principal facilities used to store hazardous waste.

As indicated in Section 1004(33) of RCRA,

> The term "storage", when used in connection with hazardous waste, means the containment of hazardous waste, *either on a temporary basis or for a period of years,* in such a manner as not to constitute disposal of such hazardous waste.

In defining the term storage in the regulations EPA emphasized the manner

in which the waste is managed. EPA defined "storage" in § 260.10(a)(66) as

> the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

EPA believes that this is an appropriate way to define storage for purposes of the hazardous waste management program. This definition focuses on how the owner or operator intends to use the facility. Knowing whether the facility will be used to hold the waste for a set period of time or whether it will be used as the ultimate repository of the waste is a basic element of sound waste management. EPA believes, therefore, that this definition directs the owner or operator's attention toward a key factor that can and should be known about the facility at the time of permit issuance.

The reasonableness of this approach is demonstrated by contrasting it with a definition that uses the environmental effects of the facility as a means of distinguishing between storage and disposal. Disposal is defined in Section 1004(3) as

> * * * the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

The definition of storage in Section 1004(33) specifically indicates that storage is "containment * * * in such a manner as not to constitute disposal of such hazardous waste." These definitions pose the question of how to classify a storage facility which leaks, causing disposal of hazardous waste. For example, is a leaky container a storage facility that violates its storage requirements or has it suddenly been re-defined as a disposal facility?

EPA believes that the definitions of storage and disposal facilities for purposes of Subtitle C permitting should not depend on whether the facility does in fact leak. Such a distinction would not be useful in determining what kinds of requirements should be placed in an initial permit for the facility. The question of whether a facility will leak depends on the conditions placed in a permit, and it would be impossible to know before such conditions are established whether leakage from the facility would occur. Thus it is more appropriate to focus on how the owner or operator intends to manage a facility (i.e., either to hold the hazardous waste for a temporary period, prior to treatment, disposal or storage elsewhere, or to permanently hold the waste at the facility) when establishing its status for hazardous waste facility permitting.

A. Regulatory Approach to Storage

Once it is clear what distinguishes storage facilities from disposal facilities it is necessary for EPA to formulate a regulatory strategy for storage facilities. After further consideration of the information available to it, EPA has decided that the requirements for storage facilities should be aimed at *containment* of the hazardous waste during the storage period.

This approach is an outgrowth of a general policy which EPA believes is appropriate for the storage, treatment and disposal of hazardous waste. EPA believes that it is unwise to allow the *uncontrolled* release of hazardous waste constituents into the environment. Certainly the entire structure of the hazardous waste program under RCRA reflects a Congressional intent that the general random release of hazardous waste constituents into the environment must be curtailed. The entire thrust of the "cradle to grave" manifest system and the permit program for storage, treatment and disposal facilities indicates a Congressional intent that the *indiscriminate* release of hazardous wastes, which has characterized so much of hazardous waste management in the past, would no longer be tolerated. Under this scheme significant releases of hazardous waste would only occur under *controlled* conditions where the facility owners and operators, EPA, the states and ultimately the public could be assured that human health and the environment would be protected. Thus where such releases are inevitable the hazardous waste program would assure, through facility design, operating conditions, monitoring provisions and emergency response measures, that only those releases which the environment can safely accommodate would be allowed.

The implications of this philosophy for regulation of storage facilities becomes clearer after considering some of the characteristics of these facilities. First, by definition, wastes are held at storage facilities only temporarily. Secondly, there are a great number of storage facilities. Third, waste storage facilities are often adjuncts to other types of industrial facilities which are not primarily engaged in waste management activities.

Under these circumstances, EPA believes that, as a national policy, owners and operators of storage facilities can more easily comply with a containment philosophy than properly implement the complex design, operational, monitoring and response permit conditions which will be necessary to responsibly manage controlled releases (e.g., as a result of proper disposal) of hazardous waste into the environment. Similarly, EPA can more easily implement a regulatory program for storage which requires containment than a program which requires analysis of risk of releases from thousands of storage facilities.

Since storage facilities are often ancillary to the main activity at a facility and are often temporary in nature, it cannot be expected that the owner or operator has sufficient knowledge to assure that any releases from the facility will be properly controlled now and in the future. Moreover, it would be inefficient for an owner or operator to commit the resources necessary to achieve such assurance in most cases for simple storage activities.

Likewise EPA is well aware that the available scientific resources (expertise, equipment, etc.) that are necessary for sound hazardous waste management are quite limited. Thus the best use of available resources requires that EPA limit the number of site-specific situations where a release of hazardous waste constituents would be allowed under controlled conditions.

Thorough analyses of hydrogeologic environments and of how particular wastes migrate in those environments simply cannot be done at every storage, treatment and disposal facility in this country. Wholly apart from the question of administrative convenience in permitting, an attempt to perform such analyses at all such facilities would spread the available resources for analysis and management too thin, forcing facility owners or operators, and EPA to compromise on the care with which such analyses are done.

EPA, therefore, concludes that the question of whether controlled releases are allowed should only be considered when such releases are inevitable, such as releases from disposal facilities (e.g., landfills) and, air emissions (from treatment facilities). Responsible use of available scientific resources requires that some limits be placed. EPA believes that it is appropriate to preclude management of controlled releases at storage facilities because of the large number of those facilities, the relative lack of knowledge about hazardous waste management among many owners and operators of such facilities, the substantial likelihood that the owner or operator has not made a long-term commitment to the management of that facility and the feasibility of containing

wastes which are held only temporarily. Therefore EPA has concluded that the requirements for storage facilities should be aimed at containment of the waste for the term of storage.

However, air emissions cannot currently be completely contained at most storage facilities. Air emissions from storage tanks holding certain types of waste are not technologically avoidable. Venting is often necessary for example to prevent pressure build up. (However, in some cases, even these emissions can be controlled. Elsewhere in today's Federal Register, proposed § 264.200 would grant the Regional Administrator authority to impose appropriate requirements to control air emissions.) Similarly, the Agency has to date been unable to develop a successful strategy to control air emissions from volatile wastes in surface impoundments. (See 45 FR 33168.) Again, some air emissions from some waste piles are probably unavoidable, although these will be minimized through compliance with § 264.251, promulgated today.

The containment approach used in the storage regulations, therefore, focuses on prevention of releases to the soil and to ground and surface waters. This approach is not mandated by the mention of the word "containment" in the statutory definition of "storage," although that definition certainly indicates that EPA's regulatory approach for storage is consistent with the Act. EPA, however, could have taken a different regulatory approach to storage facilities, just as it could have established a containment approach for disposal facilities. Ultimately, then, EPA's selection of the containment approach, embodied in the regulations issued today, is based on a policy decision about how best to accomplish the statutory goal of protecting human health and the environment.

The containment strategy for storage devices, (container storage, tanks, piles, and surface impoundments) has been translated into a regulatory approach which requires a primary containment device designed to prevent leakage and overflow as long as the wastes will remain there. An inspection program is also required to monitor deterioration in the primary containment system so that repairs or replacement can be made before release of any contents to the environment; or failing that, to detect leaks before they become major or result in significant contamination. Thirdly, where the primary containment devices are easily damaged and/or where inspection is difficult, secondary containment devices have been required. The specific requirements vary for the various facility types, i.e., tanks, piles, etc. These are discussed in detail later in this Preamble.

The reader should note that EPA does not assert that surface impoundments and piles cannot be used for (permanent) disposal rather than (temporary) storage. EPA will soon be proposing regulations that would allow such disposal facilities to be permitted, where appropriate, based upon the detailed analyses and subject to stringent requirements appropriate to disposal facilities.

B. Regulatory Approach to Treatment

The facility specific regulations promulgated today cover not only storage operations, but also many treatment facilities. Treatment operations are defined in RCRA Section 1004(34) as follows:

> * * * any method, technique, or process designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume * * *

The statutory definition of treatment does not depend on whether hazardous wastes are held at the facility only temporarily prior to treatment, disposal, or storage elsewhere, or whether they are permanently retained on site. Thus a surface impoundment used to treat hazardous waste would be a storage facility if all hazardous wastes (which may include treatment residues or sludges—see § 261.3(c)(2) is removed from the site at closure. If all hazardous waste is not removed, the impoundment would be a disposal facility. A similar analysis pertains to those waste piles in which treatment may occur. Thus, a determination that a facility is a "treatment" facility is not relevant to a determination of whether it is, on one hand, a storage facility, or, on the other hand, a disposal facility. Rather, the criteria outlined earlier in this preamble determines whether a treatment facility is a storage or disposal facility. If a tank, waste pile, or surface impoundment used for treatment meets the regulations definition of storage, it is a storage facility and may be permitted under Part 264, subpart J, K, or L.

Treatment facilities subject to the storage requirements may present hazards which either do not occur or occur less frequently at storage facilities. Some of these hazards (emissions, ignition, or reactions) are regulated under § 264.17, which requires certain precautions to be taken to prevent uncontrolled releases. EPA is developing additional standards for chemical, physical and biological (C/P/B) treatment (Part 264, Subpart Q) facilities; some or all of which may be applicable to treatment in tanks, waste piles, and surface impoundments. However, the storage standards in Part 264, Subpart J, K, and L provide baseline protection (through the storage containment philosophy) to prevent releases to the soil and ground and surface waters.

VII. Analysis of Rules

The following sections of this Preamble consider the major issues and present the rationale for the specific regulations promulgated today. These are arranged in a section-by-section sequence for reference ease.

A. Subpart B—General Facility Standards; Subpart C—Preparedness and Prevention; Subpart E—Manifest System, Recordkeeping, and Reporting

Subpart B of Part 264 contains general requirements for waste treatment, storage, and disposal facilities including requirements regarding identification numbers, required notices, waste analysis, security at facilities, inspection of facilities, and personnel training. Subpart B of Part 265 contains comparable interim status standards for those facilities. The general requirements contained in Part 264 were promulgated in final form on May 19, 1980 with one exception: § 264.12 required notices.

The May 19, 1980 Part 264 regulations did not include standards for location of facilities, and those standards are being promulgated today on an interim final basis. In addition, the May 19, 1980 regulations included only partial standards in Part 264 for managing ignitable, reactive and incompatible wastes (§ 264.36). Those standards are being promulgated today (moved from § 264.36) in § 264.17 and expanded. The expansion incorporates provisions from § 265.17(b) as promulgated on May 19, 1980. Those standards are also promulgated on an interim final basis.

In addition, the Agency is today promulgating a number of interim final amendments to Part 264, Subparts B, C, and E, which conform to the additional standards being promulgated today in Subparts G, H, I, J, K, and L. These amendments are as follows:

- A new section, § 264.10(b) is being added which states that § 264.18(b) (requirements for facilities locating in floodplains) is applicable to facilities subject to regulation under Part 264, Subparts I, J, K, and L. As additional facility standards are promulgated in the future, the Agency will amend

§ 264.10(b) when it is determined that the regulations under § 264.18(b) should apply to those new Subparts.

• A new section, § 264.13(b)(6) is being added which requires that waste analysis plans include the methods which will be used to meet the waste analysis requirements for ignitable waste in § 264.17.

• A comment is being added to § 264.14 to direct the reader to § 264.117(b) for further discussion of security requirements during the post-closure care period.

• A new requirement is being added to § 264.15 which states that inspection schedules must include at a minimum, the frequencies called for in the inspection requirements for containers, tanks, piles, and surface impoundments.

• A comment is being added to § 264.16(a) which refers to a provision of Part 122, Subpart B, requiring that Part B of the permit application include an outline of the training program at the facility and how it is designed to meet actual job tasks.

• Section 264.36 is being deleted and reserved because its provisions are covered by § 264.17.

• A new requirement is being added to § 264.73 which states that operating records must include the additional analysis required by § 264.17 and the closure and post-closure cost estimates required under §§ 264.142 and 144.

• A new requirement is being added to § 264.75 which states that the annual report must include the most recent closure and post-closure cost estimates required under §§ 264.142 and 144.

• Section 264.77 is being amended to require that facility closure be reported.

The amendments to §§ 264.73, 264.75, and 264.77 are made to include requirements resulting from promulgation today of Part 264 standards for closure and post-closure. Section 264.12 is not being finalized today. It will be promulgated in final form at a later date.

1. *General Requirements for Ignitable, Reactive or Incompatible Wastes* (§ 264.17, § 265.17). Section 265.17(a) of the Interim Status Standards and § 264.36 of the General Standards required the owner or operator to take precautions to prevent accidental ignition or reaction of ignitable or reactive waste and protect this waste from sources of ignition. Section 265.17(b) also required the owner or operator to treat, store, or dispose of ignitable, reactive or incompatible waste so that it does not ignite or explode, emit toxic gases, damage the containment structure or through other like means threaten human health or the environment.

The Agency is today promulgating requirements for ignitable, reactive and incompatible wastes in the Part 264 General Standards (§ 264.17). These requirements include those previously promulgated in § 264.36 (identical to § 265.17(a)), and those previously promulgated only in § 265.17(b), but now included in § 264.17(b) as well. Since the § 264.17(a) requirements are identical to the requirements of § 264.36, Section 264.36 is being deleted and reserved. The Agency did not include the requirements of § 265.17(b) in the Part 264 standards promulgated on May 19, 1980 since it was considering developing a general approach for regulating air emissions through the permit process on the basis of the toxicity and concentration of vapors released. However, the Agency now realizes, as discussed below, that much additional work is necessary before such an approach will be feasible, and believes that the § 264.17 requirement will provide some control over air emissions (as well as other hazards) resulting from treatment, storage or disposal.

A minor change was made to the language of § 265.17(b) upon its incorporation as § 264.17(b). Some commenters pointed out that § 265.17(b) was a "result determinative" standard in that if a fire or other incident occurred, the facility was automatically in violation despite the taking of precautions to prevent such a fire. In response to this comment, the language was changed to require the owner or operator to "take precautions" when ignitable, reactive or incompatible wastes are stored, treated or disposed.

A new § 264.17(c) was also included. This section requires that those owners or operators who must meet the requirements of § 264.17(a) or (b), document their compliance. This documentation may take the form of references to scientific or engineering literature or data derived from experience with similar wastes, in similar equipment, using similar processes, under similar operating conditions. This paragraph replaces individual requiements in each process specific section (i.e., tanks, surface impoundments, etc.). Requiring documentation will ensure that the necessary research work is carried out and makes it clear how the determinations can be made.

The Agency is promulgating all of § 264.17 as interim final and will accept comments on these provisions. The requirements of § 265.17 which were promulgated as interim final on May 19, 1980 will be finalized at a later date.

In the preamble to the Part 265 General Facility Standards (p. 33183), EPA asked for comments on the issue of expanding the classes of incompatible wastes to include pairs of waste that when exposed to each other would mobilize a hazardous waste constituent thereby increasing the rate at which it would be leached to groundwater. An example included placing organic solvents in landfill cells receiving either PCB wastes or organic pesticide wastes. Another example was the addition of acidic solutions to neutralized metalic wastes, resulting in solution of the metals.

Commenters stated that a landfill or surface impoundment equipped with a liner and leachate collection system adequately protects the environment from mobile wastes. Commenters also stated that organic solvents are routinely used to clean PCB containing equipment and this practice is recognized by EPA's Toxic Substances regulations. Commenters also believed that the suggestion that acid solutions mobilize metals was too broad since only highly acidic solutions will mobilize metals.

The Agency recognizes these comments as legitimate concerns. However, the Agency still believes that a requirement to limit the mixing of wastes, when such mixing would mobilize hazardous constituents, is necessary in some situations. Although solubility will not be added to the determination of incompatible wastes at this time, the Agency plans to propose this concept in a modified form at a future date.

2. *Volatile Wastes.* The Agency has examined several alternatives for defining and controlling volatile waste. However, attempts to develop a precise definition of volatile waste or a general regulatory strategy for its control have thus far been unsuccessful. Several of the interim status and general standards will act to reduce air emissions. However, the Agency believes that the control offered by these requirements is not sufficiently comprehensive.

The Agency requested comments and data on the issue of volatile wastes in the Preamble to the May 19 regulations (45 FR at 33166). The comments the Agency received recommended that the Clean Air Act rather than RCRA be used for the control of air emissions.

The Clean Air Act (CAA) is not well suited to the control of volatile emissions from hazardous waste facilities. Current CAA regulations address only a fraction of the potential emissions from a hazardous waste facility. The Clean Air Act is oriented toward control of emissions on a pollutant-by-pollutant basis. Current regulations are focused largely on wide-

spread large volume, pollutants (particulates, NO_x, SO_x etc.). In contrast the pollutants which could be emitted from hazardous waste facilities are more numerous and diverse. RCRA provides the authority to control emissions broadly through performance standards and direct operating and design standards. In those cases where Clean Air Act regulations apply to storage of volatile wastes, such as the Standards of Performance for New Stationary Sources which pertain to volatile emissions from tanks, EPA will coordinate its efforts under the two Acts.

3. *Location Standards* (§ 264.18). In December of 1978 EPA proposed standards for the location of facilities in active fault zones, regulatory floodways, coastal high hazard areas, 500-year floodplains, wetlands, critical habitats of endangered and threatened species, recharge zones of sole source aquifers, and, for the location of active portions of facilities with respect to the facility's property line. The Agency received extensive comments on these proposed standards and has undertaken additional research. Specific responses to comments received and additional research data are available to the public in the Background Document entitled "40 CFR Part 264, Subpart B—General Facility Standards, Section 264.18 Location Standards" and accompanying technical documents.

The hazard which a facility presents to human health and the environment may be increased by locating the facility in certain areas. The location standards are designed to reduce these additional risks. Of the eight location standards proposed, two were retained, but in modified form. These two, seismic considerations and floodplains, are now found at § 264.18. Consideration of coastal high hazard areas is incorporated into the floodplain standard where this hazard is known to exist. EPA is reserving judgment on a separate coastal high hazard area standard while it further researches the need for such a standard. The substance of three proposed standards—critical habitats, sole source aquifers, and buffer zone—is covered under other Federal environmental statutes, and/or other requirements of Part 264. A location standard for wetlands is being deferred. Considerable protection to wetlands is already provided by the Section 404 and 402 Clean Water Act regulations when combined with the specific facility requirements in Section 264. EPA, however, is still considering the appropriateness of a separate Section 264.18 wetland standard to cover situations not regulated by either Sections 404 or 402. The regulatory floodway standard is the only proposed standard that was deleted.

Each of the proposed site location standards is discussed below. The discussions include responses to major comments, and the rationale for the final standard, or for deletion or deferral of the standard.

a. *Seismic Considerations* (§ 264.18(a)).

Earthquakes present a threat to public safety and welfare in a significant portion of the United States. Damage and loss of life in earthquakes occur as a result of surface displacement along faults (surface faulting), ground motion (shaking), as well as secondary effects of the shaking such as ground or soil failure. The proposed regulation addressed the first one of these hazards, surface faulting. The standard promulgated today also addresses only surface faulting.

The proposed standard prohibited location relative to active fault zones. The standard which EPA promulgates today is similar in concept, but more specific with respect to restricted locations relative to faults. It prohibits the location of new facilities within 200 feet of faults which have moved in the recent geologic past, called Holocene faults. The standard is designed to protect facilities from such deformation (i.e., bending and warping of the earth's surface) and displacement (i.e., the relative movement of any two sides of a fault measured in any direction) of the earth's surface which occur when the fault moves.

Surface faulting is a permanent displacement of the ground surface along a fault which can take one of three forms—strike-slip fault displacement, normal-slip fault displacement, and reverse-slip fault displacement. Each form describes a different type of movement of one side of the fault relative to the other, and each subjects a structure to different types of forces, e.g., compression, extension, and deformation, as well as displacement. Displacement along a fault can be horizontal, vertical, or a combination of both and can be on the order of a few feet (1–10) to several tens of feet (10–30). The intersection of the fault with the earth's surface is called a fault trace.

Seismically active areas usually do not contain only one fault, but a number of faults grouped together. These faults are grouped within a well defined width or zone. Such a grouping is commonly referred to as a "fault zone" since it consists of a zone (a width) with several individual faults. The regulation promulgated today deals with all faults which have had displacement in time. Such faults may be found in a fault zone.

The general fault zone usually can be divided into a main fault zone, a branch fault zone, and a secondary fault zone. The spatial relationship of individual faults in the fault zone has resulted in this classification system. The main fault zone contains the main fault (i.e., the fault with the greatest displacement, length, and continuity) and closely associated faults. The width of the main zone of faulting has been reported to range up to 3,000 feet, but in most of the cases (71%) (reported by Bonilla, 1967) the width was less than 1,600 feet and for half (50%) the width was less than 550 feet. Occasionally, faults diverge from and extend well beyond the main zone of faults and are referred to as branch faults. Secondary faults are completely separate spatially from the main fault and sometimes form several hundred feet to a few miles from the main fault. Associated with main, branch, or secondary faults are often small, subsurface faults evident as fault planes in a geologic investigation. These planes run parallel to the fault and typically are considered a part of that fault.

Adjacent to the fault rupture is commonly found a zone of deformation. This is an area where the ground has been bent or warped as a consequence of the two surface planes moving relative to one another. Surface deformation is frequently reported within a zone of several tens to several hundred feet wide. Structures located within this zone are subject to distortion and are likely to be subject to damage.

Structures located across a fault at the time of surface faulting will be subjected to fault displacement. The amount of and direction of displacement and deformation will depend upon the type of fault (strike-slip, normal slip, or reverse-slip) and amount of displacement (a few inches or feet to as much as 20 feet). At the present time it is generally not practicable to design most structures to withstand serious damage under the stress of surface fault rupture. Mitigating measures are available for lifelines (pipelines, electrical lines, roads, canals, etc.) and earthen structures (dams, embankments, fills, etc.) which must cross a fault subject to displacement. The best protection, however, for hazardous waste facilities is to avoid faults subject to displacement. Consequently, the regulation promulgated today prohibits location of portions of a facility where treatment, storage, or disposal of hazardous waste will be conducted within a distance (200 feet) of the fault.

This distance typically covers the zone of deformation.

Standards relative to ground motion and ground failure have not been promulgated. Ground motion pertains to the energy released by the earthquake, expressed in terms of intensity and duration, as transmitted through the ground. Ground motion is fundamentally different than displacement and deformation for damage in the former is only secondarily related to distance from the fault. Thus the impact that ground motion has upon structures is a function of the energy characteristics of the earthquake as well as the characteristics of the ground located between the facility and the epicenter of the earthquake; and the design of the structure. A facility may be located adjacent to or hundreds of miles away from the displacement fault and still be damaged by the resulting ground motion.

There has been some attention given to the design of earthquake resistant structures. Perhaps the most significant efforts to date have been by the Nuclear Regulatory Commission, and the study by the Applied Technology Council entitled "Tentative Provisions for the Development of Seismic Regulations for Buildings" (National Bureau of Standards, U.S. Department of Commerce, 1978). However, few data exist that relate ground motion dynamics to adequacy of engineering design for various types of hazardous waste facilities. Thus, EPA is not presently prepared to set a ground motion standard until it can determine which components of ground motion (e.g., acceleration, velocity, significant duration) should be the subject of design for different operational units (e.g., tanks, surface impoundments, incinerators) at facilities. This requires an analysis of data on (1) probability of occurrence of different magnitudes of earthquakes, (2) types of construction needed to protect against the different magnitudes of earthquakes, and (3) the feasibility and costs of such construction. Such analysis is needed for each type of hazardous waste facility. In order to resolve these uncertainties, it is apparent that information from the fields of geology and engineering which could be utilized in designing hazardous waste facilities for seismic considerations must be gathered and analyzed by the engineering community.

Because of these uncertainties, EPA invites public comment on ground motion issues specifically to include:

(1) What ground motion parameters should be considered for the full range of operational units at hazardous waste facilities;

(2) What is the magnitude of ground motion which is critical for the different operational units found at facilities;

(3) What types of structural designs would adequately protect facilities at different magnitudes of ground motion; and

(4) What are the costs of designing facilities to withstand earthquakes at different magnitudes.

Ground failure occurs when the energy characteristics of an earthquake cause a particular piece of ground to loose its qualities of support. This may occur in several different forms to include landsliding, liquefaction, settlement, and lurching. While the cause of damage due to ground failure originates with ground motion, actual damage to a facility results because of the failure of the ground in or near the facility. It is common for earthquake-triggered landslides to occur as renewed movements of deposits resulting from previous landslides. Areas subject to slope instability and strong earthquakes could be subject to earthquake-triggered landslides.

Liquefaction occurs when granular, essentially cohesionless soils undergo small to complete losses of their supporting strength. When the loss in strength is low to moderate, partial liquefaction may cause ground settlement and associated ground cracking. However, when liquefaction is complete, the soil can behave as a fluid, and catastrophic failures, including soil flows and landslides, have occurred as a result.

Seismic settlement is also typically associated with cohesionless soil deposits but can occur in poorly placed or uncompacted manmade fill. The strong ground shaking that occurs during earthquakes will densify loose granular soils. The rate of the resulting ground subsidence depends upon the location of the soil with respect to the groundwater table. Above the water table, ground subsidence will occur rapidly. Below the groundwater table, the pore water pressures that have developed during the shaking must begin to dissipate before a decrease in soil volume can occur and, as a result, settlement occurs at a rate commensurate with the flow of water from the cohesionless soil layer.

Lurching may be generally defined as the development of all types and sizes of irregular ground fractures, cracks, and fissures associated with ground motion, settling, and the passage of surface wave phases during earthquakes. More specifically, lurching involves the seismically induced lateral movement and spreading of ground toward a "free face," together with the development of associated tension cracks in the ground behind the free face.

As in the case of ground motion, EPA does not have sufficient data relating ground failure risks to hazardous waste facility siting and design. Therefore, EPA does not at present include a ground failure standard; although the Agency plans to propose such a standard in the future. To assist EPA in this regard, the Agency seeks data on the various issues relating to a ground failure standard to include:

(1) Is it necessary to distinguish between hazardous waste facility types when setting a standard?

(2) Should the standard involve a prohibition from locating facilities in areas of possible failure or should the standard allow location of facilities in such areas if properly designed?

(3) What types of ground and soil conditions are reasonably part of a standard?

(4) What types of tests would be definitive for demonstrating compliance?

Public Comments on the Proposed Standard

In the proposed rules, EPA prohibited all hazardous waste facilities from locating in an active fault zone because damage to a facility during a serious earthquake could not be prevented with practicable engineering means. Active fault zone was defined as a land area which, according to the weight of geologic evidence, has a reasonable probability of being affected by movement along a fault to the extent that a hazardous waste facility would be damaged and thereby pose a threat to human health and the environment.

Numerous comments were received. One group of comments reflected concern about the precision of the standard. Questions were raised as to the appropriate definition of faults and whether we should be concerned with all faults or the ones most recently formed. Should the standard be pegged to the magnitude of the earthquake? What did EPA mean by "weight of geologic evidence", and "reasonable probability of being affected by movement along a fault" in the definition of active fault zone? Other questions centered on whether facilities should be allowed within the active fault zone if they are designed to withstand the expected seismic activity.

EPA has not pegged the standard to the magnitude of the earthquake. EPA recognizes that damage to facilities can result from fault displacement and associated deformation, ground motion or ground failure. As discussed above,

EPA's data are sufficient only to establish a ground faulting standard. For this standard, proximity to the fault and zone of deformation are the relevant factors, not magnitude of the earthquake. Magnitude will be fully considered when standards for ground motion and failure are proposed.

As for precision of definition, EPA agrees that the proposed standard left many situations unclear. Therefore, EPA has provided a specific definition of what types of faults are of concern. Once those faults are identified, the standard prohibits placement of a facility within 200 feet of such faults thereby eliminating the concept of active fault zone.

The intent of EPA's proposed standard was to ban the placement of a facility on or near faults that were likely to experience displacement in the future. The geological evidence indicates that faults which have moved in recent times are the ones most likely to move in the future. The data also indicate that such faults are the ones that either were created in or experienced displacement in Holocene times. Therefore, the ambiguous phrase "weight of geologic evidence" is replaced by the more specific reference to faults which have had displacement in Holocene time.

The Holocene is a geologic time period which extends from the end of the Pleistocene to the present; it includes approximately the last 11,000 years. Displacements during historic times in the United States have occurred along Holocene faults. Faults which have had displacement in Holocene time are easier to identify and date in the field than older faults. The Holocene produced recognizable geological deposits, and erosion and deposition surfaces. Thus, Holocene faults are identifiable by fault scarps, offset streams, mole tracks, furrows, and fault traces on young surfaces with groundwater barriers marked by spring alignments and vegetation contrasts.

While many areas of the United States have Holocene deposits and landforms of significant extent such that evaluation of fault presence and activity can be achieved, there are areas where Holocene deposits and landforms are scarce. For example, in certain areas glacial activity has stripped the surfical ground cover and left highly resistant rock, such that inspection of Holocene deposits and landforms will not yield enough evidence to conclusively determine the recency of faulting activity. In situations of this sort, reference to seismic epicenter plots and historic records must be utilized, as well as identification and close examination of possible fault related features expressed in Pleistocene and older deposits.

The U.S. Geological Survey mapped the location of Holocene faults in the United States that were so identified in 1978. (See "Preliminary Map of Young Faults in the United States as a Guide to Possible Fault Activity" by Howard and others, 1978.) Maps of identified Holocene faults in the United States are also available from the States of California and Nevada.

To further clarify the standard, EPA defined fault generally so that it includes the various forms of faults (i.e., main, branch, or secondary). This definition includes both faults which appear at the surface and those which do not have surface expression (including the small fault planes associated with surface faults). It is important to note, however, that only faults which have experienced displacement in Holocene time are of concern in this standard. Thus a subsurface or surface fault which has not disturbed the Holocene deposits is not included in the standard.

The concept of an active fault zone was also ambiguous in the proposed regulation. The breadth of this zone varies with the type of fault (e.g., normal, strike-slip and reverse-slip) as well as with the unique characteristics of the specific fault involved. Moreover, the area of deformation (which often includes fault planes) also varies with the type of fault. Finally, prohibiting location in a fault zone is an overly restrictive approach to addressing the potential damages associated with faulting. For example, even though a fault zone may extend as far as 3000 feet from the main fault (due to a single secondary fault 3000 feet from the main fault) there may be locations within that zone that are safe for location of a facility because they are outside the zone of deformation of any individual fault (main, branch, or secondary). The more relevant consideration is the specific distance of the facility from a fault, i.e., the distance associated with the zone of deformation. In the regulation promulgated today the concept of a fault zone is incorporated only as a relevant zone of study in investigating the specific location of faults. (See information requirements in § 122.25(a)(11).)

The standard promulgated today prohibits new facilities from locating within 200 feet of a fault which has had displacement in Holocene time. By expressing the standard in terms of faults, rather than fault zones, the standard is less restrictive, but equally protective.

Data available to the Agency indicate that the effects of deformation drop off rapidly as distance increases from the fault. Since the greatest degree of deformation occurs along the fault with the greatest displacement (usually the main fault), the further away the facility is from the main fault, the less likely it will be affected by deformation. Based upon available data it appears that most deformation occurs within two to three hundred feet of faults which have had displacement in Holocene time. Most of the data is taken from studies of main fault traces. Since the 200 foot set-back is measured from any fault, not just the main fault trace, EPA concludes that a 200 foot distance from any Holocene fault (surface or subsurface) gives ample protection against the effects of deformation.

Commenters suggested that facilities should be allowed to locate in fault zones if the facility is designed and constructed to withstand the effects of displacement and deformation. EPA does not have data to show that proven technology exists to design a critical structure to withstand serious damage under the stress of displacement and deformation. While there are design standards for such structures as pipe lines which cross faults, there is no systematic design information for structures which would accommodate hazardous waste facilities. States with seismic standards, like California, prohibit construction within close proximity to faults. Thus, EPA has elected the conservative approach of prohibiting the placement of those portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted within 200 feet of a fault which has had displacement in Holocene time.

Not all areas of the country are affected by Holocene faulting. To require an analysis for this standard in areas known not to have faults which have had displacement in Holocene time would impose an unnecessary regulatory burden and cost upon the owner or operator. Thus, the standard is specified to apply only to those facilities proposed to be located within political jurisdictions (e.g., counties, townships) which have some historical evidence of faulting or potential for such faulting. Analyses by the Applied Technology Council and the U.S. Geological Survey (identified above) provide a basis for identifying those areas within which seismic activity has occurred, and thus warrant application of the standard. These political jurisdictions are listed in Appendix VI to Part 264.

Because a demonstration of compliance with the seismic standard is made as part of the permit application, Part 122, Subpart B, § 122.25(a) contains procedures which must be followed to adequately demonstrate compliance with the standard. The permit applicant is provided with serveral alternative study approaches because site-specific conditions will vary considerably due to type of faults, geologic structure of the area, and the existence of published data. The information developed during the study must be of sufficient quality to be acceptable to geologists experienced in identifying and evaluating seismic activity.

Study approaches may include a review of published geological data, an aerial reconnaissance, an analysis of aerial photographs, a geological reconnaissance of the site, or trenching. EPA intends to require these studies to be carried out to different distances from the facility. The distances which EPA has chosen are generally accepted within the geologic profession as distances which must be investigated to conclusively make the demonstrations required. These distances are also based on results of geological studies, the most important of these is by M. G. Bonilla (1967) which analyzes historic surface faulting in the continental United States and adjacent parts of Mexico. Bonilla has indicated that the maximum distance from the centerline of the main zone of surface faulting to the outer edge of that zone is on the order of 3,000 feet. Bonilla also found that some branch and secondary faults do appear within this zone. Therefore, if an area within 3,000 feet of the site is studied and there is no evidence of Holocene faulting, EPA is confident that the facility is not located within a main fault zone where the large-scale damage due to displacement and deformation occurs.

The other study distance is five miles. Regional studies include a review of published geological data and an aerial reconnaissance to cover an area within a five mile radius of the site. Five miles is specified here because surface faulting data (Bonilla, 1967) indicate that the majority (81%) of branch and secondary faults associated with the main Holocene fault zone occur within five miles from the centerline of the main zone. This distance is also accepted as a regional study distance by the Nuclear Regulatory Commission for siting nuclear power plants and by the State of California Public Utilities Commission for siting of liquefied natural gas facilities.

The level of effort which will be required to make the demonstration to comply with the standard will depend upon the amount of evidence which indicates that Holocene faulting is likely or unlikely. For example, if Holocene faults have been mapped within one mile of the facility the owner or operator may want to trench at the outset because, even though the other procedures are followed through, the data may indicate that trenching must be done to conclusively make the demonstration. On the other hand, if no published data indicate faulting within (for example) 5 to 10 miles of the site, an aerial reconnaissance may be all that is required to sufficiently demonstrate lack of faulting activity. A guidance manual will be available shortly which will provide greater detail on the study procedures identified in Part 122.

Commenters on the proposed standard expressed concern that large areas of the western United States would be impacted by the proposed standard because of the prevalence of faulting in that region. It is true that the Western part of the U.S. will be more heavily impacted, but this impact is necessary in order to protect human health and the environment. The impact of the seismic standard is somewhat reduced because state regulations, such as those of California, already have restrictions on siting near faults. Further, the standard promulgated today restricts location within 200 feet of a fault, rather than in an entire fault zone. Finally, the standard applies only to new facilities.

The decision to apply the standard only to new facilities was made with several considerations in mind, and is an issue on which the Agency is requesting comment. First, given the relative infrequency of seismic activity, the Agency believes that there is a relatively low potential for an earthquake occurring at an existing facility before those facilities close at the end of their normal lifetime. Thus, the probable environmental impacts of not applying the standard to existing facilities are likely to be low. Second, the Agency is concerned about the practicability of moving existing facilities and about the impact of possible facility closure on hazardous waste capacity.

Since the Agency was unable to include provisions in the standard for designing facilities to withstand the effects of surface faulting, closure or moving would be the only alternatives for existing facilities. Moving or closing existing facilities may be impractical in some cases. For example, on-site storage or treatment facilities may be associated with existing manufacturing operations which must store or treat wastes as an integral part of their operations. Movement or closure of these storage facilities might imply movement or closure of the manufacturing facility. The Agency does not have sufficient data to determine the extent of such impacts, or to justify them at this time.

Off-site storage facilities can be closed or moved, but this would impact existing hazardous waste capacity, possibly in areas where shortages already exist. Since storage typically is associated with other hazardous waste management facilities, such as incinerators, the impact would go beyond storage alone. Should this standard be applied to incineration and land disposal facilities in the future (when further standards under Part 264 are promulgated for these facilities), the impact on capacity would be more direct. Further, in the case of existing landfills, closing a facility (with the waste in place) would not significantly reduce the potential for damage associated with faulting.

Nevertheless, EPA is not fully convinced that the standard should not apply at least to existing storage facilities (or incinerators) and is requesting comment on this issue. In particular, the Agency wishes comment on the number of existing facilities currently located in areas restricted by this standard, and the impact this restriction would have on those facilities and on capacity in the area where they are located. After reviewing this information the Agency will reconsider whether this standard should apply to existing facilities.

Comments were received on the proposed standard which indicated that restricting facilities in active fault zones should be based on the degree of hazard of the waste being managed at the facility and the particular treatment, storage, or disposal method used at the facility. It seems plausible to EPA that some facilities may be able to locate at some distance within 200 feet from a Holocene fault and not pose a threat to human health and the environment in the event of fault displacement. EPA requests comment on what may be appropriate set-back distances from Holocene faults for facilities which contain different operational units and, if variable set-back distances would be justified on the basis of the nature and quantity of waste managed at the facility. EPA also requests that commenters specify their reasoning and justify distances which are suggested with technical data to the degree possible.

b. *Floodplains* (§ 264.18(b)).

The location of hazardous waste management facilities on floodplains

could have several significant adverse effects on human health and the environment. EPA's primary concern involves waste washing out or being carried in flood waters from the active portion of the facility, thereby exposing surface water, ground water, aquatic life, soils, and human health to potential contamination through direct contact with the waste. Wastes can be washed out of surface impoundments, piles, and containers. Tanks, incinerators and other treatment units exposed to flood waters may not be constructed to withstand the hydrostatic and hydrodynamic loads exerted by a flood and could be damaged enough to allow waste leakage or be completely removed from the disposal site.

Various technologies have been developed to deal with flooding problems. Some technologies are designed to protect the facility from flood waters (i.e., not allow flood waters to reach the facility). The most common method of flood protection is the construction of levees, dikes, or flood walls around or along a side of the facility subject to flooding. Such measures would be particularly suited for landfills, surface impoundments, land treatment, and waste piles. Another approach would be flood proofing, i.e., allowing flood waters to come into contact with structures, but preventing damage to these structures. Technologies here would involve proper elevation of structures with appropriate construction of the foundations to withstand the flood water effects, anchoring of storage containers, and the use of permeable fencing that allows passage of flood waters but not objects and debris that would damage the facility.

These techniques have been in common use. Treatment of hydraulic conditions is within the knowledge of qualified engineers. Federal agencies require use of such techniques. Most common are the Army Corps of Engineer programs and the National Flood Insurance Program. The Corps of Engineers issues handbooks on various construction techniques. Similarly, the Federal Insurance Administration which administers the National Flood Insurance Program also provides guidance. Because they deal with conventional structures, many of their techniques deal with flood proofing.

EPA proposed a location standard that would prohibit the placement of a hazardous waste management facility in a 500-year floodplain unless the owner or operator demonstrated that the facility would be designed, constructed, operated and maintained to withstand inundation by a 500-year flood. In response to comments, EPA has revised the floodplain standard. The standard promulgated today addresses the 100-year floodplain rather than the 500-year floodplain. It requires that facilities located in the 100-year floodplain be designed, constructed, operated and maintained so as to prevent washout of hazardous waste from the active portion of the facility. A variance to this standard is allowed where the applicant can demonstrate that procedures are in effect which will cause the waste to be removed safely, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to the flood.

Comments on the Proposed Standard

Of the proposed location standards, the flood standard received greatest comment. While these comments are treated in greater detail in the Background Document on Location Standards, they can be summarized into the following general areas of concern:

1. Many commenters questioned the reasonableness of using the 500-year flood as the flood of concern.
2. Numerous comments focused on whether the standard should prohibit facilities from locating within the floodplain of concern or whether the standard should presume that facilities can safely locate within such floodplain if they are properly built.
3. Some comments raised questions about the appropriateness of allowing facilities to be located within the floodplain of concern only upon a showing that no inundation would occur.
4. Numerous comments focused on whether the flood of concern should vary depending upon the degree of hazard presented by the types and quantities of hazardous waste involved.
5. Some commenters pointed out the difficulties of finding maps demarking the 500-year floodplain and the difficulty of obtaining data on floods to cover a 500-year period.
6. Commenters felt that the standard, if applied to existing facilities, would force the closing of many facilities now located at industrial sites.

Each of these areas of comment is discussed below.

Many commenters stated that the probability of a 500-year flood occurring is too remote to justify the expense and limitation placed on otherwise available sites, and suggested the use of the 100-year flood as the hazard against which facilities should be protected. Most commenters suggested that EPA use the 100-year floodplain for the following reasons: (1) 100-year flood level information is available and verified in many cases, and thus (2) there would be less of a margin for debate in boundary determinations (compared to the 500-year floodplain); (3) it is consistent with the degree of restriction necessary to protect human health and the environment; (4) more land would be available for siting new facilities; (5) it is economically justifiable, and (6) it is consistent with Executive Order 11988—Floodplain Management.

EPA agrees with many of these comments. While the Agency recognizes that a 500-year standard would afford a higher level of protection, at present the Agency does not have sufficient information that would justify a need for the added level of protection over that provided by the 100-year floodplain standard. The 100-year flood is the most widely used standard in various Federal and state programs addressing the hazards associated with flooding. Of twenty four states that regulate floodplains, eighteen use the 100-year flood as the regulatory standard. The Federal Insurance Administration, Federal Emergency Management Agency, and the U.S. Army Corps of Engineers have adopted the 100-year flood as their standard on which to base floodplain management measures.

Until other data are presented to the Agency indicating the need for a different flood level, the 100-year flood has been selected as the minimum flood for this rule. However, EPA does not conclude that this level necessarily is sufficient protection for human health and the environment for all hazardous waste management facility situations. EPA is currently considering issuance of a proposed rule that would allow the Regional Administrator to require more stringent standards where circumstances would so warrant. Such a change though is not part of this rulemaking.

A few commenters questioned whether facilities should be allowed to locate in floodplains at all. Other commenters stated that a ban on location in floodplains would result in the closure of a majority of existing facilities. In the case of on-site facilities, they said that such a ban would result in these industries having to transport their waste some distance from the generation site.

EPA recognizes that hazards may be associated with increased transport of hazardous waste and that a reduction in hazardous waste management capacity could result from a ban on locating in floodplains. Reduced capacity would lead to an increased potential for illegal dumping and stockpiling of waste. Available information has led the

Agency to conclude that technology is available to protect hazardous waste management facilities from washout. Therefore the standard allows for the placement of facilities within the 100-year floodplain, but only after the applicant has made the necessary demonstration that the technologies used at the facility will prevent the washout of hazardous waste.

The proposed standard would have allowed the placement of a facility within a 500-year floodplain if the applicant would demonstrate that no inundation by flood waters would result. Protection from inundation is not the only method of protecting the environment and the public from the effects of flooding. Other measures involve flood proofing, which allows the waters to inundate the facility, but prevents the hazardous waste from leaving the facility. Proper anchoring or elevation of containers may in fact be less expensive than the construction of dikes or flood walls while the same level of protection would be provided. Thus, the inundation provision was dropped in favor of the washout provision with the effect of expanding the means by which owners or operators could comply with the standard.

A number of commenters proposed that the flood standard should vary depending upon the types and of quantities of waste involved. Instead of a 100-year standard a lesser, perhaps a 50-year flood standard, would be appropriate. EPA does not have sufficient data at present to promulgate a standard that differentiates between individual wastes. To arrive at such a standard would also require an analysis of the risk associated with each waste at different degrees of flooding in order to arrive at a unique floodplain standard for each waste.

Availability of Floodplain Maps

Commenters noted the relative scarcity of maps which delineate the 500-year floodplain. They were concerned that such a lack of maps would force owners and operators to conduct their own studies (which they claimed were costly and time-consuming) to determine whether their facilities were within the 500-year floodplain. EPA agrees that the availability of maps may constitute a problem for some facilities, but that problem is now minimized because the standard is for the 100-year floodplain.

The 100-year flood is used as the minimum flood of concern by most State and Federal agencies. This common use has resulted in a steadily growing pool of 100-year floodplain maps. the Federal Insurance Administration is the largest single source of floodplain maps. Maps are available for nearly all flood prone communities which provide either 100-year flood elevations (the Flood Insurance Rate Map) or the boundaries of the 100-year floodplain (the Flood Hazard Boundary Map) from which 100-year flood elevations can be determined.

In areas mapped by the Federal Insurance Administration, delineation of the 100-year floodplain will be determinative as to whether a facility is located within or outside the 100-year floodplain. FIA, when specifying the boundaries of the 100-year floodplain, may omit areas of the floodplain that are less than 200 feet wide. Such areas are considered within the 100-year floodplain for purposes of complying with § 264.18(b)(1). In areas not mapped by the FIA, either the FIA mapping procedure or other equivalent mapping procedures may be used to determine whether the facility is located within the 100-year floodplain.

Some commenters were concerned that the standard would force closure of many industrial facilities. EPA anticipates that although the floodplain standard may require extensive retrofitting of some facilities, closure can be avoided in most cases. If possible, EPA encourages affected facilities to prepare to meet the floodplain standard during the interim status period. It should be noted that this standard only applies to facilities securing permits under Subpart B of Part 122. This means that facilities under interim status need not comply with this standard. Existing facilities receiving permits will be provided schedules in the facility's permit for either compliance with the standards or closure of the facility. These schedules will accomodate existing facilities by allowing operation in accordance with the terms of their permit until the facility can be retrofitted or closed. In the case of facilities that must close, this schedule will prevent abrupt decreases in hazardous waste management capacity and will provide generators with time to find other facilities which are designed to manage their wastes.

c. *Wetlands.*

EPA has actively sought to protect wetland resources because the nation's coastal and inland wetlands are vital natural resources of great hydrological, ecological, economic, and social importance. There are three aspects of facility contruction and operation which should be considered for wetland locations. The first is the impact, without regard to the nature of wastes handled by the facility, that the construction and actual presence of the facility will have upon the wetland environment. The second is the impact of planned discharges from the facility and the third is the potential impact of accidental and unplanned discharges of hazardous waste into the wetland environment.

The proposed location standard for wetlands prohibited facilities from locating in wetlands. A variance to this standard was contained in an accompanying note. Facilities would be allowed to site in wetlands if the owner or operator obtained an NPDES permit and, if dredging or filling of the wetland was associated with the facility, a Section 404 permit. Even though the wetland provision does not appear in the part 264 rules at this time, facilities will be required to obtain NPDES and Section 404 permits under the Clean Water Act if it is appropriate for them to do so. These programs operate independently of RCRA.

In reviewing the proposed rule and comments on it, EPA considered not promulgating a wetland location standard under RCRA, but rather just ensuring that the permit applicant had obtained permits under the NPDES and Section 404 programs if they were required to do so under the Clear Water Act. EPA previously determined that these existing programs adequately protected wetlands from the adverse impacts of the construction and actual presence of the facility, and adverse impacts from planned discharges from the facility. In the later stages of developing the location standards promulgated today, it became apparent that EPA could not go forth with such an approach for three fundamental problems exist. One, the U.S. Army Corps of Engineers (COE) and EPA had not come to an agreement on the appropriate scope of the definition of "fill material". Until this is resolved, the exact set of circumstances under which the owner or operator of a hazardous waste facility would be required to obtain NPDES or Section 404 permits is not known. Two, not all wetlands are "waters of the United States" and therefore, they are not under the jurisdiction of the Clean Water Act. EPA could not rely on either the NPDES or the Section 404 program for these wetlands. The third problem relates to a COE policy of issuing general or nationwide Section 404 permits for some wetlands and certain activities in wetlands, rather than issuing individual Section 404 permits. These wetlands and activities are permitted by class and each action is not scrutinized individually. EPA believes that the suitability of a wetland for siting of a

hazardous waste facility must be determined on a case-by-case basis.

EPA is deferring specific regulation of the siting of facilities in wetlands until it is clear to EPA what the extent of coverage of the NPDES and Section 404 programs will be. EPA expects, however, to retain the presumption against siting facilities in wetlands which was expressed in the proposed rule, and to promulgate standards as necessary to address situations not covered by NPDES and Section 404 programs. EPA will consider determinations made under the NPDES and Section 404 programs so that duplication will be minimized.

EPA believes that in the interim wetlands will be sufficiently protected against the unintentional discharge of hazardous waste through facility compliance with the Part 264 standards. Examples of Part 264 requirements that would protect wetlands in the vicinity of facilities include: maintenance of freeboard at surface impoundments, controls to prevent overfilling of tanks, diversion of run-on and collection of run-off for piles, land treatment facilities, and landfills. Forthcoming regulations to protect ground water and surface water from the adverse effects of land disposal facilities will also protect wetlands. The Part 264 requirements are more fully described elsewhere in this preamble along with the rationale for their selection.

d. *Endangered and threatened species and critical habitats.*

Locating, constructing, and operating hazardous waste facilities, if not adequately regulated, can lead to reductions in populations of endangered and threatened species. Possible impacts include removal of critical habitat, restricting the movement of species, and degrading the environment near the facility (e.g., increasing siltation of rivers, degrading air quality). Thus, EPA believes that it is important to evaluate effects on endangered and threatened species and their critical habitats when a hazardous waste facility is being located or when an existing facility is applying for a permit.

The proposed standard prohibited hazardous waste facilities from locating in areas where they would be likely to jeopardize the continued existence of endangered and threatened species, or where the facility would destroy or adversely modify their critical habitat. Very few comments were received on this provision. One commenter indicated that a separate requirement in RCRA was unnecessary since individuals had to comply with the Endangered Species Act independently of RCRA. Several other commenters questioned EPA's use of the term "is likely to jeopardize". Finally, one commenter proposed that facilities not be prohibited from locating within a critical habitat.

EPA is obligated under Section 7 of the Endangered Species Act to ensure that permitted facilities (not just those permitted under RCRA) are not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat. Therefore, EPA must take some action with regard to its permitting activities. This has been done through § 122.12(c) of the RCRA regulations. (45 FR 33428, May 19, 1980) This provision specifies that permits shall contain conditions consistent with the requirements of the Endangered Species Act of 1973.

The term "is likely to jeopardize" comes directly from the statute. Thus, the commenter's concern that EPA is exceeding the statutory mandate is not well founded.

In response to the final comment: Facilities are not prohibited from locating in critical habitats. If EPA, in consultation with the Department of the Interior or Commerce, determines that no impact associated with the facility will alter the habitat so that the likelihood of the survival or recovery of endangered and threatened species is appreciably diminished, the facility will be permitted to locate in the critical habitat. Since such facilities must meet RCRA standards, the risks of damage to the environment are substantially reduced.

e. *Sole source aquifers.*

The proposed standard prohibited hazardous waste facilities from locating in the recharge zone of a sole source aquifer. These aquifers, designated pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974, are the sole or principal drinking water supply to a large percentage of a populated area. The "Note" to the proposed standard provided for a discretionary approval of location in the recharge zone of a sole source aquifer if it could be demonstrated (at the time of permit issuance) that the facility is located, designed, constructed, operated, maintained, and monitored to prevent endangerment of the sole source aquifer.

A number of comments were received on this proposed standard. Some commenters advocated not only a ban against facilities locating within the recharge zone of a sole source aquifer, but also a ban against any facility locating over the recharge zone of any aquifer. Other commenters approved of the variance provide through the note on the assumption that facilities could be built and managed so that no harmful discharges would occur.

EPA concludes that all sources of water for drinking, irrigation, industry, and agriculture should be protected against contamination by hazardous waste facilities. Further, EPA believes that these sources of water should be provided an equal degree of protection. However, a separate location standard is not deemed necessary at this time because the Part 264 standards and the forthcoming regulations for land disposal facilities provide positive assurances for protection of all water sources. The standards promulgated today are intended to prevent any discharge that could potentially contaminate groundwater.

f. *Buffer zone.*

The proposed standard required that active portions of hazardous waste facilities be located at a minimum of 60 meters (200 feet) from the facility property line. Lesser distances would have been allowed if it could be demonstrated that unexpected releases or discharges of hazardous waste could be controlled before they crossed the facility property boundary.

EPA has reevaluated the need for a buffer zone at hazardous waste facilities in light of the numerous comments received on the proposed standard and a subsequent comparison of the protection afforded by the proposed standard and that provided by the standards in Parts 264 and 265.

Commenters on the proposed standard were concerned that instituting a 200 foot buffer zone at existing facilities would be impossible if additional land were not available or it would result in an undue hardship and increased hazard if surface impoundments and landfills were in violation of the standard and the contained wastes had to be moved back from the property line. Many commenters pointed out that a specific distance is too arbitrary and inflexible to be universally applicable and, therefore, it would be excessive in some cases and insufficient in others.

EPA agrees that it is difficult to specify a single buffer zone distance that is appropriate for, and feasible to institute, at all facilities. Thus, EPA has elected to incorporate needed protective standards into the specific facility standards found in Parts 264 and 265, and not to promulgate a separate buffer zone location standard.

EPA's facility standards published today are designed to prevent and mitigate the effects of fires and explosions which might occur in managing ignitable, reactive, and incompatible wastes. General requirements for the management of ignitable, reactive and incompatible

wastes are specified in Subpart B of this Part. In addition, specific procedures for managing these wastes in piles, containers, tanks, and surface impoundments are included. According to these rules, containers which hold ignitable or reactive waste must be at least 15 meters (50 feet) from the facility's property line, and covered tanks which hold ignitable or reactive waste must be in compliance with the National Fire Protection Association's buffer zone requirements. These standards also provide for separation of piles, open tanks, surface impoundments, and containers if they contain incompatible wastes or materials. Further elaboration on these decisions is found elsewhere in this preamble under sections pertaining to the specific facility standards.

The purpose of the proposed buffer zone standard with respect to spills was to provide room to bring the hazardous waste into control before it crossed the facility's property boundary. Similarly, the proposed buffer zone was to provide a region within which underground leaks can be detected and dissipated or controlled before crossing the property line. The Subtitle C rules have made designation of a location buffer zone standard unnecessary. Spill prevention and containment rules and the current approach to groundwater protection have eliminated the need for a separate buffer zone.

g. *Regulatory Floodway.*

Regulatory floodway was defined in the proposed rules as the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the flood elevation more than a designated height. Regulatory floodways are designated at the discretion of communities participating in the National Flood Insurance Program (NFIP) managed by the Federal Emergency Management Agency (FEMA).

The proposed standard prohibited hazardous waste facilities from locating in a regulatory floodway because the facility would impede the flood waters thereby increasing the elevation of flood waters and expanding the area flooded. The proposed standard further specified that where regulatory floodways were not designated by FEMA, an owner or operator would have to obtain an analysis using FEMA-approved methods to determine whether the facility would be located within the regulatory floodway if such boundaries had in fact been mapped.

Commenters were divided on the necessity for a regulatory floodway standard. While some thought that the protection provided was desirable, others critized the use of the standard as being too stringent. Others pointed to the lack of information as to the location of regulatory floodways and one commenter stated that this was a concern of the NFIP, not of EPA.

EPA concludes that a regulatory floodway standard would have been appropriate if no other RCRA standards or other governmental regulations provided appropriate protection. The "no washout" 100-year flood standard under § 264.18(b) provides the same level of protection as that achievable by the proposed regulatory floodway standard. Not only must a facility be designed, constructed, operated and maintained to prevent washout from a 100-year flood, in so designing the facility the owner or operator must take into account the effects of increased flood levels at the facility due to the placement of the facility itself. Control of development in regulatory floodways is a responsibility of local government. Since the NFIP requires local controls in these areas if the locality is to participate in the NFIP, EPA considers that any additional action on its part would be unnecessary.

h. *Coastal High Hazard Areas.*

The proposed standard prohibited hazardous waste facilities from locating in coastal high hazard areas. Coastal high hazard areas are those areas subject to high velocity waters including, but not limited to hurricane wave wash or tsunamis as designated by FEMA on Flood Insurance Rate Maps (FIRM) as Zone VI–30. However, a facility could locate in a coastal high hazard area if the owner or operator could demonstrate that measures had been taken to ensure that the facility would not be inundated by high velocity waters.

Because coastal high hazard areas are within the 100-year floodplain, facilities located in these areas are required by the floodplain standard to be protected against washout of hazardous waste by a 100-year flood.

A limited number of comments were received on this standard. Some questioned the need for a uniform standard and proposed either no standard or one that accounts for the degree of hazard involved for each facility. Other commenters supported the opposite position—a complete ban of facilities from areas designated as coastal high hazard. Most commenters pointed to the lack of information for designating areas as coastal high hazard. They proposed that the standard only apply to areas specifically designated by FEMA.

All coastal high hazard areas, whether mapped or not, are within the 100-year floodplain. To the extent that information is available on wave action, the principal additional factor of concern in areas subject to coastal storms, this factor is to be considered when designing, constructing, maintaining and operating a facility to protect against washout. Thus some protection will exist for areas already mapped.

More restrictive standards for facilities located in these areas might be warranted; however EPA does not, at this time have sufficient information to reach this conclusion and to specify the nature of the additional restrictions so warranted. Nor is there sufficient information to justify a ban on the placement of facilities in these areas. Thus, facilities in these areas are subject to the no washout provision of the 100-year floodplain standard.

Because of the lack of information, EPA is requesting comment on the coastal high hazard standard. EPA requests comment on whether facilities should be allowed to locate in coastal high hazard areas and why, and whether a distinction should be made between new and existing facilities in this regard. If commenters believe that the hazards associated with facilities locating in coastal high hazard areas can be adequately reduced by proper design and construction, EPA requests information on what additional parameters need to be considered in the design and construction of the different facility types and the technology which is available to design or mitigate for them. EPA additionally requests information on the number of existing facilities in mapped coastal high hazard areas and to what extent either new or existing facilities are restricted from locating in these areas by other Federal, State, or local statutes.

EPA plans to continue work in this area and may promulgate a final standard at a later date.

i. *Permafrost areas.*

In the preamble to the proposed rules, EPA recognized that permafrost areas are fragile ecosystems with a significant potential for erosion and ground-water contamination. As such, the Agency stated that these areas should be protected from the uncontrolled siting of hazardous waste facilities. However, becasue the only State where permafrost areas are found is Alaska, EPA reasoned that it might be appropriate for the State of Alaska to determine what measures are needed to protect these areas. Comment was requested on the Agency's intent not to promulgate national standards for siting

of hazardous waste facilities in permafrost areas.

EPA received little comment on the issue of who should write a standard for locating in permafrost areas, EPA or the State of Alaska. At present the Alaska Department of Environmental Conservation has no standards regulating siting of hazardous waste facilities in permafrost areas. According to State officials, the Alaska Department of Environmental Conservation is awaiting the completion of studies on permafrost being conducted by the University of Alaska at Fairbanks before considering how such a standard should be written.

EPA recognizes permafrost as an important site condition which warrants a standard. However, the Agency does not have sufficient background information at present to justify a standard and believes that the State of Alaska may be in a better position to develop such a standard. Should Alaska promulgate an adequate standard as part of its State program, EPA will probably not promulgate a standard.

B. Subpart G—Closure and Post-Closure Care

The purpose of the Part 264 and 265 closure and post-closure standards is to ensure that all hazardous waste management facilities are closed in a manner that, to the extent necessary to protect human health and the environment, (1) minimizes the need for post-closure maintenance, and (2) controls, minimizes or eliminates post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall, or waste decomposition products to ground or surface waters or to the atmosphere. There are two types of closure and post-closure requirements: (1) general requirements, which are contained in Subpart G; and (2) particular requirements which are specific to surface impoundments; incinerators; tanks; and other types of facilities. The specific standards are contained in the Subparts for each of these types of facilities and are discussed, in the preamble sections for those Subparts. This section of the preamble discusses the Subpart G general closure and postclosure requirements.

(1.) *Interim Status Regulations (Part 265).* On May 19, 1980, EPA promulgated §§ 265.111 (Closure performance standard); § 265.112 (Closure plan; amendment of plan); § 265.113 (Time allowed for closure); § 265.117 (Post-closure care and use of property; period of care); and § 265.118 (Post-closure plan; amendment of plan) as interim final regulations. The other sections of Subpart G were promulgated as final. Some minor language changes to the interim final regulations have been made to clarify their intent. The discussion below covers only the substantive changes.

a. *Deadline for submission of closure and post-closure plans (§§ 265.112(a) and 265.118(a)).*

The interim final regulations required owners and operators to prepare facility closure and post-closure plans by November 19, 1980. Many commenters contended that this date did not provide enough time to prepare plans and asked for extensions. Other commenters argued that EPA should not require owners or operators to prepare closure plans until they are ready to close their facilities. Still others argued that EPA should not require plans in interim status at all, but only when EPA issues a permit. In rsponse to these comments, EPA extended the deadline to May 19, 1981 (§§ 265.112(a) and 265.118(a)). To notify the regulated community prior to the original November 19, 1980 deadline, this time extension was promulgated separately on October 30, 1980 (45 FR 72039–72040).

EPA believes that the May 19, 1981 date is reasonable. First, owners and operators will have had one year from the promulgation on May 19, 1980 to develop closure and post-closure plans. Furthermore, since the proposed requirements for closure and post-closure plans were published on December 18, 1978 (proposed § 250.43–7), owners and operators will have had 2½ years to consider and reduce to writing appropriate measures for closing their facilities and providing post-closure care for land disposal facilities.

Second, closure and post-closure plans entail procedures which responsible owners and operators should have already thought through in operating their facilities. For example, for container storage facilities which periodically ship the containers off-site for disposal, the closure plan would anticipate a similar shipment procedue at the time of closure. For a landfill, an understanding of how the facility will be closed (e.g., final cover and vegetation) and then maintained and monitored is essential to the efficient and economic placement of wastes and monitoring wells during the landfill's active life. In fact, since many landfills are operated on a cell-by-cell basis, with several cells filled and closed in sequence, the appropriate procedures for closure will not only have been thought through but will also have been implemented at least in part.

EPA is also convinced that the May 19, 1981 date is necessary. First, development of closure and post-closure plans will force owners and operators to analyze their future closure responsibilities as well as their present operating practices as they affect closure and post-closure procedures. Thus, the sooner the plans are developed, the sooner present operating procedures consistent with closure will be developed. Second, since many facilities partially close on an ongoing basis (e.g., close one cell of a landfill at a time), there is a significant present need for closure plans which will assure that these partial closures are properly done. Third, closure and post-closure plans are presently needed because they provide the basis for making the cost estimates which are the foundation for the financial responsibility requirements of Subpart H. Thus closure and post-closure plans are needed now to assure that owners or operators develop sufficient funds to properly close their facilities.

b. *Keeping copies of plans at the facility (§§ 265.112(a) and 265.118(a)).*

The interim final regulations required the owner or operator to keep closure and post-closure plans at his facility. The final regulations retain this requirement (§§ 265.112(a) and 265.118(a)). One commenter, pointing out the importance of plans, questioned whether EPA could ensure that owners and operators prepare plans properly if plans are only kept on facilities' premises. The commenter suggested two different solutions to the problem: EPA could require the plans to be certified by a professional engineer, or it could require the plans to be submitted to the Agency for its review.

EPA has rejected the commenter's proposed solutions. First, EPA lacks the resources to review more than a sample of plans. Thus, requiring submission of plans to EPA would not assure their adequacy. Second, the Agency does not accept the argument that requiring a professional engineer to certify the plans would necessarily improve plans. Many of the most important aspects of plans depend on the owner's or operator's intent and these are not certifiable. For example, the estimate of maximum inventory of waste, which is a major factor in developing closure cost estimates, is not certifiable by an engineer.

EPA has arrived at a different solution to the problem than that suggested by the commenter. Under § 265.74(a) of the final regulation, the Regional Administrator may, at his discretion, require the owner or operator to send in his closure plan to EPA. In addition, EPA staff may review closure plans when performing on-site inspections.

The Agency intends to use these means to review a small random sample of plans and, from this sample, determine the proportion of adequate plans. If a large proportion of reviewed closure plans are inadequate in several Regions, EPA will have to decide whether to devote more resources to address the problem. To address specific problems more immediately, EPA could require the owner or operator of a facility with a poor plan either to submit a modified plan or to submit Part B of the permit application and modify the plan through the permitting process.

c. *Closure plan; amendment of plan (§ 265.112).*

In addition to extending the effective date of closure plan requirements by six months (discussed in paragraph (a) above), EPA made several changes to this section.

The interim final requirement of paragraph (a)(4) that closure plans contain schedules of actual dates for various events has been deleted and replaced, in response to comments, by a more flexible requirement for a schedule showing the time needed to close the facility and to perform intervening closure activities which will allow tracking of the progress of closure.

Paragraph (b), which requires the owner or operator to amend the closure plan whenever "changes in operating plans or facility design affect the closure plan", has been modified to require plan amendment within 60 days of those changes. This will assure conformance of closure plans to changes in actual design and operation as soon as reasonably possible.

The interim final version of paragraph (c) has been modified in several ways. First, the procedures whereby the Regional Administrator approves closure plans have been expanded to allow greater opportunity for both the owner or operator and the public to participate. This includes opportunity for a public hearing (see the more detailed discussion on procedures in paragraph (f) below).

Second, the grounds for the Regional Administrator's approval, modification or disapproval of plans are now explicitly based upon the substantive criteria for closure contained in Part 265.

Third, the regulations specify more fully when closure plans must be submitted to the Regional Administrator. Generally, as the interim final regulations also required, they must be submitted 180 days before the owner or operator "expects to begin closure." This latter phrase is now interpreted in a comment to the regulation to be "within 30 days after the date on which he expects to receive the final volume of waste." The Agency expects that this regulatory interpretation, together with the dates for completing closure once it has begun (§ 265.113), will help eliminate environmental problems caused by inactive but unclosed sites. In addition, the regulation now specifies that a closure plan must be submitted within 15 days after termination of interim status or an order under section 3008 of RCRA that the facility cease receiving wastes or close. This provision, which covers situations where closure may not be anticipated 180 days in advance, will assure expeditious closure of facilities which are inadequately operated. (See also § 265.143(a)(10), which provides that EPA may direct the trustee to pay money out of the trust fund to pay for closure activities in these situations.)

d. *Closure; time allowed for closure (§ 265.113).*

Section 265.113(a) of the interim final regulations required that owners or operators treat, dispose of on-site, or remove from the site all hazardous wastes within 90 days after receiving the final volume of waste.

Several commenters said that it was often impossible to complete treatment of all wastes within a 90 day period. Others said that unexpected events might make it impossible to remove the waste from the site before the end of the allowed time period. EPA agrees with the commenters. The Regional Administrator is therefore authorized by the final regulations to approve a period longer than 90 days provided that "(1) the required or planned activities will, of necessity, take him longer than 90 days to complete, and (2) he has taken all steps to eliminate any significant threat to human health and the environment." This modified language parallels that of paragraph (b), which allows 180 days for closure but also allows a variance.

EPA had rejected suggestions to delete the 90 and 180 days requirements and require the Regional Administrator to determine appropriate time periods on case-by-case basis. First, these time periods are achievable in the majority of cases. Second, the adopted approach minimizes the need for interaction between the Regional Administrator and the owner or operator. It is most efficient to set uniform time periods which are reasonable and generally achievable and to allow variances on a case-by-case basis when these periods are not achievable.

EPA has made one other change to both paragraphs (a) and (b). EPA anticipates that in some instances, an owner or operator may desire to close a facility for economic or other reasons, and begin closure activities, at which time another person may wish to assume operation of the facility. Rather than require the current owner or operator to close the facility in a manner incompatible with continued operation of the site (e.g., closing a half-filled landfill cell), the regulations allow the Regional Administrator to delay completion of closure if there is a "reasonable likelihood that a person other than the owner or operator will recommence operation of the site." An example of "reasonable likelihood" is the submission by the person of a complete permit application to the Regional Administrator plus an indication by the owner or operator of a willingness to transfer ownership or operation to that person.

e. *Post-closure care and use of property (§ 265.117).*

The final § 265.117 differs from the interim final version primarily in that the procedures formerly in paragraph (d) are now located (and considerably rationalized and expanded) in § 265.118.

The major issue raised by commenters with respect to this Section was the establishment of a uniform 30-year post-closure care period, subject to a variance. Various commenters expressed concern that the period was either too long or too short. This concern presumably arose out of a concern that the variance would not provide sufficient flexibility. The expanded procedures for obtaining variances and the more carefully delineated grounds for granting variances spelled out in § 265.118 should allay such concerns. (See section (f) below.)

The Agency has retained the 30-year period as the initial requirement because it may take as long as 30 years for material leaching from hazardous wastes to migrate to the groundwater. Indeed, proper land disposal practice often includes an initial containment period, so that, if properly operated, the facility does not begin to leach into the groundwater for an extended period. For this reason, it is appropriate to set a 30-year period initially to assure that adequate post-closure financial responsibility is assumed by owners or operators.

Of course, if after 30 years of post-closure care, it is demonstrated that additional groundwater monitoring or other care is necessary to protect human health and the environment, the procedures under § 265.118 allow the period to be extended. Similarly, if at any time during the post-closure period it is demonstrated that further care is not necessary to protect human health and the environment, the period may be shortened.

f. *Post-closure plan; amendment of plan (§ 265.118).*

The variance procedures for post-closure requirements and from the 30-year post-closure period have been substantially revised. The interim final regulations contained the following provisions: allowed variances to the 30-year post-closure period only at certain times to certain people, provided only for written comments to the Agency, did not apply to security requirements in § 265.117(b) or to disturbance of containment systems' integrity in § 265.117(c), did not fully articulate the bases for the Regional Administrator's decisionmaking, and, in one respect, asserted an overbroad basis for requiring post-closure care beyond 30 years. Based on several public comments and a careful reanalysis of the regulations, the Agency made the changes discussed below.

The final regulations afford equal opportunity to both owners or operators and the public to participate in the initial approval of the post-closure plan and any subsequent modification of the plan post-closure security requirements, post-closure disturbance of the containment system, or the post-closure period. They also allow petitions for modification to be submitted not at 5-year intervals only (as provided for in the interim final regulations) but rather at any time that relevant information is submitted. This approach eliminates the arbitrary ban on such requests at most times but prevents repetitious nuisance petitions which are not based on new facts.

The final regulations clarify the procedures for approval and modifications of post-closure plans. Before approving a plan, the Regional Administrator not only will allow the submission of written comments but also will hold a public hearing if the hearing might clarify one or more issues concerning the plan. (This procedure has also been added to § 265.112(d) for approval of closure plans.) The same procedures apply to the modification of a post-closure plan or post-closure period after the post-closure period has already begun. Furthermore, the regulations now specify that if any person petitions the Regional Administrator to modify the post-closure plan or period and the Regional Administrator denies the petition, he will send the petitioner a brief written response giving a reason for the denial.

One commenter on the interim final regulations (which, as noted above, provided for written comments but not for public hearings) argued that "variances on closures, shortening of a post-closure period or reopening of a closed disposal facility should be preceded by hearings using the 'substantial evidence' test." EPA disagrees with the implication of this comment that an evidentiary hearing should be required in these situations. As EPA has explained at length in connection with the Consolidated Permit regulations (44 FR 34264–65, June 14, 1979 and 45 RF 33409–11, May 19, 1980), neither RCRA nor the Administrative Procedure Act requires formal hearings for permit issuances. The arguments presented there, that the requirements of due process are flexible and that the procedures may be adapted to the nature of the problem being addressed, apply with equal force to the approval and modification of closure and post-closure plans during interim status. The expansion of procedures in final §§ 265.112 and 265.118 (including situations for which the commenter did not request expanded procedures) to provide an opportunity for a public hearing, rather than an evidentiary hearing, satisfies the fundamental requirement of due process and should allay the concern expressed by the commenter for procedural protection.

Final § 265.118(c) and (e) clarify the grounds on which the Regional Administrator will decide to approve, disapprove or modify a post-closure plan or to modify the post-closure period. EPA has accepted the comment that "noncompliance with any applicable standards or requirements" (interim final § 265.117(d)) is not an appropriate basis for extending the post-closure period. An extension should be based only on relevant environmental factors, and the final regulations reflect this philosophy. Of course, if noncompliance with certain requirements creates physical conditions which in turn create the need for extension of the post-closure period, the period may be extended under the final regulations.

g. *Notice to local land authority and notice in deed to property (§§ 265.119 and 265.120).*

These regulations were finalized on May 19, 1980. However, elsewhere in today's Federal Register, changes to these Sections are proposed to conform to §§ 264.119 and 264.120, which are being promulgated today as interim final. The Part 264 closure and post-closure care requirements are discussed next.

2. *General (Permitting) Regulations (Part 264).* These regulations contain the same substantive requirements as the Interim Status regulations. However, the procedures differ to reflect the fact that plans will be submitted as part of the permit application (40 CFR 122.25) and approved and modified through the permit procedure (40 CFR Part 124) rather than through the less formal procedures of Part 265, Subpart G.

The reader should refer to Part 124 to determine most of the procedures governing these regulations. The Part 124 procedures apply to the following: approval of closure and post-closure plans in § 264.112(a) modifications of these plans in § 264.112(b), approval of longer periods than 90 days and 180 days for performing two stages of closure activities in § 264.113 (a) and (b); modification of the 30-year post closure period in § 264.117(a); continuation of security requirements during the post-closure period in § 264.117(b); and disturbance of the integrity of the containment system during the post-closure period in § 264.117(c).

Certain modifications of plans or requirements may be routinely required during the life of the facility and are of a minor nature. These include changes in estimates of maximum inventory in § 264.112(a)(2); changes in estimates of expected year of closure or schedule for final closure in § 264.112(a)(4); extensions of the 90-day deadline in § 264.113(a); and extensions of the 180-day deadline in § 264.113(b). The Agency believes that the procedures of Part 124 need not apply to these modifications. Accordingly, they have been designated as "minor modifications" in 40 CFR 122.17, and appropriate comments have been inserted in Part 264, Subpart G to alert the reader of this regulation that these modifications are not covered by Part 124.

Since the closure and post-closure plans will be approved when the permit is issued, the owner or operator of a facility is not required (as in Part 265) to submit his plans to the Regional Administrator for approval prior to closure. However, he must notify the Regional Administrator 180 days before he expects to close. This will afford the Regional Administrator an opportunity to assess the need for a permit modification prior to final closure of the facility.

The recently enacted Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly referred to as "Superfund") contains certain provision which relate to the post-closure care and liability requirements of §§ 264.117 and 264.118 for permitted facilities. Section 107(k)(1) provides that the liability established by Superfund "or any other law" for a permitted facility "shall" be transferred to and assumed by the Post-closure Liability Fund five years after closure provided that the facility meets certain

conditions. (The major condition is proper operation of the facility and proper post-closure care in compliance with the facility's permit.) Section 107(k)(3) provides that the Fund "may" be used to pay costs of post-closure care, for facilities which meet the conditions noted above after the period of monitoring required by the RCRA regulations. Neither of these provisions implies that the 30-year post closure period in § 264.117 must be revised. However, in developing regulations under Superfund, EPA will be reviewing § 264.117 to determine whether any modification of the 30-year period or the procedures for a variance of the period should be amended.

Sections 264.119 and 264.120 (Notice to local land authority and Notice in deed to property) are modified somewhat from the Part 265 versions. However, elsewhere in today's Federal Register, EPA is proposing changes to §§ 265.119 and 265.120 to conform them to §§ 264.119 and 264.120, which are being promulgated as interim final. Both the Part 264 and the revised Part 265 versions will be finalized together after consideration of any comments submitted.

Reference in § 265.119 to "local land authority" has been clarified in § 264.119 to mean "local zoning authority or the authority with jurisdiction over local land use." In addition, the Part 264 regulations require that after the survey plat and record of wastes are filed, subsequent changes (e.g., as a result of reopening a cell or opening a new cell) must also be submitted.

In § 264.120, two changes from the interim status standards have been made. First, the notice in the deed must state that the survey plat and record of wastes disposed of have been filed with the appropriate local authority. Prospective purchasers of the property may then check the filed records to learn the precise location of wastes buried at the site.

Second, if the wastes and contaminated materials are removed from the site, the notation on the deed may be removed or, if that is not allowed by local authority, a notation may be added indicating removal of the waste. EPA is particularly interested in public comment on this issue. Would prospective purchasers of property want to know that hazardous wastes were once buried on the property even if the wastes were later removed? Would such information affect the market price and, if so, to what extent? If removal of the notation were undesirable, would that imply that even storers and treaters of hazardous wastes should be required to place notices in deeds?

C. Subpart H—Financial Requirements

Section 3004(6) of RCRA requires EPA to establish financial responsibility standards applicable to owners and operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment. EPA has concluded that, at a minimum, financial responsibility performance standards are necessary and desirable to assure (1) that funds will be available for proper closure of facilities that treat, store, or dispose of hazardous waste and for post-closure care of hazardous waste disposal sites; and (2) that a pool of funds will be available during the operating life of the facility from which third parties can seek compensation for injuries to people and property resulting from operation of the facilities. In these regulations the Agency is establishing various requirements which are designed to meet those performance standards. Other needs in financial responsibility related to hazardous waste management are addressed by the recently passed "Superfund" law, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510 (December 11, 1980).

The need for assurance of financial responsibility for closure and post-closure care is indicated by the many instances of environmental damage resulting from abandonment of hazardous waste facilities and other failures by owners and operators to provide adequately for closure and post-closure care. (Several such cases are described in the Background Document for the financial requirements.) The likelihood of such a failure is increased by the fact that the economic value of the facility is either at a minimum or nonexistent when closure and post-closure care are expected to commence. For most disposal facilities, post-closure care must extend for 30 years beyond the operating life of the facility. EPA believes that a significant number of owners and operators will lack the ability to provide for adequate closure and post-closure care unless effective requirements for financial assurance are established.

Assurance that a pool of funds will be available from which third parties injured by the operation of a hazardous waste management facility can seek compensation is necessary and desirable, in the Agency's view, because of the potential for injury arising from the operation of those facilities. As discussed in detail in the Background Document, there are numerous instances in which third parties have suffered personal injury and property damage caused by the operation of hazardous waste management facilities. Consequently, the Agency is establishing a requirement that owners and operators must secure a liability insurance policy which covers both personal injuries and property damage resulting from their facilities. Moreover, the inherent risks associated with hazardous waste indicate that such a requirement is desirable.

The Agency has carefully considered numerous alternative financial responsibility mechanisms in developing these requirements. Their development involved a proposal of regulations in December 1978, a reproposal in May 1980, public hearings on the proposals, analyses of the many comments from the public, and a number of investigations of issues raised by commenters and by the Agency itself.

Under the first proposal, issued December 18, 1978 (43 FR 58995, 59006-7), the trust fund was the only means of assuring that funds would be available for closure and post-closure care. The closure trust fund had to be fully funded when established. The post-closure fund, however, was to be funded over the life of the facility or 20 years, whichever was shorter. The owner or operator was to estimate the amounts of the closure and post-closure funds based upon required plans for closure and post-closure care of the facility. The financial assurance provisions were essentially the same for general standards (to be used in issuing permits) in Part 264 and for interim status standards (which apply to existing facilities awaiting final disposition of their permit applications) in Part 265. Only trust funds were allowed because the Agency believed that only by setting money aside in a trust fund could owners and operators adequately assure availability of funds.

The Agency's first proposal also included liability requirements as general standards but not as standards for existing facilities with interim status. EPA based that decision on its belief at the time that insurance would not be available for facilities without permits. The amounts of required liability coverage were $5 million per sudden accident, and, for nonsudden accidents, $5 million per occurrence with a $10 million annual aggregate. In addition to insurance, self-insurance and "other evidence of financial responsibility" were allowed to satisfy the proposed requirement.

Many of the commenters on the original proposal said requiring the closure trust fund to be fully funded when established was so costly it could

put them out of business. A number of commenters also said that other financial mechanisms in addition to trust funds should be allowed. Some commenters thought the amount of the required liability insurance coverage greatly exceeded the level of risk associated with their facilities.

EPA reanalyzed these and other issues and developed a new proposal which was published May 19, 1980 (45 FR 33260–78). In this reproposal, the closure trust fund was allowed to build over the operating life of the facility or 20 years, whichever was shorter, because the Agency believed that requiring owners or operators to fully fund the closure trust immediately could cause some smaller firms to go out of business, and this would contribute to an expected capacity shortage in hazardous waste management. Consequently, both the closure and post-closure trust funds, had a pay-in period of up to 20 years. The reproposal also permitted owners and operators to use the following mechanisms other than trust funds to provide assurance of financial responsibility: surety bonds; letters of credit; a financial test; guarantees of the closure and post-closure obligations of an owner or operator by another entity which meets the financial test, a revenue test for municipalities, and State assumption of responsibility for closure and post-closure care or funding of these obligations. Also, if a State required specific financial assurance mechanisms for closure and post-closure care, the owner or operator could use those mechanisms to meet the Federal requirements as long as the State mechanisms were substantially equivalent to mechanisms specified by EPA.

The reproposed requirements for financial assurance for closure and post-closure care thus contained a range of options, all of which had been suggested by commenters on the first proposal. The principal consideration in selecting the mechanisms and determining their specifications was the effectiveness of the mechanism in assuring availability of sufficient funds when needed for closure and post-closure care. The Agency recognized, however, that in certain circumstances it may be necessary or desirable to balance other considerations against ready access to funds. As noted above, the Agency proposed a 20-year pay-in period for closure and post-closure trust funds because it believed that the environmental risk associated with a capacity shortage in hazardous waste management was greater than that associated with those instances in which there are insufficient funds for closure because the owner or operator is either bankrupt or has abandoned the site before the trust fund was paid up. The Agency also considered avoidance of unnecessary costs to the regulated community, the desirability of allowing flexibility in meeting the requirements, administrative burden on the Agency, and availability of the mechanisms.

The reproposal also included a requirement that owners or operators obtain liability insurance during interim status. Coverage for sudden accidents amounting to $1 million per occurrence with a $2 million annual aggregate was proposed. The Agency added this requirement because, contrary to EPA's previous belief that insurance would not be available for facilities without permits, further investigation showed that many of those firms which followed good business management practices already possessed liability insurance covering sudden accidents, and that it was readily available to other firms. The Agency did not propose requiring coverage for nonsudden accidents because its investigation indicated limited availability of such coverage to firms managing hazardous wastes prior to obtaining permits. (Comments were invited, however, on the desirability of requiring coverage for nonsudden accidents during interim status.) The lower level of coverage for sudden accidents (compared with the previous proposal) was based on a review of damage cases, typical levels of coverage, and State insurance requirements for hazardous waste facilities. As with financial assurance for closure and post-closure care, the reproposal allowed owners and operators to use State-required mechanisms and State guarantees to meet EPA liability requirements to the extent that the State mechanisms were substantially equivalent to EPA-specified mechanisms.

The originally proposed general standard for liability coverage was not included in the reproposal but the period of public comment on it was reopened.

At the same time that the reproposal was published (May 19, 1980), EPA issued final regulations, 40 CFR 265.140, 142, and 144 (45 FR 33243–44), which established interim status standards for estimating the costs of closure and post-closure care. (The effective date for these standards was changed from November 19, 1980, to May 19, 1981, by an amendment promulgated October 30, 1980 (45 FR 72040).) The final regulations exempted State and Federal governments from financial requirements imposed on owners and operators of hazardous waste management facilities. These regulations are discussed in the Background Document entitled Financial Requirements and in the Preamble to the May 19, 1980, publication. They are not discussed again here.

The following sections address the major issues and comments associated with the financial responsibility standards promulgated today.

1. *Financial Assurance for Closure and Post-Closure Care (Major Issues).* In the final regulations, as in the reproposal, the owner or operator of each hazardous waste treatment, storage, or disposal facility must establish financial assurance for its closure. The owner or operator of a disposal facility must also provide financial assurance for post-closure care. He may use one or more of the several mechanisms allowed by the regulations to meet those requirements. The amount of funds assured must at least equal the adjusted cost estimates.

For existing facilities, financial assurance must be established by the effective date of the Part 265 financial assurance requirements. For new facilities, assurance must be established as specified in Part 264 at least 60 days before hazardous waste is first received at the facility for treatment, storage, or disposal.

Commenters raised the following general issues:

a. *Compliance proceedings.*

Commenters said that EPA should be able to direct the use of funds from trusts, surety bonds, letters of credit, and guarantees only after a final judicial determination of a violation or after agreement between EPA and the owner or operator, and that EPA should not be able to call in a bond or draw on a letter of credit after a notice of nonrenewal or cancellation unless a court order is obtained. These limitations are needed, commenters said, to protect the owner's or operator's right of appeal and his credit standing and to ensure that EPA does not expend funds improperly.

The procedures to be used for enforcing compliance with regulations under Subtitle C of RCRA, including Subpart H, are prescribed in Section 3008 of RCRA, which authorizes the Administrator to determine when violations of RCRA and the regulations have occurred and to issue compliance orders. Pursuant to Section 3008 an opportunity for a public hearing is provided before a compliance order or suspension or revocation of a permit becomes final.

The final regulations have clarified procedures relating to cancellation of

financial assurance devices. Although continuous availability of funds is a basic consideration of EPA in developing requirements for financial assurance for closure and post-closure care, the Agency recognizes the desire of financial institutions and surety companies for means of terminating letters of credit and bonds issued on behalf of owners and operators. Consequently the final regulations include provisions for cancellation under limited circumstances. However, the owner or operator will be deemed to be without financial assurance and in violation of these regulations upon receipt by EPA of a notice of cancellation or nonrenewal, and EPA thereupon will begin compliance proceedings under Section 3008 of RCRA. In the event the owner or operator cannot satisfy a compliance order requiring alternate financial assurance, EPA will require funding of a standby trust (described below) by the surety or issuer of the letter of credit.

In order to assure that funds will be available for closure and post-closure care, and that initiation of compliance proceedings does not immediately precipitate termination of surety bonds and letters of credit, all such instruments must provide that no termination shall occur while compliance proceedings are pending, irrespective of the subject matter of the compliance proceedings.

b. *Standby trust fund.*

The final regulation requires that owners and operators who obtain letters of credit or surety bonds to provide the required financial assurance must also establish a standby trust fund at the same time. Under the terms of the letter of credit or surety bond, any funds drawn under those instruments are to be placed directly into the trust fund by the institution making the payment. The Agency is imposing this requirement because without such a depository mechanism any funds drawn under those instruments which are payable to the Regional Administrator would have to be paid into the U.S. Treasury and could not be used specifically to pay for closure and post-closure care of the facility (see 31 U.S.C. § 484). EPA plans to seek authority from Congress to directly receive and disburse funds derived from financial assurance mechanisms under RCRA. If EPA obtains that authority, owners and operators would no longer be required to establish standby trust funds. In the reproposal of May 19, 1980, the Agency allowed both trust funds and escrows to be used to hold funds drawn on letters of credit and surety bonds (escrows for closure funds, trusts for post-closure funds), and they did not have to be established before the time they were needed. Further analysis indicates that trusts are preferable to escrow accounts (see discussion of escrows in section 8 below) for this purpose and that they must be established when the letter of credit or surety bond is obtained to assure that the necessary depository mechanism is available if needed.

c. *Equity among mechanisms.*

Several commenters said that, from an equity standpoint, EPA should allow all mechanisms, not just trust funds, to be built over 20 years.

EPA is allowing owners or operators to select from a variety of financial mechanisms to meet the requirements of these regulations. It is doing so to minimize their cost. Since an owner or operator is free to choose from among the devices, he may select that alternative which seems most advantageous. Thus there is no inequity created.

d. *Restricting means of financial assurance.*

Several commenters said that EPA should not limit owners and operators to the specified mechanisms but instead should allow them to demonstrate financial assurance by any appropriate means. The Agency has decided not to adopt that approach because the implementation of such an open-ended regulation would impose an intolerable administrative burden on the Agency, especially in light of its limited experience and resources in the area of evaluating financial mechanisms. The Agency expects that a large number of owners or operators might seek to demonstrate financial assurance by alternative mechanisms if they are allowed to do so. The Agency believes that in such an event, mechanisms that do not adequately assure that funds will be available in a timely manner will inadvertently be accepted. This will result in inadequate protection of human health and the environment and, in addition, an inconsistent and possibly inequitable administration of these requirements. Consequently, the Agency concluded that it must require specific mechanisms for financial assurance and has allowed those to be used which adequately provide financial assurance and are feasible. EPA will continue to be receptive to proposed additions to these mechanisms and may add to, subtract from, or alter the currently allowed mechanisms after it examines such suggestions and its experience in implementing these regulations.

Some commenters suggested that requiring standard language for trusts and other instruments is a mistake, since financial institutions have different informational requirements. EPA believes that standard language is necessary for the same reasons that standard mechanisms are needed. The Agency simply does not have the resources or expertise to review every trust or other instrument to determine whether it adequately assures the availability of funds for closure or post-closure care. The Agency believes that the mechanisms allowed by the final regulation will be acceptable to most, if not all, financial institutions. They were developed in consultation with the American Banking Association, the Surety Association of America, other trade associations, financial institutions, and other financial experts.

2. *Trust Funds.* The trust provisions of the final regulation include several changes from the provisions of the reproposal. The most significant change is a redesign of the funding sequence.

As described above, under the first proposal issued December 1978 the Agency required that the closure trust fund be fully funded when established. The Agency selected the fully funded trust to provide financial assurance whether closure takes place as planned or closure becomes necessary prematurely due to economic difficulty or as a result of a government agency's order based on problems associated with the operation or maintenance of the facility. Immediate full funding of the trust fund represents a significant financial burden to the regulated community, however, in that it requires the owner or operator to set aside a large sum of capital at one time. This burden assumes an added significance under current tax laws, which do not allow payments into these trusts to be considered a deductible business expense because no expense occurs in a tax sense until the funds are used for closure.

The environmental impact of this economic burden might be substantial. It could tend to drive companies out of hazardous waste management and discourage new companies from entering the field, thus reducing the national capacity for hazardous waste disposal at a time when we may be short of sites which are acceptable from a health and environmental standpoint.

The Agency responded to this problem in the reproposal of May 19, 1980, by allowing a pay-in period of 20 years or facility life, whichever is shorter, for both closure and post-closure trust funds. Also, as already noted, several alternative mechanisms were allowed which are expected to be substantially less costly to the regulated community.

In the final regulation for interim status, EPA continues to allow both closure and post-closure trust funds to build over 20 years or facility life, whichever is shorter. Interim status is supposed to be a period of transition for hazardous waste facilities from no Federal hazardous waste regulation to fairly complex Federal hazardous waste regulation. As such, EPA wants the transition to be gradual. The Agency has set the buildup period for trust funds to prevent the dislocations and capacity problems that might occur from a faster buildup of trust funds.

For interim status facilities which become permitted, the owner or operator must fund the balance of the trust funds over the term of the initial permit (a maximum of 10 years under § 122.9 of this Chapter). At the end of this term, the Agency may decide not to renew the permit. Based on that consideration, the Agency decided to establish a pay-in period equal to the term of the permit. The Agency does not want to be in the position of having to consider whether to allow a poorly managed site to remain in operation so that it could continue to build its trust funds to afford closure and post-closure care. The trust should therefore be fully funded at the end of the term of the permit to assure that proper closure and post-closure care can be carried out.

EPA will require that trust funds for new facilities also be built over the life of the permit. New facilities, like existing facilities, present a potential for premature closure during the fund buildup period. Again, an apparent simple solution is full funding up front. The Agency need not be concerned about dislocations induced among new facilities by too stringent a pay-in requirement as it does with existing facilities. A decision for immediate full funding, however, sets up a significant differential in RCRA compliance costs between new and existing facilities whose owners or operators need to use trusts to meet the financial requirements. EPA believes it may be counterproductive to establish an immediate pay-in requirement for new facilities, especially when old facilities can build trusts over time. This would encourage the continued use of existing facilities and discourage the building of new sites conforming to current technical standards.

The 20-year pay-in period, which was in the reproposal and is now allowed only during interim status, was criticized by some commenters. They pointed out that the public might have to bear a significant portion of total closure and post-closure costs over that time due to the failures of firms. With a faster buildup, however, there are also closure and post-closure obligations which would fall to the public from firms which close immediately when faced with the higher costs. The Agency believes that some closure and post-closure costs will be borne by the public regardless of the pay-in period.

In an analysis prompted by the comments on the pay-in period, EPA found that, because of uncertainties in the expected normal business failure rate for firms that will be getting trust funds and the expected rates of closure induced by different pay-in periods, the optimum pay-in period could be anywhere from 5 to 20 years. If the Agency required a buildup rate during interim status faster than 5 percent a year, and subsequent evidence of bankruptcy rates showed that the annual 5 percent buildup was, in fact, justified by the data, it would be too late to prevent induced closures by reducing the pay-in rate. On the other hand, if EPA chose the 5-percent rate and bankruptcy data showed a higher rate to be more appropriate, the Agency could adjust the buildup rate at little cost. Moreover, the Agency estimates that the amount of closure and postclosure expenses to be paid for by the public does not vary greatly from a 5 percent per year pay-in rate to a 20 percent per year rate, but the additional cost to the regulated community is substantial for the higher rate. This analysis, then, is consistent with the Agency's decision to allow slower pay-in period during interim status at this time.

EPA recognizes that full assurance of funds for closure and post-closure care will not be provided through the trust fund in the event of premature closure. EPA is presently studying a variety of private sector and governmental programs, including mutual and pooled fund approaches, which will address this problem. The Agency welcomes comments in this regard. It is likely that EPA will request legislation in this area from the Congress in the near future. In the event a legislative, administrative, or private sector remedy to the problem of premature closure is not forthcoming, it is likely that EPA will review the present trust fund mechanism and require a significantly shorter pay-in period.

Among the other changes from the reproposal was the addition of qualifications for trustees. In the reproposal, a "bank or other financial institution" could serve as the trustee. In the final regulation, trustees must be banks or other financial institutions that have authority to act as trustees and whose trust operations are regulated and examined by Federal or State agencies. EPA made this change because institutions that are examined and regulated by Federal or State agencies must meet certain standards that should increase the reliability and security of trustee institutions.

In the reproposal, the Agency did not establish certain specific requirements regarding the trust agreement (for instance, how monies in the trust fund were to be invested) because it believed that these issues would either be covered by State trust law or were best resolved by agreement between the owner or operator and the trustee.

Some commenters strongly objected to this approach and said that financial institutions would not act as trustees for these trusts if the trust instrument did not contain provisions specifying the responsibilities and rights of the trustees. The Agency developed a standard trust agreement which incorporated the necessary provisions with the assistance of the American Bankers Association and other commenters. One of the clauses which was amended was the investment clause. In developing this clause, the Agency's primary concern was protection of the corpus of the fund. A secondary concern was to allow the trustee to invest the funds to earn a rate of return that will at least keep up with inflation. This concern is especially important for the post-closure period. In the final regulation the trust agreement prohibits investment in the securities of the owner or operator and their affiliates, but otherwise generally allows investments in accordance with a "prudent man" rule. The rule requires the trustee to invest with the judgment and care that persons of prudence would exercise in managing an enterprise of like character and aims. Investment in certificates of deposit or other time or demand deposits with the trustee institution is specifically allowed to the extent they are insured by an agency of the State or Federal government. EPA added this last provision because it believes that financial institutions may be more willing to accept small trust funds if the owner or operator agrees to such an investment.

EPA's concern about the willingness of financial institutions to act as trustees of small trust funds was based on comments by many of the larger banks in the country. Some closure cost estimates will be under $10,000. Many of the larger banks said they would not act as trustees for funds containing only small amounts and quoted acceptable

minimums which ranged from $20,000 to $5 million. Small trust funds, in their view, are not worthwhile because their administrative costs and potential legal expenses outweigh potential profits. However, some of the smaller banks said they would accept small trust funds and believe they are comparable to the Individual Retirement Accounts (IRA) and Keogh accounts that are established to provide retirement income. The Agency was informed that more banks would be willing to act as trustees for the smaller trust funds if the funds could be commingled for investment purposes but that such commingling might not be consistent with Federal securities laws. To encourage financial institutions to act as trustees for small trusts, EPA requested the Securities and Exchange Commission to issue a "no action" letter concerning commingling. The Agency received such a letter from SEC dated October 20, 1980.

3. *Surety Bonds.* In the May 19, 1980, proposal, three types of surety bonds were allowed. They guaranteed performance of closure, or payment of a lump sum into a post-closure trust fund at the time of closure, or performance of post-closure care. It was intended that such bonds would be allowed for both interim status and general standards. It has become apparent, however, that performance bonds are not appropriate for interim status. Performance bonds are intended to guarantee performance of a specified duty. During interim status, closure and post-closure plans will not normally be closely examined by the Regional Offices until shortly before closure. The Regional Administrator at such time may find that major changes are called for in the closure or post-closure plans. The actual required performance for the particular facility therefore may not be specified in any detail during most of the term of the bond. Consequently in the final regulations for interim status only surety bonds that guarantee payment into standby trust funds for closure and post-closure care are allowed. In the general standards, performance as well as financial guarantee bonds are allowed since the closure and post-closure plans will be reviewed as part of the permitting process.

Surety companies and other commenters identified two features of the closure and post-closure obligations that will discourage sureties from writing the bonds: the obligations are for terms much longer than surety bonds have traditionally been written for, and the costs are not set—they will shift with inflation and changes in the closure and post-closure plans. The Agency has not found a way to structure the bonds so as to reduce the effects of these basic conditions without jeopardizing the adequacy of financial assurance provided by the bonds.

Under the cancellation provisions in the reproposal, the surety could cancel a bond only if at least 90 days' advance notice is given. If during the first 30 days after the notice the owner or operator failed to establish other financial assurance, the Regional Administrator could order closure of the facility, thus triggering the bond guarantee. The surety could therefore cancel successfully only if the owner or operator could establish other financial assurance.

In the final regulations, the cancellation provisions have been revised: (1) The bond cannot be cancelled while a compliance procedure is pending. (2) Nonconformance with the financial assurance regulations is deemed to commence whenever continuity of financial assurance is threatened due to impending cancellation of the bond by the surety (i.e., upon receipt of a cancellation notice from the surety). (3) The role of Section 3008 procedures in regard to compliance orders, closure orders, and collection of the penal sum after noncompliance has been clarified. In particular, if the owner or operator fails to establish financial assurance in the period allowed by the compliance order, the surety must deposit the amount of the penal sum into the standby trust fund established by the owner or operator. The latter change was made so that financial assurance can be maintained without the need to require closure.

As these bonds represent a new risk experience for the surety companies, availability will be limited at first, with economically stronger companies more likely to receive coverage. As surety experience with these facilities and bonds increases, availability may increase as well.

4. *Letters of Credit.* A letter of credit is an agreement by the institution issuing the letter that it will make available to the beneficiary a specific sum of money during a specific time period on behalf of its customer. The beneficiary can draw on the credit by presenting to the issuing institution the documents specified in the letter. In the final regulation, an owner or operator may satisfy the financial assurance requirement by obtaining the issuance of a letter of credit, addressed to the Regional Administrator, in the amount which equals or exceeds the closure or post-closure cost estimate. The term of the letter of credit must be at least 1 year, and it must contain a clause which provides for automatic extensions. The issuing institution may terminate the letter only by sending a notice of nonrenewal to the Regional Administrator and to the owner or operator at least 90 days prior to the automatic renewal date. Like the surety bond, the letter of credit can be drawn on if the Regional Administrator determines that the owner or operator has failed to meet closure or post-closure requirements or following a notice of nonrenewal and a Section 3008 determination that the owner or operator is in violation of the financial requirements. By the terms of the instrument, the letter cannot be cancelled while a compliance procedure against the owner or operator is pending.

The issues raised regarding letters of credit were, for the most part, the same as those for surety bonds. Some commenters suggested that the term is too long, that the owner's or operator's obligations are subject to increases thus requiring frequent changes in the letter of credit, and that such letters of credit are rarely if ever written. As with the bonds, it appears that only large, highly creditworthy firms may be able to obtain these instruments on an unsecured basis.

In the reproposal, letters of credit could be used to assure funds for closure, assure payment of a lump sum into a post-closure trust fund at the time of closure, or assure availability of funds during the post-closure period. The reproposal contained a separate set of requirements for each of these uses. In the final regulation the letter of credit may be used for the same purposes, but one set of requirements covers both instances in which letters of credit are used to assure funds for post-closure care.

Numerous commenters said that the letter of credit form in the reproposal should be simplified. They suggested that detailed references to the regulations be eliminated because they were concerned that the references might be interpreted to impose a responsibility on the issuing institution to assure that the owner or operator complies with the regulations. Many bankers also suggested that EPA delete from the letter all references to the escrow account into which funds drawn under the instrument would be deposited. With the aid of the American Bankers Association, other institutions, and a legal expert on letters of credit, the Agency developed a less complex letter of credit and eliminated from it most references to the regulations.

While the letter contains a reference to the standby trust into which funds paid under the letter will be deposited (rather than the escrow account specified in the reproposal), this was done to ensure a direct transfer into the owner's or operator's trust fund and to avoid problems associated with the requirements of 31 U.S.C. 484.

Under the reproposal, only letters of credit issued by Federal Reserve System (FRS) banks would be accepted by the Agency. EPA proposed this restriction because it believed that FRS banks had greater stability and reliability and that only member banks could issue letters of credit for periods longer than 1 year. The Agency learned, however, that nonmember banks can issue letters of credit for more than 1 year. Moreover, there appears to be no significant difference in stability and reliability between FRS banks and other financial institutions which are examined and regulated. Consequently, in the final regulation, letters of credit from any financial instituituion which has authority to write letters of credit and whose letter-of-credit operations are regulated and examined by Federal or State authorities are acceptable.

5. *Revenue Test for Municipalities.* In the reproposal, municipalities, as defined in RCRA, could demonstrate financial assurance by passing a revenue test. A municipality passed the test by having annual general tax revenues which were 10 times the cost estimates to be covered. The test was intended to identify those local governments which have a tax base sufficient to readily support the costs of closure and post-closure care.

The proposed revenue test was the subject of numerous comments. While some commenters thought it was a reasonable approach, others felt that municipalities should be required to provide the same forms of assurance that other entities must provide. They cited the delays in funding of closure that could occur if cities failed to plan adequately for meeting closure costs.

Several commenters thought that a test which requires a local government to have only 10 times the cost estimates was inadequate. They contended that many cities would find it extremely difficult to reallocate in any year 10 percent of their budget to cover closure and post-closure costs. One commenter suggested that the multiple be increased to 20.

Several commenters objected to the test because it limited revenues to be counted to the property, income, and sales taxes. They suggested that fees, contract payments, and any other income should be included. Other commenters suggested alternatives to the test be allowed, including municipal bond ratings, bond pledges, annual audits, and requirements for enterprise accounting.

Because of the complexity of the issues regarding the revenue test, the Agency could not analyze them adequately in time for this promulgation. The Agency expects to announce its decision on whether it will promulgate the revenue test within the next few months. At the same time the Agency will also announce its decisions regarding the financial test and self-insurance, which are described below. The Agency decided to proceed with today's promulgation of financial responsibility standards despite the fact that these key decisions are yet to be made because of the need to begin assuring financial responsibility for hazardous waste management and also the need to meet the court-ordered schedule for issuing RCRA regulations. In planning how they will meet the financial responsibility requirements promulgated today, owners and operators should not consider the revenue test, financial test, or self-insurance as available or imminently available options at this time.

6. *Financial Test and Guarantee.* The proposed financial test allowed firms to meet the financial assurance requirement by demonstrating they had more than $10 million in net worth in the U.S., a ratio of total liabilities to net worth not greater than 3 to 1, and net working capital in the U.S. of at least two times the value of all their closure and post-closure cost estimates. An entity meeting the financial test could also guarantee closure and post-closure obligations of another entity. The Agency received many comments on this issue. They included suggestions that the test was too stringent, that it was too lenient, and that the criteria were either inappropriate or arbitrary. They suggested different values for the criteria and numerous alternative criteria such as bond ratings, a cash flow test, positive net income, the ratio of quick assests to current liabilities, and fixed assets in the U.S. (rather than net worth or working capital in the U.S.). Many commenters also raised questions about the proposed requirements for establishing that the test criteria were met. As with the revenue test, the Agency could not complete its study of the issues in time for this promulgation. As noted above. the Agency's decisions regarding the financial test and the guarantee based on the financial test will be announced at the same time as the decision on the revenue test.

7. *Variations in Use of Mechanisms.* The reproposal allowed owners and operators to use more than one type of mechanism to provide financial assurance for a facility, to use one mechanism to cover multiple facilities, and to use one mechanism to cover both closure and post-closure care. A number of commenters expressed approval of these provisions because of possible savings in costs to the regulated community. The final regulations allow these variations with some qualifications and clarifications.

An owner or operator using multiple instruments may include a surety bond guaranteeing payment but not a surety bond guaranteeing performance of closure or post-closure care. The latter type of bond is excluded because of the potential complexity of combining the performance option in the bond with funds from other instruments in case of default.

The final regulation states that if an owner or operator uses a trust fund and a letter of credit or surety bond, he may use the trust fund in place of the standby trusts required for letters of credit and surety bonds. If an owner or operator uses only letters of credit of surety bonds, only one standby trust fund is required for all instruments. Requiring a separate standby trust for each instrument means added costs for the owner or operator and added administrative burden for the Agency.

A letter of credit may not be used to cover the facilities in more than one Region because increases and decreases in the coverage of the credit, even if they concern only one of the facilities covered, would in some cases depend on the consent by all the Regional Administrators who are addressees of the letter. Such procedures are likely to delay the change in the credit amount and could add to the administrative burden of the Regional staff. The restriction to one Region does not apply to the other instruments, since only the approval by the Regional Administrator for the Region in which the affected facility is located need be obtained in order to decrease the coverage, and increases may be made without prior approval or return of existing instruments.

Combining financial assurance for closure and post-closure care in one instrument is allowed for the letter of credit and the trust fund but not for surety bonds. Unlike the other instruments, the surety bonds must, in order to specify the conditions of the guarantees, differentiate between what is to be done to assure closure and post-

closure care. The Agency believes that combining the closure and post-closure language in one bond form would add to its complexity and risk confusion.

8. *Other Mechanisms.* EPA believed that escrow agreements might be useful and therefore actively solicited information about them. Most of the commenters said there is little difference between trust funds and escrows and therefore there is little point in offering both. Trust funds appear to be preferable because the law of trusts places obligations upon trustees to protect the interests of the beneficiary (i.e., EPA in this case). An escrow agent is responsible only for what is specified in the escrow agreement. The Agency believes it would be extremely difficult to draft an escrow agreement that adequately specifies all the actions that the Agency would want the escrow agent to take in all situations to assure that the instrument serves its intended purpose. Some commenters said that if the escrow agreement is carefully worded escrowed funds could be safer from creditors' claims than trust funds, but other commenters and the Agency's analysis indicated that trust assets are better protected. Under trust law, legal title to property in a trust is transferred from the grantor to the trustee. With an escrow agreement legal title is not transferred to the escrow agent; since the grantor retains legal title while property is in escrow, such property is more likely to be subject to creditor's claims than property in a trust. Some commenters said fees for escrow accounts tend to be lower than for trusts, but other commenters said that, if an escrow agreement were written to be comparable to the trust agreement, the fees would also be comparable. Based on the information obtained, EPA believes trust funds are preferable to escrows and has decided not to add the escrow agreement as an option.

Commenters' suggestions for other financial assurance mechanisms included allowing owners and operators to deposit funds, certificates of deposit, or other property with EPA. EPA currently lacks authority, however, to directly receive and spend funds for closure and post-closure care.

9. *Liability Requirements.* The final interim status and general standard liability regulations require owners or operators of hazardous waste treatment, storage, and disposal facilities to demonstrate financial responsibility for claims arising from sudden accidents. In addition, owners or operators of surface impoundments, landfills, and land treatment facilities will be required, over a 3-year phase-in period, to demonstrate financial responsibility for claims arising from nonsudden or gradual occurrences.

Several important changes are incorporated into the final liability requirements as a result of comments received and further analysis by the Agency. First, EPA is modifying its approach to nonsudden liability coverage by extending the requirement for nonsudden coverage to interim status facilities, limiting the initial applicability of this requirement to impoundments, landfills, and land treatment facilities only, and phasing in the nonsudden requirement over 3 years. Second, EPA is reducing the amount of liability insurance required to $1 million per occurrence with a $2 million annual aggregate for sudden events and to $3 million per occurrence with a $6 million annual aggregate for nonsudden liability coverage. Third, EPA is adding a variance procedure to the final requirements to allow owners or operators who can demonstrate that the levels of required coverage are not consistent with the degree and duration of risks at their facilities to seek an adjusted level of required coverage. Finally, EPA is including provisions to allow the Regional Administrator to increase the level of required coverage if the degree and duration of risks at a facility or group of facilities warrants a higher level of coverage and to extend the nonsudden requirement to treatment and storage facilities that pose risks of nonsudden damage.

Many of these changes reflect EPA's commitment to rely to the extent possible on the insurance industry to provide liability coverage for hazardous waste management facilities. EPA believes that liability insurance is the most appropriate mechanism for assuring the public that there will be a pool of funds available from which third parties can seek compensation for claims arising from the operations of hazardous waste management facilities. On the other hand, EPA recognizes that liability coverage for these facilities, particularly for nonsudden occurrences, poses special problems to the insurance industry because of the lack of experience with a regulated waste management industry and the potential hazards associated with managing hazardous wastes. These problems may jeopardize the wide availability of liability insurance to the regulated community.

By phasing in the nonsudden requirement over 3 years, starting initially with larger firms which the Agency believes can more readily obtain nonsudden coverage, and by requiring a minimum level of coverage that EPA believes will protect human health and the environment and allow smaller insurers to provide the required coverage, EPA is seeking to encourage a broad market for nonsudden liability coverage. EPA intends to monitor the implementation of the nonsudden insurance requirement during the phase-in period, and will consider steps to increase the availability of nonsudden coverage or alternatives to an insurance requirement if it appears that the insurance industry is unable to provide the required coverage.

The changes in these final regulations also reflect EPA's wish to extend protection to the public during the interim status period. EPA had not previously included a nonsudden liability requirement in the interim status standards since it believed that liability insurance for nonsudden events during interim status would not be available. Recent discussions with the insurance industry indicate that nonsudden coverage will be offered to interim status facilities, but it will take several years for the industry to respond fully to the demand for this coverage. The insurance industry has indicated that several of the larger waste management firms already have nonsudden coverage, and that larger firms will, in general, be able to obtain this coverage more readily than smaller firms.

EPA believes that the benefits of requiring nonsudden coverage during interim status are substantial. Many commenters pointed out that interim status facilities pose risks of nonsudden accident that are the same or even greater than that posed by permitted facilities. Other commenters argued that the insurance industry, through its routine inspection and monitoring practices, would provide valuable oversight of hazardous waste management facilities during the interim status period, when EPA itself will be devoting the bulk of its resources to issuing facility permits. EPA agrees with these comments.

In preparing these final liability requirements, EPA has reconsidered both the amount and type of coverage required for hazardous waste management facilities in its effort to tailor regulations consistent with the degree and duration of risks associated with the ownership and operation of these facilities. Many commenters objected to EPA's initial proposal of $5 million liability coverage per occurrence, arguing that this amount was too high and did not reflect the risks posed by their operations. Other

commenters stated that their storage or treatment operations posed no risk of nonsudden accident.

EPA's analysis of damage cases involving waste management facilities confirms that $5 million coverage may be too high in many instances, and that surface impoundments, landfills, and land treatment facilities pose the greatest threat of nonsudden accident. These final regulations require $1 million per occurrence coverage for sudden events and $3 million per occurrence coverage for nonsudden events, and limit the nonsudden requirement to surface impoundments, landfills, and land treatment facilities (e.g., the same facilities for which ground-water monitoring is required). The Agency believes that the degree and duration of risks associated with waste management facilities, with very few exceptions, necessitates at least the amount of liability coverage required by these regulations. Hence, while EPA has included a variance in both the interim status and general standards for owners or operators who demonstrate that the level and type of required coverage are inconsistent with the degree and duration or risks associated with their facilities, EPA expects that very few facilities will be eligible for such a variance. The burden of proving that such a variance is warranted will be on the owner or operator requesting it. To some extent, variations in degree and duration of risk will be reflected in the premiums charged by insurance companies.

The Agency recognizes that many facilities may pose risks that warrant higher levels of liability coverage than the minimum level required. Also, some treatment and storage facilities may pose nonsudden risks. The final regulations therefore allow the Regional Administrator to make upward adjustments of the level of required coverage and to extend the nonsudden requirement to a treatment or storge facility. In making these adjustments, the Regional Administrator will take into consideration factors such as the type of wastes being handled at the facility, the nature of the treatment, storage, or disposal operation, the proximity of the facility to population centers, the quantity and use of ground water underlying the facility, and the number of facilities covered by one insurance policy. Furthermore, EPA intends to evaluate the level of coverage as experience with a regulated waste management industry accumulates. The Agency believes the $1 million/$2 million level for sudden accidents and $3 million/$6 million for nonsudden accidents are proper starting points but may consider revising the required levels if experience or inflation seem to warrant such revisions.

Several other changes are also incorporated into the final liability requirements. EPA had previously proposed limiting the allowable deductible in an owner's or operator's insurance policy. The final regulations set no limit on the deductible but instead require an agreement by the insurer, through an EPA-approved policy endorsement, that the insurer will pay honored claims within the limits of the policy. This allows the insurer and the insured to negotiate a deductible under which the insured will reimburse the insurer for claims paid but assures the public that "first-dollar" coverage will be available regardless of the financial condition of the insured.

EPA had also previously proposed self-insurance requirements for permitted facilities which limited self-insurance to 10 percent of equity; no self-insurance provisions were included in the proposed interim status liability requirements. EPA reevaluated these proposals and is now considering self-insurance provisions for inclusion in both the interim status and general standards. EPA expects to decide whether to add self-insurance provisions to the liability requirements within several months. If self-insurance provisions are adopted, EPA intends to adjust their effective date to make it conform to the effective date of the liability reqirements published today.

Finally, the Agency requests comments on several potential issues in the liability requirements. These issues concern the limits of coverage of liability policies as defined by the exclusions in the policies. EPA has reviewed several insurance policies which could be used to satisfy the requirements of these regulations and finds that the policies typically exclude certain events or damages from coverage. These exclusions may include liability respecting genetic damage and liability arising from noncompliance (either knowing or unknowing) with applicable laws, rules, or regulations. The Agency is concerned that these exclusions may significantly limit the scope of coverage of the policies, and requests comments on whether EPA should allow such exclusions in policies obtained to satisfy the requirements of these regulations.

10. *Incapacity of Issuing Institutions.* A section was added to the final regulations (§§ 264.148 and 265.148) to make clear what must be done by the owner or operator when the institution issuing a bond, letter of credit, or insurance policy goes bankrupt or is otherwise incapacitated. The owner or operator is required to obtain other financial assurance or liability coverage within 60 days.

11. *Applicability of State Financial Requirements.* The Agency recognizes that differences between State and Federal financial responsibility requirements might result in duplication and unnecessary costs to owners and operators. In those States that receive authorization to operate a hazardous waste regulatory program in lieu of the Federal program, there will be no duplication since only the State's requirements would apply. However, in those States which have not obtained Federal authorization, the owners and operators would be subject to Federal hazardous waste regulations and also to any State hazardous waste regulations that are in effect. To avoid unnecessary duplication and costs, the Agency included a section in the reproposed regulations (§ 265.149) that allows owners or operators to use State mechanisms to meet the Federal financial requirements if such mechanisms provide assurances that are substantially equivalent to those of mechanisms specified in the Federal requirements.

The Agency has retained this provision in the final regulations with several changes. Where the owner or operator was allowed to use "State-authorized" mechanisms, the term has been changed to "State-required." This means that the owner or operator may use a State mechanism if that is required by the State; if he has the option to meet the State requirements by using mechanisms specified in these regulations, he must use that option. This change will reduce the burden upon EPA to evaluate various mechanisms allowed by States to determine their equivalence to Federal mechanisms. Another change was the addition of a requirement that evidence of the establishment of a State-required mechanism be sent to the Regional Administrator so that the Agency could review the adequacy of these mechanisms. Inclusion of a reporting requirement was overlooked in the reproposal. A third change was substitution of "equivalent to or greater than" for "substantially equivalent" in referring to the financial assurance that the State mechanisms must provide. The Agency intends that they should not be less effective than the EPA-specified mechanisms and has decided that the revised wording better conveys this intent.

12. *State Assumption of Reponsibility.* In the May 19, 1980, proposal, if a State assumed legal responsibility for an owner's or operator's compliance with the closure or post-closure requirements or liability requirements or assured that funds would be available to cover such requirements, the owner or operator would be in compliance with the requirements if the State's assurances were substantially equivalent to meeting the requirements. The owner or operator had to send a letter to the Regional Administrator describing such guarantees and citing the State regulations providing for the guarantees. These provisions were part of the section covering applicability of State financial requirements. Since the State guarantee is potentially an important mechanism, and does not belong under the heading for State financial requirements, the State guarantee provisions have been put into a separate section (§§ 264.150 and 265.150). In the final regulations, the notification to EPA that the facility is coverd by a State guarantee must be signed by the State agency rather than the owner or operator, to save the need for verification by EPA. "Substantially equivalent" has been changed to "equivalent to or exceed" to make it clear that the degree of assurance should be no less than that provided by the other mechanisms allowed by these regulations.

D. Subpart I—Containers

The container management regulations promulgated on May 19, 1980 included only interim status rules. The general requirements promulgated today include the same requirements as the interim status regulations. The rationale for their inclusion is as discussed in the May 19, 1980 Preamble and in the Background Document published in support of the May 19 regulations. Some minor changes have been made in the course of making the interim status standards part of the general requirements. In some cases, the Agency plans to make the same changes to the interim status requirements.

In addition to counterparts to the interim status standards, the general regulations include containment requirements and a closure provision. These are discussed in the following paragraphs in the same sequence they appear in the regulations.

1. *Applicability* (§ 264.170). On November 25, 1980 the Agency amended the Part 261 requirements (45 FR 78524–78529) to clarify when and to what extent empty containers are hazardous wastes. This was done largely by incorporating what had been widely scattered provisions into a new § 261.7. Basically, this amendment says that the residues left in a container, when it has been emptied in accordance with specified procedures, are not considered to be hazardous wastes. Thus, these residues and the containers (drums, etc.) which hold them are not subject to these Part 264 requirements.

The interim status requirements published May 19, 1980 contained a comment referring to the provisions of Part 261. It was located at the end of § 265.173 on the management of containers. The Part 264 counterpart of that requirement has been modified to reference the new § 261.7 and it has been located in § 264.170, the applicability section. Since it discusses a limit on which containers the Subpart I regulations are effective, it belongs more appropriately in the applicability section. The Agency plans to make similar changes to the interim status comment currently in § 265.173.

2. *Condition of Containers* (§ 264.171). This regulation requires that hazardous wastes be taken out of leaking or corroding containers and that they be recontainerized or otherwise appropriately handled. This is designed to avoid releases to the environment.

EPA believes that a design standard for containers would be a useful addition to or replacement for this performance standard. The present regulation is general which may lead to inconsistent interpretations of the term "good condition". A design standard should be easier to interpret.

The Agency believes also that the requirements for design of containers specified in the Department of Transportation regulations for transportation of hazardous materials may be appropriate for purposes of waste storage as well (See 49 CFR 171 through 179). Some of these DOT requirements are already incorporated in the hazardous waste packaging requirements (§ 262.30) for generators who will ship wastes offsite. Before applying the DOT requirements for containers to permitted storage facilities, however, EPA wishes to examine more closely the appropriateness of the various DOT requirements for containers which will not be transported.

EPA invites comments on the suitability of the current standard, on the concept of replacing it with appropriate DOT requirements, on the applicability of the various DOT requirements, and on any other suggestions for improving this requirement.

3. *Containment* (§ 264.175). As discussed in the "General Issues" of this Preamble (Section III B), the regulations for storage facilities, of which container storage areas are one type, require a primary containment device, an inspection program where practical to detect leaks and deterioration, and where primary containment devices are easily damaged or difficult to inspect, a secondary containment system. In container storage, the container itself provides primary containment, i.e., it holds the waste, preventing escape. In this regard it serves the same purpose as a tank, the liner to a surface impoundment, and the concrete pad or other device underlying a pile. Secondly, it is practical to inspect container storage areas to detect leaks, excessive corrosion, or damage to containers so that wastes can be recontainerized before the damaged container fails, or, failing that, the escaped wastes can be cleaned up before they disperse widely into the environment.

In comparison to a tank, however, it is relatively easy to damage drums and most other kinds of containers. Containers are relatively thin-walled, can be punctured by fork lift trucks, and are prone to break open when dropped or knocked over. They tend to corrode or otherwise deteriorate relatively rapidly both from the inside as a result of reaction with the waste, and from the outside as a result of exposure to the environment. The Agency believes therefore, that it is prudent to require a secondary containment system under container storage areas. The containment system will catch leaks, spills, container failures, and precipitation which becomes contaminated, and hold it while its hazardousness can be determined.

Specifically, the containment system must have a base underlying the containers which is sufficiently impervious and continuous to hold spilled or leaked wastes or accumulated rainfall until it can be removed. Typically, the Agency believes this base will be constructed of concrete or asphalt but latitude has been incoporated to allow for other materials of construction. The important consideration is that the containment system in its entirety be capable of collecting and holding escaped wastes and contaminated precipitation.

EPA believes it unwise to allow drums or other containers to stand in accumulated rainfall, or leaked or spilled wastes. This leads to accelerated deterioration of the containers and interferes with inspections. The containment regulations therefore require that the base be sloped or otherwise designed to drain to a

collection system so that one hour after a leak or storm, no standing liquid (puddles) will remain on the base in contact with the container. Typical construction consists of gentle sloping, often with grooves, to facilitate drainage to gutters or trenches which serve either to hold the liquids or conduct them to a sump or tank where they are held until they can be tested to determine if they are a hazardous waste. The Agency realizes, however, that it is common practice, especially in small storage areas, to place containers on pallets so that the containers do not sit directly on the base. In this case, since the containers do not sit in the accumulated liquid, a drainage and external collection system is not necessary. This alternative is allowed provided of course that the liquids collected on the base would not rise to contact the containers. This constitutes a simpler type collection system in which liquids accumulate directly on the base, normally contained by a concrete curb. Of course, some provision must be made for removing the collected liquids from time to time.

Whether the collection system is external to the base or part of it, it must have sufficient capacity equal to ten percent of the capacity of the maximum number of containers holding liquids which may be stored at the facility at any one time. In the case of a few large containers, the capacity must equal the largest container. The Agency does not believe it necessary to provide containment capacity for all or even nearly all of the many containers which may be present. Short of a major disaster, it is unlikely that more than a few would be damaged at once or simultaneously begin to leak. This does not of course hold true where only a few or perhaps only one container is present. Since the rupture of only one container could be more than the required 10% of capacity, the containment device must be designed to hold the contents of the largest container. The Agency will be monitoring the adequacy of the 10% rule and, if it should prove to be insufficiently protective, will propose modifications as may be warranted by experience.

The regulations also require that precipitation drainage (run-on) into the containment system be prevented, unless the collection system has the excess capacity to handle it. The purpose of this requirement is to minimize overload of the secondary containment system and containment overflow. In addition, any spilled or leaked waste and accumulated precipitation is required to be removed from the collection area as quickly as is necessary to prevent overflow. Overflow of the containment system is simply not permissible unless it has been determined that the overflow is not a hazardous waste. Whether run-on may enter the containment area depends on the capacity of the collection system, the frequency at which the waste can be removed, the magnitude of rainfall events, and the geography of the drainage area. Where an owner or operator desires to allow run-on, a judgement will be made during permit application review concerning the capability of the collection system to handle it.

The proposed requirements of December 18, 1978 stipulated that each storage area have an impervious and continuous base (§ 250.44(e)), and that container storage areas be equipped with a spill confinement structure (§ 250.44–2(c)). The proposed standards also stated that the Regional Administrator could require ground-water monitoring if he determined there was a potential for discharge (§ 250.44(d)).

In response to comments, the Agency has deleted the proposed ground-water monitoring requirement from the General Standards. The Agency believes that the performance standard of § 264.171, the inspection standard of § 264.174, and the containment system of § 264.175, which requires that base and collection system be sufficiently impervious to contain the waste, will prevent leakage to the groundwater making a ground-water monitoring program superfluous.

Commenters suggested an exemption from the containment requirement for existing facilities claiming that it is unpractical to construct containment structures under existing containers. The Agency believes that since containers are portable and can be moved while a base is constructed, the requirement does not place an unreasonable technical or economic burden on existing facilities. Therefore, no exemptions for existing facilities have been provided.

Several commenters argued that containment was unnecessary since containers are constructed of sturdy "impermeable" material. The Agency believes that spills and leaks due to corrosion or damage in handling will occur at most container storage areas. The Agency knows of many instances where leaking and damaged containers have been stored with apparent disregard for the impact of such practices. Compliance with Subpart I should mitigate these practices. Without secondary containment, such leaks and spills runoff to surface waters or trickle through permeable soil to ground-water.

4. *Compatibility* (§§ 264.172 and 264.177). A new paragraph (c) has been to the § 264.17 basic compatibility requirements which is in addition to the comparable interim status requirements of Part 265. It requires that owners and operators have documentation that they are complying with the compatibility requirements of § 264.17 (a) and (b). It also indicates that trial tests, waste analyses, literature reviews and similar activities my be necessary to develop this documentation.

A comment has been added to § 264.177 alerting the reader to the documentation requirement of § 264.17(c). A similar comment will be added to § 265.177 when a new companion section is issued (§ 265.17(c)) for interim status.

Both §§ 264.172 and 264.177 deal with incompatibility—both the incompatibility of a waste with a container which can cause accelerated corrosion and premature failure and the incompatibility of wastes with each other which can cause dangerous emissions, violent reactions, fires, explosions, and other undesirable and uncontrolled reactions. A number of commenters asked for clarification, pointing out that all materials corrode or undergo only mild reactions at reduced concentrations, and so on. These commenters wanted to know the limits—how rapid must corrosion be before it is too rapid, how violent a reaction is too violent.

The Agency has not been able to place numerical limits on incompatibility; there are too many variables. Thus, some judgment is involved. In considering the incompatibility of wastes with containers, it is the Agency's intent that the waste not react with the materials of construction of the container at a rate which would cause the container to fail before the waste is scheduled for removal. This is not only a variable situation but is difficult to predict. The Agency believes, however, that with common sense and a little elementary chemistry, most people can avoid serious incompatibility problems which would lead to rapid failure. It is these noticeable and dangerously accelerated reactions that the Agency is addressing in § 264.172.

With regard to two or more incompatible wastes, the situation is also not clear cut. As concentrations diminish, for example, the reaction rates decrease until it is questionable whether a hazard is posed. By reference to § 264.17(b), § 264.177 refers to the generic requirement for ignitable,

reactive, and incompatible wastes. By using the terms "extreme," "violent," and "uncontrolled," § 264.17(b) indicates unusual or severe reactions. By use of the term "threaten human health," § 264.177(b) indicates that the reaction must, to some real extent, pose a hazard. In the gray areas, the exercise of judgment is unavoidable.

The Agency is developing guidance which will provide assistance to the permitting officials and the regulated community in assessing waste compatibility.

5. *Closure.* No specific closure standard under Subpart I (Part 265) was promulgated on May 19, 1980. The general closure standard (Part 265, Subpart G) is applicable, however. It requires that wastes be removed from storage facilities at closure and that structures and equipment be disposed of or decontaminated (§ 265.114). However, for purposes of clarification and to be consistent with the closure requirements of tanks (Subpart J), for which specific closure requirements were promulgated on May 19, closure standard specific to container facilities has been added to Part 264. The Agency plans to add the same specific requirements to Part 265 as well.

The rules promulgated today require that all hazardous wastes and hazardous waste residues be removed from the containment system. If any liners, bases or any other areas of the containment system cannot be decontaminated, they must be removed. In addition, any contaminated soil surrounding or in the vicinity of the containment system must also be removed or decontaminated.

E. Subpart J—Tanks

In December 1978, EPA proposed rules for storage of hazardous waste in tanks. In May 1980, EPA promulgated interim status regulations for treatement and storage of hazardous waste in tanks (Part 265, Subpart J). Today, EPA is promulgating general (permit) standards for tanks (Part 264, Subpart J). The interim status requirements for tanks will be finalized later. The Agency is currently working to develop general standards for chemical, physical and biological (C/P/B) treatment. Several of the Part 264 C/P/B treatment requirements may be applicable to treatment in tanks.

The following preamble discussion explains the Part 264 requirements for tanks in the order that they appear in Subpart J. All of Subpart J is being promulgated as an interim final rule and comments are requested. In addition, throughout this section of the preamble comments are requested on major issues and proposals. For example, the Agency is requesting comments on a ban on underground tanks, options for secondary containment, options for requiring cathodic protection, and a proposal for banning the use of tanks located in the ground water. The Agency requests that comments include adequate information, data, and explanations to support positions taken.

1. *Applicability* (§ 264.190). The general standards for tanks being promulgated today (Part 264, Subpart J) do not apply to facilities that treat or store hazardous waste in covered underground tanks that cannot be entered for inspection. The requirements do apply to partially or fully below-ground tanks which can be entered for inspection from the surface. EPA is considering a complete ban on treating or storing hazardous waste in underground tanks which cannot be entered for inspection. The Agency knows of several damage cases where leaks in underground tanks have remained undetected for years. In another damage case, the rupture of an underground tank resulted in the release of over 100,000 gallons of sodium cyanide to the surrounding area contaminating nearby surface and ground water. The Agency knows of no sure method for preventing such disasters in underground tanks that cannot be entered for inspection. The Agency solicits comment on the option of banning the use of such tanks for storage or treatment of hazardous waste. EPA requests that commenters opposed to such a ban provide evidence that adequate methods exist for protecting underground tanks from corrosion or erosion, inspecting underground tanks, and detecting and containing leaks from underground tanks. EPA also solicits information on the current use of underground tanks to treat and store hazardous waste and the means used to ensure ground-water protection. Until the Agency promulgates a final rule pertaining to underground tanks, hazardous waste facilities with existing underground tanks may continue to operate under interim status, but existing and new covered underground tanks cannot receive RCRA permits.

2. *Design of tanks* (§ 264.191). The Agency has adopted a three part strategy for regulating hazardous waste storage: (1) proper design and operation for primary containment, (2) inspections to assure the integrity of primary containment, and (3) secondary containment. The following discussion relates to the § 264.191 design requirements for tanks. Operating requirements, inspections, and secondary containment will be addressed later in this preamble.

The RCRA standards for storage in tanks proposed in December 1978 included a requirement that tanks be of sturdy and leak-proof construction in accordance with the Occupational Safety and Health Administration regulations for storage of flammable and combustible liquids (29 CFR § 1910.106). Commenters stated that OSHA's requirements applied only to storage of flammable and combustible liquids and hence EPA's application of the requirements to other hazardous materials was inappropriate. In addition, EPA's current definition of tanks includes concrete and fiberglass tanks whereas the OSHA requirements are oriented toward steel tanks. EPA agrees with the comment that a requirement for "leak-proof" construction is vague and unrealistic given the effects of long term corrosion and erosion. Therefore, the requirement has been substantially revised.

The current standard states that tanks must have sufficient shell strength and, for closed tanks, pressure controls (e.g., vents) to assure that they do not collapse or rupture. The Regional Administrator will establish a minimum tank shell thickness in the permit which must be maintained by the owner or operator. In establishing this requirement, the Regional Administrator will consider available information, which in most cases will include published industrial design standards. The Regional Administrator will also use design standards in evaluating the overall design of the tank. The Regional Administrator will evaluate such items as the foundation and structural support of the tank, pressure controls (e.g., vents), and tightness of seams. The owner or operator will submit information as to the design used (or to be used) in constructing the tank as part of the permit application. He may do so by reference to a published design standard. Design standards for steel tanks have been published by the American Petroleum Institute, Underwriters Laboratories, and American Society of Mechanical Engineers. Design specifications for concrete tanks have been published by the American Concrete Institute. When a design standard is not available, the Regional Administrator will rely on any other available engineering information in establishing a minimum thickness for the tank shell and in evaluating the design of the tank. In making such determinations, the Regional Administrator will consider the height,

width, and materials of construction of the tank and the specific gravity of the waste which will be placed in the tank in establishing a minimum thickness. These factors are normally specified in industrial design standards.

The owner or operator is expected to maintain the minimum shell thickness specified by the Regional Administrator throughout the operating life of the tank. There are several options from which the owner or operator can choose for maintaining shell thickness:

(1) Design the tank with shell thickness in excess of that specified by the Regional Administrator and monitor any wall thinning to ensure that the original margin for corrosion or erosion is not exceeded,

(2) Line, coat or otherwise protect the tank in a manner which would prevent wall thinning due to corrosion or erosion, or

(3) Place only those wastes or materials in the tank which will not corrode, erode, or abrade the walls of the tank.

Regardless of the option chosen by the owner or operator, periodic inspections are required to under § 264.194(b) to verify compliance with the § 264.191 requirements.

3. *General operating requirements* (§ 264.192). In May 1980, EPA requested comments on the propriety of including the general operating requirements (§ 265.192) as interim status standards. Comments were received on both the § 265.192(b) compatibility requirement and the § 265.192(c) freeboard requirement.

Commenters stated that the requirement that wastes and treatment reagents not corrode the tank (§ 265.192(b)) was unreasonable since some corrosion was expected in the normal use of the tank. In response to these comments, EPA has substantially reworded the comparable § 264.192 requirement to clarify that incompatible reactions (such as accelerated corrosion) or other type of deterioration (such as erosion of concrete tanks) are to be prevented through the use of coatings, liners or other means of protection (§ 264.192(a)).

Comments stated that the 2 foot freeboard requirement for uncovered tanks (§ 265.192(c)) was too inflexible and, in some instances, unnecessary. In response to these comments, the Agency has revised the comparable § 264.192 requirement to stipulate that the owner or operator must maintain sufficient freeboard to prevent overtopping due to wind or wave action or precipitation. In addition, the interim status requirement for waste feed cutoff or by-pass systems (§ 265.192(d)) has been reworded to become a general requirement for prevention of overfilling (§ 264.192(b)).

The May 1980 interim status requirement that treatment and storage of hazardous waste in tanks be in compliance with § 265.17(b) has not been included in Part 264 since it was redundant with the §§ 264.198 and 264.199 requirements.

EPA intends to make similar revisions to the § 265.192 requirements later.

4. *Waste analysis and trial tests.* In May 1980, EPA requested comment on the propriety of including the waste analysis and trial test requirement (§ 265.193) in the interim status standards. Commenters stated that the requirement was too inflexible in that it required trial tests whenever a new waste was stored or treated, or a new treatment process used, if documented information on similar treatment or storage was not available. Commenters felt engineering judgment should be used in deciding whether trial tests are necessary.

The Agency disagrees that engineering judgment alone is sufficient in such cases. EPA has concluded, however, that detailed waste analysis could provide enough information to make trial tests unnecessary in some cases. Therefore, the Agency has not included a specific waste analysis and trial test requirement in the Part 264 tank standards. Rather a requirement has been included in the § 264.17 standard for treatment, storage, and disposal of ignitable, reactive, and incompatible wastes which require documentation, waste analyses, or trial tests as necessary to assure compliance with that Section. In addition, § 264.13 requires that the owner or operator conduct sufficient waste analyses to obtain all information needed to comply with the requirements of Part 264. Comments have been added to §§ 264.198 and 264.199 to remind the reader of the §§ 264.13 and 264.17 requirements. EPA intends to make similar revisions to Part 265, Subpart J, at a future date.

5. *Inspections* (§ 264.194). The general standard for routine inspections (§ 264.194(a)) is nearly identical to the § 265.194(a) interim status requirement. However, several technical revisions have been made to provide consistency with the § 264.192 operating requirements. The words "discharge control equipment" found in § 265.194(a)(1) have been changed to "overfilling control equipment" to reflect the fact that discharge control equipment is not mentioned in § 264.192. The § 265.194(a)(5) requirements for inspection of discharge containment structures has been reworded in § 264.194(a) to require inspections of areas immediately surrounding the tank, since discharge confinement structures are not mentioned in § 264.192.

The Agency has clarified that the § 264.194(a)(4) requirement for inspection of the tank applies only to above-ground portions of the tank. The Agency intends to make similar revisions to the § 265.194 requirements in the future.

In addition, a more detailed new requirement has been added to ensure that owners and operators periodically assess the condition of their tanks to locate leaks and cracks not detectable through a routine inspection of the exterior of the tank and to assure compliance with the tank design requirement (§ 264.191). As part of these comprehensive inspections, the owner or operator will measure the thickness of the tank at representative points. These measurements can be made using a variety of ultrasonic devices which are currently on the market. In most cases, the tank must be emptied for internal inspection. The frequency of these inspections is to be based on the owner's or operator's determination as to the rate of possible deterioration of the tank. As specified in the requirement, the material of construction of the tank, type of corrosion or erosion protection used, and the characteristics of the waste being stored are the factors to be considered in making this determination. The Regional Administrator will review the schedule and procedures for these comprehensive inspections as part of the inspection schedule required under § 264.15(b).

Paragraph (c) of § 264.194 requires that the owner or operator specify in the contingency plan required under Subpart D of Part 264 procedures and timing for expenditious removal of leaked or spilled waste and repair of the tank. The paragraph (c) requirement is necessary to assure that owners or operators are prepared and able to respond to tank spills and leakage in a manner which will minimize human health and environmental damage.

A comment has been added to § 264.194 which notifies the reader that § 264.15(c) requires that all deficiencies detected during inspections be remedied.

A standard which is similar to the § 264.194(b) requirement is proposed elsewhere in today's Federal Register for interim status.

6. *Closure* (§ 264.197). The interim status requirement for closing tank facilities (§ 265.197) was promulgated as a final rule on May 19, 1980. An identical

standard has been incorporated in the general standards for tanks (§ 264.197). The rationale for its inclusion in the Part 264 general standards is the same as the rationale presented on May 19, 1980 for inclusion in the interim status standards.

7. *Ignitable, Reactive, and Incompatible Wastes* (§§ 264.198 & 264.199). The interim status requirements for treatment and storage of ignitable and reactive wastes in tanks (§ 265.198) were promulgated as an interim final rule on May 19, 1980; no comments were received.

Requirements identical to those contained in §§ 265.198 and 265.199 for ignitable, reactive, and incompatible wastes have been included in the general standards (§§ 264.198 and 264.199). The rationale for their inclusion in the Part 264 general standards is the same as the rationale presented on May 19, 1980 for inclusion in the interim status standards. Comments have been added under §§ 264.198 and 264.199 notifying the reader that waste analyses or trial tests must be conducted under §§ 264.13 and 264.17 to ensure compliance with requirements pertaining to ignitable, reactive, and incompatible wastes, or documented evidence must be provided on similar storage or treatment of similar wastes. As required by the § 264.73 operating record requirements, results of waste analyses and trial tests and documented information must be placed in the operating record.

EPA intends to amend §§ 265.198 and 265.199 with similar comments at a future date.

8. *Secondary Containment.* The standards proposed on December 18, 1978 included requirements that storage areas have impervious, continuous bases (§ 250.44(e)) and that above-ground tanks be equipped with spill confinement structures (e.g., diking systems) (§ 250.44–1(b)).

Several commenters stated that a secondary containment system with an impervious base is unnecessary since tanks are constructed of sturdy, impermeable materials.

In response to these comments, the Agency knows of numerous damage cases which show that tanks are subject to leaks, caused by stress cracks, corrosion or erosion, and spills caused by careless addition of waste to the tank or plumbing misconnections and failures. The Agency has specified tank design, operating, and inspection requirements as the first line of defense against discharges from tanks. However, EPA believes that secondary containment for tanks may also be necessary to adequately protect human health and the environment in some circumstances.

EPA is not promulgating secondary containment requirements today. However, EPA is currently considering several options for secondary containment for tanks. These options are discussed below. EPA requests comments on the need for and effectiveness of each of these options in protecting human health and the environment, on their technical and economic feasibility, and on other alternatives. Based on the comments received, EPA intends to propose secondary containment requirements for tanks as an addition to Part 264 in the future. The options are:

(1) Complete containment. Under this option, the secondary containment system would consist of an impervious base underlying the tank(s) in the storage area. The system would be required to have adequate capacity to contain the volume of the largest tank in the storage area. The purpose of this system would be to completely contain all spills and leaks until they are removed. This option is similar to the requirements proposed in December 1978, and applies primarily to above-ground tanks. Complete containment for partially or fully buried tanks would consist of a double shell, or a liner and leachate detection, collection, and removal system under the tank.

(2) Variable containment. Under this option the owner or operator would submit a plan for secondary containment which would provide varying levels of containment based on the likelihood of a spill or leak in any given area of the facility. Such a plan would normally provide for impervious ground areas in the vicinity of valves, pumps, and pipe attachments, and in some situations, around the base of the tank. An impervious base underlying the tank would not normally be a part of such a plan. The purpose of this option would be to contain the large majority of spills and leaks which are most likely to occur around valves, pumps, and plumbing fixtures. However, this option would not provide containment of spills caused by tank rupture or of leaks occurring through tanks bottoms or below-ground portions of tank shells. This option could, however, be required in conjunction with option 3 to provide increased protection.

(3) Run-off collection for containment of catastrophic failures. The secondary containment system would consist of a diking or drainage system with the capacity to contain the volume of the largest tank in the storage area. The system would not include an impervious base and would not protect ground water from leaks and spills. The purpose of this system would be to prevent waste spilled in a major tank failure from traveling across the surface to surrounding areas or surface waters.

9. *Tanks in the Water Table.* EPA is considering a ban on the storage or treatment of hazardous waste in tanks placed in the water table. Past experience demonstrates that leaks caused by corrosion or erosion occur with much higher frequency in tanks placed in the ground water. Internal inspection of tanks placed in the ground water is nearly impossible since a tank so placed will often float when emptied. In addition, the risk of significant ground-water contamination due to a leak is substantially increased if waste is being discharged directly to the ground water. EPA believes there is no compelling reason why hazardous waste storage or treatment tanks should be placed in the water table.

Comments are requested on this issue. The Agency particularly requests comments pertaining to the impact of this approach in geographical areas with water tables close to the land surface. EPA suggests that commenters opposed to the ban provide human health and environmental justifications, as well as economic justifications, for their position. EPA further suggests that actual examples be used, when possible, to support comments on this issue.

10. *Cathodic Protection.* Two general systems of cathodic protection for steel tanks are currently in use. In the sacrificial anode system a magnesium anode is connected in circuit with the structure which hence becomes the cathode. Since the loss of metal ions (corrosion) occurs at the anodic area, the structure is protected. Sacrificial anode systems are useful in protecting coated tanks but are limited by their low driving voltage and hence may not be effective in protecting uncoated tanks. Impressed current (or rectifier) systems use a power supply to cause current to flow through the soil to the structure. Impressed current systems require substantially higher initial expenditures than sacrificial anode systems.

Corrosion protection through coatings and cathodic protection is generally used only when structures are subject to corrosive conditions. Soils are generally considered corrosive if they possess a resistivity of less than 10,000 ohm-cm. Other factors, such as pH, moisture content, and sulfide content, also affect corrosivity.

EPA is considering requiring cathodic protection for steel tanks which are partially buried in corrosive soil. The Agency requests information on: (1) cathodic protection systems which have

proven effective for partially buried tanks, (2) specific criteria to be used in determining when such systems are necessary, and (3) design standards for cathodic protection systems and for tanks equipped with cathodic protection.

11. *Air Emissions.* A proposed requirement for controlling air emissions from tanks (§ 264.200) is discussed in a separate part of this Federal Register.

F. Subpart K—Surface Impoundments

Today's publication of regulations for surface impoundments under Subpart K of Part 264 is applicable to a limited sub-set of the facilities which are defined as surface impoundments in § 260.10. That sub-set is those surface impoundments which are or have been designed to prevent discharge into the land and ground water, and to surface waters (except discharges authorized by an NPDES permit). Additional regulations will be published in the future to cover surface impoundments which may discharge into the land and ground water, and surface impoundments which are to be closed with waste left in place. The scope of the coverage of these regulations is explained in the discussion of § 264.220, Applicability. Owners and operators of new surface impoundments that are not designed to prevent discharge into the land to comply with this Subpart cannot obtain a RCRA permit, and existing surface impoundments that are not brought into compliance with these regulations must remain on interim status subject to Subpart K of Part 265 until amendments are published in the future.

These regulations are the basis for permits to be issued by the Agency to owners and operators of surface impoundments who apply by filing Part B of the RCRA permit application in accordance with § 122.25.

On May 19, 1980, the Agency published interim status standards for surface impoundments as Subpart K of Part 265. Comments received on that promulgation have been useful in preparing these regulations and will be referenced as appropriate. Comments received on the initial regulations proposed on December 18, 1978 (43 FR 58982–59016) are also discussed. Additional discussions of the regulation and the comments are contained in the background documents.

1. *Regulatory Approach.* Surface impoundments (also known as pits, ponds, or lagoons) are designed to hold liquid wastes and wastes containing free liquids. Leakage to ground water generally poses the most serious threat to human health and the environment from impoundments, but air emissions from volatile wastes and surface water contamination as a result of overtopping the impoundment or dike failure can also be serious problems.

Today's promulgation addresses ground water and surface water concerns. The general approach, as discussed earlier in the preamble, is to require primary containment and inspection, and where inspections cannot be readily or reliably performed, a secondary containment system. The Agency is still working on a regulatory approach to air emissions from surface impoundments.

Surface water concerns are addressed by standards which prohibit overtopping the impoundment, require maintenance of a specified freeboard, require that the structural integrity of dikes be certified by a qualified engineer and preserved by protection from perennial woody plants and burrowing mammals and by protective cover, and require inspections at specified frequencies. In addition, the regulations require a device or method to shut off waste flow into the impoundment, and the diversion of run-on away from impoundments. Above ground secondary containment is not required and inspection is used to ensure that actual or potential discharge is readily identified and corrected.

Ground water concerns are addressed by standards which require: a primary liner system in contact with the waste which is designed to prevent discharge from the impoundment during the life (i.e., active life and closure period) of the facility, which meets certain performance requirements, and which is inspected and tested as appropriate during construction and installation. A leachate detection, collection, and removal system beneath the primary liner system is also required to detect failure of the primary liner system and to prevent discharge into the land. This system must be inspected at least once each operating day and operated to remove any liquids which accumulate in it. A containment system evaluation and repair plan to be implemented in the event of a liner failure or evidence of a possible liner failure must also be prepared.

2. *Applicability* (§ 264.220) The substance of this section has been discussed in previous paragraphs. In Part 264, EPA has decided to address surface impoundments in two separate promulgations: (1) surface impoundments which are used for storage, or storage and treatment, and (2) surface impoundments which are disposal facilities. In the context of this discussion the terms storage and disposal are used with respect to the land. A surface impoundment used "to treat or store hazardous waste" might discharge to the air or the surface waters (if authorized by an NPDES permit), but may not discharge into the land or through the land into ground water.

This distinction is being made in Part 264 in order to facilitate the permitting and regulation of the nonleaking impoundments which are functionally equivalent to tanks (and basins). The regulation of land disposal facilities is more complex than storage facilities, especially with respect to ground water protection and monitoring, post-closure care, and closure and post-closure financial responsibility. The Agency is actively working on the Part 264 regulations to address disposal into the land.

3. *General Design Requirements* (§ 264.221). This section of the regulations addresses the design requirements for (1) freeboard, (2) waste in-flow shut off systems, and (3) liners and leachate detection, collection, and removal systems. The first and third requirements are discussed later in the preamble under sections with these titles.

The purpose of the waste in-flow shut off system is to enable the flow of waste into the impoundment to be immediately stopped in the event of overtopping or liner failure, as required in § 264.227(c)(1). The method or device available for flow control depends on how wastes are deposited in the impoundment. For example, if the flow is by batch delivery, then the cessation of furthur deliveries is sufficient. If the flow is by gravity flow or via an automatic feed system, whether continuous or intermittent (e.g., pipes, open channels, hoses, conveyors, or other similar conveyance systems), then a cut-off device (e.g., a valve or gate) must be available to immediately cut off flow into or divert flow from the impoundment.

4. *General Operating Requirements* (§ 264.222). This section of the regulation addresses operating requirements for (1) overtopping and freeboard, (2) leachate detection, collection, and removal systems, (3) protection of earthen dikes, and (4) run-on diversion. The first two requirements are discussed later in the preamble.

Many perennial woody plants have root systems which displace earthen materials and can weaken dikes or berms. Of particular concern are woody plants (bushes and trees) which may be uprooted because of wind, snow, or saturated soil conditions, thereby destroying sections of the dike. Burrowing mammals (e.g., rats, moles, woodchucks, and ground hogs) can also

displace earthen materials upon which the structural integrity of the dike is dependent, or create channels through which liquid wastes or leachate can escape or leak, or rainwater can be channeled causing further erosion and weakening of the dike. For earthen dikes with grass covers, mowing is one of the most effective means of controlling woody plants. Mowing also makes the presence of burrowing mammals obvious so that they can be controlled and eliminated by trapping or poisoning. If burrowing mammals are controlled on a continuing basis, they will not have the opportunity to create large burrows which would require extensive remedial action to ensure the integrity of the dike. A requirement for weekly inspection of dikes and berms is included in § 264.226(b)(2).

Paragraph (e) requires that run-on be diverted away from surface impoundments. Some surface impoundments are excavated into the ground and therefore do not have raised dikes for structural support. If this is the case and the surrounding topography is such that run-on may flow into the impoundment; culverts, ditches, or other devices such as berms must be built and maintained to divert run-on away from the impoundment. Where dikes are used they can serve to divert run-on, but they must be protected from erosion.

5. *Containment Systems* (§ 264.223). This Section of the regulations addresses requirements for (1) earthern dikes and (2) liners and leachate detection, collection, and removal systems. These are discussed later in this preamble.

As in the Part 265 regulations, earthen dikes must have a protective cover to minimize wind and water erosion and to preserve the structural integrity of the dike. Three examples of materials (i.e. grass, shale, or rock) that could be used as a protective cover are suggested in the regulation.

6. *Inspections and Testing* (§ 264.226). This Section of the regulations addresses inspections of (1) liner systems during installation or construction (including testing), (2) overtopping, freeboard, liner, and leachate detection systems at least once each operating day at facilities which contain free liquids, (3) dikes and berms at least once a week, and (4) the structural integrity of any dike prior to the impoundment being placed or returned to service in terms of the ability of the dike to withstand liquid pressures and the weakening effect of earthen materials being scoured due to leakage.

Since the liner system in contact with waste is the primary containment device, and since the effective operation of the leachate detection, collection, and removal system is dependent on the liner beneath it, it is very important that liner systems be inspected and tested during construction and installation to ensure that they are properly installed and are free of damage and imperfections. Such quality control has proven invaluable in identifying or ensuring against liner problems at numerous installations. Items such as holes, cracks, thin spots, foreign materials, seams and joints, and tears or blisters can be identified by visual inspection during construction or installation. Testing for thin spots, foreign materials, and seams and joints may also be necessary depending on the type of liner installed or constructed. Earth material liners must be tested after emplacement for compaction density, moisture content, and permeability. Such testing may have to be repeated before the impoundment is placed in service to ensure that the materials will function as expected. An example would be a clay liner system. Clay is quite impermeable when it is saturated with water, but is pervious and tends to crack when dry. These items, which are listed in the regulations, have all been frequently identified as critical factors in determining how well various types of liner systems perform as containment devices. They, as well as additional installation and construction concerns, are discussed in detail in the EPA report "Lining of Waste Impoundment and Disposal Facilities", SW/870, September 1980. This report also references other sources of information including that available from the manufacturers of liner materials.

As in the Part 265 regulations, inspections must be performed to check for adequate freeboard to avoid overtopping, and for evidence of overtopping at least once each operating day. This inspection is only required in Part 264 when the impoundment contains free liquids. Impoundments which contain liquids or sludges containing free liquids or which are exposed to precipitation all contain free liquids at least part of the year. Facilities protected from precipitation and which do not contain liquids or sludges containing free liquids, empty facilities, or facilities located in high evaporation and low rainfall areas may not contain free liquids during portions of the year.

Part 264 also requires daily inspection of the leachate detection, collection, and removal system for the free flowing condition of the collection system and for the presence of liquids which could indicate liner failure. Failure to maintain a free flowing condition in the collection system by removing leachate or other liquids that collect in the system as they accumulate could create backwater in the collection system. Backwater, or the creation of hydraulic head above the liner beneath the collection system, would impair the efficiency of the containment system. The presence of liquids in the collection system could indicate primary liner system failure, or other impoundment failure such as ground water entering the leachate detection, collection, and removal system. If liquids do appear in the leachate detection, collection, and removal system, it must be determined whether or not that appearance is an indication of a failure of the containment system. The means by which this will be determined must be defined in the containment system evaluation and repair plan required by paragraph (d) of § 264.227.

As in the Part 265 regulations, the impoundment including dikes and vegetation surrounding the dike must be inspected at least once a week. Berms has been added in Part 264 to the listing of the types of structures which must be inspected. A requirement for inspections "after storms" has also been added. This provision for inspections after storms is considered necessary since storm events could place additional stress on the dikes, berms, and vegetative cover. In addition, the phrase "to detect any leaks, deterioration, or failures in the impoundment" has been modified in Part 264 to read "to detect any evidence of or potential for leaks from the impoundment and erosion of dikes." Often, one of the first indications of a leak from an impoundment is a change in the character of the surrounding vegetation (flourishing or dying plants) resulting from additional moisture, nutrients, or phytotoxic elements in contact with the root zone. This type of change is observable and can be recognized as evidence of a potential leak long before the leak itself is observable. Dikes and berms are also to be inspected at least once a week for evidence of perennial woody plants and burrowing mammals (i.e., for compliance with § 264.222(d)). One of the most effective inspection techniques for grass covered earthen dikes and berms is a mowing program which automatically controls woody plants and makes the presence of burrowing mammals apparent.

Although the liner system provides for primary containment in a surface impoundment, the support (base) for the

liner provides the structural integrity. For those impoundments which are not excavated in the ground, dikes are required to support the liner on the sides of the impoundment. An earthen dike, since it serves to impound the liquid behind it, is structurally and functionally equivalent to an earthen dam.

The design of earthen dams is a well developed art within the practice of engineering. The main elements of design to prevent structural failure are based on the resistance provided by the mass of the dike to the force exerted by the pressure head of the liquid behind the dike and the systems provided in the dike to avoid weakening of the dike due to scouring caused by the passage of liquids through it.

Paragraph (c) of this Section calls for a certification of the structural integrity of dikes by a qualified engineer. Such a certification would require the engineer to be familiar with the design and construction of the dike.

The required certification must establish that the structural integrity of the dike will be maintained even in the absence of a liner system and if the liner were breached. Both of these conditions could arise in an impoundment, and it would be under such circumstances that a dike would be most prone to massive failure.

Earthen dikes in direct contact with the liquid they impound cannot be constructed to be perfectly tight (i.e., impervious) and under such circumstances, liquid will seep through all earthen dikes. This seepage, unless carefully controlled by design, will tend to scour the downgradient face of the dike structure causing it to slough. If the velocity of the escaping liquid is sufficient to dislodge and carry soil grains away, channels of flow will develop (called piping). Liner leakage resulting in scouring and piping could lead to massive failure.

The elements of design and construction to avoid scouring and piping involve the type and placement of materials used to construct the dike. The interior of the dike (the core) and the lowermost exterior portion of the dike (the toe) may be constructed of different materials or with different methods of placement. Cores may be present or absent depending on the size of the dike and the forces it must withstand. Cores are often designed to be less pervious than the bulk of the dike to control the pattern of seepage flow. Cut-off walls (i.e., a core emplaced or extended into the natural base beneath the dike) are also sometimes used to direct seepage flow within the dike or base.

There are a number of techniques which are commonly used to reduce the flow velocity of escaping liquids at the toe of a dam or dike (where flow lines tend to merge increasing flow velocity) below that which could scour the materials of which the impounding structure is constructed. One of the most common is to use rock to construct the toe. Flow net analysis is usually used to estimate flow velocity through the dike taking into account the relative perviousness of the dike structure and core, the base on which it is built, and the toe design.

The initial certification may require extensive analysis for large dikes or be quite simple for small dikes. It requires professional attention. Once the initial certification has been made, recertification (even of large dikes) should be quite simple requiring only a verification that changes have not occurred. Certification is required at the time of permit issuance or reissuance and in the event of a "positive indication" of a failure requiring the surface impoundment to be removed from service.

7. *Containment System Repairs: Contingency Plans* (§ 264.227). This Section requires remedial action in the event a surface impoundment containment system fails or seems likely to fail. Action may be initiated by observations during inspections, testing of liner materials, or known occurrences which could compromise the integrity of the system. Appropriate remedial action will vary with circumstances, and the regulation requires that a containment system evaluation or repair plan be prepared and submitted with Part B of the RCRA permit application, as part of the contingency plan required by Subpart D.

Two types of remedial response are required. The first is a maintenance type of response, which must be detailed in the plan, that is to be initiated in the event of any indication of a possible failure or a situation which could be expected to cause or lead to a failure. The second is an emergency response to a positive indication of a failure. The regulation requires the impoundment to be removed from service upon a positive indication of a failure.

The appearance of liquids in the system does not necessarily mean failure of the liner. With some designs (e.g. soil liners), some liquid can be expected to appear in the system. The amount and characteristics of the liquid which would indicate failure would depend on the liner system design. Expected amounts and quality of liquids over time, and levels which would indicate failure, must be described in the remedial action plan.

In the regulation, a distinction is made between liquids and waste. The term waste is used to describe the appearance of liquids which are derived from the waste (leachate) and waste which is not attenuated by passage through the liner system. If leachate appears in the detection system, it is an indication that the containment life of the system has expired and the impoundment must be removed from service. If unattenuated waste appears in the system, it would be a positive indication of liner system failure and emergency response would be triggered.

Liquids which appear in the detection system may not be leachate (i.e., not derived from the waste). Liquids could appear as they are displaced from the primary liner system as waste (leachate) migrates through the liner. Liquids could also appear as a result of ground water migrating through the bottom liner below the leachate detection, collection, and removal system. This could occur in some circumstances even if the ground water table did not rise above the liner. Liquid could also enter the system laterally and derive from rainwater infiltration. The distinction between liquids and waste is not precise as a matter of regulatory language, and the distinction must be established by testing any liquids which do appear. The testing program, which can be expected to vary with the type of waste being handled, must be specified in the containment system evaluation and repair plan.

Once an impoundment has been removed from service, the regulation requires a complete repair and a certification by a qualified engineer that the system has been restored to meet the approved design specifications.

8. *Closure* (§ 264.227). Since these regulations address only those surface impoundments which will not discharge into the land (i.e., those which treat or store hazardous waste) closure logically requires the removal of hazardous waste and hazardous waste residues. Most of the comments received on proposed § 250.45–3(e) are applicable to surface impoundments which discharge into the land, and will, therefore, be addressed when regulations applicable to impoundments which may leak are promulgated. Some relevant comments were received regarding the impracticality of removing waste and waste residues from large impoundments, and the proposed requirement to fill emptied impoundments with inert material.

Although a large impoundment may present special problems (e.g., machinery may have to be placed on the impoundment liner at closure) the

Agency believes that these problems are not insurmountable and that the inherent benefits which accrue by removing all waste and waste residues is justified for surface impoundments used for storage and treatment. Since all hazardous wastes and residues must be removed at closure, the requirement for inert fill material has been dropped in these regulations.

Section 264.228 specifically requires the removal of all hazardous waste and hazardous waste residues at closure from the impoundment, containment systems components, and appurtenant equipment and structures. This means the above mentioned system components and appurtenant equipment and structures must be either decontaminated or removed and handled as a waste which is presumed to be hazardous unless it is established that it is not.

Closure with wastes left in the impoundment is not allowed in the regulations promulgated today, but will be addressed in surface impoundment regulations yet to be promulgated by the Agency.

9. *Special Requirements for Ignitable or Reactive Waste.* (§ 264.229). Section 264.229 prohibits the placement of ignitable or reactive wastes in a surface impoundment, unless the waste is made non-ignitable or non-reactive as defined in §§ 261.21 and 261.23 while also complying with § 265.17(b). An exception provided for in the regulations is an impoundment that is used solely for emergencies. In addition, § 264.229 allows the placement of ignitable or reactive waste in a surface impoundment if the waste is protected from ignition or reaction.

Ignitable or reactive wastes require continuing protection from conditions which would cause them to ignite or react. One important factor is that in a surface impoundment mixing of wastes is inherent. Unless such wastes are rendered non-ignitable or non-reactive, the operator of a surface impoundment may find it difficult to properly manage such wastes in a surface impoundment. Reactive wastes may be especially difficult to manage since surface impoundments are directly exposed to the environment. Some surface impoundments are operated to concentrate and collect floating oils that may be ignitable. Such practices are acceptable in protected surface impoundments when ignition sources will not be present. Consequently, the Agency will allow the management of ignitable or reactive wastes in surface impoundments that are protected from any material or conditions which may cause them to ignite or react.

10. *Special Requirements for Incompatible Wastes.* (§ 264.230). This Section of the regulation is identical to § 265.230 promulgated on May 19, 1980. The potential dangers from the mixing of incompatible wastes include extreme heat, fire, explosion, violent reaction, production of toxic mists, fumes, dusts, or gases, and damage to the structural integrity of the surface impoundment. Clearly the potential impacts on human health or the environment which could result from such conditions must be avoided.

11. *Freeboard.* Section 264.221 requires that a surface impoundment be designed to provide at least 60 centimeters (2 feet) of freeboard, or a specified amount of freeboard of other than 60 centimeters, if this specified amount is documented to be sufficient to prevent overtopping. The amount of freeboard provided must prevent overtopping under all conditions of operation and be specified in the permit by the Regional Administrator.

The strong trend towards the use of a 2-foot freeboard in designing surface impoundments is demonstrated by the fact that this requirement is included in at least six State regulations and in several engineering texts and handbooks as recommended practice. The Agency received numerous comments on the May 19, 1980 regulations concerning freeboard and thus has reconsidered the issue of freeboard. The Agency has decided that, in some cases, surface impoundments with less than 60 centimeters of freeboard would not be overtopped and thereby be in compliance with the objective of the regulation.

Some of the factors that may reduce the likelihood of overtopping and justify an alternative to the 60 centimeters freeboard requirement for surface impoundments are: size and shape which reduces susceptible to significant wind action; strength and direction of wind and the amounts of precipitation (average and maximum) at the location of the surface impoundment; depth and shape of the edge of impoundment, which influence wave action; and the presence of interior baffles to minimize the effect of wind and waves. These types of factors may be addressed in documenting the adequacy of freeboard under the alternative in § 264.221(a)(2). In applying for a permit specifying a freeboard of other than 60 centimeters, the owner or operator must document the adequacy of the alternative by engineering calculations which address the factors specified in § 264.222(a). As mentioned in the May 19 preamble (45 FR 33202), the Agency feels level controls should be used in conjunction with, not in place of, minimum freeboard to assure no overtopping. The Agency still maintains this attitude.

The Agency believes that not preventing the overtopping of surface impoundments and relying on an above ground secondary containment system to collect liquid which overtops a dike is undesirable and unnecessary. Control problems associated with overtopping and secondary containment devices include: the random locations where overtopping could occur due to wind action necessitating peripheral collection systems around the entire facility rather than at the location of discrete pipes or weirs; splashing of overtopping liquids; potential adverse impact due to erosion caused by overtopping liquids on the structural integrity of the dike; and the difficulty of ensuring that a secondary containment device is of adequate capacity and would be sufficiently impermeable to collect and contain all overtopping.

12. *Liners and Leachate Detection, Collection, and Removal Systems.* Liner systems are the key element necessary to achieve containment. Liner systems are required both above and beneath the leachate detection, collection, and removal system. These systems must be collectively designed, operated, and maintained in a manner which will prevent any discharge of waste or leachate into the land during the life of the impoundment. The design life of the primary liner system must exceed the period of time that hazardous wastes and hazardous waste residues will remain in the impoundment. Since wastes and residues must be removed from the impoundment at closure, this means the life of the impoundment ends when wastes are removed at closure. In designing the primary liner system and applying for a permit, the owner or operator must state the estimated life of the impoundment (i.e., the year when all wastes and residues will be removed from the impoundment) as part of the closure plan and demonstrate that the liner will contain the wastes (i.e., prevent waste leakage or discharge) for that period. For soil liners or admixed liners (e.g., Portland cement concrete, bituminous concrete, soil cement, etc.) this means predicting the flow rate through the material. Since impoundments contain liquid wastes, this prediction must be based on saturated flow. Such a prediction can be made according to Darcy's law. Darcy's law was derived to express the relationship between the hydraulic gradient and the velocity of water flowing through uniform sands. As

applied to evaluate liner systems, it is a function of three measurable factors: the thickness of the liner, the saturated permeability of the liner (which will vary with the viscosity of the waste), and the hydraulic head of the waste. Although not applicable to surface impoundments containing free liquids, predictions may also be made for leachate migration due to capillary action under unsaturated conditions. When synthetic membrane liners are used, which cannot be evaluated by application of Darcy's law, the owner or operator must provide test data or documented information to show long-term stability of the liner under the conditions to which they will be exposed. The resistence of membrane liners to deterioration depends on their compatibility with the waste or leachate and other conditions (e.g., ultraviolet or sunlight exposure). Design information is available in two EPA reports. They are SW/870, "Lining of Waste Impoundment and Disposal Facilities"; and SW/869 "Landfill and Surface Impoundment Performance Evaluation".

The liner systems must meet some general performance standards specified in § 264.223(c). These standards are a departure from the detailed design specifications contained in the December 18, 1978, proposed regulations (43 FR 59011–13). In response to comments, the Agency has developed regulations which are performance rather than design oriented in order to provide flexibility. Advancement in the state-of-the-art evidenced by the above referenced publications indicate that design flexibility and performance oriented standards are an appropriate approach.

The leachate detection, collection, and removal system must be located above the water table. The primary purpose of the system is to detect and contain leachate which migrates through or breaches the primary liner. The system includes a liner system beneath the collection system to ensure that the system will function effectively and prevent discharge into the land. The system therefore functions as a secondary containment system in the event the primary containment system fails. The system must be located above the water table to protect the integrity of the liner beneath the collection system which could be breached or floated (displaced) by ground water and to ensure that large volumes of ground water will not enter the detection system and mask the presence of leachate. This type of system will allow the detection of leachate or waste due to liner failure early enough to enable early repair or emptying of the impoundment and the prevention of discharge into the land. The Agency believes this is a good general design to meet the objective of hazardous waste storage or treatment and storage in surface impoundments.

The standard prohibiting wastes which react adversely with the liner(s) uses the plural parenthetically to refer to reactivity with all liners used in the containment system.

13. *Waste Analysis and Trial Tests.* As discussed in the preamble to the May 19, 1980 regulations, the purpose of the waste analysis requirements for surface impoundments (§ 265.225) was the same as for tanks (§ 265.193). That purpose is described as being to prevent accidents and haphazard experimentation with new wastes or new treatment techniques. The commenters on the May 19, 1980 promulgation regarded the requirements as too detailed while also being redundant with § 265.13. The Agency agrees with respect to the general standards and believes that the addition of § 264.17(c), coupled with the general waste analysis requirements of § 264.13, adequately cover this matter. Thus, as is the case with waste piles and tanks, a specific waste analysis provision for surface impoundments used for storage or treatment is now redundant, and no such provision is included in the Part 264 general standards.

G. Subpart L—Waste Piles

Since the proposed RCRA Subtitle C regulations of December 1978 contained no specific requirements for waste piles, the Part 265, Subpart L, interim status standards published in May of 1980 were promulgated on an interim final basis, with the exception of § 265.250, Applicability. Comments were therefore solicited on the waste pile regulations, but few were received. No comments were received on the requirements respecting protection from wind (§ 265.251), waste analysis (§ 265.252), ignitable or reactive waste (§ 265.256), and incompatible wastes (§ 265.257). Accordingly, the Agency intends to finalize §§ 265.251, 265.256, and 265.257 without change. Section 265.252 will be deleted as discussed below.

Most of the interim status requirements are being adopted as general standards in Part 264. The rationale for their inclusion is the same as for the interim status regulations as discussed in the May 19, 1980 publication and associated background documents. Some changes were made to the containment requirements (§ 264.253), and requirements for general design (§ 264.251), general operation (§ 264.252), base inspections during installation (§ 264.254), containment system repairs (§ 264.255), and closure (§ 264.258) have been added. In addition, regulations specifically relating to periodic inspections of piles are being proposed separately as an addition to the general standards and the interim status standards (§§ 264.254 and 265.254).

The regulations for which comments were received, or which were added or modified, are discussed below. A discussion of the proposed periodic inspection standards for waste piles is given elsewhere in this Federal Register.

1. *Applicability* (§ 264.250). The general standard for applicability of the waste pile requirements (§ 264.250) is similar to the interim status provision, except that the alternative for managing a pile of hazardous waste as a landfill under Subpart N has been deleted. This alternative was deleted because: (1) the Part 264, Subpart N, landfill standards are not being promulgated at this time, and (2) the Agency wants to emphasize that these Part 264, Subpart L, regulations deal only with storage and treatment practices in waste piles, and thus that such waste piles require containment.

A comment to this section points out, however, that the Agency intends to supplement these regulations in the future to address other types of waste piles including piles that are not designed and operated to prevent discharge and piles that are closed with waste left in place. The Agency believes these types of waste piles constitute disposal rather than storage or treatment, and are best dealt with under an engineering analysis approach. Meanwhile, until additional regulations are promulgated, all waste piles that are authorized by permit must comply with the Part 264, Subpart L, regulations promulgated today.

The interim status standard for applicability of the waste pile requirements (§ 265.250) was promulgated as a final rule, and no comments were solicited. Nonetheless, some comments on this rule were received.

Commenters maintained that since some waste piles are very small and are held for very short periods of time (frequently less than two weeks), both inside and outside buildings, that these piles should be exempt from the requirements of Subpart L of Part 265, and from the permit requirements of RCRA Subtitle C or at a minimum that these piles should be conditionally exempt just as containerized or tanked waste stored for less than 90 days is conditionally exempt under § 262.34 (Accumulation Time).

The Agency disagrees with the commenters' position that the volume, location or length of storage of waste piles merits an exemption from the requirements of Subpart L. The volume or location of hazardous waste treated, stored, or disposed is not a factor in the applicability of any of the RCRA Subtitle C treatment, storage, or disposal standards unless the waste is produced by a small quantity generator. There is no environmental basis for making such a distinction that is not inherently arbitrary.

The Agency continues to believe that short-term accumulation of hazardous waste in piles is fundamentally different than similar accumulation in containers or tanks. Section 262.34 specifies that hazardous wastes stored for less than ninety days may be exempt from the permit requirements of RCRA Subtitle C if they are containerized, among other things. This containerization controls release of hazardous substances and allows for relatively easy inspection for leaks. Piles do not provide this same level of protection. Even though it might initially appear that piles stored inside buildings might be "containerized" and therefore not subject to such impacts as wind dispersal, precipitation, and run-on, this is not necessarily the case. For example, a "building" may not be fully enclosed—it may not have a roof or may only have three sides. A pile stored in such a "building" would, therefore, be subject to both wind dispersal and precipitation. In addition, the ventilation systems of many buildings might allow waste that is in a particulate form to be picked up from the pile and circulated throughout the building. This could present a hazard to worker health and to the environment.

Further, the Agency feels that waste stored in piles could result in leaching or run-off of hazardous waste, hazardous waste constituents, or hazardous waste by-products from decomposition even in the absence of precipitation and run-on, and regardless of waste pile location or duration of storage.

Finally, the Agency sees no need for the exemption from RCRA Subtitle C permits, as requested. The commenters may have assumed that a separate permit would be required for each pile. However, this is not the case. All storage locations at a given facility can be covered with a single permit. Thus, the permit requirements are not burdensome, as was claimed by the commenters.

2. *Objectives and Organization.* In keeping with the storage concept (as discussed earlier in this preamble), the Agency believes that storage or treatment of hazardous waste in piles authorized by permit should be conducted in a manner that prevents discharge into the land, surface water, and ground water during the life of the pile. Hazardous waste, hazardous waste constituents, or hazardous waste by-products from decomposition can be discharged from a waste pile into the land, surface water, or ground water via (1) wind dispersal, (2) water erosion caused by precipitation or run-on, (3) leachate or run-off entering the soil beneath or around a pile, or (4) leachate or run-off moving along the land surface. The first two discharge mechanisms are addressed by general design and operating requirements (§§ 264.251, and 264.252). The last two discharge mechanisms are specifically addressed by containment systems requirements (§ 264.253). Thus, these Part 264 waste pile regulations are structured somewhat differently than the comparable interim status standards in order to clarify the objectives of the regulations, and also to improve their consistency with other Subparts.

3. *General Design Requirements* (§ 264.251). The Part 264 general design requirements for waste piles state the objectives to be achieved by the pile design. These objectives are (1) to control dispersal of the waste by wind, where necessary, or by water erosion (e.g., by windstorms, precipitation, or run-on), and (2) to prevent discharge into the land, surface water, or ground water during the life of the pile.

The Agency anticipates that the owner or operator of a waste pile will design the pile to meet these requirements, and submit the design information to the Regional Administrator with Part B of his permit application for review, modification as necessary, and final determination as part of the permit process. For example, the owner or operator must, where necessary, include wind dispersal controls (such as enclosing the pile in a shed) in the waste pile design. Every waste pile design must include provisions for controlling dispersal of waste by precipitation, run-on, or other water erosion (e.g., a wall, berm, or dike). The second design requirement is to be achieved by use of a containment system as specified in § 264.253 (see discussion on "Containment Systems" below).

As noted earlier, the Agency intends to supplement these waste pile design requirements in the future to address other types of waste piles including piles that are not designed to prevent discharge and piles that are closed with waste left in place.

4. *General Operating Requirements* (§ 264.252). The Part 264 general operating requirements for waste piles are: (1) to control wind dispersal of waste where necessary, (2) to divert run-on away from the pile, and (3) to collect and control leachate and run-off from the pile. Two of these operating requirements were included in other sections of the interim status standards and are merely transferred. The control of wind dispersal (§ 264.252(a)) is comparable to the interim status requirement for protection from wind (§ 265.251), but worded differently because the Agency anticipates that the Regional Administrator will impose specific control practices (e.g., cover or frequent wetting) as permit conditions, where necessary. The requirement to divert run-on away from a waste pile (§ 264.252(b)) is required for either option in the interim status containment provision (§ 265.253).

The operating requirement that leachate and run-off from a waste pile must be collected and controlled (§ 264.252(c)) derives from the containment objective of these Part 264 standards. Although there may be rare situations where the leachate or run-off from a pile of hazardous waste is not itself a hazardous waste and thus where uncontrolled discharges from the pile may be allowed, or situations where hazardous leachate or run-off may be discharged in a manner that protects human health or the environment, such cases are properly the subject of the supplemental Part 264 waste pile regulations to be issued in the future, as mentioned earlier. Until these additional regulations are promulgated, all waste piles that are authorized by permit must collect and control leachate and run-off from the pile. The owner or operator must then determine whether or not the leachate or run-off is a hazardous waste and manage it accordingly.

5. *Containment Systems* (§ 264.253). Under these Part 264 rules, storage and treatment of hazardous waste in both new and existing piles requires both primary containment designed to prevent discharges into the land, surface water, or ground water during the life of the pile and inspection to ensure integrity of the primary containment. The Agency believes that secondary containment is not necessary for waste piles on the premise that free liquids do not typically or routinely impose a significant hydraulic head on the primary containment system. The potential for major discharge through the primary containment system is, therefore, significantly reduced.

The specific requirements for containment in piles are to collect and control leachate and run-off prior to

their removal, and to place the pile on a base that will prevent leachate and run-off from entering the soil beneath or around a pile. Two options are provided for the pile base, as discussed below.

Commenters on the interim final Part 265 waste pile containment rule (§ 265.253) aruged that the prevention of run-on should not be required if leachate and run-off are collected. The Agency disagrees. The Agency continues to feel that it is important to prevent run-on to waste piles even if leachate and run-off are collected, in order to ensure that leachate or run-off collection systems will not be overloaded and that the pile will not be washed out in the event of a major storm. It is probable in any event that part of the leachate and run-off collection system (i.e., the curb, wall, or dike) will also prevent run-on, thereby minimizing the cost of preventing run-on.

The first waste pile base option requires a sturdy base underlying and in contact with the waste pile that is made of a liner (or liners) that will prevent discharge into the land, surface water, or ground water during the life of the pile. To comply with this requirement, the base material(s) and design must be based on the liner(s) thickness, the permeability of the liner(s), and the characteristics of the waste or leachate to which the liner(s) will be exposed. Further, the liner(s) must be of sufficient strength and thickness to prevent failure due to puncture, cracking, tearing, or other physical damage from equipment used to place waste in or on the pile, or to clean and expose the liner surface for inspection.

The material(s) and design for this waste pile base option have not been specified in order to provide flexibility to the pile owner or operator. The major difference between this base option and the alternate discussed below is the ability of the base to accommodate periodic removal of the waste pile to allow inspection of the liner surface. Given that heavy equipment (e.g., bulldozers or front-end loaders) may have to be used for waste pile removal, the Agency expects that in many cases this base option will consist of reinforced concrete with appropriate coating(s) or synthetic membrane liner(s), to prevent leachate seepage. The Agency does not believe that natural or compacted soil liners provide an adequate base for hazardous waste piles. A compacted clay liner, for example, must be saturated to provide waste containment. In a waste pile, a clay liner would not be in contact with liquids at all times, as it would be in a surface impoundment, and thus would be likely to dry out, crack, and lose its containment properties.

The second waste pile base option is included primarily to accommodate those situations where it is impractical to remove the waste periodically to allow inspection of the liner surface. The base in contact with waste must be designed to prevent discharge as in the first option, but a leachate detection, collection, and removal system is also required beneath the base to detect, contain, collect, and remove any discharge from the base. The leachate detection, collection, and removal system is not intended to be part of the primary containment system, but rather a substitute for periodic inspection of the base. Further discussion of liners coupled with a leachate detection, collection, and removal system can be found in the preamble section on surface impoundments.

Section 264.253(b) amplifies the requirements for waste pile base materials and specifies that the base foundation must be capable of supporting the loads placed or moving on the base to prevent failure of the liner(s) due to settlement or compression.

Section 264.253(c) specifies that the waste pile containment system (including the base and the leachate and run-off control system) must be protected from plant growth (such as woody plants or trees) which could puncture any component of the system, and thereby provide an avenue for discharge.

Lastly, § 264.253(d) specifies that a containment system must have a containment life equal to or greater than the life of the pile. Given that many waste piles may be removed periodically for inspecting the base or for other purposes, the Agency intends that components of the containment system, such as the base coating(s) or liner(s), can be replaced during the life of the pile if this is necessary.

6. *Inspections and Testing* (§ 264.254). Inspection of the primary containment system for piles was not included in the RCRA Subtitle C rules proposed in December 1978, nor specifically included in the Part 265, Subpart L, requirements promulgated on May 19, 1980. The Agency believes periodic inspection and testing requirements for waste pile containment systems should be specified explicitly, since neither a secondary containment system nor ground-water monitoring is required for waste piles. Periodic inspection and testing of the waste pile base necessarily involves removing the waste from the base. This would be a significant new regulatory requirement. Therefore, the Agency has proposed these rules elsewhere in todays Federal Register for both Parts 264 and 265.

The Agency also believes that the waste pile base should be inspected during its construction or installation to detect imperfections and damage, and, for manufactured liner materials, to ensure tight seams and joints, so that the base will in fact contain waste when placed on it. While such an inspection makes sense and is commonly done, the Agency believes the requirement should be made explicit in the regulations due to its importance. Further, the Agency believes this requirement for inspecting the waste pile base during construction or installation is not burdensome. Therefore, the requirement is being promulgated in Part 264 as an interim final rule under § 264.254(a). The Agency solicits comment on this rule, and on its potential inclusion in the Part 265 interim status standards.

7. *Containment System Repairs: Contingency Plans* (§ 264.255). In addition to inspecting the waste pile base during its construction or installation, and periodic inspections of the containment system, the Agency believes the containment system should be inspected whenever there is any indication of its possible failure. Further, whenever there is a positive indication of containment system failure, the waste pile should be removed from service, and its containment system should be repaired immediately, or the waste pile should be closed.

Consequently, the Agency has included a requirement for remedial action (§ 264.255) in accordance with a previously prepared contingency plan whenever a waste pile containment system fails or seems likely to fail. This requirement for waste piles is a direct analog to a similar requirement for surface impoundment containment systems (§ 264.227), and the same rationale and conditions generally apply. Therefore, the reader is directed to the discussion of § 264.227 in the preamble section of Subpart K, surface impoundments, for futher explanation of this requirement.

8. *Closure* (§ 264.258). Under interim status, there are no specific regulations for the closure of waste pile facilities, although the topic was discussed in the preamble to Subpart L. The general closure standard (Part 265, Subpart G) requiring that wastes be removed from storage facilities at closure (§ 265.113(a)), was applicable. This fact was perhaps not obvious to the regulated community. For purposes of clarification, a closure requirement specific to waste piles (§ 264.258) has now been added to the Part 264 general

standards. The new provision explicitly requires the removal of waste piles and pile residues at closure. Any component of the containment system containing or contaminated with hazardous waste or residues must be decontaminated or removed. The Agency intends to include a similar provision in the interim status standards.

9. *Waste Analysis.* As noted in the preamble to the May 19, 1980 rule, the basic purpose of the interim status standard for waste analysis for waste piles (§ 265.252) is to prevent inadvertent mixing of incompatible wastes in piles and to assure that ignitable or reactive wastes are protected from sources of ignition. The Agency believes that the addition of § 264.17(c), coupled with the general waste analysis requirements under § 264.13, adequately covers this matter. Thus, a specific waste analysis provision for piles is now redundant, and no such provision is included in the Part 264 general standards. EPA intends to delete § 265.252 from the interim status standards for the same reasons.

H. Permitting Requirements

EPA is promulgating changes to the consolidated permit regulations under 40 CFR Part 122, Subpart B. The changes reflect today's promulgation of facility standards under Part 264. The revisions to the Part 122 regulations are issued on an interim final basis. Public comment is solicited on the provisions of these regulations.

Most of the modifications included in this publication are in § 122.25 which deals with the information which must be submitted on Part B of the permit application. But minor changes have also been made to other sections of Part 122.

1. Permit Modification. (§§ 122.15 and 122.17). Section 122.15 has been modified by the addition of several grounds for permit modification which correspond to new closure and post-closure requirements in Part 264, Subpart G and new financial liability requirements in Part 264, Subpart H. Sections 264.112(b) and 264.118(b) require modification of closure plans whenever facility design or operator changes would effect closure or post-closure activities. The Director may determine under § 264.147(d) that a downward variance in the level of financial responsibility is applicable or under § 264.147(e) that an upward adjustment of the level of financial responsibility is required. In addition, prior to closure, an opportunity is provided in §§ 264.113 and 264.117 (a), (b), and (c) for the Director to extend the time allowed to close a facility to modify the post-closure period (which is 30 years unless modified by the Director), continue security requirements (which do not apply to the post-closure period unless explicitly made applicable, or allow disturbance of the integrity of the containment system. Several of these permit modifications have been designated in revised § 122.17(e) as minor modifications. See today's preamble discussion of Part 264, Subparts G and H for further information.

2. Application Requirements for Part B (§ 122.25). The proposed December, 1978 regulations identified six general information categories for inclusion in Part B of the permit application. These included a master plan for the facility, geological data, hydrological data, a description of the climate at the site, a list of position or job descriptions, and a list of performance bonds and other financial instruments.

The general approach created a great deal of confusion. Many commenters thought the Part B application requirements were vague and that costs to prepare Part B's will be excessive because they contain a lot of irrelevant information. There were comments questioning EPA's authority to request some of the information and recomendations that EPA better define which information items are required for specific types of facilities (e.g., incinerators).

EPA agreed with these comments and restructured the Part B information requirements. Each Part B information requirement is now tied to a standard in Part 264. Further, the structure of the Part B requirements now parallels the structure of the technical standards in that Section. The Part B requirements are structured into general requirements that apply to all facilities and specific requirements for individual types of facilities (e.g., tanks, piles, incinerators).

On May 19, 1980, EPA published a list of general Part B information requirements. The Part B information requirements being promulgated today include these requirements, expand the list of general information requirements, add specific information requirements for the types of facilities covered by the Part 264 standards being promulgated today. The Part B information requirements will be amended in the future as necessary to reflect additional standards in Part 264 at the time these standards are promulgated.

The proposed regulation indicated that the Part B information items listed in the regulation would be the minimum information that would be required in a Part B application. Commenters suggested that the regulation be amended to make it clear that the Part B items listed are all the information that is required and not minimum requirements. EPA agrees with the suggestion. Since the Part B requirements are now tailored to the Part 264 standards the information items listed in the regulation cover only those items necessary for EPA to determine whether the facility complies with those standards. Commenters also suggested that requests for additional information be limited to situations where the Agency needs additional information to clarify information previously submitted. The Agency agrees with this point. Section 124.3 provides that the Agency will limit requests for additional information to those situations where this additional information is essential for the Agency to complete its review of the permit application. For some of the Part 264 standards EPA will not be able to determine the extent of additional information that is needed until after it has reviewed the applicant's initial submittal. For example, where the Director finds that a facility did not use recognized design standards for tanks containing hazardous waste, as required under § 264.191, then the applicant may be required to provide additional information on the design, construction, operation, and maintenance of the tank.

One comment held that EPA can only request in Part B the more general information listed in Section 3005(b) of RCRA. The Agency disagrees. More detailed information is needed for the Agency to assess compliance with the Part 264 standards.

The proposed regulation required a topographic map with a scale of one inch equal to not more than 200 feet and a contour interval not greater than five feet for the area within one thousand feet of the boundaries of the facility. Commenters raised two points on this requirement. First, the regulations should be amended to allow flexibility in the contour intervals used. It was pointed out that in some areas, such as steep mountain areas, larger intervals should be used, otherwise the topographic map will be a solid black line. Second, a scale of one inch equals 200 feet is unreasonable for large facilities. The Agency agrees with the first point and the final regulations allow applicants to use reasonable contour levels in mountain areas. On the second point, one inch equal to not more than 200 feet has been retained as the general standard scale because the Agency believes this scale will provide a reasonable size map for most facilities. The Agency will allow the use of other scales on a case by case basis.

Recognizing that site specific conditions may vary, the regulations provide alternative means of demonstrating compliance with the location standards in § 264.18. For example, § 122.25(a)(11) may require information about the seismic activity of a site ranging from 3,000 feet from the site to a radius of five miles from the site. EPA intends to shortly make available a guidance/permitting manual which will provide greater detail on the study procedures identified.

In terms of floodplain data, comments suggesting the wide availability of maps showing the 100 year floodplain and the growing expertise in designing for the 100 year flood were factors that influenced EPA's decision to require, as a minimum, information about the 100 year floodplain rather that the 500 year floodplain as originally proposed. (For a more detailed discussion of the changes in the § 264.18 location standards see Section VII A–3 of this preamble).

There was a comment recommending that the Part B application be expanded to cover a discussion of alternative sites considered by the applicant, since some sites are clearly preferable to others. There is no specific requirement in RCRA for an analysis of alternative sites; rather EPA will pass judgment on the acceptability of proposed sites. EPA believes that its Part 122 and Part 264 regulations provide adequate protection for human health and the environment and that Agency analyses of alternative sites is neither within that Agency's mandate nor would it provide additional protection.

Section 122.12 requires that all permits be issued in a manner that is consistent with other Federal laws, such as the Endangered Species Act and the Coastal Zone Management Act. The Acts cited in § 122.12 place an affirmative duty on EPA to insure that the goals of each of the statutes, if applicable, are complied with in issuing RCRA permits. EPA believes that the best source of information to insure compliance with these Acts will be the permit applicant in many cases. Thus, the Part B information requirements include a provision [§ 122.25(a)(20)] that applicants may be required to submit information as may be necessary to enable EPA to carry out its duties to uphold other Federal laws. It is in the best interest of the applicant (1) to consider the potential impact of the facility on these special environmental areas, and (2) to provide, in the permit application, information on these environmental areas as stipulated in pertinent statutes, regulations, or guidance documents.

Commenters recommended that EPA require that the Part B application be prepared by or under the supervision of a registered professional engineer. EPA believes that this requirement is unnecessary since much of the information required in Part B does not warrant preparation or review of a registered professional engineer (for example, financial information, training information, and waste analysis plans). Rather, the final regulations have been amended to only require that certain technical data be certified by a registered professional engineer. The Agency expects, however, that many applicants will use a registered professional engineer to prepare or review the other Part B items even though it is not required by the regulations.

The proposed regulation contained provisions for the Director to waive certain Part B application requirements if the information was not applicable to the facility and was not needed to establish compliance with the Part 264 standards. The Agency received numerous comments and recommendations on how the waiver provision should be administered. Because the Part B requirements are now tailored to the Part 264 standards they become applicable only when the companion Part 264 standards are applicable. The Agency believes the waiver provision is no longer needed and it has been deleted from the final regulation.

The Agency recognizes there may be cases where applicants will not be able to provide all the Part B information that is required for their type of facility. For example, design plans and specifications or construction plans may be incomplete or non-existent for some existing facilities. Applicants must make a good faith effort to supply all of the necessary information. Applicants should explain why certain information cannot be supplied. In reviewing permit applications, EPA will take into account situations as described above in reaching a judgment as to whether the permit application is complete.

Several commenters expressed concern that six months might not be enough time to prepare and file some Part B information. There were other comments suggesting that EPA set time frames for submitting part B on a case by case basis and that time waivers for filing Part B be granted where there is good cause. Neither the proposed or final regulations limit the time for submitting Part B information. Both regulations provide for applicants to have at least six months to prepare their Part B. The Agency has reviewed each of the information requirements in the Part B information list and feels that none of the items should take longer than six months to prepare. The Agency will use six months as a general rule of thumb for preparation of Part B. Any applicant can explain in the permit application why it may take longer to submit certain pieces of information. EPA will allow extensions on a case by case basis. (EPA will be reluctant to allow extensions in cases where facilities are suspected of causing harm to human health or the environment).

One comment recommended that facilities be able to incorporate by reference information contained in permit applications for other facilities, where such facilities are substantially similar in design or operation. The Agency will allow applicants to do this on a case by case basis and only where the applicant demonstrates that the information to be referenced is available to the Agency and relevant to the facility under review.

Commenters suggested that EPA should articulate in the regulations the specific standards it will use in determining when a facility should file its Part B application. Commenters suggested that one of those standards should be the hazard posed by the facility. The Agency will use the following general priority policy for processing permit applications: potentially high risk existing facilities (i.e. those suspected of causing harm, located in sensitive areas, handling highly hazardous materials, or of suspect or novel design) and new facilities will be given the highest priority; the next priority will be existing facilities with potential for consolidated permits; followed by exemplary existing facilities (i.e. those thought to be in full compliance), and then all other existing facilities. Because there must be flexibility in this scheme to allow for adjustments based on the timing of the promulgation of the technical standards, Regional Office and State needs and problems, and resources or other factors, EPA probably will stray from strict implementation of this policy. Therefore, the Agency does not think the priority should be published as part of the regulation.

3. Permit Conditions (§ 122.29). Section 122.29 has been expanded to require that each RCRA permit specify the wastes or classes of wastes to be handled at the facility, a description of how they will be handled (i.e. what processes, methods, or units will be utilized), and the design capacities of each treatment, storage and disposal

unit. Section 122.24 (f) and (g) already requires that the applicant submit this information in Part A of the RCRA permit application. This amendment clarifies that the Director, when issuing a permit, specify these conditions in the permit. This specifically permits or allows the permittee to manage the wastes and quantities by the methods set forth in the application. The permit may, however, contain different wastes or amounts or methods of handling from those set forth in the application, based upon the Director's determinations, under the Parts 264 and 266 standards of acceptable practices.

Unlike tanks, land disposal facilities, and incinerators, containers may be adequately regulated without permit restrictions on the types of wastes to be handled in each particular container. Provided that the permittee complies with basic requirements such as the controls on mixing incompatible wastes and containers, he may, under the permit, store any waste in any containers. Section 122.29 requires only that the classes of wastes generally stored in containers at the facility be identified. This information will be useful in cases of emergencies.

VIII. Regulatory Analysis

In support of the regulations promulgated on May 19, 1980, the Agency prepared draft economic and environmental impact statements, a Reports Impact Anslysis, an Operations Resources Impact Analysis, and an Evaluation Plan. All covered only the interim status regulations (except the Operations Resources Impact Analysis which covered the entire program) and each was based on preliminary drafts of the regulations. Final revisions of the interim status economic and environmental impact statements will soon be available and revised versions of the Operations Resources Impact Analysis and the Evaluation Plan have been developed. Evaluation of the regulations will include analysis of the effectiveness of the required reports.

Because of the accelerated schedule on which the regulations promulgated today were produced, it has not been possible to develop the extensive background materials which accompanied the previous promulgation. Before work can commence in earnest on these analyses, reasonably complete and reasonably final drafts of the regulations must be available. Such drafts only became available within six weeks of the publication of these regulations. Nevertheless, the Agency has conducted analyses of the costs of the general standards for new treatment and storage surface impoundments, tanks, and piles. Additionally, EPA is writing a draft Environmental Impact Statement which is scheduled for completion in April 1981. The Reports Impact Analysis has been combined with the OMB Reports Clearance Application and will be submitted to the Office of Management and Budget for review.

Except for the Evaluation Plan, copies of these documents are, or will soon be, available for review in the EPA regional office libraries and at the EPA headquarters library, Room 2404, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. The Evaluation Plan is available for review only at the EPA headquarters library.

A. Economic Analysis

The economic evaluations indicate that there are both costs and benefits associated with the RCRA Subtitle C regulatory program.

1. *Benefits.* The Subtitle C regulatory program will reduce the damage to human health and the environment from improper management of hazardous waste. The following is a brief list of some of the many expected improvements:

- Ground-water pollution from leaching of toxic pollutants from improperly designed and managed tanks, waste piles, landfills, and surface impoundments will be reduced.
- Poisoning and injury due to direct contact with randomly dumped wastes will be reduced.
- Pollution of surface waters from hazardous waste stored or disposed of in fields and on riverbanks will be reduced.
- Illicit dumping of waste in farm fields, wooded areas, along roadsides, and in ditches and streams will be reduced.
- Emission of toxic gases from improperly run incinerators will be reduced.
- Accidents, mistakes, and malfunctions at hazardous waste management facilities, which could affect people near the site, will be reduced in number and in severity, due to improved training of personnel, monitoring and inspections, and required emergency equipment.
- Contingency plans will spell out procedures to ensure rapid and effective responses to emergencies to minimize any danger to off-site residents and the environment.
- Facilities will be decontaminated or otherwise secured at closure, and disposal sites will be monitored and maintained after closure, to reduce the possibility of future adverse impacts on human health or the environment.

The Agency believes these improvements will be substantial and noticeable. The expected improvements are not easily quantifiable, however, since records of past practices and problems are extremely limited. In addition to the major economic benefits expected from decreases in human health problems and in pollution of our air, land, and water, EPA expects an improvement in economic efficiency and equity, and substantial direct savings from avoiding clean up costs in the future.

An economy functions efficiently and equitably when the price of goods produced in the society reflects the actual social and private costs of production (i.e., when the costs are internalized). Until now, in most States, firms could dispose of wastes in environmentally unsafe ways at a cost substantially less than that for adequate disposal. Thus, the price of goods often did not reflect the full social cost of production.

These Pre-RCRA practices for managing hazardous waste created economic inequities. The true costs of disposal often fell randomly on individuals affected by improper management or on the public at large, since tax revenues were used to clean up inadequate facilities. It would be more equitable for the costs of adequate hazardous waste management to fall on the consumers and producers of the products which generate the hazardous waste.

Pre-RCRA management practices also caused economic inefficiencies. Because the price of goods did not reflect the cost of properly managing the waste produced as part of the manufacturing process, these goods were priced too low relative to other goods. Because prices were lower than the true social cost of producing the product, consumers were able to buy more of these goods than they could if proper waste management costs were included in the product price. Thus, companies manufactured and sold more of these products and generated more hazardous waste than was economically efficient. Furthermore, because companies did not have to either pay the cost of proper waste management or pass it along to customers, the incentives to develop technology and process changes to lessen the quantity of hazardous waste generated or to recover the waste as a useful material were weaker than if proper waste management were required. Additionally, companies which properly managed their wastes were at a competitive disadvantage to competitors who did not.

The RCRA Subtitle C regulations will ensure that those generating hazardous waste will pay appropriately for their safe management. Most of this incremental cost will be passed on to consumers, while some may be borne by the generator, particularly where price increases are held down in some way (e.g., by foreign competition or competition with other products). In either case, the economy will be more efficient and equitable because those receiving the benefits will also pay the incremental costs, and prices will serve as a more efficient allocator of resources.

In recent years, with increasing frequency, society has been forced to properly dispose of waste that was previously disposed of haphazardly. The best known example of this is Love Canal in New York, where 20,000 tons of waste were buried over a period of years. A severe health hazard in the area due to wastes seeping into house basements and surfacing in backyards caused society to take remedial action. The cost to the State and Federal governments is currently about $36 million for clean up, relocating residents, health and environmental testing services, and other expenses associated with the disaster, and the figure is still increasing. Thus, society is spending about $1,800 per ton in its effort to clean up waste improperly disposed of, and more will be spent before the area is returned to normal. Further, the $1,800 per ton figure excludes human health costs and suffering, which might easily outweigh actual dollar costs. Given that average disposal costs after the entire RCRA regulatory program is in place will be much less than $1,800 per ton, it clearly pays to do the job right in the first place.

Given that damages from improper hazardous waste management often take decades to surface, society may be paying dearly for past waste mismanagement for many years to come. Further, without a regulatory program, new problem sites would continue to be developed. Ultimately, clean up of all of these sites could cost billions of dollars.

2. *Costs and Impacts.* The Agency has not yet been able to estimate incremental costs and impacts of the Part 264 general standards for treatment and storage surface impoundments, tanks, and the other management methods promulgated today. This results from the fact that most hazardous wastes can be managed satisfactorily in a variety of ways. For example, wastes from chlorine production from the diaphragm cell process are amenable to resource recovery, chemical treatment, landfilling, and deep well injection. The methods chosen by a given company will depend to a major extent on the cost of each option; the costs, in turn, directly depend on the regulations governing each option. Thus, until the regulations covering all waste management options are available, the total incremental cost and impacts on any one method cannot be determined. At present, regulations governing the general (permit) standards for the land disposal options (surface impoundments, land treatment, and landfills) have not been developed and, thus, the total incremental costs and impacts of the regulations promulgated today cannot be determined.

Although total costs and impacts cannot be determined yet, EPA is building the model which allows these determinations. Inputs to this model are quantities of waste by waste stream and industry, unit costs of waste management, lists of feasible management methods for each waste stream, and capacity for existing management processes. The output from the model is the total incremental cost of the regulation.

The incremental costs over current practice of managing hazardous waste are now being determined. These are the incremental costs of treating (or storing or disposing) of waste by a given method (e.g., in a tank, or in a surface impoundment) which is in compliance with the regulations. Preliminary costs have been developed for tanks, treatment and storage surface impoundments, and waste piles. In the following analyses these costs are presented on an incremental annualized basis. Because they are incremental, they represent the additional cost of waste management imposed by the Part 264 general status regulations (over and above the costs imposed by the Part 265 interim status standards) on those owners or operators required to obtain a RCRA permit for storage or treatment of hazardous waste. Because they are annualized, they represent the cost (in 1980 dollars) the owner or operator would incur if he incurred the same cost each year.

a. *Tanks.* The Part 264, Subpart J general regulations will cause the cost of treating and storing hazardous wastes in tanks under a RCRA permit to increase slightly over and above the costs imposed by the interim status regulations. The sections of the regulations that cause the additional cost require the owner or operator to develop a schedule and procedure to assess the condition of tanks, and require that tanks meet industrial design standards where these are available. The incremental cost will be higher if the tank must be recoated to comply with the design standards, or if the tank must be decontaminated to be inspected. The Agency believes that most tanks will not have to be recoated to comply with design standards or decontaminated for inspections. The following table shows the annualized incremental cost of complying with the regulations (Part 264, Subpart J) for tanks of various sizes at facilities with various numbers of tanks, under a RCRA permit.

Table I.—*Annualized incremental cost per tank of compliance with part 264, subpart J for tanks*

[Annualized incremental cost]

	No recoating		Recoating decontamination
	No decontamination	Decontamination	
1 tank per facility (gallons):			
10,000	$176	$1,176	$1,860
20,000	176	1,476	2,553
50,000	176	2,376	4,359
5 tanks per facility (gallons):			
10,000	58	1,058	1,742
20,000	58	1,358	2,435
50,000	58	2,258	4,241
10 tanks per facility (gallons):			
10,000	44	1,044	1,727
20,000	44	1,344	2,420
50,000	44	2,244	4,226
50 tanks per facility (gallons):			
10,000	32	1,032	1,715
20,000	32	1,332	2,403
50,000	32	2,232	4,215

b. *Surface Impoundments.* As a result of the treatment and storage surface impoundment regulations issued today, (Subpart K of Part 264), the cost of treating and storing hazardous wastes in surface impoundments under a RCRA permit will increase in most cases. Over and above the interim status regulations, these regulations may cause additional cost by requiring the owner or operator, if he is required to have a RCRA permit under Part 264, Subpart K, to remove all hazardous waste and contaminated liners from the impoundment at closure; to manage all dredged wastes in a permitted facility; to build impoundments with a liner and leachate detection, collection, and removal system; to operate the system to remove leachate; to divert surface water and run on away from the impoundment (although most diked facilities already comply with this requirement); and in the event of failure of the containment system, to repair the system before using the impoundment.

Although the impacts of these requirements cannot yet be estimated for reasons discussed earlier, at first glance it would appear that they will be substantial. Such is probably *not* the case. These regulations apply only to storage and treatment impoundments (i.e., to those which are designed to contain the wastes). Regulations covering disposal impoundments (i.e., those that discharge into the land or ground water) will be promulgated later. Since few existing impoundments are designed for containment, few are expected to seek permits as storage and treatment impoundments and only those that do would be subjected to the regulations. Many new facilities may also choose to meet the requirements of disposal impoundments when they are promulgated. The only facilities which will have to design to the standards promulgated today are those which must be designed and built prior to the effective date of the disposal impoundment regulations. This is expected to be a small group.

Major parameters affecting the cost of compliance with these Part 264 regulations for surface impoundments are the size of the impoundment, the rate at which sludge accumulates on the bottom, and the type of liner (membrane or clay). The following table summarizes the annualized (over 20 years) incremental costs of compliance with Part 264, Subpart K, for treatment and storage surface impoundments with clay liners and membrane liners, based on the assumption that either no sludge accumulates on the bottom of the impoundment, or that the sludge that accumulates is not a hazardous waste.

Table II.—*Annualized incremental cost of compliance with Part 164, Subpart K, for treatment and storage surface impoundments without hazardous sludge accumulation*

[Annualized incremental cost in thousands of dollars]

Impoundment size	Clay liner	Membrane liner
Acres:		
1	8	14
5	31	56
10	61	107
25	145	255

If sludge does accumulate, and if the sludge is a hazardous waste, then annualized incremental cost of compliance with the regulation will be larger. Table III shows the annualized incremental cost of compliance for impoundments with different sludge accumulation rates.

Table III.—*Annualized incremental cost of compliance with Part 264, Subpart K, for treatment and storage surface impoundments with hazardous sludge accumulation*

[Annualized incremental Cost [1] in thousands of dollars]

Impoundment size	Sludge accumulation rate		
	Low	Medium	High
Acres:			
1	63	100	136
5	307	584	851
10	813	1,208	1,776
25	1,989	2,977	4,407

[1] All costs assume an owner or operator will use a trust fund to comply with the financial requirements. This assumption increases the costs considerably. For example, if an owner or operator used a letter-of-credit to meet the financial requirement, the entry for the 25 acre impoundment with a high sludge accumulation rate would be $3,104. These costs also assume that the sludge is a hazardous waste, and that its disposal has an incremental cost of $50 per ton. EPA made this assumption for analytical purposes. After the EPA promulgates Part 264 landfill regulations, the incremental cost of landfilling might well be less than $50 per ton. These cost also include the costs shown in Table II.

The impoundment with a low sludge accumulation rate has an influent with 125 milligrams of solids per liter of influent, that with a medium rate has 250 milligrams per liter, and that with high rate has 500 milligrams per liter.

Over the 20 year life of a 5 acre impoundment with a medium sludge accumulation rate, about 250,000 tons of sludge accumulate, are dredged; and are disposed of; the corresponding sludge quantity for the 25 acre impoundment with a high accumulation rate is almost 2 million tons. Thus, the costs presented in Table III are large because the analysis assumes that the tremendous quantities of sludge which accumulate at the bottom of treatment and storage surface impoundments, must be managed as a hazardous waste when it is periodically dredged. The cost of managing dredged sludge drives these estimates. For treatment and storage impoundments in which little or no sludge is produced, the incremental costs are very much less.

Table IV presents the incremental cost per ton of storing or treating hazardous waste in a surface impoundment with sludge accumulation under a RCRA permit, in compliance with the Part 264, Subpart K regulations issued today. Because these unit costs explicitly account for the quantity of sludge, they do not appear so large. Unit costs for surface impoundments without hazardous sludge accumulation are very much less.

Table IV.—*Incremental Unit Costs of Compliance with Part 264, Subpart K for Treatment and Storage Surface Impoundment With Hazardous Sludge Accumulation*

[Cost per ton [1]]

Impoundment size	Sludge accumulation rate		
	Low	Medium	High
Acres:			
1	$67.43	$50.70	$40.53
5	60.34	45.35	36.59
10	78.40	44.76	36.15
25	78.01	44.42	36.02

[1] All costs assume an owner or operator will use a trust fund to comply with financial requirements. This assumption increases the cost considerably.

c. *Waste Piles.* The Part 264, Subpart L general regulations will also cause the cost of storing or treating waste in piles under RCRA permit to increase over and above the cost of storage or treatment under the interim status regulations. Under the general regulations a waste pile must have a waste containment system. The containment system must be either sufficiently strong to support equipment so that the waste may be moved to inspect the liner (sturdy impermeable base design) or the system must have a liner and leachate collection, detection, and removal system (liner design). The incremental cost of compliance with Part 264, Subpart L, under a RCRA permit for each type of waste pile containment system is shown in Table V for different sized waste piles.

Table V.—*Annualized Incremental Cost Per Pile of Compliance With Part 264, Subpart L, for Waste Piles*

Size of pile	Sturdy impermeable base	Liner and leachate system
Metric tons:		
340	$493	$875
850	812	1,232
1,700	1,194	1,648
3,400	1,766	2,308

B. Reports Analysis

At the time of promulgation (May 1980), the Agency analyzed the paperwork burden imposed by the Phase I requirements on the regulated community. The estimated burden for those requirements was 1,424,000 hours initially, and 2,322,000 hours on an annual basis, including planning, recordkeeping, and reporting activities. The Phase I requirements were designed to contain most of the information gathering requirements which are necessary. They are applicable during

both the interim status period and after permits are granted.

There are, however, some additional planning, recordkeeping, and reporting activities associated with the Phase II requirements promulgated today. The Agency is analyzing the added burden of these new regulations and will have a summary available soon in the EPA regional and headquarters libraries. Preliminary estimates have been summarized as follows:

Table VI.—*Information Burden Requirements*

Requirement	Hours			
	Phase I (May 1980)		Phase II (December 1980)	
	Initial	Recurring	Initial	Recurring
Subpart B (location)			10,219	
Subpart G (closure and post-closure)			29,500	
Subpart H (financial)			97,295	24,555
Subparts I, J, and L (storage)			4,252	24,806
Other	1,424,000	2,322,000		
Total	1,424,000	2,322,000	143,378	74,489

Most of the additional information burden of the general (Part 264) regulations is associated with preparation of Part B of the permit application (§ 122.25).

No burden has been estimated for the surface impoundment requirements (Subpart K) promulgated today. This stems from the Agency's belief that few existing surface impoundments and only a small group of new facilities will seek permits under these regulations. Thus the aggregate burden is very small on a national basis.

IX. Relationship to Polychlorinated Biphenyl Management

In the Preamble to the RCRA promulgation of May 19, 1980 (45 FR 33173), the Agency indicated its intent to incorporate the polychlorinated biphenyl (PCB) disposal regulations issued under the authority of the Toxic Substances Control Act (TSCA) into the RCRA hazardous waste regulations. The Agency has been working on this task, but it has turned out to be more difficult than expected. The PCB requirements are largely design and management oriented standards which lay down specific requirements. The RCRA regulations on the other hand, are more performance oriented and thus are made up largely of more general operating objectives rather than specific management requirements. EPA has not completed integration of the two regulatory programs but plans to do so in the near future. In the interim, the management of PCB's remains under the TSCA PCB regulations promulgated on February 17, 1978 (43 FR 7150) and May 31, 1979 (44 FR 31514).

X. OMB Review

Under the Federal Reports Act of 1942, the Office of Management and Budget (OMB) reviews reporting requirements in proposed forms and regulations in order to minimize the reporting burden on respondents and the cost to government. Although EPA has initiated discussions with the staff of OMB, time has prevented the completion and submission to OMB of the reporting requirements, and supporting materials, contained in these regulations. These regulations, pursuant to Section 3010(b) of the Act, do not take effect until six months after their promulgation. EPA anticipates that OMB review will be completed well before the reporting requirements take effect.

XI. Supporting Documents

The Agency has developed or will prepare two sets of documents in conjunction with the facility standards.

A. Background Documents

Seven background documents support these regulations, providing response to public comments and rationale for how and why the regulations have come to be written the way they are. In conjunction with the references listed in them, these documents provide the basis for and defense of the promulgated regulations.

For the most part, they are the same background documents issued in support of the May 19, 1980, promulgation, but they have been expanded to include: (a) summaries and responses to comments on the May 19 interim final, interim status regulations; (b) summaries and responses to comments on the propriety of certain May 19 regulations as interim status requirements; (c) summaries and responses to comments on the proposed (December 1978) general standards; and (d) rationale for the general standards promulgated today. The following documents directly support the regulations promulgated today.

Background Documents

General Facility and Location Standards
Closure and Post-Closure Care
Financial Requirements
Storage, Containers, and Piles
Tanks and Chemical, Physical, and Biological Treatment
Surface Impoundments

Copies of these documents are available for review in the EPA regional office libraries and at the EPA headquarters library, Room 2404, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

B. Guidance Documents

These regulations and those issued May 19, 1980, provide a complete set of requirements for managing hazardous wastes in many types of facilities. However, reliance on performance standards and the incorporation of case-by-case consideration of many factors provide considerable flexibility to accommodate new technologies, special needs of specific locations, and variations in waste characteristics.

To assist both owners and operators of facilities and regulatory officials, EPA is preparing a series of design and operation manuals. These will not have the effect of regulations, but will provide guidance on how facilities may be designed and operated to meet the standards. Other manuals will also provide guidance on what modifications and variations are likely to be effective under the variance procedures. They will be organized to correspond closely to the regulations and will be based on the collective knowledge of the Agency, the literature, and experts throughout the world. Manuals will also be prepared for testing, training, and monitoring.

EPA is preparing the following manuals in support of the entire hazardous waste regulatory program.

RCRA Guidance Manuals

Waste Analysis Plans
Contingency Plans
Ground-water Assessment Plans
Operating Records
Variance to Security Requirements
Variance to Ground-Water Monitoring Requirements
Variance to Post-Closure Care Requirements
Demonstration for Growing Food Chain Crops
Guidance for Subpart G, Closure and Post-Closure Care
Guidance for Subpart H, Financial Requirements

Personnel Training Guidance Manual
Permit Writers Guidance Manual: Containers
Permit Writers Guidance Manual: Tanks
Permit Writers Guidance Manual: Piles
Permit Writers Guidance Manual: Chemical, Physical and Biological Treatment
Permit Writers Guidance Manual: Thermal Treatment
Permit Writers Guidance Manual: Incineration
Permit Writers Guidance Manual: Site Selection
Permit Writers Guidance Manual: Waste Compatibility
Permit Writers Guidance Manual: Ground-Water Monitoring
Engineering Handbook for Hazardous Waste Incineration
Evaluating Cover Systems for Solid and Hazardous Waste
Hydrologic Simulation on Solid Waste Disposal Sites
Landfill and Surface Impoundment Performance Evaluation
Lining of Waste Impoundment and Disposal Facilities
Management of Hazardous Waste Leachate
Guide to the Disposal of Chemically Stabilized and Solidified Wastes
Closure of Hazardous Waste Surface Impoundments
Design and Management of Hazardous Waste Land Treatment Facilities
Soil Permeability Test Manual
Leachate quality from a Hazardous Waste Facility
Landfill Closure Manual
Ground-Water Monitoring for Owners or Operators of Treatment, Storage or Disposal Facilities

Dated: December 31, 1980.

Douglas M. Costle,

Administrator.

Title 40 CFR Parts 264, 265, and 122 are amended as set forth below.

The following sections are being promulgated on an interim final basis (see Preamble for discussion):

PART 264

Subpart B—General Facility Standards

264.17 General requirements for ignitable, reactive, or incompatible wastes.
264.18 Location standards.

Subpart G—Closure and Post-Closure

264.110 Applicability.
264.111 Closure performance standard.
264.112 Closure; Plan; amendment of plan.
264.113 Closure; time allowed for closure.
264.114 Disposal or decontamination of equipment.
264.115 Certification of closure.
264.117 Post-closure care and use of property.
264.118 Post-closure plan; amendment of plan.
264.119 Notice to local land authority.
264.120 Notice in deed to property.

Subpart H—Financial Requirements

264.140 Applicability.
264.141 Definitions.
264.142 Cost estimate for facility closure.
264.143 Financial assurance for facility closure.
264.144 Cost estimate for post-closure monitoring and maintenance.
264.145 Financial assurance for post-closure monitoring and maintenance.
264.146 Use of a mechanism for financial assurance of both closure and post-closure care.
264.147 Liability requirement.
264.148 Incapacity of institutions issuing letters of credit, surety bonds, or insurance policies.
264.149 Applicability of State financial requirements.
264.150 State assumption of responsibility.
264.151 Wording of the instruments.

Subpart I—Use and Management of Containers

264.170 Applicability.
264.171 Condition of containers.
264.172 Compatibility of waste with container.
264.173 Management of containers.
264.174 Inspections.
264.175 Containment.
264.176 Special requirements for ignitable or reactive waste.
264.177 Special requirements for incompatible wastes.
264.178 Closure.

Subpart J—Tanks

264.190 Applicability.
264.191 Design of tanks.
264.192 General operating requirements.
264.194 Inspections
264.197 Closure.
264.198 Special requirements for ignitable or reactive waste.
264.199 Special requirements for incompatible wastes.

Subpart K—Surface Impoundments

264.220 Applicability.
264.221 General design requirements.
264.222 General operating requirements.
264.223 Containment systems.
264.226 Inspections and testing.
264.227 Containment system repairs; contingency plans.
264.228 Closure.
264.229 Special requirements for ignitable or reactive waste.
264.230 Special requirements for incompatible wastes.

Subpart L—Waste Piles

264.250 Applicability.
264.251 General design requirements.
264.252 General operating requirements.
264.253 Containment systems.
264.254 Inspections and testing.
264.255 Containment system repairs; contingency plans.
264.256 Special requirements for ignitable or reactive waste.
264.257 Special requirements for incompatible wastes.
264.258 Closure.
Appendix V—Examples of potentially incompatible waste.
Appendix VI—Political jurisdictions in which compliance with § 264.18(a) must be demonstrated.

PART 265

Subpart G—Closure and Post-Closure

265.112 Closure plan; amendment of plan.
265.113 Closure; time allowed for closure.
265.117 Post-closure care and use of property.
265.118 Post-closure plan; amendment of plan.

Subpart H—Financial Requirements

265.141 Definitions.
265.143 Financial assurance for facility closure.
265.145 Financial assurance for post-closure care.
265.146 Use of a mechanism for financial assurance of both closure and post-closure care.
265.147 Liability requirement.
265.148 Incapacity of institutions issuing letters of credit, surety bonds, or insurance policies.
265.149 Applicability of State financial requirements.
265.150 State assumption of responsibility.
265.151 Wording of the instruments.

Part 122

122.15 Modification or revocation and reissuance of permits. (Paragraph (a)(7) only.)
122.17 Minor modifications of permits. (Pararaph (e)(2) only.
122.25 Contents of Part B. (All except Paragraphs 9a)(1)-(a)(10).)
122.29 Establishing RCRA permit conditions. (Paragraph (a) only.)

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

a. Amend Table of Contents as follows:

1. Add to Subpart B—General Facility Standards:

Sec.
264.17 General requirements for ignitable, reactive, or incompatible wastes.
264.18 Location standards.

2. Revise § 264.36 in Subpart C—Preparedness and Prevention:

264.36 [Reserved]

3. Add the following:

Subpart G—Closure and Post-Closure

264.110 Applicability.
264.111 Closure performance standard.
264.112 Closure plan; amendment of plan.
264.113 Closure; time allowed for closure.
264.114 Disposal or decontamination of equipment.
264.115 Certification of closure.
264.116 [Reserved]
264.117 Post-closure care and use of property.
264.118 Post-closure plan; amendment of plan.
264.119 Notice to local land authority.
264.120 Notice in deed to property.

Subpart H—Financial Requirements

Sec.
264.140 Applicability.
264.141 Definitions.
264.142 Cost estimate for facility closure.
264.143 Financial assurance for facility closure.
264.144 Cost estimate for post-closure monitoring and maintenance.
264.145 Financial assurance for post-closure monitoring and maintenance.
264.146 Use of a mechanism for financial assurance of both closure and post-closure care.
264.147 Liability requirement.
264.148 Incapacity of institutions issuing letters of credit, surety bonds, or insurance policies.
264.149 Applicability of State financial requirements.
264.150 State assumption of responsibility.
264.151 Wording of the instruments.

Subpart I—Use and Management of Containers

264.170 Applicability.
264.171 Condition of containers.
264.172 Compatibility of waste with container.
264.173 Management of containers.
264.174 Inspections.
264.175 Containment.
264.176 Special requirements for ignitable or reactive waste.
264.177 Special requirements for incompatible wastes.
264.178 Closure.

Subpart J—Tanks

264.190 Applicability.
264.191 Design of tanks.
264.192 General operating requirements.
264.193 [Reserved]
264.194 Inspections.
264.195 [Reserved]
264.196 [Reserved]
264.197 Closure.
264.198 Special requirements for ignitable or reactive waste.
264.199 Special requirements for incompatible wastes.

Subpart K—Surface Impoundments

264.220 Applicability.
264.221 General design requirements.
264.222 General operating requirements.
264.223 Containment systems.
264.224 [Reserved]
264.225 [Reserved]
264.226 Inspections and testing.
264.227 Containment system repairs; contingency plans.
264.228 Closure.
264.229 Special requirements for ignitable or reactive waste.
264.230 Special requirements for incompatible wastes.

Subpart L—Waste Piles

264.250 Applicability.
264.251 General design requirements.
264.252 General operating requirements.
264.253 Containment systems.
264.254 Inspections and testing.
264.255 Containment system repairs; contingency plans.
264.256 Special requirements for ignitable or reactive waste.
Sec.
264.257 Special requirements for incompatible wastes.
264.258 Closure.
Appendix I—Recordkeeping instructions.
Appendix II—EPA report form and instructions.
Appendix III-IV [Reserved]
Appendix V—Examples of potentially incompatible wastes.
Appendix VI—Political jursidictions in which compliance with § 264.18(a) must be demonstrated.

b. Revise Subpart B—General Facility Standards as follows:

1. Revise § 264.10, to read as follows.

§ 264.10 Applicability.

(a) The regulations in this Subpart apply to owners and operators of all hazardous waste facilities, except as provided in § 264.1 and in paragraph (b) of this Section.

(b) Section 264.18(b) is applicable only to facilities subject to regulation under Part 264, Subparts I, J, K, and L.

2. In § 264.13, revise the comment to paragraph (b)(3) and add paragraph (b)(6) as follows.

§ 264.13 General water analysis.

* * * * *

(b) * * *

(3) * * *

[*Comment:* See § 260.21 of this Chapter for related discussion.]

* * * * *

(6) Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in § 264.17.

3. Add the following comment at the end of § 264.14.

§ 264.14 [Amended]

[*Comment:* See § 264.117(b) for discussion of security requirements at disposal facilities during the post-closure care period.]

4. Add the following sentence to § 264.15, paragraph (b)(4);

§ 264.15 [Amended]

* * * * *

(b) * * *

(4) * * *

At a minimum, the inspection schedule must include the terms and frequencies called for in §§ 264.174, 264.194, 264.226, and 264.254, where applicable.

5. Add the following comment at the end of § 264.16(a).

§ 264.16 [Amended]

(a) * * *

[*Comment:* Part 122, Subpart B, of this Chapter requires that owners and operators submit with Part B of the RCRA permit application, an outline of the training program used (or to be used) at the facility and a brief description of how the training program is designed to meet actual job tasks.]

6. Add the following new §§ 264.17 and 264.18, which are issued as interim final rules:

§ 264.17 General requirements for ignitable, reactive, or incompatible wastes.

(a) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by other Sections of this Part, the owner or operator of a facility that treats, stores or disposes ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, must take precautions to prevent reactons which:

(1) Generate extreme heat or pressure, fire or explosions, or violent reactions;

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(4) Damage the structural integrity of the device or facility;

(5) Through other like means threaten human health or the environment.

(c) When required to comply with paragraphs (a) or (b) of this Section, the owner or operator must document that compliance. This documentation may be based on references to published scientific or engineering literature, data from trial tests (e.g., bench scale or pilot scale tests), waste analyses (as specified in § 264.13), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

§ 264.18 Location standards.

(a) *Seismic considerations.* (1) Portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted must not be located within 61 meters (200

feet) of a fault which has had displacement in Holocene time.

(2) As used in paragraph (a)(1) of this Section:

(i) "Fault" means a fracture along which rocks on one side have been displaced with respect to those on the other side.

(ii) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(iii) "Holocene" means the most recent epoch of the Quarternary period, extending from the end of the Pleistocene to the present.

[*Comment:* Procedures for demonstrating compliance with this standard in Part B of the permit application are specified in § 122.25(a)(11). Facilities which are located in political jurisdictions other than those listed in Appendix VI of this Part, are assumed to be in compliance with this requirement.]

(b) *Floodplains.* (1) A facility located in a 100-year floodplain must be designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100-year flood *unless* the owner or operator can demonstrate to the Regional Administrator that procedures are in effect which will cause the waste to be removed safely, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to floodwaters.

[*Comment:* The location where wastes are moved must be a facility which is either permitted by EPA under Part 122 of this Chapter, authorized to manage hazardous waste by a State with a hazardous waste management program authorized under Part 123 of this Chapter, or in interim status under Parts 122 and 265 of this Chapter.]

(2) As used in paragraph (b)(1) of this Section:

(i) "100-year floodplain" means any land area which is subject to a one percent or greater chance of flooding in any given year from any source.

(ii) "Washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding.

(iii) "100-year flood" means a flood that has a one percent chance of being equalled or exeeded in any given year.

[*Comment:* (1) Requirements pertaining to other Federal laws which affect the location and permitting of facilities are found in § 122.12 of this Chapter. For details relative to these laws, see EPA's manual for SEA (special environmental area) requirements for hazardous waste facility permits. Through EPA is responsible for complying with these requirements, applicants are advised to consider them in planning the location of a facility to help prevent subsequent project delays.]

§ 264.36 [Reserved]

c. Amend Subpart C by removing and reserving § 264.36.

d. Revise Subpart E as follows:

1. In § 264.73, add the following comment after paragraph (b)(2), revise paragraphs (b)(3) through (b)(6) and add (b)(7) to read as follows;

§ 264.73 [Amended]

* * * * *

(b) * * *

(2) * * *

[*Comment:* See § 264.119 for related requirements.]

(3) Records and results of waste analyses performed as specified in §§ 264.13 and 264.17;

(4) Summary reports and details of all incidents that require implementing the contingency plan as specified in § 264.56(j);

(5) Records and results of inspections as required by § 264.15(d) (except these data need be kept only three years);

(6) For off-site facilities, notices to generators as specified in § 264.12(b); and

(7) All closure cost estimates under § 264.142, and, for disposal facilities, all post-closure cost estimates under § 264.144.

2. In § 264.75, revise paragraphs (e) and (f) and add paragraphs (g) and (h) to read as follows;

§ 264.75 [Amended]

* * * * *

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) [Reserved]

(g) The most recent closure cost estimate under § 264.142, and, for disposal facilities, the most recent post-closure cost estimate under § 264.144; and

(h) The certification signed by the owner or operator of the facility or his authorized representative.

3. Revise § 264.77 to read as follows:

§ 264.77 Additional reports.

In addition to submitting the annual report and unmanifested waste reports described in §§ 264.75 and 264.76, the owner or operator must also report to the Regional Administrator:

(a) Releases, fires, and explosions as specified in § 264.56(j);

(b) [Reserved]; and

(c) Facility closure as specified in § 264.115.

e. Add new Subparts G, H, I, J, K, and L to Part 264 as follows; these Subparts are issued as interim final rules:

Subpart G—Closure and Post-Closure

§ 264.110 Applicability.

Except as § 264.1 provides otherwise:

(a) Sections 264.111–264.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 264.117–264.120 (which concern post-closure care) apply to the owners and operators of all hazardous waste disposal facilities.

§ 264.111 Closure performance standard.

The owner or operator must close the facility in a manner that:

(a) Minimizes the need for further maintenance, and

(b) Controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall, or waste decomposition products to the ground or surface waters or to the atmosphere.

§ 264.112 Closure plan; amendment of plan.

(a) The owner or operator of a hazardous waste management facility must have a written closure plan. The plan must be submitted with the permit application, in accordance with § 122.25(a)(13) of this Chapter, and approved by the Regional Administrator as part of the permit issuance proceeding under Part 124 of this Chapter. In accordance with § 122.29 of this Chapter, the approved closure plan will become a condition of any RCRA permit. The Regional Administrator's decision must assure that the approved closure plan is consistent with §§ 264.111, 264.113, 264.114, 264.115 and the applicable requirements of §§ 264.178, 264.197, 264.228, and 264.258. A copy of the approved plan and all revisions to the plan must be kept at the facility until closure is completed and certified in accordance with § 264.115. The plan must identify steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan must include, at least:

(1) A description of how and when the facility will be partially closed, if applicable, and finally closed. The description must identify the maximum extent of the operation which will be unclosed during the life of the facility, and how the requirements of §§ 264.111, 264.113, 264.114, 265.115, and the applicable closure requirements of

§§ 264.178, 264.197, 264.228, and 264.258 will be met;

(2) An estimate of the maximum inventory of wastes in storage and in treatment at any time during the life of the facility. (Any change in this estimate is a minor modification under § 122.17);

(3) A description of the steps needed to decontaminate facility equipment during closure; and

(4) An estimate of the expected year of closure and a schedule for final closure. The schedule must include, at a minimum, the total time required to close the facility and the time required for intervening closure activities which will allow tracking of the progress of closure. (For example, in the case of a landfill, estimates of the time required to treat and dispose of all waste inventory and of the time required to place a final cover must be included.)

(b) The owner or operator may amend his closure plan at any time during the active life of the facility. (The active life of the facility is that period during which wastes are periodically received.) The owner or operator must amend the plan whenever changes in operating plans or facility design affect the closure plan, or whenever there is a change in the expected year of closure. When the owner or operator requests a permit modification to authorize a change in operating plans or facility design, he must request a modification of the closure plan at the same time (see § 124.5(a)). If a permit modification is not needed to authorize the change in operating plans or facility design, the request for modification of the closure plan must be made within 60 days after the change in plans or design occurs.

[*Comment:* Changes in estimates of maximum inventory and of the estimated year of closure under § 264.112(a) (2) and (4) may be made as minor permit modifications under § 122.17(e)].

(c) The owner or operator must notify the Regional Administrator at least 180 days prior to the date he expects to begin closure.

[*Comment:* The date when he "expects to begin closure" should be within 30 days after the date on which he expects to receive the final volume of wastes. If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or compliance order under Section 3008 of RCRA, to cease receiving wastes or to close, then the requirement of this paragraph does not apply. However, the owner or operator must close the facility in accordance with the deadlines established in § 264.113]

§ 264.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, the owner or operator must treat, remove from the site, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator demonstrates that:

(1)(i) The activities required to comply with this paragraph will, of necessity, take longer than 90 days to complete; or

(ii)(A) The facility has the capacity to receive additional wastes;

(B) There is a reasonable likelihood that a person other than the owner or operator will recommence operation of the site; and

(C) Closure of the facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment.

(b) The owner or operator must complete closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of wastes. The Regional Administrator may approve a longer closure period if the owner or operator demonstrates that:

(1)(i) The closure activities will, of necessity, take longer than 180 days to complete; or

(ii)(A) The facility has the capacity to receive additional wastes;

(B) There is reasonable likelihood that a person other than the owner or operator will recommence operation of the site; and

(C) Closure of the facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but inactive facility.

[*Comment:* Any extension of the 90 or 180 day period in this Section may be made as a minor modification under § 122.17. Under paragraphs (a)(1)(ii) and (b)(1)(ii) of this Section, if operation of the site is recommenced, the Regional Administrator may defer completion of closure activities until the new operation is terminated.]

§ 264.114 Disposal or decontamination of equipment.

When closure is completed, all facility equipment and structures must have been properly disposed of, or decontaminated by removing all hazardous waste and residues.

§ 264.115 Certification of closure.

When closure is completed, the owner or operator must submit to the Regional Administrator certification both by the owner or operator and by an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan.

§ 264.116 [Reserved]

§ 264.117 Post-closure care and use of property.

(a)(1) Post-closure care must continue for 30 years after the date of completing closure and must consist of at least the following:

(i) Ground-water monitoring and reporting as applicable.

(ii) Maintenance of monitoring and waste containment systems as applicable.

(2)(i) During the 180-day period preceding closure (see § 264.112(c)) or at any time thereafter, the Regional Administrator may reduce the post-closure care period to less than 30 years if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure).

(ii) Prior to the time that the post-closure care period is due to expire, the Regional Administrator may extend the post-closure care period if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of waste at levels which may be harmful to human health and the environment).

(b) The Regional Administrator may require, at closure, continuation of any of the security requirements of (§ 264.14 during part or all of the post-closure period after the date of completing closure when:

(1) Wastes may remain exposed after completion of closure; or

(2) Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the Regional Administrator finds that the disturbance:

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in § 264.118.

§ 264.118 Post-closure plan; amendment of plan.

(a) The owner or operator of a disposal facility must have a written post-closure plan. The plan must be submitted with the permit application, in accordance with § 122.25(a)(13) of this Chapter, and approved by the Regional Administrator as part of the permit issuance proceeding under Part 124 of this Chapter. In accordance with § 122.29 of this Chapter, the approved post-closure plan will become a condition of any permit issued. A copy of the approved plan and all revisions to the plan must be kept at the facility until the post-closure care period begins. This plan must identify the activities which will be carried on after closure and the frequency of these activities, and include at least:

(1) A description of the planned ground-water monitoring activities and frequencies at which they will be performed;

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) the intergrity of the cap and final cover or other containment structures where applicable; and

(ii) the function of the facility monitoring equipment and

(3) The name, address, and phone number of the person or office to contact about the disposal facility during the post-closure period. This person or office must keep an updated post-closure plan during the post-closure period.

(b) The owner or operator may amend his post-closure plan at any time during the active life of the disposal facility or during the post-closure care period. The owner or operator must amend his plan whenever changes in operating plans or facility design, or events which occur during the active life of the facility or during the post-closure period, affect his post-closure plan. He must also amend his plan whenever there is a change in the expected year of closure.

(c) When a permit modification is requested during the active life of the facility to authorize a change in operating plans or facility design, modification of the post-closure plan must be requested at the same time (see § 124.5(a)). In all other cases, the request for modification of the post-closure plan must be made within 60 days after the change in operating plans or facility design or the events which affect his post-closure plan occur.

§ 264.119 Notice to local land authority.

Within 90 days after closure is completed, the owner or operator of a disposal facility must submit to the local zoning authority or the authority with jurisdiction over local land use and to the Regional Administrator a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the site as specified in § 264.117(c). In addition, the owner or operator must submit to the local zoning authority or the authority with jurisdiction over local land use and to the Regional Administrator a record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility. For wastes disposed of before these regulations were promulgated, the owner or operator must identify the type, location and quantity of the wastes to the best of his knowledge and in accordance with any records he has kept. Any changes in the type, location, or quantity of hazardous wastes disposed of within each cell or area of the facility that occur after the survey plat and record of wastes have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the Regional Administrator.

§ 264.120 Notice in deed to property.

(a) The owner of the property on which a disposal facility is located must record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:

(1) The land has been used to manage hazardous wastes;

(2) Its use is restricted under § 264.117(c); and

(3) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility required in § 265.119 have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Regional Administrator of the Environmental Protection Agency.

(b) If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste facility was located removes the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he may remove the notation on the deed to the facility property or other instrument normally examined during title search, or he may add a notation to the deed or instrument indicating the removal of the waste.

[*Comment:* On removing the waste and waste residues, the liner, if any, and the contaminated soil, the owner or operator, unless he can demonstrate in accordance with § 261.3(d) of this Chapter that any solid waste removed is not a hazardous waste, becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262–266 of this Chapter.]

Subpart H—Financial Requirements

§ 264.140 Applicability.

(a) The requirements of §§ 264.142, 264.143, and 264.146–151, apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this Section or in § 264.1.

(b) The requirements of §§ 264.144 and 264.145 apply only to owners and operators of disposal facilities.

(c) States and the Federal government are exempt from the requirements of this Subpart.

§ 264.141 Definitions.

(a) When used in this Subpart, the following terms have the meanings given below:

"Compliance procedure" means any proceedings instituted pursuant to RCRA or regulations issued under authority of RCRA which seeks to require compliance or which is in the nature of an enforcement action or an action to cure a violation. A compliance procedure includes a compliance order or notice of intention to terminate a permit pursuant to Section 3008 of RCRA or Part 124 of this Chapter, or an application in the United States district court for appropriate relief pursuant to Sections 3008, 7002, or 7003 of RCRA. For the purposes of this Subpart, a compliance procedure is considered to be pending from the time an order or notice of intent to terminate is issued or judicial proceedings are begun until the Regional Administrator notifies the owner or operator in writing that the violation has been corrected or that the

procedure has been withdrawn or discontinued.

"Standby trust fund" means a trust fund which must be established by an owner or operator who obtains a letter of credit or surety bond as specified in these regulations. The institution issuing the letter of credit or surety bond will deposit into the standby trust fund any drawings by the Regional Administrator on the credit or bond.

(b) The following terms are used in the liability requirements. The definitions suggest what EPA believes are the common meanings of the terms as they are generally used in the insurance industry; the definitions are not intended to limit the meanings in a way that conflicts with general usage.

"Claims-made policy" means an insurance policy that provides coverage for an occurrence if a claim is filed during the term of the policy.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Nonsudden accident" means an unforeseen and unexpected occurrence which takes place over time and involves continuous or repeated exposure.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage which the owner or operator neither expected nor intended to occur.

"Sudden accident" means an unforeseen and unexpected occurrence which is not continuous or repeated in nature.

§ 264.142 Cost estimate for facility closure.

(a) The owner or operator must have a written estimate of the cost of closing the facility in accordance with the requirements in §§ 264.111–264.115 and applicable closure requirements in §§ 264.178, 264.197, 264.228, and 264.258. The owner or operator must keep this estimate, and all subsequent estimates required in this Section, at the facility. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan [see § 264.112(a)].

[*Comment:* For example, the closure cost estimate for a particular landfill may be for the cost of closure when its active disposal operations extend over 20 acres, if at all other times these operations extend over less than 20 acres. The estimate would not include costs of partial closures that the closure plan schedules before or after the time of maximum closure cost.]

(b) The owner or operator must prepare a new closure cost estimate whenever a change in the closure plan affects the cost of closure.

(c) On each anniversary of the date on which the first estimate was prepared as specified in paragraph (a) of this Section, the owner or operator must adjust the latest closure cost estimate using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its *Survey of Current Business*. The inflation factor must be calculated by dividing the latest published annual Deflator by the Deflator for the previous year. The result is the inflation factor. The adjusted closure cost estimate must equal the latest closure cost estimate (see paragraph (b) of this Section) times the inflation factor.

[*Comments:* The following is a sample calculation of the adjusted closure cost estimate: Assume that the latest closure cost estimate for a facility is $50,000, the latest published annual Deflator is 152.05, and the annual Deflator for the previous year is 141.70. The Deflators may be rounded to the nearest whole number. Dividing 152 by 142 gives the inflation factor, 1.07. Multiply $50,000 by 1.07 for a product of $53,500—the adjusted closure cost estimate.

The closure cost estimate must be submitted to the Regional Administrator with Part B of the permit application under § 122.25 of this Chapter, and modification may be required as a condition of the permit.]

§ 264.143 Financial assurance for facility closure.

An owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from among the following options:

(a) *Closure trust fund.* (1) An owner or operator may satisfy the requirements of this Section by establishing a closure trust fund which conforms to the requirements of this paragraph and by sending an originally signed duplicate of the trust agreement to the Regional Administrator by certified mail. An owner or operator of a new facility must send the originally signed duplicate of the trust agreement to the Regional Administrator by certified mail at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement must be identical to the wording specified in § 264.151(a)(1) and the trust agreement must be accompanied by a formal certification of acknowledgment (for an example, see § 264.151(a)(2)).

(3) Payments to the trust fund must be made annually by the owner or operator over the term of the initial RCRA permit. The payments to the closure trust fund must be made as follows:

(i) For a new facility, as defined in § 260.10, the first payment must be made when the trust fund is established. The first payment must be at least equal to the closure cost estimate (see § 264.142), except as provided in paragraph (g) of this Section, divided by the number of years in the term of the permit. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by performing the following calculation:

$$\text{Next payment} = \frac{ACE - CV}{Y}$$

where ACE is the adjusted closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the term of the permit.

[*Comment:* The following is a sample calculation of subsequent payments: Assume that the adjusted closure cost estimate is $50,000, the current value of the trust is $35,000 and there are 3 years remaining in the term of the permit. Subtract $35,000 from $50,000, leaving $15,000. Divide $15,000 by 3. The result, $5,000, is the amount of the next payment to the trust fund. All amounts may be rounded to the nearest dollar.]

(ii) If an owner or operator established a trust fund as specified in Part 265, and the value of the trust fund does not equal the adjusted closure cost estimate when a permit is awarded for the facility, the amount of the adjusted closure cost estimate still to be paid into the trust fund must be paid in over the term of the permit. Payments must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to Part 265. The amount of each payment must be determined by performing the following calculation:

$$\text{Next payment} = \frac{ACE - CV}{Y}$$

where ACE is the adjusted closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the term of the permit.

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value the fund would have if annual payments were made as specified in paragraphs (a)(1) and (3) of this Section.

(5) If the owner or operator establishes a closure trust fund after having initially used one or more alternate mechanisms specified in this Section, his first payment must be at least the amount that the fund would have contained if the trust fund were established and annual payments made as specified in paragraph (a)(1) and (3) of this Section.

(6) After the term of the initial RCRA permit is completed, whenever the adjusted closure cost estimate changes the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund (described in Section 10 of the trust agreement). If the value of the fund is less than the amount of the new estimate, the owner or operator must, within 60 days of the change in the cost estimate, deposit a sufficient amount into the fund so that its value after payment at least equals the amount of the new estimate, or obtain other financial assurance as specified in this Section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the adjusted closure cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the adjusted closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this Section for all or part of the trust fund, he may submit a written request to the Regional Administrator for release of the amount in the trust fund which is greater than the amount required as a result of such substitution.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraphs (a)(7) or (8) of this Section, the Regional Administrator will instruct the trustee to release to the owner or operator such funds as the Regional Administrator specifies in writing.

(10) After beginning final closure, an owner or operator or any other person authorized to conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for closure activities, the Regional Administrator will instruct the trustee to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the closure expenditures are in accordance with the closure plan or otherwise justified.

[*Comment:* Ordinarily, the Regional Administrator will approve reimbursements only up to 80 percent of the value of the closure trust fund; the remaining 20 percent will be returned to the owner or operator or any other person authorized to perform closure upon satisfactory certification of closure as noted in paragraph (i) of this Section.]

(11) The Regional Administrator will agree to termination of the trust when:

(i) The owner or operator substitutes alternate fianancial assurance for closure as specified in this Section, or

(ii) The Regional Administrator notifies the owner or operator, in accordance with paragraph (i) of this Section, that he is no longer required by this Section to maintain financial assurance for closure of the facility.

(b) *Surety bond guaranteeing payment into a closure trust fund.* (1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond which conforms to the requirements of this paragraph and by having the bond delivered to the Regional Administrator by certified mail. An owner or operator of a new facility must have the surety bond delivered to the Regional Administrator by certified mail at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The surety bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

[*Comment:* Circular 570 is published in the Federal Register annually on July 1; interim changes in the Circular are also published in the Federal Register.]

(2) The wording of the surety bond must be identical to the wording specified in § 264.151(b).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund by the time the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited directly into the standby trust fund. This trust fund must meet the requirements specified in paragraph (a) of this Section, except that:

(i) An orginally signed duplicate of the trust agreement must be delivered to the Regional Administrator with the surety bond; and

(ii) After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in paragraph (a) of this Section are not required until the standby trust fund is funded pursuant to the requirements of this paragraph.

(4) The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond at least 60 days prior to the expected date of the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure in accordance with Subpart G of this Part is issued by the Regional Administrator or by a U.S. district court pursuant to Section 3008, 7002, or 7003 of RCRA, or within 15 days after issuance of a notice of termination of the permit pursuant to Part 124 of this Chapter; or

(iii) Provide alternate financial assurance as specified in this Section within 30 days after receipt by the Regional Administrator of a notice of cancellation of the bond from the surety.

(5) The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the amount of the adjusted closure cost estimate (see § 264.142) except as provided in paragraph (g) of this Section.

(7) Whenever the adjusted closure cost estimate increases to an amount greater than the amount of the penal sum of the bond, the owner or operator must, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the adjusted closure cost estimate decreases, the penal sum may be reduced to the amount of the new estimate following written approval by the Regional Administrator. Notice of an increase or decrease in the penal sum must be sent to the Regional Administrator by certified mail within 60 days after the change.

(8) The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation cannot occur, however:

(i) During the 90 days beginning on the date of receipt of the notice of cancellation by the Regional Administrator as shown on the signed return receipt; or

(ii) While a compliance procedure is pending, as defined in § 264.141.

(9) The surety bond no longer satisfies the requirements of this paragraph subsequent to the receipt by the Regional Administrator of a notice of cancellation of the surety bond. Upon receipt of such notice the Regional Administrator will issue a compliance order pursuant to Section 3008 of RCRA, unless the owner or operator has demonstrated alternate financial assurance as specified in this Section. In the event the owner or operator does not correct the violation by demonstrating such alternative financial assurance within 30 days after issuance of the compliance order, the Regional Administrator may direct the surety to place the penal sum of the bond in the standby trust fund.

(10) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this Section.

(11) The Regional Administrator will notify the surety when the owner or operator funds the standby trust fund in the amount guaranteed by the surety bond or if he provides alternate financial assurance as specified in this Section.

(c) *Surety bond guaranteeing performance of closure.*

(1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond which conforms to the requirements of this paragraph and by having the bond delivered to the Regional Administrator by certified mail. An owner or operator of a new facility must have the surety bond delivered to the Regional Administrator by certified mail at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The surety bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

[*Comment:* Circular 570 is published in the Federal Register annually on July 1; interim changes in the Circular are also published in the Federal Register.]

(2) The wording of the surety bond must be identical to the wording specified in § 264.151(c).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund by the time the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited directly into the standby trust fund. This trust must meet the requirements specified in paragraph (a) of this Section, except that:

(i) An orginally signed duplicate of the trust agreement must be delivered to the Regional Administrator with the surety bond; and

(ii) After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in paragraph (a) of this Section are not required unless the standby trust fund is funded pursuant to the requirements of this paragraph.

(4) The bond must guarantee that the owner or operator will:

(i) Perform final closure in accordance with the closure plan and other requirements in the permit for the facility; or

(ii) Perform final closure in accordance with Subpart G of this Part following an order to begin closure issued by the Regional Administrator or by a U.S. district court pursuant to Section 3008, 7002, or 7003 of RCRA, or following issuance of a notice of termination of the permit pursuant to Part 124 of this Chapter; or

(iii) Provide alternate financial assurance as specified in this Section within 30 days after receipt by the Regional Administrator of a notice of cancellation of the bond from the surety.

(5) The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the amount of the adjusted closure cost estimate (see § 264.142).

(7) Whenever the adjusted closure cost estimate increases to an amount greater than the amount of the penal sum of the bond, the owner or operator must, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the adjusted closure cost estimate decreases, the penal sum may be reduced to the amount of the adjusted closure cost estimate following written approval by the Regional Administrator. Notice of an increase or decrease in the penal sum must be sent to the Regional Administrator by certified mail within 60 days after the change.

(8) The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation cannot occur, however:

(i) During the 90 days beginning on the date of receipt of the notice of cancellation by the Regional Administrator as shown on the signed return receipt; or

(ii) While a compliance procedure is pending, as defined in § 264.141.

(9) Following a determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure in accordance with the closure plan and other permit requirements or closure order; as an alternative the surety may deposit the amount of the penal sum into the standby trust fund.

(10) The surety bond no longer satisfies the requirements of this paragraph subsequent to the receipt by the Regional Administrator of a notice of cancellation of the surety bond. Upon receipt of such notice the Regional Administrator will issue a compliance order pursuant to Section 3008 of RCRA, unless the owner or operator has demonstrated alternate financial assurance as specified in this Section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within 30 days after issuance of the compliance order, the Regional Administrator may direct the surety to place the penal sum of the bond in the standby trust fund.

(11) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this Section.

(12) The Regional Administrator will notify the surety if the owner or operator provides alternate financial assurance as specified in this Section.

(13) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the owner or operator has been notified by the Regional Administrator, in accordance with paragraph (i) of this Section, that he is no longer required by

this Section to maintain financial assurance for closure of the facility.

(d) *Closure letter of credit.* (1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and by having it delivered to the Regional Administrator by certified mail. An owner or operator of a new facility must have the letter of credit delivered to the Regional Administrator by certified mail at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before the initial receipt of hazardous waste. The issuing institution must be a bank or other financial institution which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit must be identical to the wording specified in § 264.151(f).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this Section must also establish a standby trust fund by the time the letter of credit is obtained. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Regional Administrator will be deposited promptly and directly by the issuing institution into the standby trust fund. The standby trust fund must meet the requirements of the trust fund specified in paragraph (a) of this Section, except that:

(i) An originally signed duplicate of the trust agreement must be delivered to the Regional Administrator with the letter of credit; and

(ii) After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in paragraph (a) of this Section are not required unless the standby trust fund is funded pursuant to the requirements of this paragraph.

(4) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year. If the issuing institution decides not to extend the letter of credit beyond the then current expiration date it must, at least 90 days before that date, notify both the owner or operator and the Regional Administrator by certified mail of that decision. The 90-day period will begin on the date of receipt by the Regional Administrator as shown on the signed return receipt. Expiration cannot occur, however, while a compliance procedure is pending as defined in § 264.141.

(5) The letter of credit must be issued for at least the amount of the adjusted closure cost estimate (see § 264.142), except as provided in paragraph (g) of this Section.

(6) Whenever the adjusted closure cost estimate increases to an amount greater than the amount of the credit the owner or operator must, within 60 days of the increase, cause the amount of the credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this Section to cover the increase. Whenever the adjusted closure cost estimate decreases the letter of credit may be reduced to the amount of the new estimate following written approval by the Regional Administrator. Notice of an increase or decrease in the amount of the credit must be sent to the Regional Administration by certified mail within 60 days of the change.

(7) Following a determination pursuant to Section 3008 of RCRA that the owner or operator has failed, when required to do, to perform closure in accordance with the closure plan or other permit requirements, the Regional Administrator may draw on the letter of credit.

(8) The letter of credit no longer satisfies the requirements of this paragraph subsequent to the receipt by the Regional Administrator of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the then current expiration date. Upon receipt of such notice, the Regional Administrator will issue a compliance order pursuant to Section 3008 of RCRA, unless the owner or operator has demonstrated alternate financial assurance as specified in this Section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within 30 days of issuance of the compliance order, the Regional Administrator may draw on the letter of credit.

(9) The Regional Administrator will return the original letter of credit to the issuing institution for termination when:

(i) The owner or operator substitutes alternate financial assurance for closure as specified in this Section, or

(ii) The Regional Administrator notifies the owner or operator, in accordance with paragraph (i) of this Section, that he is no longer required by this Section to maintain financial assurance for closure of the facility.

(e) and (f) [Reserved].

(g) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a closure trust fund, and letters of credit. The mechanisms must be as specified in paragraphs (a), (b), and (d), respectively, of this Section, except that it is the combination of mechanisms, rather than each single mechanism, which must provide financial assurance for an amount at least equal to the adjusted closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the bond or letter of credit. If the multiple mechanisms include only surety bonds and letters of credit, a single standby trust may be established for all these mechanisms. The Regional Administrator may invoke use of any or all of the mechanisms, in accordance with the requirements of paragraphs (a), (b), and (d) of this Section, to provide for closure of the facility.

(h) *Use of a financial mechanism for multiple facilities.* (1) An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility of which he is the owner or operator. Evidence of financial assurance submitted to the Regional Administrator must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure assured by the mechanism. If the list is changed by addition or subtraction of a facility or by an increase or decrease in the amount of funds assured for closure of one or more facilities, a corrected list must be sent to the Regional Administrator within 60 days of such change. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility.

(2) A letter of credit may not be used to assure funds for facilities in more than one Region. If other financial mechanisms specified in this Section cover facilities that are located in more than one Region, the regional Administrators for all Regions in which the facilities are located must be involved in all transactions that involve the Regional Administrator, except when the transactions involve only those facilities in one Region.

(i) *Release of the owner or operator from the requirements of this Section.* Within 60 days after receiving certifications from the owner or operator

and an independent registered professional engineer that closure has been accomplished in accordance with the closure plan (see § 264.115), the Regional Administrator will notify the owner or operator in writing that he is no longer required by this Section to maintain financial assurance for closure of the particular facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the closure plan.

[*Comment:* The notice releases the owner or operator only from requirements for financial assurance for closure of the facility; it does not release him from legal responsibility for meeting the closure standards.]

§ 264.144 Cost estimate for post-closure monitoring and maintenance.

(a) The owner or operator of a disposal facility must have a written estimate of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 264.117–264.120. The owner or operator must keep this estimate, and all subsequent estimates required in this Section, at the facility.

(b) The owner or operator must prepare a new annual post-closure cost estimate whenever a change in the post-closure plan affects the cost of post-closure care [see § 264.118(b)]. The latest post-closure cost estimate is calculated by multiplying the latest annual post-closure cost estimate by the number of years of post-closure care required in the latest post-closure plan approved for the facility by the Regional Administrator.

(c) On each anniversary of the date on which the first estimate was prepared as specified in paragraph (a) of this Section, during the operating life of the facility, the owner or operator must adjust the latest post-closure cost estimate using the inflation factor calculated in accordance with § 264.142(c). The adjusted post-closure cost estimate must equal the latest post-closure cost estimate (see paragraph (b) of this Section) times the inflation factor.

[*Comment:* The post-closure cost estimate must be submitted to the Regional Administator with Part B of the permit application under § 122.25 of this Chapter, and modification may be required as a condition of the permit.]

§ 264.145 Financial assurance for post-closure monitoring and maintenance.

An owner or operator of each disposal facility must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility. He must choose from among the following options:

(a) *Post-closure trust fund.* (1) An owner or operator may satisfy the requirements of this Section by establishing a post-closure trust fund which conforms to the requirements of this paragraph and by sending an originally signed duplicate of the trust agreement to the Regional Administrator by certified mail. An owner or operator of a new facility must send the originally signed duplicate of the trust agreement to the Regional Administrator by certified mail at least 60 days before the date on which hazardous waste is first received for disposal. The trustee must be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement must be identical to the wording specified in § 264.151(a)(1) and the trust agreement must be accompanied by a formal certification of acknowledgment (for an example, see § 264.151(a)(2)).

(3) Payments to the trust fund must be made annually by the owner or operator over the term of the initial RCRA permit. The payments to the post-closure trust fund must be made as follows:

(i) For a new facility, as defined in § 260.10, the first payment must be made when the trust fund is established. The first payment must be at least equal to the post-closure cost estimate (see § 264.144), except as provided in paragraph (g) of this Section, divided by the number of years in the term of the permit. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by performing the following calculation:

$$\text{Next payment} = \frac{ACE - CV}{Y}$$

where ACE is the adjusted post-closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the term of the permit.

[*Comment:* The following is a sample calculation of subsequent payments: Assume that the adjusted post-closure cost estimate is $50,000, the current value of the trust fund is $35,000 and there are 3 years remaining in the term of the permit. Subtract $35,000 from $50,000, leaving $15,000. Divide $15,000 by 3. The result, $5,000, is the amount of the next payment to the trust fund. All amounts may be rounded to the nearest dollar.]

(ii) If an owner or operator established a trust fund as specified in Part 265, and the value of the fund does not equal the adjusted post-closure cost estimate when a permit is awarded for the facility, the amount of the adjusted post-closure cost estimate still to be paid into the fund must be paid in over the term of the permit. Payments must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to Part 265. The amount of each payment must be determined by performing the following calculation:

$$\text{Next payment} = \frac{ACE - CV}{Y}$$

where ACE is the adjusted post-closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the term of the permit.

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the post-closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value the fund would have if annual payments were made as specified in paragraphs (a)(1) and (3) of this Section.

(5) If the owner or operator establishes a post-closure trust fund after having initially used one or more alternate mechanisms specified in this Section, his first payment must be at least the amount that the fund would have contained if the trust fund were established and annual payments made as specified in paragraphs (a)(1) and (3) of this Section.

(6) After the term of the initial RCRA permit is completed, whenever the adjusted post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund (described in Section 10 of the trust agreement). If the value of the fund is less than the amount of the new estimate, the owner or operator must, within 60 days of the change in the cost estimate, deposit a sufficient amount into the fund so that its value after payment at least equals the amount of the new estimate, or obtain other

financial assurance as specified in this Section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the adjusted post-closure cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the adjusted post-closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this Section for all or part of the trust fund, he may submit a written request to the Regional Administrator for release of the amount in the trust fund which is greater than the amount required as a result of such substitution.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraphs (a)(7) or (8) of this Section, the Regional Administrator will instruct the trustee to release to the owner or operator such funds as the Regional Administrator specifies in writing.

(10) An owner or operator or any other person authorized to conduct post-closure may request reimbursement for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure activities, the Regional Administrator will instruct the trustee to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified.

(11) The Regional Administrator will agree to termination of the trust when:

(i) The owner or operator substitutes alternate financial assurance for post-closure as specified in this Section, or

(ii) The Regional Administrator notifies the owner or operator, in accordance with paragraph (i) of this Section, that he is no longer required by this Section to maintain financial assurance for post-closure care of the facility.

(b) *Surety bond guaranteed payment into a post-closure trust fund.*

(1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond which confirms to the requirements of this paragraph and by having the bond delivered to the Regional Administrator by certified mail. An owner or operator of a new facility must have the surety bond delivered to the Regional Administrator by certified mail at least 60 days before the date on which hazardous waste is first received for disposal. The surety bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

[*Comment:* Circular 570 is published in the **Federal Register** annually on July 1; interim changes in the Circular are also published in the **Federal Register.**]

(2) The wording of the surety bond must be identical to the wording specified in § 264.151(d).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund by the time the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited directly into the standby trust fund. This trust fund must meet the requirements specified in paragraph (a) of this Section, except that:

(i) An originally signed duplicate of the trust agreement must be delivered to the Regional Administrator with the surety bond; and

(ii) After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in paragraph (a) of this Section are not required until the standby trust fund is funded pursuant to the requirements of this paragraph.

(4) The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond by the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure in accordance with Subpart G of this Part is issued by the Regional Administrator or by a U.S. district court pursuant to Section 3008, 7002, or 7003 of RCRA, or within 15 days after issuance of a notice of termination of the permit pursuant to Part 124 of this Chapter; or

(iii) Provide alternate financial assurance as specified in this Section within 30 days after receipt by the Regional Administrator of a notice of cancellation of the bond from the surety.

(5) The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the amount of the adjusted post-closure cost estimate (see § 264.144) except as provided in paragraph (g) of this Section.

(7) Whenever the adjusted post-closure cost estimate increases to an amount greater than the penal sum of the bond the owner or operator must, within 60 days after the increase cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the adjusted post-closure cost estimate decreases the penal sum may be reduced to the amount of the new cost estimate following written approval by the Regional Administrator. Notice of an increase or decrease in the penal sum must be sent to the Regional Administrator by certified mail within 60 days after the change.

(8) The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation cannot occur, however:

(i) During the 90 days beginning on the date of receipt of the notice of cancellation by the Regional Administrator as shown on the signed return receipt; or

(ii) While a compliance procedure is pending, as defined in § 264.141.

(9) The surety bond no longer satisfies the requirements of this paragraph subsequent to the receipt by the Regional Administrator of a notice of cancellation of the surety bond. Upon receipt of such notice the Regional Administrator will issue a compliance order pursuant to Section 3008 of RCRA, unless the owner or operator has demonstrated alternate financial assurance as specified in this Section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within 30 days after issuance of the compliance order, the Regional Administrator may direct the surety to place the penal sum of the bond in the standby trust fund.

(10) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this Section.

(11) The Regional Administrator will notify the surety when the owner or operator funds the standby trust fund in the amount guaranteed by the surety bond or if he provides alternate financial assurance as specified in this Section.

(c) *Surety bond guaranteeing performance of post-closure care.*

(1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond which conforms to the requirements of this paragraph and by having the bond delivered to the Regional Administrator by certified mail. An owner or operator of a new facility must have the surety bond

delivered to the Regional Administrator by certified mail at least 60 days before the date on which hazardous waste is first received for disposal. The surety bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sure ties on Federal bonds in Circular 570 of the U.S. Department of Treasury.

[*Comment:* Circular 570 is published in the Federal Register annually on July 1; interim changes in the Circular are also published in the Federal Register.]

(2) The wording of the surety bond must be identical to the wording specified in § 264.151(e).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund by the time the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited into the standby trust fund. This trust fund must meet the requirements specified in paragraph (a) of this Section, except that:

(i) An originally signed duplicate of the trust agreement must be delivered to the Regional Administrator with the surety bond; and

(ii) After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in paragraph (a) of this Section are not required unless the standby trust fund is funded pursuant to the requirements of this paragraph.

(4) The bond must guarantee that the owner or operator will:

(i) Perform post-closure care in accordance with the post-closure plan and other requirements of the permit; or

(ii) Provide alternate financial assurance within 30 days of receipt by the Regional Administrator of a notice of cancellation of the bond from the surety.

(5) The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the adjusted post-closure cost estimate (see § 264.144).

(7) Whenever the adjusted post-closure cost estimate increases to an amount greater than the penal sum of the bond during the operating life of the facility, the owner or operator must, within 60 days after the increase in the estimate, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the adjusted post-closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the new estimate following written approval by the Regional Administrator. Notice of an increase or decrease in the penal sum must be sent to the Regional Administrator by certified mail within 60 days after the change.

(8) During the period of post-closure care, the Regional Administrator may approve a decrease in the penal sum of the surety bond if the owner or operator demonstrates to the Regional Administrator that the amount exceeds the remaining cost of post-closure care.

(9) The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation cannot occur, however:

(i) During the 90 says beginning on the date of receipt of the notice of cancellation by the Regional Administrator as shown on the signed return receipt; or

(ii) While a compliance procedure is pending, as defined in § 264.141.

(10) Following a determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or deposit the amount of the penal sum into the standby trust fund.

(11) The surety bond no longer satisfies the requirements of this paragraph subsequent to the receipt by the Regional Administrator of a notice of cancellation of the surety bond. Upon receipt of such a notice the Regional Administrator will issue a compliance order pursuant to Section 3008 of RCRA unless the owner or operator has demonstrated alternate financial assurance as specified in this Section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within 30 days after issuance of the compliance order, the Regional Administrator may direct the surety to place the penal sum of the bond in the standby trust fund.

(12) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent, based on his receipt of evidence of alternate financial assurance as specified in this Section.

(13) The Regional Administrator will notify the surety if the owner or operator provides alternate financial assurance as specified in this Section.

(14) The surety will not be liable for deficiencies in the performance of post-closure care by the owner or operator after the owner or operator has been notified by the Regional Administrator, in accordance with paragraph (i) of this Section, that he is no longer required by this Section to maintain financial assurance for post-closure care of the facility.

(d) *Post-closure letter of credit.* (1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and by having it delivered to the Regional Administrator by certified mail. An owner or operator of a new facility must have the letter of credit delivered to the Regional Administrator by certified mail at least 60 days before the date on which hazardous waste is first received for disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be a bank or other financial institution which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit must be identical to the wording specified in § 264.151(f).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this Section must also establish a standby trust fund by the time the letter of credit is obtained. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Regional Administrator will be deposited promptly and directly by the issuing institution into the standby trust fund. The standby trust fund must meet the requirements of the trust fund specified in paragraph (a) of this Section, except that:

(i) An originally signed duplicate of the trust agreement must be delivered to the Regional Administrator with the letter of credit; and

(ii) After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in paragraph (a) of this Section are not required unless the standby trust fund is funded pursuant to the requirements of this paragraph.

(4) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year. If the issuing institution decides not to extend the letter of credit beyond the then current expiration date

it must, at least 90 days before that date, notify both the owner or operator and the Regional Administrator by certified mail of that decision. The 90-day period will begin on the date of receipt by the Regional Administrator as shown on the signed return receipt. Expiration cannot occur, however, while a compliance procedure is pending as defined in § 264.141.

(5) The letter of credit must be issued for at least the amount of the adjusted post-closure cost estimate (see § 264.144), except as provided in paragraph (g) of this Section.

(6) Whenever the adjusted post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility the owner or operator must, within 60 days of the increase, cause the amount of the credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this Section to cover the increase. Whenever the adjusted post-closure cost estimate decreases during the operating life of the facility, the letter of credit may be reduced to the amount of the new estimate following written approval by the Regional Administrator. Notice of an increase or decrease in the amount of the credit must be sent to the Regional Administrator by certified mail within 60 days of the change.

(7) During the period of post-closure care, the Regional Administrator may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Regional Administrator that the amount exceeds the remaining cost of post-closure care.

(8) Following a determination pursuant to Section 3008 of RCRA that the owner or operator has failed, when required to do so, to perform post-closure in accordance with the post-closure plan or other permit requirements, the Regional Administrator may draw on the letter of credit.

(9) The letter of credit no longer satisfies the requirements of this paragraph subsequent to the receipt by the Regional Administrator of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the then current expiration date. Upon receipt of such notice, the Regional Administrator will issue a compliance order pursuant to Section 3008 of RCRA, unless the owner or operator has demonstrated alternate financial assurance as specified in this Section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within 30 days of issuance of the commpliance order, the Regional Administrator may draw on the letter of credit.

(10) The Regional Administrator will return the original letter of credit to the issuing institution for termination when:

(i) The owner or operator substitutes alternate financial assurance for post-closure care as specified in this Section, or

(ii) The Regional Administrator notifies the owner or operator, in accordance with paragraph (i) of this Section, that he is no longer required by this Section to maintain financial assurance for post-closure of the facility.

(e) and (f) [Reserved].

(g) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a post-closure trust fund, and letters of credit. The mechanisms must be as specified in paragraphs (a), (b), and (d), respectively, of this Section, except that it is the combination of mechanisms, rather than each single mechanism, which must provide financial assurance for an amount at least equal to the adjusted post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the bond or letter of credit. If the multiple mechanisms include only surety bonds and letters of credit, a single standby trust may be established for all these mechanisms. The Regional Administrator may invoke use of any or all of the mechanisms, in accordance with the requirements of paragraphs (a), (b) and (d) of this Section, to provide for post-closure care of the facility.

(h) *Use of a financial mechanism for multiple facilities.* (1) An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility of which he is the owner or operator. Evidence of financial assurance submitted to the Regional Administrator must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for post-closure care assured by the mechanism. If the list is changed by addition or subtraction of a facility or by an increase or decrease in the amount of funds assured for post-closure care of one or more facilities, a corrected list must be sent to the Regional Administrator within 60 days of such change. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility.

(2) A letter of credit may not be used to assure funds for facilities located in more than one Region. If other financial mechanisms specified in this Section cover facilities that are located in more than one Region, the Regional Administrators for all Regions in which the facilities are located must be involved in all transactions that involve the Regional Administrator, except when the transactions involve only those facilities in one Region.

(i) *Release of the owner or operator from the requirements of this Section.* When an owner or operator has completed, to the satisfaction of the Regional Administrator, all post-closure care requirements for the period of post-closure care specified in the permit for the facility or the period specified by the Regional Administrator after closure, whichever period is shorter, the Regional Administrator will, at the request of the owner or operator, notify him in writing that he is no longer required by this Section to maintain financial assurance for post-closure care of the particular facility.

[*Comment:* The notice releases the owner or operator only from requirements for financial assurance for post-closure care of the facility; it does not release him from legal responsibility for meeting the post-closure standards.]

§ 264.146 Use of a mechanism for financial assurance of both closure and post-closure care.

An owner or operator may use one of the following financial assurance mechanisms to provide financial assurance for both closure and post-closure care of one or more facilities of which he is the owner or operator:

(a) A trust fund that meets the specifications of both § 264.143(a) and § 264.145(a), or

(b) A letter of credit that meets the specifications of both § 264.143(d) and § 264.145(d).

The amount of funds available under the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care of each facility.

§ 264.147 Liability requirements.

(a) An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for claims arising from the operations of each such facility or group

of facilities from sudden and accidental occurrences that cause injury to persons or property. An owner or operator must have and maintain liability insurance for sudden occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. As evidence of this liability insurance, an owner or operator must deliver an originally signed duplicate of the insurance policy to the Regional Administrator, or Regional Administrators if the facilities are in more than one Region, by certified mail. An owner or operator of a new facility must send the originally signed duplicate of the insurance policy to the Regional Administrator by certified mail at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. Each policy must be for limits of liability not less than the minimum amounts required by this paragraph and each policy must be amended, in order to comply with the requirements of this regulation, by attachment of the Hazardous Waste Facility Liability Endorsement. The wording of the endorsement must be identical to the wording specified in § 264.151(g).

(b) An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for claims arising from the operations of each such facility or group of facilities from nonsudden and accidental occurrences that cause injury to persons or property. An owner or operator must have and maintain liability insurance for nonsudden occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. As evidence of this liability insurance, an owner or operator of an existing surface impoundment, landfill, or land treatment facility must deliver an originally signed duplicate of the insurance policy to the Regional Administrator, or Regional Administrators if the facilities are in more than one Region, by certified mail. However, such insurance will not be required of an existing facility before the following dates:

(1) For an owner or operator with annual sales in the last calendar year preceding the effective date of these regulations totaling $10 million or more; 6 months after the effective date of these regulations.

(2) For an owner or operator with annual sales in the last calendar year preceding the effective date of these regulations greater than $5 million but less than $10 million; 18 months after the effective date of these regulations.

(3) All other owners or operators; 30 months after the effective date of these regulations.

An owner or operator of a new surface impoundment, landfill, or land treatment facility must send an originally signed duplicate of the insurance policy to the Regional Administrator by certified mail at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. For both existing and new facilities, each policy shall be for limits of liability not less than the minimum amounts required by this paragraph and each policy must be amended, in order to comply with the requirements of this regulation, by attachment of the Hazardous Waste Facility Liability Endorsement. The wording of the endorsement must be identical to the wording specified in § 264.151(g).

(c) If an owner or operator elects to comply with paragraphs (a) and (b) of this Section through one insurance policy covering both sudden and nonsudden occurrences, this policy must be in the amount of at least $4 million per occurrence with an annual aggregate of at least $8 million, exclusive of legal defense costs.

(d) If an owner or operator can demonstrate to the satisfaction of the Regional Administrator that the levels of financial responsibility required by paragraphs (a) or (b) of this Section are not consistent with the degree and duration of tasks associated with the treatment, storage, or disposal at each facility or group of facilities, the owner or operator may obtain a variance from the Regional Administrator. The request for a variance must be submitted to the Regional Administrator as part of the permit application under § 122.25 of this Chapter for a facility that does not have a permit, or pursuant to the procedures for permit modification under § 124.5 of this Chapter for a facility that has a permit. The variance shall take the form of an adjusted level of required liability coverage, such level to be based on the Regional Administrator's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of facilities. The Regional Administrator may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Regional Administrator to determine a level of financial responsibility other than that required by paragraphs (a) or (b) of this Section. Any request for a variance for a permitted facility shall be treated as a request for a permit modification under §§ 122.15 (a)(5) and 124.5 of this Chapter.

(e) If the Regional Administrator determines that the levels of financial responsibility required by paragraphs (a) or (b) of this Section are not consistent with the degree and duration of risks associated with treatment, storage, or disposal at any facility or group of facilities, the Regional Administrator may adjust the level of financial responsibility required under paragraphs (a) or (b) of this Section as may be necessary to protect human health and the environment, such adjusted level to be based on the Regional Administrator's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of such facilities. The Regional Administrator may also require an owner or operator of a treatment or storage facility or group of facilities to comply with paragraph (b) of this Section if the Regional Administrator determines that there is a significant risk to human health and the environment from nonsudden and accidental occurrences from the operations of such facility or group of facilities. Any adjustment of the level of required coverage for a facility that has a permit shall be treated as a permit modification under §§ 122.15(a)(5) and 124.5 of this Chapter.

[*Comment:* Under § 122.25 of this Chapter, an owner or operator of a new facility must include in Part B of his permit application the amounts of liability coverage meeting the requirements of § 264.147(a) and, if applicable, § 264.147(b) that he plans to establish prior to initial receipt of hazardous waste at the facility for treatment, storage, or disposal.]

§ 264.148 Incapacity of institutions issuing letters of credit, surety bonds, or insurance policies.

An owner or operator who fulfills the requirements of §§ 264.143, 264.145, or 264.147 by obtaining a letter of credit, surety bond, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. The owner or operator must establish other financial assurance or

liability coverage within 60 days of such events.

§ 264.140 Applicability of State financial requirements.

(a) For a facility located in a State whose hazardous waste regulations include liability requirements or requirements for financial assurance for closure and post-closure care, an owner or operator may use State-required financial mechanisms to meet the requirements of §§ 264.143, 264.145, and 264.147 if the State mechanisms provide assurance or liability coverage equivalent to or greater than that provided by the mechanisms of §§ 264.143, 264.145, and 264.147. Evidence of the establishment of such a mechanism must be delivered by certified mail to the Regional Administrator. The submittal must include, or have attached to it, the following information: the facility's EPA Identification Number, name, address, and the amounts of liability coverge or funds for closure or post-closure care assured by the mechanism. An owner or operator of a new facility must deliver such evidence to the Regional Administrator or by certified mail at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The mechanism must be effective before this initial receipt of hazardous waste.

(b) The owner or operator must obtain an additional financial assurance mechanism for closure or for post-closure care, as specified in §§ 264.143 and 264.145 or additional liability insurance as specified in § 264.147, if the amount of funds available from the State mechanism is less than that required by this Subpart. The amounts of funds available through the State and Federal mechanisms must equal at least the amounts required in §§ 264.143, 264.145, and 264.147.

§ 264.150 State assumption of responsibility.

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the closure, post-closure, or liability requirements of these regulations *or* assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with requirements of this Subpart if the State's assurances are equivalent to or exceed the assurances provided by the requirements of this Subpart. The owner or operator must deliver by certified mail to the Regional Administrator a letter from the State describing the nature of the State's responsibility regarding the closure, post-closure, and liability requirements so covered. The letter must include, or have attached to it, the following information: the facility's EPA Identification Number, name, address, and the amounts of liability coverage or funds for closure or post-closure care that are assured by the State. An owner or operator of a new facility must deliver the letter to the Regional Administrator by certified mail at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The guarantee must be effective before this initial receipt of hazardous waste.

(b) The owner or operator must obtain an additional financial assurance mechanism for closure or for post-closure care, as specified in §§ 264.143 and 264.145 or additional liability insurance as specified in § 264.147, if the amount of funds available through State guarantees is less than that required by this Subpart. The amounts of funds available through the State guarantees and Federal mechanisms must equal at least the amounts required in §§ 264.143, 264.145, and 264.147.

§ 264.151 Wording of the instruments.

(a)(1) A trust agreement for a trust fund as specified in §§ 264.143(a) or 264.145(a) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a [State] [corporation, partnership, association, proprietorship], the "Grantor", and [name of corporate trustee], a [State corporation] [national bank], the "Trustee".

Whereas, the United States Environmental Protection Agency, "EPA", an agency of the United States Government, has established *certain regulations applicable to the Grantor*, requiring that the owner or operator of a hazardous waste management facility must provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

Whereas, the Grantor has elected to establish a trust to provide such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of this trust fund, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this trust fund.

(b) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(c) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to [for each facility insert the EPA Identification Number, name, and address, and the adjusted closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.]

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund" for the benefit of the EPA. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule A attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund will be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments to discharge any liabilities of the Grantor established by the EPA.

Section 4. Payment for Closure and Post-Closure Care. The Trustee will make such payments from the Fund as the EPA Regional Administrator will direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee will reimburse the Grantor or other persons as specified by the Regional Administrator from the Fund for closure and post-closure expenditures in such amounts as the Regional Administrator will direct, in writing. The Trustee will notify the Regional Administrator when 20 percent of the amount allocated for closure of the facility remains in the Fund, and will not make further reimbursements for closure expenditures unless the Regional Administrator identifies reimbursements that may be made out of the remaining 20 percent. In addition, the Trustee will refund to the Grantor such amounts as the EPA Regional Administrator specifies in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund will consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee will invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with investment guidelines and objectives communicated in writing to the Trustee from time to time by the Grantor, subject, however, to the provisions of this Section. In investing,

reinvesting, exchanging, selling and managing the Fund, the Trustee or any other fiduciary will discharge his duties with respect to the trust fund solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; *except that:*

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2.(a), will not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein. To the extent of the equitable share of the Fund in any such commingled trust, such commingled trust will be part of the Fund;

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., or one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by private contract or at public auction. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee will at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee will be paid from the Fund.

Section 10. Annual Valuation. The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional Administrator a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than 30 days prior to the date of the statement. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee will be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. Upon the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, the Trustee may resign or the Grantor may replace the Trustee. In either event, the Grantor will appoint a successor Trustee who will have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of the appointment by the successor trustee, the Trustee will assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee and the date on which he assumes administration of the trust will be specified in writing and sent to the Grantor, the EPA Regional Administrator, and the present and successor trustees by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section will be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the EPA Regional Administrator to the Trustee will be in writing, singed by the EPA Regional Administrators of the Regions in which the facilities are located, and the Trustee will act and will be fully protected in acting in accordance with such orders, requests and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the EPA hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the EPA, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee will notify the Grantor and the appropriate EPA Regional Administrator, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed the Trustee is not required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate EPA Regional Administrator, or by the Trustee and the appropriate EPA Regional Administrator if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust will be irrevocable and will continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, will be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee will not incur personal liability of any nature in connection with any act or omisssion, made in good faith, in the administration of this Trust, or in carrying out

any directions by the Grantor or the EPA Regional Administrator issued in accordance with this Agreement. The Trustee will be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement will be administered, construed and enforced according to the laws of the State of *[State].*

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this agreement will not affect the interpretation or the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 264.151(a)(1).

[Signature of Grantor]
By [Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
By
Attest:
[Title]
[Seal]

(2) This is an example of the certification of acknowledgment, which must accompany the trust agreement for a trust fund as specified in §§ 264.143(a) and 264.145(a):

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.
[Signature of Notary Public]

[*Comment:* As required in §§ 264.143(a)(2) and 264.145(a)(2), the trust agreement must be accompanied by a formal certification of acknowledgment. This is an example only. State requirements may differ on the proper content of this acknowledgment.]

(b) A surety bond guaranteeing payment into a closure trust fund, as specified in § 265.143(b), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond for Closure

Date bond executed: _____
Effective date: _____
Principal: [legal name and business address]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, and address of each facility and, if more than one facility is covered by this bond, the amount of the penal sum for each facility: _____
Total penal sum of bond: $ _____

Know all men by these presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have an EPA permit or permits, or interim status, in order to own or operate the hazardous waste management facility(ies) identified above, and

Whereas said Principal is required to provide financial assurance for closure of the facility(ies) as a condition of the permit(s) or interim status, and

Whereas said Principal shall establish a standby trust fund as specified by 40 CFR 264.143 or 40 CFR 265.143,

Now, therefore the conditions of the obligation are such that if the Principal shall faithfully, for the facility(ies) identified above, at least 60 days before the beginning of final closure, fund the standby trust fund in an amount equal to the penal sum,

Or, if the Principal shall fund the standby trust fund in such an amount within 15 days after an order to begin closure in accordance with Subpart G of 40 CFR Parts 264 and 265 is issued by an EPA Regional Administrator or by a U.S. district court pursuant to Section 3008, 7002, or 7003 of the Resource Conservation and Recovery Act, as amended, or within 15 days after a notice of termination of the permit(s) or interim status pursuant to 40 CFR Part 124,

Or, if the Principal shall provide alternate financial assurance as specified in 40 CFR 264.143 or 40 CFR 265.143 within 30 days after the date notice of cancellation is received by a Regional Administrator, then this obligation will be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an EPA Regional Administrator that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount of the penal sum into the standby trust fund as directed by the EPA Regional Administrator.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending written notice of cancellation to the owner or operator and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, provided, however, that cancellation cannot occur: (1) during the 90 days beginning on the date of receipt of the notice of cancellation by the Regional Administrator(s) as shown on the signed return receipt(s); or (2) while a compliance procedure is pending, as defined in 40 CFR 264.141 or 40 CFR 265.141.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located. [The following paragraph is an *optional* rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it equals the adjusted closure cost estimate(s), provided that the amount of the cost estimate(s) does do not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Regional Administrator(s).

In witness whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 265.151(b).

Principal

Signature(s): _____
Name(s) and title(s) [typed] _____
Corporate seal:

Corporate Surety(ies)

Name and address: _____
State of incorporation: _____
Liability limit: $ _____
Signature(s): _____
Name(s) and title(s) [typed]: _____
Corporate seal:

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $ _____

(c) A Surety bond guaranteeing performance of closure, as specified in § 264.143(c), must be worded as follows, except that the instructions in brackets

are to be replaced with the relevant information and the brackets deleted:

Performance Bond for Closure

Date bond executed: _____
Effective date: _____
Principal: [legal name and business address]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, address, and adjusted closure cost estimate for each facility: _____
Total penal sum of bond: $ _____

Know all men by these presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a permit or permits from EPA in order to own or operate the hazardous waste management facility(ies), identified above, and

Whereas, said Principal is required to provide financial assurance for closure of the facility(ies) as a condition of the permit(s), and

Whereas said Principal shall establish a standby trust fund as specified by 40 CFR 264.143,

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully perform closure of the facility(ies) identified above in accordance with the closure plan(s) submitted to receive said permit(s) and other requirements of said permit(s) as such plan(s) and permit(s) may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulatons may be amended,

Or, if the Principal shall faithfully perform closure in accordance with 40 CFR 264, Subpart G, following an order to begin closure issued by an EPA Regional Administrator or by a U.S. district court pursuant to Section 3008, 7002, or 7003 of the Resource Conservation and Recovery Act, as amended, or following a notice of termination of the permit pursuant to Part 124 of this Chapter,

Or, if the Principal shall provide alternate financial assurance as specified in 40 CFR 264.143 within 30 days of the date notice of cancellation is received by a Regional Administrator, then this obligation will be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an EPA Regional Administrator that the Principal has been found in violation of 40 CFR 264.143 in an order made pursuant to Section 3008 of the Resource Conservation and Recovery Act, as amended, the Surety(ies) must place funds in the amount of the adjusted closure cost estimate(s) into the standby trust fund as directed by an EPA Regional Administrator. Upon notification by an EPA Regional Administrator that the Principal has been found in violation of the closure requirements of 40 CFR Part 264, the Surety(ies) must either perform closure in accordance with the closure plan(s) and other permit requirements or place the amount of the adjusted closure cost estimate(s) in the standby trust fund. Upon notification by an EPA Regional Administrator that the Principal has been found in violation of an order to begin closure, the Surety(ies) must either perform closure in accordance with the closure order or place the amount of the adjusted closure cost estimate(s) in the standby trust fund.

The Surety(ies) hereby waives notification of amendments to the closure plan(s), permit(s), applicable laws, statutes, rules and regulations and agrees that no such amendments(s) shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or successon of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending written notice of cancellation to the owner or operator and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, provided, however, that cancellation cannot occur: (1) during the 90 days beginning on the date of receipt of the notice of cancellation by the Regional Administrator(s) as shown on the signed return receipt(s); or (2) while a compliance procedure is pending, as defined in 40 CFR 264.141.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located. [The following paragraph is an *optional* rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it equals the adjusted closure cost estimate(s), provided that the amount of the cost estimate(s) does (do) not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Regional Administrator(s).

In witness whereof, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 264.151(c).

Principal

Signature(s): _____
Name(s) and title(s) [typed]: _____
Corporate seal:

Corporate Surety(ies)

Name and address: _____
State of incorporation: _____
Liability limit: $ _____
Signature(s): _____
Name(s) and title(s) [typed]: _____
Corporate seal:
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $ _____

(d) A surety bond guaranteeing payment into a post-closure trust fund, as specified in § 264.145(b), must be worded as follows, except that instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Financial Guarantee Bond for Post-Closure Care

Date bond executed: _____
Effective date: _____
Principal: [legal name and business address]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, and address of each facility and, if more than one facility is covered by this bond, the amount of the penal sum for each facility:
Total penal sum of bond: $ _____

Know all men by these presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have an EPA permit or permits, or interim status, in order to own or operate the hazardous waste management facility(ies) identified above, and

Whereas said Principal is required to provide financial assurance for post-closure care of the facility(ies) as a condition of the permit(s) or interim status, and

Whereas said Principal shall establish a standby trust fund as specified by 40 CFR 264.145 or 40 CFR 265.145,

Now, therefore the conditions of the obligation are such that if the Principal shall faithfully, for the facility(ies) identified above, by the beginning of final closure, fund the standby trust fund in an amount equal to the penal sum,

Or, if the Principal shall fund the standby trust fund in such an amount within 15 days after an order to begin closure in accordance with Subpart G of 40 CFR Parts 264 and 265 is issued by the Regional Administrator or a U.S. district court pursuant to Section 3008, 7002, or 7003 of the Resource Conservation and Recovery Act, as amended, or within 15 days after a notice of termination of the permit(s) or interim status pursuant to 40 CFR Part 124,

Or, if the Principal shall provide alternate financial assurance as specified in 40 CFR 264.145 or 40 CFR 265.145 within 30 days after the date notice of cancellation is received by a Regional Administrator, then this obligation will be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an EPA Regional Administrator that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) must place funds in the amount of the penal sum into the standby trust fund as directed by an EPA Regional Administrator.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending written notice of cancellation to the owner or operator and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, provided, however, that cancellation cannot occur: (1) during the 90 days beginning on the date of the receipt of the notice of cancellation by the Regional Administrator(s) as shown on the signed return receipt(s); or (2) while a compliance procedure is pending, as defined in 40 CFR 264.141 or 40 CFR 265.141.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located. [The following paragraph is an *optional* rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it equals the adjusted post-closure cost estimate(s), provided that the amount of the cost estimate(s) does (do) not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Regional Administrator(s).

In witness whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 265.151(d).

Principal

Signature(s): _____
Name(s) and title(s) [typed]: _____
Corporate seal:

Corporate Surety(ies)

Name and address: _____
State of incorporation: _____
Liability limit: $ _____
Signature(s): _____
Name(s) and title(s) [typed]: _____
Corporate seal: _____

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $ _____

(e) A surety bond guaranteeing performance of post-closure care, as specified in § 264.145(c), must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Performance Bond for Post-Closure Care

Date bond executed: _____
Effective date: _____
Principal: [legal name and business address]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, address, and adjusted post-closure cost estimate for each facility: _____
Total penal sum of bond: $ _____

Know all men by these presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bond ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a permit or permits from EPA in order to own or operate the hazardous waste management facility(ies) identified above, and

Whereas, said Principal is required to provide financial assurance for post-closure care of the facility(ies) as a condition of the permit(s), and

Whereas said Principal shall establish a standby trust fund as specified by 40 CFR 264.145,

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully perform post-closure care of the facility(ies) identified above in accordance with the post-closure plan(s) and other requirements of the permit(s), as such post-closure plan(s) and permit(s) may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in 40 CFR 264.145 within 30 days of the date notice of cancellation is received by a Regional Administrator, then this obligation will be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an EPA Regional Administrator that the Principal has been found in violation of 40 CFR 264.145 in an order made pursuant to Section 3008 of the Resource Conservation and Recovery Act, as amended, the Surety(ies) must place funds in the amount of the adjusted post-closure cost estimate(s) into the standby trust fund as directed by an EPA Regional Administrator. Upon notification by an EPA Regional Administrator that the Principal has been found in violation of the post-closure requirements of 40 CFR Part 264, the Surety(ies) must perform post-closure care in accordance with the post-closure plan and other requirements of the permit or place the amount of the adjusted post-closure cost estimate(s) into the standby trust fund.

The Surety(ies) hereby waives notification of amendments to closure plan(s), permit(s), applicable laws, statutes, rules and regulations and agrees that no such amendment(s) shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the Surety's(ies') obligation hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending written notice of cancellation to the owner or operator and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, provided, however, that cancellation cannot occur: (1) during the 90 days beginning on the date of receipt of the notice of cancellation by the Regional Administrator(s) as shown on the signed return receipt(s); or (2) while a compliance procedure is pending, as defined in 40 CFR 264.141. [The following paragraph is an *optional* rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it equals the adjusted post-closure cost estimate(s), provided that the amount of the cost estimate(s) does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Regional Administrator(s).

In witness whereof, the Principal and Surety(ies) have executed this Performance

Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 264.151(e).

Principal

Signature(s): ———
Name(s) and title(s) [typed]: ———
Corporate seal:

Corporate Surety(ies)

Name and address: ———
State of incorporation: ———
Liability limit: $ ———
Signature(s): ———
Name(s) and title(s) [typed]: ———
Corporate seal:
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $ ———

(f) A letter of credit as specified in §§ 264.143(d) and 264.145(d) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

[Regional Administrator]

Dear Sir or Madam: We hereby establish our Irrevocable Letter of Credit No. ——— in favor of the Regional Administrator for Region ——— of the United States Environmental Protection Agency, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $———, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No. ———, together with

(2) your signed statement declaring that the amount of the draft is payable pursuant to regulations issued under the authority of the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended.

The following amounts are included in the amount of this letter of credit: [For each facility, insert the EPA Facility Identification Number, name and address, and the adjusted closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this letter of credit].

This letter of credit is effective as of [date] and will expire on [date at least 1 year later], but such expiration date will be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 90 days before the current expiration date, we notify you and [owner or operator's name] by certified mail that we decide not to extend the Letter of Credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit will be available upon presentation of your sight draft for 90 days after the date of receipt by you as shown on the signed return receipt or while a compliance procedure is pending as defined in 40 CFR 264.141, whichever is later.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will deposit the amount of the draft promptly and directly into the standby trust fund of [owner's or operator's name] held in trust by [name and address of corporate trustee].

I hereby certify that I am authorized to execute this letter of credit on behalf of [issuing institution] and that the wording of this letter of credit is identical to the wording specified in 40 CFR 264.151(f).

Attest:

[Signature and title of official of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce", or "the Uniform Commercial Code"].

(g) A hazardous waste facility liability endorsement as required in § 264.147 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Hazardous Waste Facility Liability Endorsement

It is agreed that:

1. The certification of the policy, as proof of financial responsibility under the provisions of [insert § 264.147(a)(1) and/or (b)(1), 40 CFR] amends the policy to provide insurance in accordance with the provisions of such regulations to the extent of coverage and limits of liability required thereby at [list EPA Identification Number, name, and address for each facility]. Within the limits of liability provided it is understood that no condition, provision, stipulation, or limitation contained in the policy, or any other endorsement thereon or violation thereof, or of this endorsement, by the insured, shall relieve the Company from liability hereunder or from the payment of any such final judgement, irrespective of the financial responsibility or lack thereof or insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which this endorsement is attached are to remain in full force and effect as binding between the insured and the Company, and the insured agrees to reimburse the Company for any payment made by the Company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the Company would not have been obligated to make under the provisions of the policy except for the agreement contained in the endorsement.

2. Whenever requested by the Regional Administrator, the company agrees to furnish to the Regional Administrator a duplicate original of said policy and all endorsements thereon.

3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may only be effected by the Company or the insured giving sixty (60) days' notice in writing to the Regional Administrator, such sixty (60) days' notice to commence to run from the date the notice is actually received by the Regional Administrator.

4. Notwithstanding any other provision of this policy, if this endorsement or policy is on a claims-made basis, cancellation or termination may not be effected within 120 days of any fire, explosion, or unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, surface water, or ground water.

Attached to and forming part of policy No. ——— issued by [name of Company], herein called the Company, of [address of Company] to [name of insured] of [address]. Dated at ——— this ——— day of ———, 19———.

Countersigned by ———, authorized Company representative.

Subpart I—Use and Management of Containers

§ 264.170 Applicability.

The regulations in this Subpart apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as § 264.1 provides otherwise.

[*Comment:* Under § 261.7 and § 261.33(c), if a hazardous waste is emptied from a container the residue remaining in the container is not considered a hazardous waste if the container is "empty" as defined in § 261.7. In that event, management of the container is exempt from the requirements of this Subpart.]

§ 264.171 Condition of containers.

If a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition or manage the waste in some other way that complies with the requirements of this Part.

§ 264.172 Compatibility of waste with containers.

The owner or operator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

§ 264.173 Management of containers.

(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

[*Comment:* Reuse of containers in transportation is governed by U.S. Department of Transportation regulations including those set forth in 49 CFR 173.28.]

§ 264.174 Inspections.

At least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

[*Comment:* See §§ 264.15(c) and 264.171 for remedial action required if deterioration or leaks are detected.]

§ 264.175 Containment.

(a) Container storage areas must have a containment system that is capable of collecting and holding spills, leaks, and precipitation. The containment system must:

(1) Have a base underlying the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated rainfall until the collected material is detected and removed;

(2) Be designed for efficient drainage so that standing liquid does not remain on the base longer than one hour after a leakage or precipitation event unless the containers are elevated or in some other manner are protected from contact with accumulated liquids; and

(3) Have sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater.

(b) Run-on into the containment system must be prevented, unless the Regional Administrator waives this requirement in the permit after determining that the collection system has sufficient excess capacity in addition to that required in paragraph (a)(3) of this Section to accommodate any run-on which might enter the system.

(c) Spilled or leaked waste and accumulated precipitation must be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

[*Comment:* If the collected material is a hazardous waste under Part 261 of this Chapter, it must be managed as a hazardous waste in accordance with all applicable requirements of Parts 262–266 of this Chapter. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of Section 402 of the Clean Water Act, as amended.]

§ 264.176 Special requirements for ignitable or reactive waste.

Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line.

[*Comment:* See § 264.17(a) for additional requirements.]

§ 264.177 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials (see Appendix V for examples), must not be placed in the same container, unless § 264.17(b) is complied with.

(b) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material.

[*Comment:* As required by § 264.13, the waste analysis plan must include analyses needed to comply with § 264.177. Also, § 264.17(c) requires wastes analyses, trial tests or other documentation to assure compliance with § 264.17(b). As required by § 264.73, the owner or operator must place the results of each waste analysis and trial test, and any documented information, in the operating record of the facility.]

(c) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

[*Comment:* The purpose of this Section is to prevent fires, explosions, gaseous emission, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the mixing of incompatible wastes or materials if containers break or leak.]

§ 264.178 Closure.

At closure, all hazardous waste and hazardous waste residues must be removed from the containment system. Remaining containers, liners, bases, and soil containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed.

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with § 261.3(d) of this Chapter that the solid waste removed from the containment system is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262–266 of this Chapter].

Subpart J—Tanks

§ 264.190 Applicability.

(a) The regulations in this Subpart apply to owners and operators of facilities that use tanks to treat or store hazardous waste, except as § 264.1 and paragraph (b) of this Section provide otherwise;

(b) The regulations in this Subpart do not apply to facilities that treat or store hazardous waste in covered underground tanks that cannot be entered for inspection.

§ 264.191 Design of tanks.

(a) Tanks must have sufficient shell strength and, for closed tanks, pressure controls (e.g., vents) to assure that they do not collapse or rupture. The Regional Administrator will review the design of the tanks, including the foundation, structural support, seams and pressure controls. The Regional Administrator shall require that a minimum shell thickness be maintained at all times to ensure sufficient shell strength. Factors to be considered in establishing minimum thickness include the width, height, and materials of construction of the tank, and the specific gravity of the waste which will be placed in the tank. In reviewing the design of the tank and establishing a minimum thickness, the Regional Administrator shall rely upon appropriate industrial design standards and other available information.

[*Comment:* Design standards for certain types of tanks are published by the American Petroleum Institute, Underwriter's Laboratories, the American Concrete Institute, and several other organizations.]

§ 264.192 General operating requirements.

(a) Wastes and other materials (e.g., treatment reagents) which are incompatible with the material of construction of the tank must not be placed in the tank unless the tank is protected from accelerated corrosion, erosion or abrasion through the use of:

(1) An inner liner or coating which is compatible with the waste or material and which is free of leaks, cracks, holes or other deterioration; or

(2) Alternative means of protection (e.g., cathodic protection or corrosion inhibitors).

(b) The owner or operator must use appropriate controls and practices to prevent overfilling. These must include:

(1) Controls to prevent overfilling (e.g., waste feed cutoff system or by-pass system to a standby tank); and

(2) For uncovered tanks, maintenance of sufficient freeboard to prevent overtopping by wave or wind action or by precipitation.

§ 264.193 [Reserved]

§ 264.194 Inspections.

(a) The owner or operator must inspect:

(1) Overfilling control equipment (e.g., waste feed cut-off systems and by-pass

systems) at least once each operating day to ensure that it is in good working order;

(2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) where present, at least once each operating day to ensure that the tank is being operated according to its design;

(3) For uncovered tanks, the level of waste in the tank, at least once each operating day, to ensure compliance with § 264.192(b)(2);

(4) The construction materials of the above-ground portions of the tank, at least weekly to detect corrosion or erosion and leaking of fixtures and seams; and

(5) The area immediately surrounding the tank, at least weekly, to detect obvious signs of leakage (e.g., wet spots or dead vegetation).

(b) As part of the inspection schedule required in § 264.15(b) and in addition to the specific requirements of paragraph (a) of this Section, the owner or operator must develop a schedule and procedure for assessing the condition of the tank. The schedule and procedure must be adequate to detect cracks, leaks, corrosion or erosion which may lead to cracks or leaks, or wall thinning to less that the thickness required under § 264.191. Procedures for emptying a tank to allow entry and inspection of the interior must be established when necessary to detect corrosion or erosion of the tank sides and bottom. The frequency of these assessments must be based on the material of construction of the tank, type of corrosion or erosion protection used, rate of corrosion or erosion observed during previous inspections, and the characteristics of the waste being treated or stored.

(c) As part of the contingency plan required under Subpart D of Part 264, the owner or operator must specify the procedures he intends to use to respond to tank spills or leakage, including procedures and timing for expeditious removal of leaked or spilled waste and repair of the tank.

[*Comment:* As required in § 264.15(c), the owner or operator must remedy any leak, crack, or wall thinning in violation of § 264.191, or equipment or process malfunction in violation of § 264.192, which he discovers during inspection. See 29 CFR § 1910.94(d)(11) for Occupational Safety and Health Administration requirements relating to entry of tanks for inspection.]

§§ 264.195–264.196 [Reserved]

§ 264.197 Closure.

At closure, all hazardous waste and hazardous waste residues must be removed from tanks, discharge control equipment, and discharge confinement structures.

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with § 261.3(d) of this Chapter that the solid waste removed from his tank is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262–266 of this Chapter.]

§ 264.198 Special requirements for ignitable or reactive wastes.

(a) Ignitable or reactive waste must not be placed in a tank unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the tank so that (i) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this Chapter, and (ii) § 264.17(b) is complied with; or

(2) The waste is stored or treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react; or

(3) The tank is used solely for emergencies.

(b) The owner or operator of a facility which treats or stores ignitable or reactive waste in covered tanks must comply with the National Fire Protection Association's (NFPA's) buffer zone requirements for tanks, contained in Tables 2–1 through 2–6 of the "Flammable and Combustible Code—1977".

[*Comment:* As required by § 264.13, the waste analysis plan must include analyses needed to comply with § 264.198. Section 264.17(a) contains additional requirements for ignitable and reactive wastes. Also, § 264.17(c) requires waste analysis, trial tests, or other documentation to ensure compliance with § 264.17(b). As required by § 264.73, the owner or operator must place the results of each waste analysis and trial test, and any documented information, in the operating record of the facility.]

§ 264.199 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, must not be placed in the same tank, unless § 264.17(b) is complied with.

(b) Hazardous waste must not be placed in an unwashed tank which previously held an incompatible waste or material, unless § 264.17(b) is complied with.

[*Comment:* As required by § 264.13, the waste analysis plan must include analyses needed to comply with § 264.199. Also, § 264.17(c) requires waste analyses, trial tests, or other documentation to ensure compliance with § 264.17(b). As required by § 264.73, the owner or operator must place the results of each waste analysis and trial test, and any documented information, in the operating record of the facility.]

Subpart K—Surface Impoundments

§ 264.220 Applicability.

The regulations in this Subpart apply to owners and operators of facilities that use surface impoundments to treat or store hazardous waste, except as § 264.1 provides otherwise.

[*Comment:* This Subpart currently applies only to surface impoundments that are used for storage or treatment of hazardous waste and are designed and operated to prevent discharge into the land and ground water, and the surface water (except discharges authorized by an NPDES permit issued pursuant to Section 402 of the Clean Water Act, as amended). The Agency intends to supplement this regulation to address other types of surface impoundments including impoundments that are not designed and operated to prevent discharge and impoundments that are closed with wastes left in place. Until additional regulations are promulgated, all surface impoundments which are authorized by permit must comply with this Subpart.]

§ 264.221 General design requirements.

(a) A surface impoundment must be designed to provide:

(1) At least 60 centimeters (2 feet) of freeboard; or

(2) An amount of freeboard other than 60 centimeters based on documentation, acceptable to the Regional Administrator, that the specified amount of freeboard will prevent overtopping.

[*Comment:* The amount of freeboard approved by the Regional Administrator shall be specified in the permit.]

(b) A surface impoundment must be designed so that any flow of waste into the impoundment can be immediately shut off in the event of overtopping or liner failure.

(c) A surface impoundment must be designed to prevent discharge into the land and ground water, and to surface water (except discharges authorized by an NPDES permit) during the life of the impoundment by use of a containment system which complies with § 264.223.

[*Comment:* The Regional Administrator shall include the design of

the containment system as a term and condition of the permit.]

(d) Dikes must be designed with sufficient structural integrity to prevent massive failure without dependence on any liner system included in the surface impoundment design.

(e) A leachate detection, collection, and removal system must be designed so that liquid will flow freely from the collection system to prevent the creation of pressure head within the collection system in excess of that necessary to cause the liquid to flow freely.

§ 264.222 General operating requirements.

(a) A surface impoundment must be operated to prevent any overtopping due to wind and wave action, overfilling precipitation, or any combination thereof.

(b) A surface impoundment must be operated to maintain at least the amount of freeboard specified by the Regional Administrator in the permit.

(c) A leachate detection, collection, and removal system installed to comply with § 264.223(b) must be operated so that leachate flows freely from the collection system and is removed as it accumulates or with sufficient frequency to prevent backwater within the collection system.

(d) Earthen dikes must be kept free of:

(1) Perennial woody plants with root systems which could displace the earthen materials upon which the structural integrity of the dike is dependent; and

(2) Burrowing mammals which could remove earthen materials upon which the structural integrity of the dike is dependent or create leaks through burrows in the dike.

(e) Run-on must be diverted away from a surface impoundment.

§ 264.223 Containment systems.

(a) Earthen dikes must have a protective cover, such as grass, shale, or rock, to minimize wind and water erosion and to preserve the structural integrity of the dike.

(b) A liner system designed to prevent discharge into the land during the life of the surface impoundment must:

(1)(i) Be constructed with a highly impermeable liner system in contact with the waste which will prevent discharge of the waste or leachate through the liner(s) during the life of the surface impoundment based on the liner(s) thickness, the saturated permeability of the liner(s) and the pressure head or waste or leachate to which the liner(s) will be exposed; and

[*Comment:* The liner system in contact with the waste (i.e., the top liner system) includes any protective cover over the liner(s).]

(ii) A leachate detection, collection, and removal system beneath the liner(s) in contact with the waste to detect, contain, collect, and remove any discharge from the liner system in contact with the waste; and

[*Comment:* A highly impermeable liner beneath the drainage layer (i.e., the bottom liner) is a necessary part of a leachate detection, collection, and removal system.]

(2) Be constructed above the water table to ensure the detection of any discharge of waste or leachate through the liner system in contact with the waste; prevent the discharge of ground water to the leachate detection, collection, and removal system; and to protect the structural integrity of the liner(s).

[*Comment:* The ground water table may be controlled to comply with this requirement.]

(c) A containment system must have a containment life equal to or greater than the life of the surface impoundment.

[*Comment:* See "Landfill and Surface Impoundment Performance Evaluation", EPA, SW/869, September 1980 for methods to evaluate the containment life and effectiveness of a containment system.]

(d) Liner systems must be constructed:

(1) Of materials which have appropriate chemical properties and strength and of sufficient thickness to prevent failure due to pressure head, physical contact with the waste or leachate to which they are exposed, climatic conditions, and the stress of installation; and

(2) On a foundation capable of providing support to the liner(s) and resistance to pressure head above the liner(s) to prevent failure of the liner(s) due to settlement or compression.

[*Comment:* See "Lining of Waste Impoundment and Disposal Facilities", EPA/870, September 1980 for data and discussions of liner system materials, design, construction, operation, and maintenance.]

§ 264.224-§ 264.225 [Reserved]

§ 264.226 Inspections and testing.

(a) (1) During construction or installation, liner systems must be inspected for uniformity, damage, and imperfections (e.g. holes, cracks, thin spots, and foreign materials).

(2) Earth material liner systems must be tested for compaction density, moisture content, and permeability after placement.

(3) Manufactured liner materials (e.g. membranes, sheets, and coatings) must be inspected to ensure tight seams and joints and the absence of tears or blisters.

(b) The owner or operator must inspect:

(1) A surface impoundment which contains free liquids at least once each operating day to ensure compliance with § 264.222(a), (b) and (c), and to detect any leaks or other failures of the impoundment.

(2) Each surface impoundment, including dikes, berms, and vegetation surrounding the dike, at least once a week and after storms to detect any evidence of or potential for leaks from the impoundment, erosion of dikes, and to ensure compliance with § 264.222(d).

[*Comment:* As required by § 264.15(c), the owner or operator must remedy any deterioration or malfunction found.]

(c) The structural integrity of any dike, including that portion of any dike which provides freeboard, must be certified against massive failure by a qualified engineer prior to the issuance or reissuance of a permit; or if the impoundment is not in service, prior to being placed in service and after construction or prior to being returned to service.

(1) In certifying the structual integrity of the dike it must be established that the dike will withstand:

(i) The stress of the pressure head of liquids placed into the impoundment;

(ii) The weakening effect of earth materials being scoured due to leakage from the impoundment through and under the dike without relying on any liner system; and

(iii) The weakening effect of earth materials being scoured due to leakage from the impoundment through and under the dike assuming leaks develop in the liner system.

§ 264.227 Containment system repairs; contingency plans.

(a) Whenever there is any indication of a possible failure of the containment system, that system must be inspected in accordance with the provisions of the containment system evaluation and repair plan required by paragraph (d) of this Section. Indications of possible failure of the containment system include at least an unplanned and non-sudden drop in liquid level in the impoundment, liquid detected in the leachate detection system, evidence of leakage or the potential for leakage in the dike, erosion of the dike, apparent or potential deterioration of the liner(s) based on observation or test samples of the liner materials, any mishandling of wastes placed in the impoundment, and foreign objects in the impoundment.

(b) Whenever there is a positive indication of a failure of the containment system, the impoundment must be removed from service. Indications of positive failure of the containment system include an unplanned sudden drop in liquid level in the impoundment, waste detected in the leachate detection system, active leakage through the dike, or a breach (e.g., a hole, tear, crack, or separation) in the liner system.

(c) If the surface impoundment must be removed from service as required by paragraph (b) of this Section, the owner or operator must:

(1) Immediately shut off the flow of or stop the addition of wastes into the impoundment;

(2) Immediately contain any leakage which has occured or is occurring;

(3) Immediately cause the leak to be stopped; and

(4) If the leak cannot be stopped by any other means, empty the impoundment.

[*Comment:* See § 264.56(j) for recordkeeping and reporting requirements.]

(d) As part of the contingency plan required in Subpart D, the owner or operator must specify:

(1) A procedure for complying with the requiremnents of paragraph (c) of this Section; and

(2) A containment system evaluation and repair plan describing testing and monitoring techniques; procedures to be followed to evaluate the integrity of the containment system in the event of a possible failure; a schedule of actions to be taken in the event of a possible failure; and a description of the repair techniques to be used in the event of leakage due to containment system failure or deterioration which does not require the impoundment to be removed from service.

(e) No surface impoundment that has been removed from service in accordance with paragraph (b) of this Section may be restored to service unless:

(1) The containment system has been repaired; and

(2) The containment system has been certified by a qualified engineer as meeting the design specifications approved in the permit.

(f) A surface impoundment that has been removed from service in accordance with paragraph (b) of this Section and that is not being repaired must be closed in accordance with § 264.228.

[*Comment:* All wastes removed from the impoundment must be managed as a hazardous waste in compliance with all applicable requirements of Parts 262–266 of this Chapter. Any point source discharge to waters of the United States is subject to the requirements of Section 402 of the Clean Water Act, as amended. Spills may be subject to Section 311 of that Act.]

§ 264.228 Closure.

At closure, all hazardous waste and hazardous waste residues must be removed from the impoundment. Any component of the containment system or any appurtenant structures or equipment (e.g., discharge platforms and pipes, and baffles, skimmers, aerators, or other equipment) containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed.

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with § 261.3(d) of this Chapter that the solid waste removed from the surface impoundment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262–266 of this Chapter.]

§ 264.229 Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be placed in a surface impoundment, unless:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this Chapter; and

(2) § 264.17(b) is complied with; or

(b) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; or

(c) The surface impoundment is used solely for emergencies.

[*Comment:* As required by § 264.13, the waste analysis plan must include analyses needed to comply with § 264.229. Also, § 264.17(c) requires waste analyses, trial tests, or other documentation to assure compliance with § 264.17(b). As required by § 264.73, the owner or operator must place the results of each waste analysis and trial test, and any documented information, in the operating record of the facility.]

§ 264.230 Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials (see Appendix V for examples) must not be placed in the same surface impoundment, unless § 264.17(b) is complied with.

[*Comment:* As required by § 264.13, the waste analysis plan must include analyses needed to comply with § 264.230. Also, § 264.17(c) requires waste analyses, trial tests, or other documentation to assure compliance with § 264.17(b). As required by § 264.73, the owner or operator must place the results of each waste analysis and trial test, and any documented information, in the operating record of the facility.]

Subpart L—Waste Piles

§ 264.250 Applicability.

The regulations of this Subpart apply to owners and operators of facilities that store or treat hazardous waste in piles, except as § 264.1 provides otherwise.

[*Comment:* This Subpart currently applies only to waste piles that are used for storage or treatment of hazardous waste and are designed and operated to prevent discharge into the land, surface water, and ground water. The Agency intends to supplement this regulation to address other types of waste piles including piles that are not designed and operated to prevent discharge and piles that are closed with waste left in place. Until additional regulations are promulgated, all waste piles that are authorized by permit must comply with this Subpart.]

§ 264.251 General design requirements.

(a) A waste pile must be designed to control dispersal of the waste by wind, where necessary, or by water erosion.

(b) A waste pile must be designed to prevent discharge into the land, surface water, or ground water during the life of the pile by use of a containment system which complies with § 264.253.

§ 264.252 General operating requirements.

(a) The Regional Administrator shall specify control practices (e.g., cover or frequent wetting) where necessary to ensure that wind dispersal of hazardous waste from piles is controlled.

(b) Run-on must be diverted away from a waste pile.

(c) Leachate and run-off from a waste pile must be collected and controlled.

[*Comment:* If the collected leachate or run-off is a hazardous waste under Part 261 of this Chapter, it must be managed as a hazardous waste in accordance with all applicable requirements of Parts 262–266 of this Chapter. If collected leachate or run-off is discharged through a point source to waters of the United States, it is subject to the requirements of Section 402 of the Clean Water Act, as amended.]

§ 264.253 Containment systems.

(a) A containment system must be designed, constructed, maintained, and operated to prevent discharge into the land, surface water, or ground water during the life of the waste pile. The system must consist of:

(1) A leachate and run-off collection and control system; and either

(2) A base underlying and in contact with the waste pile that is made of a liner (or liners) which will prevent discharge into the land, surface water, or ground water during the life of the pile based on the liner(s) thickness, the permeability of the liner(s), and the characteristics of the waste or leachate to which the liner(s) will be exposed. The liner(s) must be of sufficient strength and thickness to prevent failure due to puncture, cracking, tearing, or other physical damage from equipment used to place waste in or on the pile, or to clean and expose the liner surface for inspection; or

(3) A base as in paragraph (a)(2) of this Section, except that the liner(s) need not be of sufficient strength and thickness to prevent failure due to physical damage from equipment used to clean and expose the liner surface for inspection, and a leachate detection, collection, and removal system beneath the base to detect, contain, collect, and remove any discharge from the base. The leachate detection, collection, and removal system must be placed above the water table to ensure the detection of any discharge through the base; to prevent the discharge of ground water into the leachate detection, collection, and removal system; and to protect the structural integrity of the base.

[*Comment:* A highly impermeable liner beneath the drainage layer is a necessary part of a leachate detection, collection, and removal system. The ground water table may be controlled to comply with this requirement.]

(b) A waste pile base must be constructed;

(1) Of materials that have appropriate chemical properties and strength and of sufficient thickness to prevent failure due to pressure of and physical contact with the waste to which they are exposed, climatic conditions, and the stress of installation; and

(2) On a foundation capable of providing support to the liner(s) and to loads placed or moving above the liner(s) to prevent failure of the liner(s) due to settlement or compression.

(c) A containment system must be protected from plant growth which could puncture any component of the system.

(d) A containment system must have a containment life equal to or greater than the life of the pile.

[*Comment:* See "Landfill and Surface Impoundment Performance Evaluation", EPA, SW/869, September 1980 for methods to evaluate the containment life and effectiveness of a liner system. See "Lining of Waste Impoundment and Disposal Facilities", EPA/870, September 1980 for data and discussions of liner system materials, design, construction, operation, and maintenance.]

§ 264.254 Inspections and testing.

(a) During construction or installation of the waste pile base:

(1) Liner systems must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, and foreign materials); and

(2) Manufactured liner materials (e.g., membranes, sheets, and coatings) must be inspected to ensure tight seams and joints and the absence of tears or blisters.

§ 264.255 Containment system repairs; contingency plans.

(a) Whenever there is any indication of a possible failure of the containment system, that system must be inspected in accordance with the provisions of the containment system evaluation and repair plan required by paragraph (d) of this Section. Indications of possible failure of the containment system include liquid detected in the leachate detection system (where applicable), evidence of leakage or the potential for leakage in the base, erosion of the base, or apparent or potential deterioration of the liner(s) based on observation or test samples of the liner materials.

(b) Whenever there is a positive indication of a failure of the containment system, the waste pile must be removed from service. Indications of positive failure of the containment system include waste detected in the leachate detection system (where applicable), or a breach (e.g., a hole, tear, crack, or separation) in the base.

(c) If the waste pile must be removed from service as required by paragraph (b) of this Section, the owner or operator must:

(1) Immediately stop adding wastes to the pile;

(2) Immediately contain any leakage which has or is occuring;

(3) Immediately cause the leak to be stoppped; and

(4) If the leak cannot be stopped by any other means, remove the waste from the base.

[*Comment:* See § 264.56(j) for recordkeeping and reporting requirements.]

(d) As part of the contingency plan required in Subpart D, the owner or operator must specify:

(1) A procedure for complying with the requirements of paragraph (c) of this Section; and

(2) A containment system evaluation and repair plan describing testing and monitoring techniques; procedures to be followed to evaluate the integrity of the containment system in the event of a possible failure; a schedule of actions to be taken in the event of a possible failure; and a description of the repair techniques to be used in the event of leakage due to containment system failure or deterioration which does not require the waste pile to be removed from service.

(e) No waste pile that has been removed from service in accordance with paragraph (b) of this Section may be restored to service unless:

(1) The containment system has been repaired; and

(2) The containment system has been certified by a qualified engineer as meeting the design specifications approved in the permit.

(f) A waste pile that has been removed from service in accordance with paragraph (b) of this Section and that is not being repaired must be closed in accordance with § 264.258.

[*Comment:* All wastes removed from the waste pile must be managed as a hazardous waste in compliance with all applicable requirements of Parts 262–266 of this Chapter. Any point source discharge to waters of the United States is subject to the requirements of Section 402 of the Clean Water Act, as amended.]

§ 264.256 Special requirements for ignitable or reactive waste.

(a) Ignitable or reactive waste must not be placed in a pile, *unless:*

(1) Addition of the waste to an existing pile (i) results in the waste or mixture no longer meeting the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this Chapter, and (ii) complies with § 264.17(b); or

(2) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

[*Comment:* As required by § 264.13, the waste analysis plan must include analyses needed to comply with § 264.256. Also, § 264.17(c) requires waste analyses, trial tests, or other documentation to assure compliance with § 264.17(b). As required by § 264.73, the owner or operator must place the results of each waste analysis and trial test, and any documented information, in the operating record of the facility.]

§ 264.257 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials (see Appendix V for examples), must not be placed in the same pile, unless § 264.17(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device.

[*Comment*: The purpose of this is to prevent fires, explosions, gaseous emissions, leaching, or other discharge which could result from the contact or mixing of incompatible wastes or materials.]

(c) Hazardous waste must not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with § 264.17(b).

[*Comment*: As required by § 264.13, the waste analysis plan must include analyses needed to comply with § 264.257. Also, § 264.17(c) requires waste analyses, trial tests, or other documentation to assure compliance with § 264.17(b). As required by § 264.73, the owner or operator must place the results of each waste analysis and trial tests, and any documented information, in the operating record of the facility.]

§ 264.258 Closure.

At closure, all hazardous waste and hazardous waste residues must be removed from the pile. Any component of the containment system containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed.

[*Comment*: At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with § 261.3(d) of this Chapter that the solid waste removed from the waste pile is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262—266 of this Chapter.]

f. In Part 264, Appendices III and IV are reserved and new Appendices V and VI are added to read as follows: these Appendices are issued as interim final rules:

Appendix V—Examples of Potentially Incompatible Waste

Many hazardous wastes, when mixed with other waste or materials at a hazardous waste facility, can produce effects which are harmful to human health and the environment, such as (1) heat or pressure, (2) fire or explosion, (3) violent reaction, (4) toxic dusts, mists, fumes, or gases, or (5) flammable fumes or gases.

Below are examples of potentially incompatible wastes, waste components, and materials, along with the harmful consequences which result from mixing materials in one group with materials in another group. The list is intended as a guide to owners or operators of treatment, storage, and disposal facilities, and to enforcement and permit granting officials, to indicate the need for special precautions when managing these potentially incompatible waste materials or components.

This list is not intended to be exhaustive. An owner or operator must, as the regulations require, adequately analyze his wastes so that he can avoid creating uncontrolled substances or reactions of the type listed below, whether they are listed below or not.

It is possible for potentially incompatible wastes to be mixed in a way that precludes a reaction (e.g., adding acid to water rather than water to acid) or that neutralizes them (e.g., a strong acid mixed with a strong base), or that controls substances produced (e.g., by generating flammable gases in a closed tank equipped so that ignition cannot occur, and burning the gases in an incinerator).

In the lists below, the mixing of a Group A material with a Group B material may have the potential consequence as noted.

Group 1–A

Acetylene sludge
Alkaline caustic liquids
Alkaline cleaner
Alkaline corrosive liquids
Alkaline corrosive battery fluid
Caustic wastewater
Lime sludge and other corrosive alkalies
Lime wastewater
Lime and water
Spent caustic

Group 1–B

Acid sludge
Acid and water
Battery acid
Chemical cleaners
Electrolyte, acid
Etching acid liquid or solvent
Pickling liquor and other corrosive acids
Spent acid
Spent mixed acid
Spent sulfuric acid

Potential consequences: Heat generation; violent reaction.

Group 2–A

Aluminum
Beryllium
Calcium
Lithium
Magnesium
Potassium
Sodium
Zinc powder
Other reactive metals and metal hydrides

Group 2–B

Any waste in Group 1–A or 1–B

Potential consequences: Fire or explosion; generation of flammable hydrogen gas.

Group 3–A

Alcohols
Water

Group 3–B

Any concentrated waste in Groups 1–A or 1–B
Calcium
Lithium
Metal hydrides
Potassium
SO_2Cl_2, $SOCl_2$, PCl_3, CH_3SiCl_3
Other water-reactive waste

Potential consequences: Fire, explosion, or heat generation; generation of flammable or toxic gases.

Group 4–A

Alcohols
Aldehydes
Halogenated hydrocarbons
Nitrated hydrocarbons
Unsaturated hydrocarbons
Other reactive organic compounds and solvents

Group 4–B

Concentrated Group 1–A or 1–B wastes
Group 2–A wastes

Potential consequences: Fire, explosion, or violent reaction.

Group 5–A

Spent cyanide and sulfide solutions

Group 5–B

Group 1–B wastes

Potential consequences: Generation of toxic hydrogen cyanide or hydrogen sulfide gas.

Group 6–A

Chlorates
Chlorine
Chlorites
Chromic acid
Hypochlorites
Nitrates
Nitric acid, fuming
Perchlorates
Permanganates
Peroxides
Other strong oxidizers

Group 6–B

Acetic acid and other organic acids
Concentrated mineral acids
Group 2–A wastes
Group 4–A wastes
Other flammable and combustible wastes

Potential consequences: Fire, explosion, or violent reaction.

Source: "Law, Regulations, and Guidelines for Handling of Hazardous Waste." California Department of Health, February 1975.

Appendix VI.—Political Jurisdictions [1] in Which Compliance With § 264.18(a) Must Be Demonstrated

Alabama

None

Alaska

Aleutian Islands
Anchorage
Bethel
Bristol Bay
Cordova-Valdez
Fairbanks-Fort Yukon
Juneau
Kenai-Cook Inlet
Ketchikan-Prince of Wales
Kodiak
Lynn Canal-Icy Straits
Palmer-Wasilla-Talkeena
Seward
Sitka
Wade Hampton
Wrangell Petersburg
Yukon-Kuskokwim

Arizona

Cochise
Graham
Greenlee
Yuma

Arkansas

Arkansas
Clay
Cleburne
Craighead
Crittenden
Cross
Fulton
Greene
Independence
Izard
Jackson
Lawrence
Lee
Lonoke
Mississippi
Monroe
Phillips
Poinsett
Polk
Prairie
Randolf
Sharp
St. Francis
Stone
White
Woodruff

California

All

Colorado

Archuleta
Conejos
Hinsdale
Mineral
Rio Grande
Saguache

Connecticut

All

Delaware

None

Florida

None

Georgia

Banks
Barrow
Bartow
Bryan
Bulloch
Burke
Candler
Catoosa
Chatham
Chattooga
Cherokee
Clarke
Cobb
Columbia
Dade
Dawson
De Kalb
Effingham
Elbert
Emanuel
Fannin
Floyd
Forsyth
Franklin
Fulton
Glascock
Gilmer
Gordon
Greene
Gwinnett
Habersham
Hall
Hancock
Hart
Jackson
Jasper
Jefferson
Jenkins
Johnson
Lincoln
Lumpkin
Madison
McDuffie
Morgan
Murray
Newton
Oconee
Oglethorpe
Pickens
Putnam
Rabun
Richmond
Rockdale
Screven
Stephens
Talaferro
Towns
Treutlen
Union
Walker
Walton
Warren
Washington
White
Whitfield
Wilkes

Hawaii

Hawaii
Honolulu
Maui

Idaho

Bannock
Bear Lake
Bingham
Bonneville
Caribou
Cassia
Clark
Franklin
Fremont
Jefferson
Madison
Oneida
Power
Teton

Illinois

Alexander
Bond
Christian
Clark
Clay
Clinton
Coles
Crawford
Cumberland
Douglas
Edgar
Edwards
Effingham
Fayette
Franklin
Gallatin
Hamilton
Hardin
Jackson
Jasper
Jefferson
Jersey
Johnson
Lawrence
Macoupin
Madison
Marion
Massac
Monroe
Montgomery
Moultrie
Perry
Pope
Pulaski
Randolf
Richland
Saline
Shelby
St. Clair
Union
Wabash
Washington
Wayne
White
Williamson

Indiana

Gibson
Knox
Posey
Sullivan
Vanderburgh

Iowa

Fremont
Mills
Page

Kansas

Anderson
Atchison
Brown
Coffey
Doniphan
Douglas
Franklin
Geary
Jackson
Jefferson
Johnson
Leavenworth
Linn
Lyon
Marshall
Miami
Morris
Nemaha
Osage
Pottawatomie
Riley
Shawnee
Wabaunsee
Washington
Wyandotte

Kentucky

Ballard
Bell
Caldwell
Calloway
Carlisle
Crittenden
Fulton
Graves
Harlan
Henderson
Hickman
Letcher
Livingston
Lyon
Marshall
McCracken
Trigg
Union
Webster

Louisiana

None

Maine

All

Maryland

None

Massachusetts

All

Michigan

None

Minnesota

None

Mississippi

None

Missouri

Bollinger
Butler
Cape Girardeau
Carter
Crawford
Dent
Dunklin
Franklin
Howell
Iron
Jefferson
Madison
Mississippi
New Madrid
Oregon
Pemiscot
Perry
Reynolds
Ripley
Scott
Shannon
St. Charles
Ste. Genevieve
St. Francois
St. Louis
St. Louis City
Stoddard
Texas
Washington
Wayne

Montana

Beaverhead
Broadwater
Cascade
Deer Lodge
Flathead
Gallatin
Granite
Jefferson
Lake
Lewis and Clark
Madison
Meagher
Missoula
Park
Powell
Sanders
Silver Bow
Stillwater
Sweet Grass
Teton
Wheatland

Nebraska

Cass
Gage
Jefferson
Johnson
Lancaster
Sarpy
Otoe
Nemaha
Pawnee
Richardson

Nevada

All

New Hampshire

All

New Jersey

Bergen
Essex
Hudson
Hunterdon
Mercer
Middlesex
Monmouth
Morris
Passaic
Somerset
Sussex
Union
Warren

[1] These include counties, city-county consolidations, independent cities, and, in the case of Alaska, election districts.

New Mexico

Bernalillo
Catron
Grant
Hidalgo
Los Alamos
Rio Arriba
Sandoval
Santa Fe
Sierra
Socorro
Taos
Torrance
Valencia

New York

Albany
Bronx
Clinton
Columbia
Delaware
Dutchess
Erie
Essex
Franklin
Fulton
Genesee
Greene
Hamilton
Herkimer
Jefferson
Kings
Lewis
Montgomery
Nassau
New York
Niagara
Oneida
Orange
Orleans
Otsego
Putnam
Queens
Rensselaer
Richland
Richmond
Rockland
Saratoga
Schenectady
Schoharie
St. Lawrence
Suffolk
Sullivan
Ulster
Warren
Washington
Westchester
Wyoming

North Carolina

Alexander
Alleghany
Anson
Ashe
Avery
Buncombe
Burke
Cabarrus
Caldwell
Catawba
Cherokee
Clay
Cleveland
Gaston
Graham
Haywood
Henderson
Iredell
Jackson
Lincoln
Macon
Madison
McDowell
Mecklenburg
Mitchell
Polk
Richmond
Rowan
Rutherford
Stanly
Surry
Swain
Transylvania
Union
Watauga
Wilkes
Yancey

North Dakota

None

Ohio

None

Oklahoma

Atoka
Bryan
Carter
Choctaw
Cleveland
Coal
Creek
Garvin
Grady
Haskell
Hughes
Johnston
Latimer
Le Plore
Lincoln
Marshall
McClain
McCurtain
McIntosh
Murray
Muskogee
Okfuskee
Oklahoma
Okmulgee
Pittsburg
Pontotoc
Pottawatomie
Pushmataha
Seminole
Stephens
Tusla

Oregon

None

Pennsylvania

Berks
Bucks
Carbon
Chester
Lackawanna
Lancaster.
Lebanon
Lehigh
Luzurne
Monroe
Montgomery
Northampton
Pike
Schuylkill
Susquenhanna
Wayne
Wyoming

Rhode Island

All

South Carolina

All

South Dakota

None

Tennessee

Anderson
Bledsoe
Blount
Bradley
Campbell
Carroll
Carter
Claiborne
Cocke
Crockett
Cumberland
Dyer
Fayette
Gibson
Grainger
Greene
Hamblen
Hamilton
Hancock
Hardeman
Hawkins
Haywood
Henry
Jefferson
Johnson
Knox
Lake
Lauderdale
Loudon
Madison
McMinn
Meigs
Monroe
Morgan
Obion
Polk
Rhea
Roane
Scott
Sequatchie
Sevier
Shelby
Sullivan
Tipton
Unicoi
Union
Washington
Weakley

Texas

None

Utah

Beaver
Box Elder
Cache
Carbon
Davis
Duchesne
Emery
Garfield
Iran
Juab
Millard
Morgan
Piute
Rich
Salt Lake
Sanpete
Sevier
Summit
Tooele
Utah
Wasatch
Washington
Wayne
Weber

Vermont

All

Virginia

Bland
Buchanan
Carroll
Craig
Dickenson
Floyd
Giles
Grayson
Lee
Montgomery
Pulaski
Roanoke
Russell
Scott
Smyth
Tazewell
Washington
Wise
Wythe

Washington

Chelan
Clallam
Clark
Cowlitz
Douglas
Ferry
Grant
Gray Harbor
Jefferson
King
Kitsap
Kittitas
Lewis
Mason
Okanogan
Pacific
Pierce
San Juan Islands
Skagit
Skamania
Snohomish
Thurston
Wahkiakum
Whatcom
Yakima

West Virginia

Mercer
McDowell
Monroe
Summers

Wisconsin

None

Wyoming

Fremont
Lincoln
Park
Sublette
Teton
Uinta
Yellowstone National Park

Territories of the United States

American Samoa: All
Commonwealth of the Northern Mariana Islands: All
Guam: All
Puerto Rico: All
U.S. Virgin Islands: All

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

a. Amend Table of Contents as follows:

1. Revise Subpart G—Closure and Post-Closure to read as follows:

Subpart G—Closure and Post-Closure

Sec.
265.110 Applicability.
265.111 Closure performance standard.
265.112 Closure plan; amendment of plan.
265.113 Closure; time allowed for closure.
265.114 Disposal or decontamination of equipment.
265.115 Certification of closure.
265.116 [Reserved]
265.117 Post-closure care and use of property.
265.118 Post-closure plan; amendment of plan.
265.119 Notice to local land authority.
265.120 Notice in deed to property.

2. Revise Subpart H—Financial Requirements to read as follows:

Subpart H—Financial Requirements

Sec.
265.140 Applicability.
265.141 Definitions.
265.142 Cost estimate for facility closure.
265.143 Financial assurance for facility closure.
265.144 Cost estimate for post-closure monitoring and maintenance.
265.145 Financial assurance for post-closure monitoring and maintenance.

265.146 Use of a mechanism for financial assurance of both closure and post-closure care.
265.147 Liability requirements.
265.148 Incapacity of institutions issuing letters of credit, surety bonds, or insurance policies.
265.149 Applicability of State financial requirements.
265.150 State assumption of responsibility.
265.151 Wording of the instruments.

b. Revise Subpart G to read as follows; sections 265.112, 265.113, 265.117, and 265.118 are issued as amended interim final rules:

Subpart G—Closure and Post-Closure

§ 265.110 Applicability.

Except as § 265.1 provides otherwise:

(a) Sections 265.111–265.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 265.117–265.120 (which concern post-closure care) apply to the owners and operators of all hazardous waste disposal facilities.

§ 265.111 Closure performance standard.

The owner or operator must close his facility in a manner that:

(a) Minimizes the need for further maintenance, and

(b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall, or waste decomposition products to the ground or surface waters or to the atmosphere.

§ 265.112 Closure plan; amendment of plan.

(a) By May 19, 1981, the owner or operator must have a written closure plan. He must keep a copy of the closure plan and all revisions to the plan at the facility until closure is completed and certified in accordance with § 265.115. This plan must identify the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan must include, at least:

(1) A description of how and when the facility will be partially closed, if applicable, and finally closed. The description must identify the maximum extent of the operation which will be unclosed during the life of the facility, and how the requirements of §§ 265.111, 265.113, 265.114, and 265.115 and the applicable closure requirements of §§ 265.197, 265.228, 265.280, 265.310, 265.351, 265.381, and 265.404 will be met;

(2) An estimate of the maximum inventory of wastes in storage and in treatment at any time during the life of the facility;

(3) A description of the steps needed to decontaminate facility equipment during closure; and

(4) An estimate of the expected year of closure and a schedule for final closure. The schedule must include, at a minimum, the total time required to close the facility and the time required for intervening closure activities which will allow tracking of the progress of closure. (For example, in the case of a landfill, estimates of the time required to treat and dispose of all waste inventory and of the time required to place a final cover must be included.)

(b) The owner or operator may amend his closure plan at any time during the active life of the facility. (The active life of the facility is that period during which wastes are periodically received.) The owner or operator must amend the plan whenever changes in operating plans or facility design affect the closure plan, or whenever there is a change in the expected year of closure of the facility. The plan must be amended within 60 days of the changes.

(c) The owner or operator must submit his closure plan to the Regional Administrator at least 180 days before the date he expects to begin closure. The owner or operator must submit his closure plan to the Regional Administrator no later than 15 days after:

(1) termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status; or

(2) issuance of a judicial decree or compliance order under Section 3008 of RCRA to cease receiving wastes or close.

[*Comment:* The date when closure commences should be within 30 days after the date on which the owner or operator expects to receive the final volume of wastes.]

(d) The Regional Administrator will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the plan within 90 days of its receipt. If the Regional Administrator does not approve the plan, the owner or operator must modify the plan or submit a new plan for approval within 30 days. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved closure plan. The Regional Administrator's decision must assure that the approved closure plan is consistent with §§ 265.111, 265.113, 265.114, and 265.115 and the applicable requirements of §§ 265.197, 265.228, 265.280, 265.310, 265.351, 265.381 and 265.404. A copy of this modified plan must be mailed to the owner or operator. If the owner or operator plans to begin closure before November 19, 1981 he must submit the closure plan by May 19, 1981.

§ 265.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or 90 days after approval of the closure plan, if that is later, the owner or operator must treat, remove from the site, or dispose of on-site all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period using the procedures under § 265.112(d) if the owner or operator demonstrates that:

(1)(i) The activities required to comply with this paragraph will, of necessity, take him longer than 90 days to complete; or

(ii)(A) The facility has the capacity to receive additional wastes;

(B) There is a reasonable likelihood that a person other than the owner or operator will recommence operation of the site; and

(C) Closure of the facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment.

(b) The owner or operator must complete closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of wastes or 180 days after approval of the closure plan, if that is later. The Regional Administrator may approve a longer closure period using the procedures under § 265.112(c) if the owner or operator demonstrates that:

(1)(i) The closure activities will, of necessity, take him longer than 180 days to complete; or

(ii)(A) The facility has the capacity to receive additional waste;

(B) There is a reasonable likelihood that a person other than the owner or operator will recommence operation of the site;

(C) Closure of the facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but inactive facility.

[*Comment:* Under paragraphs (a)(1)(ii) and (b)(1)(ii), of this Section, if operation of the facility is recommenced, the Regional Administrator may defer completion of closure activities until the new operation is terminated.

§ 265.114 Disposal or decontamination of equipment.

When closure is completed, all facility equipment and structures must have been properly disposed of, or decontaminated by removing all hazardous waste and residues.

§ 265.115 Certification of closure.

When closure is completed, the owner or operator must submit to the Regional Administrator certification both by the owner or operator and by an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan.

§ 265.116 [Reserved]

§ 265.117 Post-closure care and use of property.

(a) Post-closure care must continue for 30 years after the date of completing closure and must consist of at least the following:

(1) Ground-water monitoring and reporting in accordance with the requirements of Subpart F, and

(2) Maintenance of monitoring and waste containment systems as specified in §§ 265.91, 265.223, 265.228, 265.280, and 265.310, where applicable.

(b) The Regional Administrator may require continuation of any of the security requirements of § 265.14 for 30 years after the date closure has been completed when:

(1) Wastes may remain exposed after completion of closure; or

(2) Access by the public or domestic livestock may pose a hazard to human health.

In extending any of these requirements the Regional Administrator will use the procedures of § 265.118(c).

(c) Post-closure use of property on or in which hazardous wastes remain after closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the owner or operator can demonstrate to the Regional Administrator, either in the post-closure plan or by petition, through the procedures in § 265.118(c) or (f), as appropriate, that the disturbance:

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be performed in accordance with the provisions of the approved post-closure plan as specified in § 265.118.

§ 265.118 Post-closure plan; amendment of plan.

(a) By May 19, 1981, the owner or operator of a disposal facility must have a written post-closure plan. He must keep a copy of the post-closure plan and all revisions to the plan at the facility until the post-closure care period begins. The post-closure plan must identify the activities which will be carried on after closure and the frequency of these activities, and include at least:

(1) A description of the planned ground-water monitoring activities and frequencies at which they will be performed to comply with Subpart F during the post-closure period;

(2) A description of the planned maintenance activities and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment structures as specified in §§ 265.223, 265.228, 265.280, and 265.310, where applicable; and

(ii) The function of the facility monitoring equipment as specified in § 265.91; and

(3) The name, address, and phone number of the person or office to contact about the disposal facility during the post-closure care period. This person or office must keep an updated post-closure plan during the post-closure care period.

(b) The owner or operator may amend his post-closure plan at any time during the active life of the disposal facility. The owner or operator must amend his plan any time changes in operating plans or facility design, or events which occur during the active life of the facility, affect his post-closure plan. The plan must be amended within 60 days after the changes or events occur.

(c) The owner or operator of a disposal facility must submit his post-closure plan to the Regional Administrator at least 180 days before the date he expects to begin closure. The date when he "expects to begin closure" should be immediately after the date on which he expects to receive the final volume of wastes. The owner or operator must submit his closure plan to the Regional Administrator no later than 15 days after:

(1) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) issuance of a judicial decree or compliance order under Section 3008 of RCRA to cease receiving wastes or close.

[*Comment:* The date when closure commences should be within 30 days after the date on which the owner or operator expects to receive the final volume of wastes.]

(d) The Regional Administrator will provide the owner or operator and the public through a newspaper notice the opportunity to submit written comments on the plan and request modifications of the plan including modification of the 30 year post-closure period required in § 265.117 within 30 days of the date of the notice. He may also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Regional Administrator will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the plan within 90 days of its receipt. If the Regional Administrator does not approve the plan, the owner or operator must modify the plan or submit a new plan for approval within 30 days. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved post-closure plan. The Regional Administrator must base his decision upon the criteria required of petitions under paragraph (f)(1)(i) of this Section. A copy of this modified plan must be mailed to the owner or operator. If an owner or operator plans to begin closure before November 19, 1981, he must submit the post-closure plan by May 19, 1981.

(e) The owner or operator may amend his post-closure plan during the post-closure care period. The owner or operator must amend his plan any time changes in monitoring or maintenance plans or events which occur during the post-closure care period affect the post-closure plan. The owner or operator

must petition the Regional Administrator within 60 days of the changes or events, under the procedures of paragraph (f) of this section, to allow the plan to be modified.

(f) The post-closure plan (or period) may be modified during the post-closure care period or at the end of the post-closure care period in either of the following two ways:

(1) The owner or operator or any member of the public may petition the Regional Administrator to extend or reduce the post-closure care period based on cause, or alter the requirements of the post-closure care period based on cause.

(i) The petition must include evidence demonstrating that:

(A) The secure nature of the facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan (e.g., leachate or groundwater monitoring results, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure), or

(B) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment.

(ii) These petitions will be considered by the Regional Administrator only when they present new and relevant information not previously considered by the Regional Administrator. Whenever the Regional Administrator is considering a petition, he will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Regional Administrator will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.) After considering the comments, he will issue a final determination, based upon the criteria set forth in subparagraph (1).

(iii) If the Regional Administrator denies the petition, he will send the petitioner a brief written response giving a reason for the denial.

(2) The Regional Administrator may tentatively decide to modify the post-closure plan if he deems it necessary to prevent threats to human health and the environment. He may propose to extend or reduce the post-closure care period based on cause or alter the requirements of the post-closure care period based on cause.

(i) The Regional Administrator will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in subparagraph (a)(1)(ii) of this Section. After considering the comments, he will issue a final determination.

(ii) The Regional Administrator will base his final determination upon the same criteria as required for petitions under paragraph (f)(1)(i) of this Section.

[*Comment:* A modification of the post-closure plan may include where appropriate the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Regional Administrator would then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment.]

§ 265.119 Notice to local land authority.

Within 90 days after closure is completed, the owner or operator of a disposal facility must submit to the local land authority and to the Regional Administrator a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local land authority must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the site as specified in § 265.117(c). In addition, the owner or operator must submit to the Regional Administrator and to the local land authority a record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility. The owner or operator must identify the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility. For wastes disposed of before these regulations were promulgated, the owner or operator must identify the type, location, and quantity of the wastes to the best of his knowledge and in accordance with any records he has kept.

§ 265.120 Notice in deed to property.

The owner of the property on which a disposal facility is located must record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that: (1) the land has been used to manage hazardous waste, and (2) its use is restricted under § 265.117(c).

c. Revise Subpart H to read as follows; except for §§ 265.140, 265.142 and 265.144, all Sections are issued as interim final rules:

Subpart H—Financial Requirements

§ 265.140 Applicability.

(a) The requirements of §§ 265.142, 265.143, and 265.146–151 apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this section or in § 265.1.

(b) The requirements of §§ 265.144 and 265.145 apply only to owners and operators of disposal facilities.

(c) States and the Federal Government are exempt from the requirements of this Subpart.

§ 265.141 Definitions.

(a) When used in this Subpart, the following terms have the meanings given below:

"Compliance procedure" means any proceedings instituted pursuant to RCRA or regulations issued under authority of RCRA which seeks to require compliance or which is in the nature of an enforcement action or an action to cure a violation. A compliance procedure includes a compliance order or notice of intention to terminate a permit or interim status pursuant to Section 3008 of RCRA or Part 124 of this Chapter, or an application in the United States district court for appropriate relief pursuant to Sections 3008, 7002, or 7003 of RCRA. For the purposes of this Subpart, a compliance procedure is considered to be pending from the time an order or notice of intent to terminate is issued or judicial proceedings are begun until the Regional Administrator notifies the owner or operator in writing that the violation has been corrected or that the procedure has been withdrawn or discontinued.

"Standby trust fund" means a trust fund which must be established by an owner or operator who obtains a letter of credit or surety bond as specified in these regulations. The institution issuing the letter of credit or surety bond will deposit into the standby trust fund any drawings by the Regional Administrator on the credit or bond.

(b) The following terms are used in the liability requirements. The definitions suggest what EPA believes

are the common meanings of the terms as they are generally used in the insurance industry; the definitions are not intended to limit the meanings in a way that conflicts with general usage.

"Claims-made policy" means an insurance policy that provides coverage for an occurrence if a claim is filed during the term of the policy.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Nonsudden accident" means an unforeseen and unexpected occurrence which takes place over time and involves continuous or repeated exposure.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage which the owner or operator neither expected nor intended to occur.

"Sudden accident" means an unforeseen and unexpected occurrence which is not continuous or repeated in nature.

§ 265.142 Cost estimate for facility closure.

(a) On May 19, 1981, each facility owner or operator must have a written estimate of the costs of closing the facility in accordance with the requirements in §§ 265.111–265.115 and applicable closure requirements in §§ 265.197, 265.228, 265.280, 265.310, 265.351, 265.381, and 265.404. The owner or operator must keep this estimate, and all subsequent estimates required in this Section, at the facility. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see § 265.112 (a)).

[*Comment:* For example, the closure cost estimate for a particular landfill may be for the cost of closure when its active disposal operations extend over 20 acres, if at all other times these operations extend over less than 20 acres. The estimate would not include costs of partial closures that the closure plan schedules before or after the time of maximum closure cost.]

(b) The owner or operator must prepare a new closure cost estimate whenever a change in the closure plan affects the cost of closure.

(c) On each anniversary of the effective date of these regulations, the owner or operator must adjust the latest closure cost estimate using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its *Survey of Current Business*. The inflation factor must be calculated by dividing the latest published annual Deflator by the Deflator for the previous year. The result is the inflation factor. The adjusted closure cost estimate must equal the latest closure cost estimate (see paragraph (b) of this Section) times the inflation factor.

[*Comment:* The following is a sample calculation of the adjusted closure cost estimate: Assume that the latest closure cost estimate for a facility is $50,000, the latest published annual Deflator is 152.05, and the annual Deflator for the previous year is 141.70. The Deflators may be rounded to the nearest whole number. Dividing 152 by 142 gives the inflation factor, 1.07. Multiply $50,000 by 1.07 for a product of $53,500—the adjusted closure cost estimate.]

§ 265.143 Financial assurance for facility closure.

By the effective date of these regulations, an owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from among the following options:

(a) *Closure trust fund.* (1) An owner or operator may satisfy the requirements of this Section by establishing a closure trust fund which conforms to the requirements of this paragraph and by sending an originally signed duplicate of the trust agreement to the Regional Administrator by certified mail. The trustee must be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement must be identical to the wording specified in § 265.151(a)(1) and the trust agreement must be accompanied by a formal certification of acknowledgment (for an example, see § 265.151(a)(2)).

(3) Payments to the trust fund must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan (§ 265.112(a)) or over the 20 years beginning with the effective date of these regulations, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments to the closure trust fund must be made as follows:

(i) The first payment must be made by the effective date of these regulations, except as provided in paragraph (a)(5) of this Section. The first payment must be at least equal to the closure cost estimate (see § 265.142), except as provided in paragraph (f) of this Section, divided by the number of years in the pay-in period.

(ii) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by performing the following calculation:

$$\text{Next payment} = ACE - CV/Y$$

where ACE is the adjusted closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

[*Comment:* The following is a sample calculation of subsequent payments: Assume that the adjusted closure cost estimate is $50,000, the current value of the trust fund is $35,000 and there are 3 years remaining in the pay-in period. Subtract $35,000 from $50,000, leaving $15,000. Divide $15,000 by 3. The result, $5,000, is the amount of the next payment to the trust fund. All amounts may be rounded to the nearest dollar.]

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value the fund would have if annual payments were made as specified in paragraph (a)(3) of this Section.

(5) If the owner or operator establishes a closure trust fund after having initially used one or more alternate mechanisms specified in this Section, his first payment must be at least the amount that the fund would have contained if the trust fund were established and annual payments made as specified in paragraph (a)(3) of this Section.

(6) After the pay-in period is completed, whenever the adjusted closure cost estimate changes the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund (described in Section 10 of the trust agreement). If the value of the fund is less than the amount of the new estimate, the owner or operator must, within 60 days of the change in the cost estimate, deposit a sufficient amount into the fund so that its value after payment at least equals the amount of the new estimate, or obtain other financial assurance as specified in this Section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the adjusted closure cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the adjusted closure cost estimate.

(8) In an owner or operator substitutes other financial assurance as specified in this Section for all or part of the trust fund, he may submit a written request to the Regional Administrator for release of the amount in the trust fund which is greater than the amount required as a result of such substitution.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraphs (a)(7) or (8) of this Section, the Regional Administrator will instruct the trustee to release to the owner or operator such funds as the Regional Administrator specifies in writing.

(10) After beginning final closure, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for closure activities, the Regional Administrator will instruct the trustee to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the closure expenditures are in accordance with the closure plan or otherwise justified.

[*Comment:* Ordinarily, the Regional Administrator will approve reimbursements only up to 80 percent of the value of the closure trust fund; the remaining 20 percent will be returned to the owner or operator or reimbursed to any other person authorized to perform closure upon satisfactory certification of closure as noted in paragraph (h) of this Section.]

(11) The Regional Administrator will agree to termination of the trust when:

(i) The owner or operator substitutes alternate financial assurance for closure as specified in this Section, or

(ii) The Regional Administrator notifies the owner or operator, in accordance with paragraph (h) of this Section, that he is no longer required by this Section to maintain financial assurance for closure of the facility.

(b) *Surety bond guaranteeing payment into a closure trust fund.* (1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond which conforms to the requirements of this paragraph and by having the bond delivered to the Regional Administrator by certified mail. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

[*Comment:* Circular 570 is published in the Federal Register annually on July 1; interim changes in the Circular are also published in the Federal Register.]

(2) The wording of the surety bond must be identical to the wording specified in § 265.151(b).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund by the time the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited into the standby trust fund. This trust fund must meet the requirements specified in paragraph (a) of this Section, except that:

(i) An originally signed duplicate of the trust agreement must be delivered to the Regional Administrator with the surety bond; and

(ii) After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in paragraph (a) of this Section are not required until the standby trust fund is funded pursuant to the requirements of this paragraph.

(4) The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond at least 60 days prior to the expected date of the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure in accordance with Subpart G of this Part is issued by the Regional Administrator or by a U.S. district court pursuant to Section 3008, 7002, or 7003 of RCRA, or within 15 days after issuance of a notice of termination of interim status pursuant to Part 124 of this Chapter; or

(iii) Provide alternate financial assurance as specified in this Section within 30 days after receipt by the Regional Administrator of a notice of cancellation of the bond from the surety.

(5) The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the amount of the adjusted closure cost estimate (see § 265.142), except as provided in paragraph (f) of this Section.

(7) Whenever the adjusted closure cost estimate increases to an amount greater than the penal sum of the bond, the owner or operator must, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the adjusted closure cost estimate decreases, the penal sum may be reduced to the amount of the new estimate following written approval by the Regional Administrator. Notice of an increase or decrease in the penal sum must be sent to the Regional Administrator by certified mail within 60 days after the change.

(8) The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation cannot occur, however:

(i) During the 90 days beginning on the date of receipt of the notice of cancellation by the Regional Administrator as shown on the signed return receipt; or

(ii) While a compliance procedure is pending, as defined in § 265.141.

(9) The surety bond no longer satisfies the requirements of this paragraph subsequent to the receipt by the Regional Administrator of a notice of cancellation of the surety bond. Upon receipt of such notice the Regional Administrator will issue a compliance order pursuant to Section 3008 of RCRA unless the owner or operator has demonstrated alternate financial assurance as specified in this Section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within 30 days after issuance of the compliance order, the Regional Administrator may direct the surety to place the penal sum of the bond in the standby trust fund.

(10) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this Section.

(11) The Regional Administrator will notify the surety when the owner or operator funds the standby trust fund in the amount guaranteed by the surety bond or if he provides alternate financial assurance as specified in this Section.

(c) *Closure letter of credit.* (1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and by having it delivered to the Regional Administrator by certified mail. The issuing institution must be a bank or other financial institution which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit must be identical to the wording specified in § 265.151(d).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this Section must also establish a standby trust fund by the time the letter of credit is obtained. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Regional Administrator will be deposited promptly and directly by the issuing institution into the standby trust fund. The standby trust fund must meet the requirements of the trust fund specified paragraph (a) of this Section, except that:

(i) An originally signed duplicate of the trust agreement must be delivered to the Regional Administrator with the letter of credit; and

(ii) After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in paragraph (a) of this Section are not required unless the standby trust fund is funded pursuant to the requirements of this paragraph.

(4) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year. If the issuing institution decides not to extend the letter of credit beyond the then current expiration date it must, at least 90 days before that date, notify both the owner or operator and the Regional Administrator by certified mail of that decision. The 90-day period will begin on the date of receipt by the Regional Administrator as shown on the signed return receipt. Expiration cannot occur, however, while a compliance procedure is pending as defined in § 265.141.

(5) The letter of credit must be issued for at least the amount of the adjusted closure cost estimate (see § 265.142), except as provided in paragraph (f) of this Section.

(6) Whenever the adjusted closure cost estimate increases to an amount greater than the amount of the credit the owner or operator must, within 60 days of the increase, cause the amount of the credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this Section to cover the increase. Whenever the adjusted closure cost estimate decreases the letter of credit may be reduced to the amount of the new estimate following written approval by the Regional Administrator. Notice of an increase or decrease in the amount of the credit must be sent to the Regional Administrator by certified mail within 60 days of the change.

(7) Following a determination pursuant to Section 3008 of RCRA that the owner or operator has failed, when required to do so, to perform closure in accordance with the closure plan or other interim status requirements, the Regional Administrator may draw on the letter of credit.

(8) The letter of credit no longer satisfies the requirements of this paragraph subsequent to the receipt by the Regional Administrator of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the then current expiration date. Upon receipt of such notice, the Regional Administrator will issue a compliance order pursuant to Section 3008 of RCRA, unless the owner or operator has demonstrated alternate financial assurance as specified in this Section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within 30 days of issuance of the compliance order, the Regional Administrator may draw on the letter of credit.

(9) The Regional Administrator will return the original letter of credit to the issuing institution for termination when:

(i) The owner or operator substitutes alternate financial assurance for closure as specified in this Section, or

(ii) The Regional Administrator notifies the owner or operator, in accordance with paragraph (h) of this Section, that he is no longer required by this Section to maintain financial assurance for closure of the facility.

(d) and (e) [Reserved]

(f) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism. The mechanisms are limited to trust funds, surety bonds, and letters of credit. These mechanisms must be as specified in paragraphs (a), (b), and (c), respectively, of this Section, except that it is the combination of mechanisms, rather than each single mechanism, which must provide financial assurance for an amount at least equal to the adjusted closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the bond or letter of credit. If the multiple mechanisms include only surety bonds and letters of credit, a single standby trust may be established for all these mechanisms. The Regional Administrator may invoke use of any or all of the mechanisms in accordance with the requirements of paragraphs (a), (b), and (c) of this Section, to provide for closure of the facility.

(g) *Use of a financial mechanism for multiple facilities.* (1) An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility of which he is the owner or operator. Evidence of financial assurance submitted to the Regional Administrator must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure assured by the mechanism. If the list is changed by addition or subtraction of a facility or by an increase or decrease in the amount of funds assured for closure of one or more facilities, a corrected list must be sent to the Regional Administrator within 60 days of such change. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility.

(2) A letter of credit may not be used to assure funds for facilities in more than one Region. If other financial mechanisms specified in this Section cover facilities that are located in more than one Region, the Regional Administrators for all Regions in which the facilities are located must be involved in all transactions that involve the Regional Administrator, except when the transactions involve only those facilities in one Region.

(h) *Release of the owner or operator from the requirements of this Section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that closure has been accomplished in accordance with the closure plan (see § 265.115), the Regional Administrator will notify the owner or operator in writing that he is no longer required by this Section to maintain financial assurance for closure of the particular facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the closure plan.

[*Comment:* The notice releases the owner or operator only from requirements for financial assurance for closure of the facility; it does not release him from legal responsibility for meeting the closure standards.]

§ 265.144 Cost estimate for post-closure monitoring and maintenance.

(a) On May 19, 1981, each facility owner or operator of a disposal facility must have a written estimate of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 265.117–265.120, 265.228, 265.280, and 265.310. The owner or operator must keep this

estimate, and all subsequent estimates required in this Section, at the facility.

(b) The owner or operator must prepare a new annual post-closure cost estimate whenever a change in the post-closure plan affects the cost of post-closure care (see § 265.118(b)). The latest post-closure cost estimate is calculated by multiplying the latest annual post-closure cost estimate by 30.

(c) On each anniversary of the effective date of these regulations, during the operating life of the facility, the owner or operator must adjust the latest post-closure cost estimate using the inflation factor calculated in accordance with § 265.142(c). The adjusted post-closure cost estimate must equal the latest post-closure cost estimate (see paragraph (b) of this Section) times the inflation factor.

§ 265.145 Financial assurance for post-closure monitoring and maintenance.

By the effective date of these regulations, an owner or operator of each disposal facility must establish financial assurance for 30 years of post-closure care of the facility. He must choose from among the following options:

(a) *Post-closure trust fund.* (1) An owner or operator may satisfy the requirements of this Section by establishing a post-closure trust fund which conforms to the requirements of this paragraph and by sending an originally signed duplicate of the trust agreement to the Regional Administrator by certified mail. The trustee must be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement must be identical to the wording specified in § 265.151(a)(1) and the trust agreement must be accompanied by a formal certification of acknowledgment (for an example, see § 265.151(a)(2)).

(3) Payments to the trust fund must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan (§ 265.112(a)) or over the 20 years beginning with the effective date of these regulations, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments to the post-closure trust fund must be made as follows:

(i) The first payment must be made by the effective date of these regulations, except as provided in paragraph (a)(5) of this Section. The first payment must be at least equal to the post-closure cost estimate (see § 265.144), except as provided in paragraph (f) of this Section, divided by the number of years in the pay-in period.

(ii) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by performing the following calculation:

$$\text{Next payment} = ACE - CV/Y$$

where ACE is the adjusted post-closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

[*Comment:* The following is a sample calculation of subsequent payments: Assume that the adjusted post-closure cost estimate is $50,000, the current value of the trust fund is $35,000 and there are 3 years remaining in the pay-in period. Subtract $35,000 from $50,000, leaving $15,000. Divide $15,000 by 3. The result, $5,000,—the amount of the next payment to the trust fund. All amounts may be rounded to the nearest dollar.]

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the post-closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value the fund would have if annual payments were made as specified in paragraph (a)(3) of this Section.

(5) If the owner or operator establishes a post-closure trust fund after having initially used one or more alternate mechanisms specified in this Section, his first payment must be at least the amount that the fund would have contained if the trust fund were established and annual payments made as specified in paragraph (a)(3) of this Section.

(6) After the pay-in period is completed, whenever the adjusted post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund (described in Section 10 of the trust agreement). If the value of the fund is less than the amount of the new cost estimate, the owner or operator must, within 60 days of the change in the cost estimate, deposit a sufficient amount into the fund so that its value after payment at least equals the amount of the new estimate, or obtain other financial assurance as specified in this Section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the adjusted post-closure cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the adjusted post-closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this Section for all or part of the trust fund, he may submit a written request to the Regional Administrator for release of the amount in the trust fund which is greater than the amount required as a result of such substitution.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraphs (a) (7) or (8) of this Section, the Regional Administrator will instruct the trustee to release to the owner or operator such funds as the Regional Administrator specifies in writing.

(10) An owner or operator or any other person authorized to conduct post-closure may request reimbursement for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure activities, the Regional Administrator will instruct the trustee to make reimbursement in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified.

(11) The Regional Administrator will agree to termination of the trust when:

(i) The owner or operator substitutes alternate financial assurance for post-closure as specified in this Section, or

(ii) The Regional Administrator notifies the owner or operator, in accordance with paragraph (h) of this Section, that he is no longer required by this Section to maintain financial assurance for post-closure of the facility.

(b) *Surety bond guaranteeing payment into a post-closure trust fund* (1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond which conforms to the requirements of this paragraph and by having the bond delivered to the Regional Administrator by certified mail. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

[*Comment:* Circular 570 is published in the **Federal Register** annually on July 1; interim changes in the Circular are also published in the **Federal Register**.]

(2) The wording of the surety bond must be identical to the wording specified in § 265.151(c).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund by the time the bond is obtained. Under the terms of the

surety bond, all payments made thereunder will be deposited directly into the standby trust fund. This trust fund must meet the requirements specified in paragraph (a) of this Section, except that:

(i) An originally signed duplicate of the trust agreement must be delivered to the Regional Administrator with the surety bond; and

(ii) After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in paragraph (a) of this Section are not required until the standby trust fund is funded pursuant to the requirements of this paragraph.

(4) The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond by the expected date of the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure in accordance with Subpart G of this Part is issued by the Regional Administrator or by a U.S. district court pursuant to Section 3008, 7002, or 7003 of RCRA, or within 15 days after issuance of a notice of termination of interim status pursuant to Part 124 of this Chapter; or

(iii) Provide alternate financial assurance as specified in this Section within 30 days after receipt by the Regional Administrator of a notice of cancellation of the bond from the surety.

(5) The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the amount of the adjusted post-closure cost estimate (see § 265.144), except as provided in paragraph (g) of this Section.

(7) Whenever the adjusted post-closure cost estimate increases to an amount greater than the penal sum of the bond, the owner or operator must, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the adjusted post-closure cost estimate decreases, the penal sum may be reduced to the amount of the new estimate following written approval by the Regional Administrator. Notice of an increase or decrease in the penal sum must be sent to the Regional Administrator by certified mail within 60 days after the change.

(8) The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation cannot occur, however:

(i) During the 90 days beginning on the date of receipt of the notice of cancellation by the Regional Administrator as shown on the signed return receipt; or

(ii) While a compliance procedure is pending, as defined in § 265.141.

(9) The surety bond no longer satisfies the requirements of this paragraph subsequent to the receipt by the Regional Administrator of a notice of cancellation of the surety bond. Upon receipt of such notice the Regional Administrator will issue a compliance order pursuant to Section 3008 of RCRA unless the owner or operator has demonstrated alternate financial assurance as specified in this Section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within 30 days after issuance of the compliance order, the Regional Administrator may direct the surety to place the penal sum of the bond in the standby trust fund.

(10) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this Section.

(11) The Regional Administrator will notify the surety when the owner or operator funds the standby trust fund in the amount guaranteed by the surety bond or if he provides alternate financial assurance as specified in this Section.

(c) *Post-closure letter of credit.* (1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and by having it delivered to the Regional Administrator by certified mail. The issuing institution must be a bank or other financial institution which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit must be identical to the wording specified in § 265.151(d).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this Section must also establish a standby trust fund by the time the letter of credit is obtained. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Regional Administrator will be deposited promptly and directly by the issuing institution into the standby trust fund. The standby trust fund must meet the requirements of the trust fund specified in paragraph (a) of this Section, except that:

(i) An originally signed duplicate of the trust agreement must be delivered to the Regional Administrator with the letter of credit; and

(ii) After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in paragraph (a) of this Section are not required unless the standby trust fund is funded pursuant to the requirements of this paragraph.

(4) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year. If the issuing institution decides not to extend the letter of credit beyond the then current expiration date it must, at least 90 days before that date, notify both the owner or operator and the Regional Administrator by certified mail of that decision. The 90-day period will begin on the date of receipt by the Regional Administrator as shown on the signed return receipt. Expiration cannot occur, however, while a compliance procedure is pending as defined in § 265.141.

(5) The letter of credit must be issued for at least the amount of the adjusted post-closure cost estimate (see § 265.144), except as provided in paragraph (f) of this Section.

(6) Whenever the adjusted post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator must, within 60 days of the increase, cause the amount of the credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this Section to cover the increase. Whenever the adjusted post-closure cost estimate decreases during the operating life of the facility, the letter of credit may be reduced to the amount of the new estimate following written approval by the Regional Administrator. Notice of an increase or decrease in the amount of the credit must be sent to the Regional Administration by certified mail within 60 days of the change.

(7) During the period of post-closure care, the Regional Administrator may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Regional Administrator that the amount exceeds the remaining cost of post-closure care.

(8) Following a determination pursuant to Section 3008 of RCRA that the owner or operator has failed, when required to do so, to perform post-closure in accordance with the post-closure plan or other interim status requirements, the Regional Administrator may draw on the letter of credit.

(9) The letter of credit no longer satisfies the requirements of this paragraph subsequent to the receipt by the Regional Administrator of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the then current expiration date. Upon receipt of such notice, the Regional Administrator will issue a compliance order pursuant to Section 3008 of RCRA, unless the owner or operator has demonstrated alternate financial assurance as specified in this Section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within 30 days of issuance of the compliance order, the Regional Administrator may draw on the letter of credit.

(10) The Regional Administrator will return the original letter of credit to the issuing institution for termination when:

(i) The owner or operator substitutes alternate financial assurance for post-closure care as specified in this Section, or

(ii) The Regional Administrator notifies the owner or operator, in accordance with paragraph (h) of this Section, that he is no longer required by this Section to maintain financial assurance for post-closure care of the facility.

(d) and (e) [Reserved].

(f) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism. The mechanisms are limited to trust funds, surety bonds, and letters of credit. These mechanisms must be as specified in paragraphs (a), (b), and (c), respectively, of this Section, except that it is the combination of mechanisms, rather than each single mechanism, which must provide financial assurance for an amount at least equal to the adjusted post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the bond or letter of credit. If the multiple mechanisms include only surety bonds and letters of credit, a single standby trust may be established for all these mechanisms. The Regional Administrator may invoke use of any or all of the mechanisms, in accordance with the requirements of paragraphs (a), (b), and (c) of this Section, to provide for post-closure of the facility.

(g) *Use of a financial mechanism for multiple facilities.* (1) An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility of which he is the owner or operator. Evidence of financial assurance submitted to the Regional Administrator must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for post-closure care assured by the mechanism. If the list is changed by addition or subtraction of a facility or by an increase or decrease in the amount of funds assured for post-closure care of one or more facilities, a corrected list must be sent to the Regional Administrator within 60 days of such change. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility.

(2) A letter of credit may not be used to assure funds for facilities in more than one Region. If other financial mechanisms specified in this Section cover facilities that are located in more than one Region, the Regional Administrators for all Regions in which the facilities are located must be involved in all transactions that involve the Regional Administrator, except when the transactions involve only those facilities in one Region.

(h) *Release of the owner or operator from the requirements of this Section.* When the owner or operator has completed, to the satisfaction of the Regional Administrator, all post-closure care requirements for 30 years of post-closure care or the period specified by the Regional Administrator after closure, whichever period is shorter, the Regional Administrator will, at the request of the owner or operator, notify him in writing that he is no longer required by this Section to maintain financial assurance for post-closure care of the particular facility.

[*Comment:* The notice releases the owner or operator only from requirements for financial assurance for post-closure care of the facility; it does not release him from legal responsibility for meeting the post-closure standards.]

§ 265.146 Use of a mechanism for financial assurance of both closure and post-closure care.

An owner or operator may use one of the following financial assurance mechanisms to provide financial assurance for both closure and post-closure care of one or more facilities of which he is the owner or operator:

(a) A trust fund that meets the specifications of both § 265.143(a) and § 265.145(a); or

(b) A letter of credit that meets the specifications of both § 265.143(c) and § 265.145(c).

The amount of funds available under the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care of each facility.

§ 265.147 Liability requirements.

(a) By the effective date of these regulations, an owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for claims arising from the operations of each such facility or group of facilities from sudden and accidental occurrences that cause injury to persons or property. An owner or operator must have and maintain liability insurance for sudden occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. As evidence of this liability insurance, an owner or operator must deliver an originally signed duplicate of the insurance policy to the Regional Administrator, or Regional Administrators if facilities are located in more than one Region, by certified mail. Each policy must be for limits of liability not less than the minimum amounts required by this paragraph and each policy must be amended, in order to comply with the requirements of this regulation, by attachment of the Hazardous Waste Facility Liability Endorsement. The wording of the endorsement must be identical to the wording specified in § 265.151(e).

(b) An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for claims arising from the operations of each such facility or group of facilities from nonsudden and accidental occurrences that cause injury to persons or property. An owner or operator must have and maintain liability insurance for nonsudden occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator must have this insurance by the following dates:

(1) For an owner or operator with annual sales in the last calendar year preceding the effective date of these regulations totaling $10 million or more; 6 months after the effective date of these regulations.

(2) For an owner or operator with annual sales in the last calendar year preceding the effective date of these regulations greater than $5 million but less than $10 million; 18 months after the effective date of these regulations.

(3) All other owners or operators; 30 months after the effective date of these regulations.

As evidence of this liability insurance, an owner or operator must deliver an originally signed duplicate of the insurance policy to the Regional Administrator, or Regional Administrators if facilities are located in more than one Region, by certified mail. Each policy must be for limits of liability not less than the minimum amounts required by this paragraph and each policy must be amended, in order to comply with the requirements of this regulation, by attachment of the Hazardous Waste Facility Liability Endorsement. The wording of the endorsement must be identical to the wording specified in § 265.151(e).

(c) If an owner or operator elects to comply with paragraphs (a) and (b) of this Section through one insurance policy covering both sudden and nonsudden occurrences, this policy must be in the amount of at least $4 million per occurrence with an annual aggregate of at least $8 million, exclusive of legal defense costs.

(d) If an owner or operator can demonstrate to the satisfaction of the Regional Administrator that the levels of financial responsibility required by paragraphs (a) or (b) of this Section are not consistent with the degree and duration of risk associated with the treatment, storage, or disposal at each facility or group of facilities, the owner or operator may obtain a variance from the Regional Administrator. The request for a variance must be submitted by certified mail to the Regional Administrator. The variance shall take the form of an adjusted level of required liability coverage, such level to be based on the Regional Administrator's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of facilities. The Regional Administrator may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Regional Administrator to determine a level of financial responsibility other than that required by paragraphs (a) or (b) of this Section. The Regional Administrator shall process a variance request as if it were a permit modification request under § 122.15(a)(5) of this Chapter and subject to the procedures of § 124.5 of this Chapter. Notwithstanding any other provision, the Regional Administrator shall hold a public hearing at his discretion or whenever he finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to grant a variance.

(e) If the Regional Administrator determines that the levels of financial responsibility required by paragraphs (a) or (b) of this Section are not consistent with the degree and duration of risks associated with treatment, storage, or disposal at any facility or group of facilities, the Regional Administrator may adjust the level of required financial responsibility required under paragraphs (a) or (b) of this Section as may be necessary to protect human health and the environment, such adjusted level to be based on the Regional Administrator's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of such facilities. The Regional Administrator may also require an owner or operator of a treatment or storage facility or group of facilities to comply with paragraph (b) of this Section if the Regional Administrator determines that there is a significant risk to human health and the environment from nonsudden and accidental occurrences resulting from the operations of such facility or group of facilities. The owner or operator must furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator requests to determine whether cause exists for such adjustments of level or type of coverage. The Regional Administrator shall process an adjustment of the level of required coverage as if it were a permit modification under § 122.15(a)(5) of this Chapter and subject to the procedures of § 124.5 of this Chapter. Notwithstanding any other provisions, the Regional Administrator shall hold a public hearing only at his discretion or whenever he finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to adjust the level or type of required coverage.

§ 265.148 Incapacity of institutions issuing letters of credit, surety bonds, or insurance policies.

An owner or operator who fulfills the requirements of §§ 265.143, 265,145, or 265.147 by obtaining a letter of credit, surety bond, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. The owner or operator must establish other financial assurance or liability coverage within 60 days of such events.

§ 265.149 Applicability of State financial requirements.

(a) For a facility located in a State whose hazardous waste regulations include liability requirements or requirements for financial assurance for closure and post-closure care, an owner or operator may use State-required financial mechnisms to meet the requirements of §§265.143, 265,145, and 265.147 if the State mechanisms provide assurance or liability coverage equivalent to or greater than that provided by the mechanisms of §§ 265.143, 265.145, and 265.147. Evidence of the establishment of such a mechanism must be delivered by certified mail to the Regional Administrator. The submittal must include, or have attached to it, the following information: the facility's EPA Identification Number, name, address, and the amounts of liability coverage or funds for closure or post-closure care assured by the mechanism.

(b) The owner or operator must obtain an additional financial assurance mechanism for closure or for post-closure care, as specified in §§265.143 and 265.145, or additional liability insurance as specified in § 265.147, if the amount of funds available from the State mechanism is less than that required by this Subpart. The amounts of funds available through the State and Federal mechanisms must equal at least the amounts required in §§ 265.143, 265.145, and 265.147.

§ 265.150 State assumption of responsibility.

(a) If a State either assumes legal responsiblity for an owner's or operator's compliance with the closure, post-closure, or liabiality requirements of these regulations *or* assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with requirements of this Subpart if the State's assurances are equivalent to or exceed the assurances provided by meeting the requirements of this Subpart. The owner or operator must deliver by certified mail to the Regional Administrator a letter from the State describing the nature of the State's responsibility regarding the closure,

post-closure, and liability requirements so covered. The letter must include, or have attached to it, the following information: the facility's EPA Identification Number, name, address, and the amounts of liability coverage or funds for closure or post-closure care that are assured by the State.

(b) The owner or operator must obtain an additional financial assurance mechanism for closure or for post-closure care, as specified in §§265.143 and 265.145 or additional liability insurance as specified in § 265.147, if the amount of funds available through the State guarantees is less than that required by this Subpart. The amounts of funds available through the State guarantees and Federal mechanisms must equal at least the amounts required in §§ 265.143, 265.145, and 265.147.

§ 265.151 Wording of the instruments.

(a)(1) A trust agreement for a trust fund as specified in §§ 265.143(a) or 265.145(a) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a [State] [corporation, partnership, association, proprietorship], the "Grantor", and [name of corporate trustee], a [State corporation] [national bank], the "Trustee".

Whereas, the United States Environmental Protection Agency, "EPA", an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that the owner or operator of a hazardous waste management facility must provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

Whereas, the Grantor has elected to establish a trust to provide such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of this trust fund, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this trust fund.

(b) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(c) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to [for each facility insert the EPA Identification Number, name, and address, and the adjusted closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of the EPA. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule A attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund will be held by the Trustee, in trust, as hereinafter provided. The Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments to discharge any liabilities of the Grantor established by the EPA.

Section 4. Payment for Closure and Post-Closure Care. The Trustee will make such payments from the Fund as the EPA Regional Administrator will direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee will reimburse the Grantor or other persons as specified by the Regional Administrator from the Fund for closure and post-closure expenditures in such amounts as the Regional Administrator will direct, in writing. The Trustee will notify the Regional Administrator when 20 percent of the amount allocated for closure of the facility remains in the Fund, and will not make further reimbursements for closure expenditures unless the Regional Administrator identifies reimbursements that may be made out of the remaining 20 percent. In addition, the Trustee will refund to the Grantor such amounts as the EPA Regional Administrator specifies in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund will consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee will invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with investment guidelines and objectives communicated in writing to the Trustee from time to time by the Grantor, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee or any other fiduciary will discharge his duties with respect to the trust fund solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; *except that:*

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2.(a), will not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein. To the extent of the equitable share of the Fund in any such commingled trust, such commingled trust will be part of the Fund;

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., or one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such share in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by private contract or at public auction. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for

the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee will at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee will be paid from the Fund.

Section 10. Annual Valuation. The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional Administrator a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than 30 days prior to the date of the statement. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee will be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. Upon the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, the Trustee may resign or the Grantor may replace the Trustee. In either event, the Grantor will appoint a successor Trustee who will have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of the appointment by the successor trustee, the Trustee will assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee and the date on which he assumes administration of the trust will be specified in writing and sent to the Grantor, the EPA Regional Administrator, and the present and successor trustees by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section will be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the EPA Regional Administrator to the Trustee will be in writing, signed by the EPA Regional Administrators of the Regions in which the facilities are located, and the Trustee will act and will be fully protected in acting in accordance with such orders, requests and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the EPA hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the EPA, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee will notify the Grantor and the appropriate EPA Regional Administrator, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee is not required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate EPA Regional Administrator, or by the Trustee and the appropriate EPA Regional Administrator if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust will be irrevocable and will continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, will be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA Regional Administrator issued in accordance with this Agreement. The Trustee will be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement will be administered, construed and enforced according to the laws of the State of [*State*].

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement will not affect the interpretation or the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 265.151(a)(1).

[Signature of Grantor]
By [Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
By
Attest:
[Title]
[Seal]

(2) This is an example of the certification of acknowledgement, which must accompany the trust agreement for a trust fund as specified in §§ 265.143(a) and 265.145(a):

STATE OF _____
COUNTY OF _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[*Comment:* As required in §§ 265.143(a)(2) and 265.145(a)(2), the trust agreement must be accompanied by a formal certification of acknowledgement. This is an example only. State requirements may differ on the proper content of this acknowledgement.]

(b) A surety bond guaranteeing payment into a closure trust fund, as specified in § 265.143(b), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond for Closure

Date bond executed: _____
Effective date: _____
Principal: [legal name and business address]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: ———
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, and address of each facility and, if more than one facility is covered by this bond, the amount of the penal sum for each facility:———
Total penal sum of bond: $ ———

Know all men by these presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a EPA permit or permits, or interim status, in order to own or operate the hazardous waste management facility(ies) identified above, and

Whereas said Principal is required to provide financial assurance for closure of the facility(ies) as a condition of the permit(s) or interim status, and

Whereas said Principal shall establish a standby trust fund as specified by 40 CFR 264.143 or 40 CFR 265.143,

Now, therefore the conditions of the obligation are such that if the Principal shall faithfully, for the facility(ies) identified above, at least 60 days before the beginning of final closure, fund the standby trust fund in an amount equal to the penal sum,

Or, if the Principal shall fund the standby trust fund in such an amount within 15 days after an order to begin closure in accordance with Subpart G of 40 CFR Parts 264 and 265 is issued by an EPA Regional Administrator or by a U.S. district court pursuant to Section 3008, 7002, or 7003 of the Resource Conservation and Recovery Act, as amended, or within 15 days after a notice of termination of the permit(s) or interim status pursuant to 40 CFR Part 124,

Or, if the Principal shall provide alternate financial assurance as specified in 40 CFR 264.143 or 40 CFR 265.143 within 30 days after the date notice of cancellation is received by a Regional Administrator, then this obligation will be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an EPA Regional Administrator that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount of the penal sum into the standby trust fund as directed by the EPA Regional Administrator.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending written notice of cancellation to the owner or operator and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, provided, however, that cancellation cannot occur: (1) during the 90 days beginning on the date of receipt of the notice of cancellation by the Regional Administrator(s) as shown on the signed return receipt(s); or (2) while a compliance procedure is pending, as defined in 40 CFR 264.141 or 40 CFR 265.141.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located. [The following paragraph is an *optional* rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it equals the adjusted closure cost estimate(s), provided that the amount of the cost estimate(s) does (do) not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Regional Administrator(s).

In witness whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 265.151(b).

Principal

Signature(s): ———
Name(s) and title(s) [typed]: ———
Corporate seal:

Corporate Surety(ies)

Name and address: ———
State of incorporation: ———
Liability limit: $ ———
Signature(s): ———
Name(s) and title(s) [typed]: ———
Corporate seal:
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $ ———

(c) A surety bond guaranteeing payment into a post-closure trust fund, as specified in § 265.145(b), must be worded as follows, except that instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Financial Guarantee Bond for Post-Closure Care

Date bond executed: ———
Effective date: ———
Principal: [legal name and business address]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: ———
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, and address of each facility and, if more than one facility is covered by this bond, the amount of the penal sum for each facility:
Total penal sum of bond: $ ———

Know all men by these presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have an EPA permit or permits, or interim status, in order to own or operate the hazardous waste management facility(ies) identified above, and

Whereas said Principal is required to provide financial assurance for post-closure care of the facility(ies) as a condition of the permit(s) or interim status, and

Whereas said Principal shall establish a standby trust fund as specified by 40 CFR 264.145 or 40 CFR 265.145,

Now, therefore the conditions of the obligation are such that if the Principal shall faithfully, for the facility(ies) identified above, by the beginning of final closure, fund the standby trust fund in an amount equal to the penal sum,

Or, if the Principal shall fund the standby trust fund in such an amount within 15 days after an order to begin closure in accordance with Subpart G of 40 CFR Parts 264 and 265 is issued by the Regional Administrator or a U.S. district court pursuant to Section 3008, 7002, or 7003 of the Resource Conservation and Recovery Act, as amended, or within 15 days after a notice of termination of the permit(s) or interim status pursuant to 40 CFR Part 124,

Or, if the Principal shall provide alternate financial assurance as specified in 40 CFR 264.145 or 40 CFR 265.145 within 30 days after the date notice of cancellation is received by a Regional Administrator, then this obligation will be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an EPA Regional Administrator that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) must place funds in the amount of the penal sum into the standby trust fund as directed by an EPA Regional Administrator.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending written notice of cancellation to the owner or operator and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, provided, however, that cancellation cannot occur: (1) during the 90 days beginning on the date of receipt of the notice of cancellation by the Regional Administrator(s) as shown on the signed return receipt(s); or (2) while a compliance procedure is pending, as defined in 40 CFR 264.141 or 40 CFR 265.141.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located. [The following paragraph is an *optional* rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it equals the adjusted post-closure cost estimate(s), provided that the amount of the cost estimate(s) does (do) not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Regional Administrator(s).

In witness whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 265.151(c).

Principal

Signature(s): ———————
Name(s) and title(s) [typed]: ———————
Corporate seal:

Corporate Surety(ies)

Name and address: ———————
State of incorporation: ———————
Liability limit: $ ———————
Signature(s): ———————
Name(s) and title(s) [typed]: ———————
Corporate seal:
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $ ———————

(d) A letter of credit as specified in §§ 265.143(c) and 265.145(c) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

[Regional Administrator]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ——— in favor of the Regional Administrator for Region ——— of the United States Environmental Protection Agency, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $———, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No. ———, together with

(2) your signed statement declaring that the amount of the draft is payable pursuant to regulations issued under the authority of the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended.

The following amounts are included in the amount of this letter of credit: [For each facility, insert the EPA Facility Identification Number, name and address, and the adjusted closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this letter of credit].

This letter of credit is effective as of [date] and will expire on [date at least 1 year later], but such expiration date will be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 90 days before the current expiration date, we notify you and [owner or operator's name] by certified mail that we decided not to extend the Letter of Credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit will be available upon presentation of your sight draft for 90 days after the date of receipt by you as shown on the signed return receipt or while a compliance procedure is pending as defined in 40 CFR 265.141, whichever is later.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will deposit the amount of the draft promptly and directly into the standby trust fund of [owner's or operator's name] held in trust by [name and address of corporate trustee].

I hereby certify that I am authorized to execute this letter of credit on behalf of [issuing institution] and that the wording of this letter of credit is identical to the wording specified in 40 CFR 265.151(d).

Attest:

[Signature and title of official of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(e) A hazardous waste facility liability endorsement as required in § 265.147 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Liability Endorsement

It is agreed that:

1. The certification of the policy, as proof of financial responsibility under the provisions of [insert § 265.147 (a)(1) and/or (b)(1), 40 CFR] amends the policy to provide insurance in accordance with the provisions of such regulations to the extent of coverage and limits of liability required thereby at [list EPA Identification Number, name, and address for each facility]. Within the limits of liability provided it is understood that no condition, provision, stipulation, or limitation contained in the policy, or any other endorsement thereon or violation thereof, or of this endorsement, by the insured, shall relieve the Company from liability hereunder or from the payment of any such final judgment, irrespective of the financial responsibility or lack thereof or insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which this endorsement is attached are to remain in full force and effect as binding between the insured and the Company, and the insured agrees to reimburse the Company for any payment made by the Company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the Company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

2. Whenever requested by the Regional Administrator, the Company agrees to furnish to the Regional Administrator a duplicate original of said policy and all endorsements thereon.

3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may only be effected by the Company or the insured giving sixty (60) days' notice in writing to the Regional Administrator, such sixty (60) days' notice to commence to run from the date the notice is actually received by the Regional Administrator.

4. Notwithstanding any other provision of the policy, if this endorsement or policy is on a claims-made basis, cancellation or termination may not be effected within 120 days of any fire, explosion, or unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, surface water, or ground water.

Attached to and forming part of policy No. ——— issued by [name of Company], herein called the Company, of [address of Company] to [name of insured] of [address] this ——— day of ———, 19——.

Countersigned by ———, authorized Company representative.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

a. Amend Subpart A as follows:

1. Amend § 122.15(a) by adding new paragraph (7) as an interim final rule to read as follows:

§ 122.15 [Amended]

(a) * * *

(7) *for RCRA only,* the Director may modify a permit:

(i) When modification of a closure plan is required under §§264.112(b) or 264.118(b).

(ii) After the Director receives the notification of expected closure under

§ 264.113, when the Director determines that extension of the 90 or 180 day periods under § 264.113, modification of the 30-year post-closure period under § 264.117(a), continuation of security requirements under § 264.117(b), or permission to disturb the integrity of the containment system under § 264.117(c) are unwarranted.

(iii) When the permittee has filed a request under § 264.147(d) for a variance to the level of financial responsibility or when the Director demonstrates under § 264.147(e) that an upward adjustment of the level of financial responsibility is required.

2. Revise § 122.17(e) to read as follows:

§ 122.17 [Amended]

* * * * *

(e) *For RCRA only:*

(1) Change the lists of facility emergency coordinators or equipment in the permit's contingency plan; or

(2)(i) Change estimates of maximum inventory under § 264.112(a)(2);

(ii) Change estimates of expected year of closure or schedules for final closure under § 264.112(a)(4); or

(iii) Approve periods longer than 90 days or 180 days under 264.113(a) and (b).

(b) Amend Subpart B as follows:

1. Revise § 122.25 to read as follows: all paragraphs except paragraphs (a)(1)-(a)(10) are issued as an interim final rule:

§ 122.25 Contents of Part B.

(Applicable to State RCRA programs, see §123.7)

Part B information requirements presented below reflect the standards promulgated in 40 CFR Part 264. These information requirements are necessary in order for EPA to determine compliance with the Part 264 standards. If owners and operators of HWM facilities can demonstrate that the information prescribed in Part B can *not* be provided to the extent required, the Director *may* make allowance for submission of such information on a case by case basis. Information required in Part B shall be submitted to the Director and signed in accordance with requirements in § 122.6. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a registered professional engineer. Part B of the RCRA application includes the following:

(a) *General information requirements.* The following information is required for all HWM facilities, except as § 264.1 provides otherwise:

(1) A general description of the facility.

(2) Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with Part 264.

(3) A copy of the waste analysis plan required by § 264.13(b) and, if applicable, § 264.13(c).

(4) A description of the security procedures and equipment required by § 264.14, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(5) A copy of the general inspection schedule required by § 264.15(b); *Note:* Include, where applicable, as part of inspection schedule, specific requirements in §§ 264.174, 264.194, 264.226, and 264.254.

(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of Part 264, Subpart C.

(7) A copy of the contingency plan required by Part 264, Subpart D. *Note:* Include, where applicable, as part of the contingency plan, specific requirements in §§ 264.227 and 264.255.

(8) A description of procedures, structures, or equipment used at the facility to:

(i) Prevent hazards in unloading operations (for example, ramps, special forklifts);

(ii) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);

(iii) Prevent contamination of water supplies;

(iv) Mitigate effects of equipment failure and power outages; and

(v) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing).

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with § 264.17 including documentation demonstrating compliance with § 264.17(c).

(10) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes (if appropriate); describe access road surfacing and load bearing capacity; show traffic control signals).

(11) Facility location information:

(i) In order to determine the applicability of the seismic standard [§ 264.18(a)] the owner or operator of a new facility must identify the political jurisdiction (e.g., county, township, or election district) in which the facility is proposed to be located.

[*Comment:* If the county or election district is *not* listed in Appendix VI of Part 264, no further information is required to demonstrate compliance with § 264.18(a).]

(ii) If the facility is proposed to be located in an area listed in Appendix VI of Part 264, the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided must be of such quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted must show that either:

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have displacement in Holocene time) within 3,000 feet of a facility are present, based on data from:

(*1*) published geologic studies,

(*2*) aerial reconnaissance of the area within a five-mile radius from the facility,

(*3*) an analysis of aerial photographs covering a 3,000 foot radius of the facility, and

(*4*) if needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

(B) If faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass with 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility, data shall be obtained from a subsurface exploration (trenching) of the area within a distance no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such trenching shall be performed in a direction that is perpendicular to known faults (which have had displacement in Holocene time) passing within 3,000 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses, the location of any faults found.

[*Comment:* The Guidance Manual for the Location Standards provides greater detail on the content of each type of seismic investigation and the appropriate conditions under which each approach or a combination of approaches would be used.]

(iii) Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year floodplain. This identification must indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where a FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e.g., wave action) which must be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood.

[*Comment:* Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100-year floodplain. However, where the FIA map excludes an area (usually areas of the floodplain less than 200 feet in width), these areas must be considered and a determination made as to whether they are in the 100-year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator must use equivalent mapping techniques to determine whether the facility is within the 100-year floodplain, and if so located, what the 100-year flood elevation would be.]

(iv) Owners and operators of facilities located in the 100-year floodplain must provide the following information:

(A) Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a consequence of a 100-year flood.

(B) Structural or other engineering studies showing the design of operational units (e.g., tanks, incinerators) and flood protection devices (e.g., floodwalls, dikes) at the facility and how these will prevent washout.

(C) If applicable, and in lieu of paragraphs (A) and (B) above, a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

(*1*) timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility,

(*2*) a description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the regulations under Parts 122 through 124 and 264 through 266 of this Chapter,

(*3*) the planned procedures, equipment, and personnel to be used and the means to ensure that such resources will be available in time for use,

(*4*) the potential for accidental discharges of the waste during movement.

(v) *Existing facilities NOT* in compliance with § 264.18(b) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(12) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the HWM facility in a safe manner as required to demonstrate compliance with § 264.16. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in § 264.16(a)(3).

(13) A copy of the closure plan and, where applicable, the post-closure plan required by §§ 264.112 and 264.118.

Note.—Include, where applicable, as part of the plans, specific requirements in §§ 264.178, 264.197, 264.228, and 264.258.

(14) For existing facilities, documentation that a notice has been placed in the deed or appropriate alternate instrument as required by § 264.120.

(15) The most recent closure cost estimate for the facility prepared in accordance with § 264.142 plus a copy of the financial assurance mechanism adopted in compliance with § 264.143.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with § 264.144 plus a copy of the financial assurance mechanism adopted in compliance with § 264.145.

(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of § 264.147. For a new facility, documentation showing the amount of insurance meeting the specification of § 264.147(a) and, if applicable, § 264.147(b), that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in § 264.147(d).

(18) Where appropriate, proof of coverage by a State financial mechanism in compliance with §§ 264.149 or 264.150.

(19) A topographic map showing a distance of 1000 feet around the facility at a scale* of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). Owners and operators of HWM facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

(i) Map scale and date.

(ii) 100-year floodplain area.

(iii) Surface waters including intermittant streams.

(iv) Surrounding land uses (residential, commercial, agricultural, recreational).

(v) A wind rose (i.e., prevailing wind-speed and direction).

(vi) Orientation of the map (north arrow).

(vii) Legal boundaries of the HWM facility site.

(viii) Access control (fences, gates).

(ix) Injection and withdrawal wells both on-site and off-site.

(x) Buildings; treatment, storage, or disposal operations; or other structures (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.)

(xi) Barriers for drainage or flood control.

(xii) Location of operational units within the HWM facility site, where hazardous waste is (or will be) treated, stored, or disposed (include equipment cleanup areas).

Note.—For large HWM facilities, the Agency will allow the use of other scales on a case by case basis.

(20) Applicants may be required to submit such information as may be necessary to enable the Regional Administrator to carry out his duties under other Federal laws as required in § 122.12 of this Part.

(b) *Specific information requirements.* The following additional information is required from owners or operators of specific types of HWM facilities that are

used or to be used for storage or treatment:

(1) For facilities that store *containers* of hazardous waste, except as otherwise provided in § 264.170.

(i) A description of the containment system to demonstrate compliance with § 264.175. Show at least the following:

(A) Basic design parameters, dimensions, and materials of construction.

(B) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.

(C) Capacity of the containment system relative to the number and volume of containers to be stored.

(D) Provisions for preventing or managing run-on.

(E) How accumulated liquids can be analyzed and removed to prevent overflow.

(ii) Sketches, drawings, or data demonstrating compliance with § 264.176 (location or buffer zone and containers holding ignitable or reactive wastes) and § 264.177(c) (location of incompatible wastes), where applicable.

(iii) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with §§ 264.177 (a) and (b), and 264.17 (b) and (c).

(2) For facilities that use *tanks* to store or treat hazardous waste, except as otherwise provided in § 264.190, description of design and operation procedures which demonstrate compliance with the requirements of §§ 264.191, 264.192, 264.198 and 264.199 including:

(i) References to design standards or other available information used (or to be used) in design and construction of the tank.

(ii) A description of design specifications including identification of construction materials and lining materials (include pertinent characteristics such as corrosion or erosion resistance).

(iii) Tank dimensions, capacity, and shell thickness.

(iv) A diagram of piping, instrumentation, and process flow.

(v) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents).

(vi) Description of procedures for handling incompatible ignitable, or reactive wastes, including the use of buffer zones.

(3) For facilities that store or treat hazardous waste in *surface impoundments,* except as otherwise provided in § 264.220, the owner or operator must submit detailed plans and specifications accompanied by an engineering report which must collectively include the information itemized in paragraphs (i) through (x). For new facilities, the plans and specifications must be in sufficient detail to provide complete information to a contractor hired to build the facility even if the owner or operator intends to construct the facility without hiring a contractor. For existing facilities, comparable detail must be provided, but the form of presentation need not assume contractor construction except to the extent that the facility will be modified.

(i) A statement of the minimum freeboard to be maintained at the facility and the basis of the design to demonstrate compliance with freeboard requirements of §§ 264.221(a) and 264.222 (a) and (b). For flow through facilities include a hydraulic profile.

(ii) Detailed drawings of the structure which is or will be provided to immediately stop flow into the impoundment to comply with § 264.221(b); or, if no structure is needed to comply with § 264.227(c)(1), a description of the means by which waste additions will be stopped.

(iii) Detailed drawings of any dikes which exist or will be constructed.

(iv) A basis of design and design analysis of any dikes to comply with §§ 264.221(d) and 264.223(a). The design analysis must show that any dike will meet the requirements of § 264.226(c)(1).

(v) Detailed design drawings and specifications of the liner(s) and the leachate detection, collection, and removal system and the basis of design and design analysis to comply with §§ 264.221(c), 264.221(e), and 264.223 (b), (c), and (d).

(vi) Liner installation instructions to comply with the requirements of § 264.226(a). For existing facilities, when the owner or operator proposes to rely on existing liners, a description of the installation procedures used.

(vii) Design details of the leachate removal system, the basis of design, and a description of the operating procedures to be used to ensure free flow from the collection system in accordance with § 264.222(c).

(viii) Design plans and specifications and basis of design of any structures needed to comply with § 264.222(e).

(ix) A description of the maintenance and repair procedures proposed to comply with §§ 264.222(d) and 264.15(c).

(x) A description of the operating procedures that will ensure compliance with §§ 264.229 and 264.230.

(xi) A certification by a qualified engineer which complies with § 264.226(c). The owner or operator of a new facility must submit a statement by a qualified engineer that he will provide such a certification upon completion of construction in accordance with the plans and specifications.

(4) For facilities that store or treat hazardous waste in *waste piles,* except as otherwise provided in § 264.250.

(i) A description of practices to control wind dispersal (e.g., cover or frequent wetting) of hazardous waste in piles so that the Director, where necessary, can specify appropriate control measures.

(ii) A detailed engineering description of the facility design including:

(A) A description of measures to divert run-on away from the pile;

(B) A description of the leachate and run-off collection and control system;

(C) A description of the foundation supporting the base;

(D) Design specifications of the pile base and liner (or liners) including the estimated containment life of the base and the permeability of the liner(s);

(E) Estimated life of the hazardous waste pile; and

(F) If applicable under § 264.253(a)(3), a description of the leachate detection, collection, and removal system including the system's relation to the water table and a description of any efforts to control the water table.

(iii) A detailed description of the facility operating procedures which demonstrate compliance with §§ 264.252, 264.253, 264.256 (ignitable or reactive waste), and 264.257 (incompatible waste) including:

(A) A description of efforts to protect the containment system from plant growth which could puncture any component of the system;

(B) A description of design and operating procedures to properly manage and dispose of any leachate that is a hazardous waste;

(C) A description and listing of all equipment and procedures used to place the waste in or on the pile or to clean and expose the liner surface; and

(D) A description of efforts to separate hazardous waste that is incompatible with any waste or material stored nearby including the design specifications of any dike, berm, wall, or other device used to separate the materials.

(c) [Reserved]

Note.—Requirements set forth in § 122.25 (a) and (b) reflect the Part 264 regulations promulgated on May 19, 1980 and today. Additional permit application requirements including those for other treatment and disposal facilities will be promulgated when the remaining portions of Part 264 are promulgated.

2. Revise § 122.29 to read as follows; paragraph (a) is issued as an interim final rule:

§ 122.29 Establishing RCRA Permit Conditions.

(Applicable to State RCRA programs, see § 123.7)

In addition to the conditions established under § 122.8(a), each RCRA permit shall include:

(a) A list of the wastes or classes of wastes which will be treated, stored, or disposed of at the facility, and a description of the processes to be used for treating, storing, and disposing of these hazardous wastes at the facility including the design capacities of each storage, treatment, and disposal unit. Except in the case of containers, the description must identify the particular wastes or classes of wastes which will be treated, stored, or disposed of in particular equipment or locations (e.g., "Halogenated organics may be stored in Tank A", and "Metal hydroxide sludges may be disposed of in landfill cells B, C, and D"), and

(b) Each of the applicable requirements specified in 40 CFR Parts 264 and 266.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[SWH-FRL 1673-7b]

Closure, Tank, and Waste Pile Standards for Owners and Operators of Hazardous Waste Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules.

SUMMARY: The Environmental Protection Agency is proposing to amend the Part 265 interim status standards promulgated on May 19, 1980, (45 FR 33153–33258). Amendments are being proposed to the §§ 265.119 and 265.120 standards requiring notification of the local land authority of hazardous waste disposal activities and placement of a notice of such activities in the deed. In addition, EPA is proposing to amend the interim status requirements for tank and waste pile facilities (Part 265, Subparts J and L) to stipulate that periodic comprehensive inspections are required.

EPA is proposing these amendments to the Part 265 interim status standards because they involve substantive changes to interim status requirements promulgated in May 1980.

The Agency is also proposing to amend the Part 264 general (permit) standards promulgated today. The proposed amendments include requirements for controlling air emissions from tank facilities (§ 264.200) and inspecting waste pile containment systems (§ 264.254).

EPA is proposing these additions to the Part 264 general standards, because they are major changes from the proposed rules published on December 18, 1978 (43 FR 58982–59028).

DATES: Comments are due on or before April 13, 1981. A public hearing will be held March 18, 1981.

ADDRESSES: Comments should be addressed to Deborah Villari, Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460. Comments should identify the regulatory docket as follows: "Docket No. 3004, Proposed Amendments".

The official record for this rulemaking is available at Room 2711, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:30 p.m., Monday through Friday excluding holidays.

A public hearing will be held at Room 3906, Waterside Mall, 401 M St. S.W. in Washington, D.C. on March 18, 1981. Anyone wishing to make a statement at the hearing should notify in writing Ms. Geraldine Wyer, Public Participation Officer, Office of Solid Waste (WH-562), U.S. EPA 401 M Street, S.W., Washington, D.C. 20460.

Oral and written comments may be submitted at the public hearing. Persons who wish to make oral presentations must restrict their presentations to 10 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

FOR FURTHER INFORMATION CONTACT: John P. Lehman, Office of Solid Waste (WH-565) U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9185.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
III. Detailed Discussion of Proposals
A. Tank Air Emissions
B. Waste Pile Inspections
C. Notification of Land Authority and Notice in Deed
D. Tank Inspections
IV. Supporting Documents

I. Authority

This regulation is proposed under the authority of Sections 1006, 2002(a) and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6905, 6912(a), and 6924.

II. Background

Early this year EPA began issuing regulations which comprise the Subtitle C hazardous waste management system. On February 26, 1980, it promulgated standards for generators and transporters of waste (Parts 262 and 263, respectively). On May 19, 1980, EPA promulgated the interim status standards for hazardous waste treatment, storage, and disposal facilities (Part 265), the initial portion of the general standards for permitted facilities (Part 264), and consolidated permit and State program regulations (Parts 122–124). Today, EPA promulgated Part 265 interim status standards for financial responsibility and revised Part 265 rules for closure and post-closure; promulgated Part 264 general standards for treatment and storage of hazardous waste and for closure and financial responsibility; and amended the Part 122 permit requirements.

III. Detailed Discussion of Proposals

The following sections on tank air emissions and waste pile inspections discuss proposed Part 264 general (permit) standards which were not included in the proposed requirements for hazardous waste management facilities published on December 18, 1978 (43 FR 58982–59022). The section on waste pile inspections also includes discussion of a proposed interim status standard (Part 265).

The sections on tank inspections and post-closure notification and deed amendments discuss proposed amendments to the Part 265 interim status standards.

A. Tank Air Emissions

A requirement for the control of air emissions from tank facilities (§ 264.200) is being proposed for inclusion in the general standards for tanks (40 CFR, Part 264, Subpart J).

On December 18, 1978 the Agency proposed several requirements pertaining to the control of air emissions from tanks. The proposed requirements stipulated that all storage tanks were to be covered. The proposed § 150.44–1(a) stated that storage tanks which contain volatile waste could not be vented directly to the atmosphere. The proposed § 250.42–3 requirement stated that all facilities must be designed and operated in such a manner as to prevent air emissions in violation of regulations promulgated pursuant to Sections 110, 111, and 112 of the Clean Air Act (CAA). The proposed § 250.44(f) requirement added that if the Regional Administrator determined that open storage of a waste could result in a violation of the Clean Air Act regulations, the waste must be stored in a closed tank.

Commenters stated that the requirements should be based more directly on the quantity and concentration of harmful vapors emitted, or alternatively that the requirements should be deleted and authority deferred to the Clean Air Act. The Agency has stated in the preamble to the May 19, 1980 regulation that RCRA authority is a more efficient vehicle for controlling air emissions from hazardous waste facilities than is the Clean Air Act. EPA agrees with commenters, however, that the regulation of such emissions should be based on the quantity and concentrations of harmful vapors and their impact on human health and the environment. Regulations under the Clean Air Act to address in part the problem of air emissions from tanks may be promulgated in the near future. EPA has developed and distributed to the public, preproposal drafts of "Standards of Performance for New Stationary Sources—Volatile Organic Liquid Storage Vessels." The

requirement would be proposed under the authority of Section 111 of the Clean Air Act, and would include storage of volatile organics in tanks.

The draft regulation for volatile organic liquid storage vessels does not, by itself, adequately control air emissions from hazardous waste facilities. While the draft CAA regulation would apply to hazardous waste storage tanks containing over 15,000 gallons of volatile organic liquids, the regulation would not control potentially hazardous air emissions from hazardous waste treatment processes conducted in tanks. EPA is particularly concerned with cyanide destruction processes and with precipitation and chromium reduction processes involving the use of bisulfide. Process upsets, such as pH fluctuation, at facilities using these processes can result in emissions of toxic HCN or H_2S gases which can threaten not only workers but surrounding communities. Therefore, a RCRA regulation, which complements and is not inconsistent with existing and proposed CAA regulations, is necessary for the control of air emissions from hazardous waste facilities.

The proposed approach would require the owner or operator to evaluate the potential for hazardous air emissions at his facility and to establish adequate treatment process controls, emission controls, and safety or emergency procedures as are necessary to protect human health and the environment. Both the evaluation as to potential hazards from air emissions and the controls established to protect human health and the envoronment will be subject to review by the Regional Administrator during the permit process.

Several alternatives to the proposed requirement were considered by EPA. Each is discussed below:

(1) Defer to CAA authority. As discussed above, the CAA regulations do not control emissions from treatment processes or treatment process upsets. The Agency is concerned with a large variety of treatment processes including cyanide destruction, chromium reduction, precipitation, steam stripping, physical agitation and others. To regulate each of these potential sources through CAA authority would be extremely cumbersome.

(2) Process specific requirements. The Agency considered developing controls which would be specific to each type of treatment process (e.g. require automatic pH control systems at cyanide destruction facilities). However, in view of the large number of processes used for hazardous waste treatment and the large variation between facilities in technologies used for a given process, the Agency decided that process specific controls would be both inflexible and unwieldy.

EPA requests comments on the proposed rule, the alternatives considered, and on other regulatory options for the control of air emissions for hazardous waste treatment and storage tanks.

B. Waste Pile Inspections and Testing

When the Part 265, Subpart L, interim status requirements for hazardous waste pile facilities were promulgated on May 19, 1980, there were no specific requirements for the inspections of piles other than the General Inspection Requirements of § 265.15. EPA now proposes to amend the interim status regulations for waste pile facilities by adding § 265.254, a requirement for the periodic inspection of the piles. The Agency also proposes to add this periodic inspection requirement to the general standards in § 264.254, as an adjunct to the final General Inspection Requirements of § 264.15 and § 264.254(a).

Storage and treatement of hazardous waste in both new and existing piles requires both primary containment designed to prevent discharges and inspection and testing to ensure integrity of the primary containment. This proposed inspection and testing requirement stipulates that the devices for controlling precipitation and run-on, and the waste pile base and run-off control devices, where these are required for containment of a pile, must be periodically inspected and tested. Where a waste pile base is required, the waste pile must be removed at regular intervals in order to inspect the base. This requirement is necessary to ensure that long-term degenerative processes which could result in failure of the containment system are detected. These processes include settling and cracking of dikes and foundations and corrosion, puncture, or deterioration of liners.

Since neither secondary containment nor ground-water monitoring are required for waste pile facilities, it is doubly important to utilize inspections as a means to ensure the integrity of the waste pile containment system. Waste or leachate can be released through cracks or holes in a base or diking system and improper functioning of precipitation, run-on, and leachate and run-off control devices can lead to emission of waste as well. Once released, the waste, leachate, or run-off may contaminate soil, ground water, or surface water. In order to prevent such contamination, it is important to monitor the condition of the waste pile base and diking system and precipitation, run-on, and leachate and run-off control equipment at regular intervals so that any corrosion, punctures, cracks, or other failure can be detected before it leads to failure of the containment system and subsequent release of the waste.

The Agency has considered the technical problem of the method of inspection of a waste pile base and has concluded that the best way to detect any deterioration is to visually examine and test the condition of the base. This necessitates the removal of the pile from its base periodically.

The Agency understands, however, that it may be impractical in some cases to remove the waste pile from its base for visual examination and testing of the base because of the size of the pile or because of the type of base used. For example, if a synthetic membrane is used as a base, it could be damaged by material handling equipment during waste removal. Accordingly, the proposed inspection requirement allows the owner or operator to omit the periodic waste pile base inspection from his inspection plan in such cases, *provided* that there is an alternative means for detecting failure of the primary containment system (the base). The Agency believes the best method to accomplish leak detection in a waste pile is to require that a leachate detection, collection, and removal system, as specified in § 264.253(a)(3), be placed under the waste pile base.

EPA requests comment on the proposed rule and other alternatives for inspecting waste pile bases.

C. Notification of Land Authority and Notice in Deed

Section 265.119 of the final Part 265, Subpart G, interim status standards promulgated on May 19, 1980 requires that within 90 days after closure is completed, the owner or operator of a disposal facility must submit to the local land authority and to the Regional Administrator a survey plat indicating the location and dimensions of landfill cells or other disposal areas. This plat, certified by a professional land surveyor, must contain a note stating the owner's or operator's obligation to restrict disturbance of the site as specified in § 265.117(c) of the post-closure regulations. The owner or operator is also required to submit to the local land authority and to the Regional Administrator a record of the type, location, and quantity of wastes disposed of within each cell or area of the facility.

EPA is reproposing this final regulation in slightly altered form in order to clarify the intent of the

requirement. Aware that the term "local land authority" might have different connotations in different localities, EPA has changed the references to such an authority to the "local zoning authority or the authority with jurisdiction over local land use" in the reproposed interim status standards. The Agency believes this terminology will specify more accurately the type of local authority to which survey plats and waste disposal records must be submitted.

EPA also recognizes that under certain conditions (e.g., cleanup of an environmental problem at a disposal facility) the type, location, or quantity of hazardous wastes disposed of within a particular cell or area of the facility may change. Therefore, the reproposed § 265.119 requires the owner or operator to report any changes in the type, location, or quantity of hazardous waste disposed of within each area or cell of the facility, to the local zoning authority or to the authority with jurisdiction over local land use and to the Regional Administrator.

EPA is also reproposing § 265.120 of the final Part 265, Subpart G, interim status standards in order to strengthen the assurance that a future owner or operator of property on which a disposal facility once operated will have full knowledge of previous uses of the land.

In addition to requiring a notation on the deed to the facility property indicating the land has been used to manage hazardous wastes and that its use is restricted under § 265.117(c), as in the final regulation, the reproposed regulation requires the notation to indicate that a survey plat and record of the type, location, and quantity of hazardous waste disposed of within each cell or area of the facility have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Regional Administrator.

Although this section was promulgated as final on May 19, 1980, EPA received one comment recommending that the Agency allow removal of the notation from the deed if the owner removes the contents of a disposal site or can demonstrate the secure nature of the facility under § 265.117. EPA agrees with this commenter that the notation may be removed, if certain conditions are met.

The Agency considered two alternative ways of enacting this provision. One alternative allows removal of the notation only if all hazardous waste is removed from the site. The other alternative requires the owner or operator of a treatment or storage facility, as well as a disposal facility, to attach a notation to the deed which may then be removed if the conditions outlined above are met.

EPA has opted for this first alternative and, consequently, is reproposing this section of the final regulation to permit an owner or operator or any subsequent owner of the land upon which a hazardous waste disposal facility was located to remove the notation from the deed or any other instrument normally examined during title search, if he removes the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil. The reproposed regulation also states that an owner or operator who removes the above components, unless he can demonstrate that any solid waste removed is not a hazardous waste, becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262; 263; and 264 or 265.

Since this section of the regulation was issued as a final rule on May 19, 1980, it is being reproposed to allow for public comment. The Agency expects that when § 264.120 of the general standards, today being promulgated as an interim final rule, becomes final, it will parallel whatever version of § 265.120 interim status standards is adopted as a final rule.

EPA requests comments on all aspects of the reproposed §§ 265.119 and 265.120. These rules as promulgated on May 19, 1980, remain in effect until amended final rules are promulgated.

D. Tank Inspections

The Part 265, Subpart J, interim status standards for hazardous waste treatment and storage tanks contain requirements in § 265.194 for inspections of monitoring equipment, discharge control and safety equipment, and the construction materials of the tank and discharge confinement structures surrounding the tank.

EPA is proposing to amend § 265.194 by adding a paragraph (b) requiring that owners and operators periodically conduct a comprehensive inspection to ensure that any corrosion, leaks, or cracks not detectable through routine visual inspection of the exterior of the tank will be discovered. In most cases, tanks must be emptied and the interior of the tank inspected for cracks, weak spots, and corrosion. However, in some cases, such as with underground tanks, emptying the tank and inspecting the interior is not a reasonable means of inspection. In these cases, alternative means may be used for inspecting the tank and detecting leaks. An example of such alternative means would be testing for leaks hydrostatically or through precisely measuring changes in the level of liquids in the tank over a 2-3 hours period.

The proposed rule specifies factors upon which a determination as to the frequency of these inspections must be based. These factors are to be used by the owner or operator in making a determination as to potential rate of deterioration as required by § 265.15(b). The frequency of inspection must be based on this determination.

EPA requests comment on proposed § 265.194(b) and other alternatives for inspecting tanks. Section 265.194(a) remains in effect.

IV. Supporting Documents

1. Background Documents

Copies of the Background Documents used in support of these proposed rules are available for review in all EPA Regional Offices libraries and in EPA headquarters library [Public Information Reference Unit] Room 2404, Waterside Mall, 401 M Street SW., Washington, D.C.

2. Economic, Environmental, and Regulatory Impacts

In accordance with Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107, EPA policy as stipulated in 39 FR 37419, October 21, 1974, and Executive Order 12044, respectively, analyses of the economic, environmental, and regulatory impacts are being performed for the entirety of Subtitle C, Hazardous Waste Management. Copies of the draft documents are available for review in the EPA libraries noted above. The impacts of this proposal are not covered in the present drafts but will be covered in subsequent drafts.

Dated: December 31, 1980.

Douglas M. Costle,

Administrator.

PART 264—STANDARD FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. It is proposed to amend 40 CFR Part 264 by adding § 264.200 to Subpart J and § 264.254 (b) and (c) to Subpart L as follows:

Subpart J—Tanks

§ 264.200 Air Emissions.

All tanks must have such treatment process controls, emission controls, and safety or emergency procedures as are necessary to protect human health and the environment from toxic or otherwise harmful fumes, mists, or gases resulting from:

(a) Volatilization of wastes stored or treated in the tank;

(b) Chemical reactions in the tank, either routine or resulting from process upsets; or

(c) Physical agitation or other forms of treatment conducted in the tank.

Subpart L—Waste Piles

§ 264.254 Inspections and testing.

* * * * *

(b) Except as otherwise provided in paragraph (c) of this Section, the owner or operator of a waste pile must include in the inspection plan required under § 264.15 a schedule of inspection of the devices for controlling wind dispersal (where required) and run-on, and the waste pile containment system under § 264.253. The inspection schedule must include periodic removal of the waste pile and testing of the underlying base to ensure that it has not deteriorated to the point where it is no longer capable of containment, is already leaking, or is otherwise in disrepair.

(c) If it is impractical to remove the waste pile and test the underlying base periodically because of the size of the pile or the type of base used (e.g., a synthetic membrane which could be damaged during waste removal), the owner or operator may omit the pile base inspection from his inspection plan, *provided* that the waste pile has a leachate detection, collection, and removal system as specified in § 264.253(a)(3).

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

2. It is proposed to amend 40 CFR Part 265 by revising §§ 265.119 and 265.120 in Subpart G, adding paragraph (b) to § 265.194 in Subpart J, and adding § 265.254 to Subpart L, as follows:

Subpart G—Closure and Post-Closure

§ 265.119 Notice to local land authority.

Within 90 days after closure is completed, the owner or operator of a disposal facility must submit to the local zoning authority or the authority with jurisdiction over local land use and to the Regional Administrator a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the site as specified in § 265.117(c). In addition, the owner or operator must submit to the Regional Administrator and to the local zoning authority or the authority with jurisdiction over local land use a record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility. For wastes disposed of before these regulations were promulgated, the owner or operator must identify the type, location, and quantity of the wastes to the best of his knowledge and in accordance with any records he has kept. Any changes in the type, location, or quantity of hazardous waste disposed of within each cell or area of the facility that occur after the survey plat and record of wastes have been filed must be reported within 30 days to the local zoning authority or the authority with jurisdiction over local land use and to the Regional Administrator.

§ 265.120 Notice in deed to property.

(a) The owner of the property on which a disposal facility is located must record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:

(1) The land has been used to manage hazardous wastes;

(2) Its use is restricted under § 265.117(c); and

(3) The survey plat and record of the type, location, and quantity of hazardous waste disposed of within each cell or area of the facility required in § 265.119 have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Regional Administrator of the Environmental Protection Agency.

(b) If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste facility was located removes the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he may remove the notation on the deed to the facility property or other instrument normally examined during title search.

[*Comment:* On removing the waste and waste residues, the liner, if any, and the contaminated soil, the owner or operator, unless he can demonstrate, in accordance with § 261.3(d) of this Chapter, that any solid waste removed is not a hazardous waste, becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262–266 of this Chapter.]

Subpart J—Tanks

§ 265.194 Inspections.

* * * * *

(b) As part of the inspection schedule required in § 265.15(b), and in addition to the specific requirements of paragraph (a) of this Section, the owner or operator must develop a schedule and procedure for assessing the condition of the tank. The schedule and procedure must be adequate to detect cracks, leaks, and corrosion which may lead to cracks or leaks. Procedures for emptying a tank to allow entry and inspection of the interior must be established when necessary to detect corrosion of the tank sides and bottoms. In those cases where emptying the tank is an ineffective procedure for inspection (e.g., underground tanks), alternative means (e.g., hydrostatic testing or other leak tests) may be used to assess the condition of the tank. The frequency of these assessments must be based on the material of construction of the tank, type of corrosion protection used, and the characteristics of the waste being treated or stored.

[*Comment:* As required in § 265.15(c), the owner or operator must remedy any leak or crack, or equipment or process malfunction in violation of § 265.192 which he discovers during inspection. As part of the contingency plan required under Subpart D of Part 264, the owner or operator must specify the procedures he intends to use to respond to tank spills or leakage, including procedures and timing for expenditious removal of leaked or spilled waste and repair of the tank. See 29 CFR 1910.94(d)(11) for Occupational Safety and Health Administration requirements relating to entry of tanks for inspection.]

Subpart L—Waste Piles

§ 265.254 Inspections and testing.

(a) Except as otherwise provided in paragraph (b) of this Section, the owner or operator of a waste pile must include in the inspection plan required under § 265.15 a schedule of inspection of the devices for controlling precipitation and run-on, and the waste pile base and devices for controlling run-off, where these are required for containment of the pile under § 265.253. Where a waste pile base is required, the inspection schedule must include, at a minimum, periodic removal of the waste pile and testing of the base to ensure that it has not deterioriated to the point where it is no longer capable of containment, is

already leaking, or is otherwise in disrepair.

(b) If it is impractical to remove the waste pile and test the underlying base periodically because of the size of the pile or the type of base used (e.g., synthetic membrane which could be damaged during waste removal), the owner or operator may omit the pile base inspection from his inspection plan, *provided* that the waste pile has a leachate detection, collection, and removal system as specified in § 264.253(a)(3) of this Chapter.

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Part III

Department of Agriculture

Farmers Home Administration

Environmental Program; General

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1901 and 1940

Environmental Program; General

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of Proposed Rulemaking, Review of Existing Regulations under E.O. 12044.

SUMMARY: The Farmers Home Administration (FmHA) is proposing to amend its regulations for implementing the National Environmental Policy Act. These amendments are necessary in order to comply with the Council on Environmental Quality's (CEQ) "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act". The intended effect of these amendments is to make FmHA's regulation consistent with CEQ's as well as serve as a reference point for those environmental laws, Executive Orders and regulations applicable to FmHA's programs.

DATES: Comments must be received on or before March 13, 1981.

On February 19, 1981, at 10:00 a.m., a public information meeting will be held for the purpose of discussing this proposed rule as well as considering comments and questions of interested parties.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers, Home Administration, U.S. Department of Agriculture, Room 6346, South Agriculture Building, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the above address.

The public information meeting on February 19, 1981 will be held in Room 330 of the GHI Building, 500 12th Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John Hansel (Environmental Specialist), telephone (202) 447-3395, Farmers Home Administration, U.S. Department of Agriculture, Room 6309, South Agriculture Building, Washington, D.C. 20250.

The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available upon request from Joseph H. Linsley, Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, South Agriculture Building, Washington, D.C. 20250, telephone (202) 447-4057.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant". The FmHA programs and projects which are affected by this instructions are subject to state and local clearinghouse review in the manner delineated in FmHA Instruction 1901-H. The affected programs are as follows: FCDA No. 10.405, Farm Labor Housing Loans and Grants; 10.409, Irrigation Drainage, and other Soil and Water Conservation Loans, 10.411, Rural Housing Site Loans; 10.414, Resource Conservation and Development Loans; 10.418, Water and Waste Disposal Systems for Rural Communities; 10.419, Watershed Protection and Flood Prevention Loans, 10.420, Rural Self-Help Housing Technical Assistance, 10.422, Business and Industrial Loans; 10.423, Community Facility Loans, 10.424, Industrial Development Grants; 10.426, Area Development Assistance Planning Grants; 10.427, Rural Rental Assistance Payments; 10.430, Energy Impacted Area Development Assistance Programs; and 10.431, Technical and Supervisory Assistance Grants; and 10.432, Biomass Energy and Alcohol Fuels Loans and Loan Guarantees.

FmHA proposes to revise and redesignate Subpart G of Part 1901 to a new Subpart G, Part 1940, Chapter XVIII, Title 7, Code of Federal Regulations. This proposed rule updates FmHA's environmental impact review requirements. Like the existing requirements it affects all of the Agency's financial assistance programs but these revisions provide more specific guidance in how to complete environmental reviews. This is particularly true with respect to smaller projects, housing projects of less than 20 units for example, which are exempt from formal review under FmHA's existing requirements. Such an exemption is not permitted under the CEQ regulations.

This proposed rule also adopts the concept being utilized by many other federal agencies and encouraged by CEQ of using the environmental impact assessment, and when necessary the environmental impact statement, as the basic mechanism for completing and demonstrating compliance with other major federal environmental laws, regulations and policies. Additionally, the proposed rule provides specific procedures for implementing Secretary's Memorandum No. 1827, Revised, "Statement on Land Use Policy".

This document has been reviewed in accordance with Part 1901, Subpart G, "Environmental Impact Statement" of this Chapter. It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Dated: December 29, 1980.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

PART 1901 [AMENDED]

Therefore, it is proposed that Subpart G of Part 1901 be removed and reserved and a new Subpart G, Part 1940, be added to read as follows:

PART 1940—GENERAL

* * * * *

Subpart G—Environmental Program

Sec.

1940.301 Purpose.
1940.302 General policy.
1940.303 Special policy.
1940.304 Policy implementation.
1940.305 Environmental responsibilities within National Office.
1940.306 Environmental responsibilities within State Office.
1940.307 Responsibilities of State Environmental Officer.
1940.308 Environmental responsibilities at the district and county office levels.
1940.309 Responsibilities of the prospective applicant.
1940.310 Categorical exclusions from NEPA reviews.
1940.311 Environmental assessments for Class I actions.
1940.312 Environmental assessments for Class II actions.
1940.313 Actions that normally require the preparation of an environmental impact statement (EIS).
1940.314 Criteria for determining a significant environmental impact.
1940.315 Timing of the environmental review process.
1940.316 Responsible officials for the environmental review process.
1940.317 Methods for ensuring proper implementation of categorical exclusions.
1940.318 Completing environmental assessments for Class II actions.
1940.319 Completing environmental assessments for Class I actions.
1940.320 Preparing environmental impact statements.
1940.321 Use of completed EIS.
1940.322 Record of decision.
1940.323 Preparing supplements to EISs.
1940.324 Adoption of EIS and environmental assessment prepared by other Federal agency.
1940.325 FmHA as a cooperating agency.
1940.326 FmHA as a lead agency.
1940.327 Tiering.
1940.328 State Environmental Policy Acts.
1940.329 Commenting on other agencies' EISs.

1940.330 Monitoring.
1940.331 Public involvement.
1940.332 Emergencies.
1940.333 Applicability to planning assistance.
1940.334 Direct participation of State agencies in the preparation of FmHA EISs.
1940.335 Environmental review of FmHA proposals for legislation.
1940.336 Contracting for consulting services.
1940.337–1940.350 [Reserved]

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Exhibits

A. Secretary's Memorandum No. 1827, Revised, *Statement on Land Use Policy*
B. Form FmHA 1940–20, "Request For Environmental Information"
C. Timing of FmHA Environmental Impact Review Process
D. Form FmHA 1940–21, "Environmental Assessment for Class I Actions"
E. Environmental Assessment for Class II Actions
F. Form FmHA 1940–22, "Environmental Checklist For Categorical Exclusions"
G. Finding of No Significant Environmental Impact

Subpart G—Environmental Program

§ 1940.301 Purpose.

(a) This Subpart establishes the major environmental policies of the Farmers Home Administration (FmHA). It also provides the procedures and guidelines for preparing the environmental impact analyses required for a series of federal laws, regulations, and Executive Orders within one environmental document. The timing and use of this environmental document within the FmHA decision-making process is also outlined.

(b) This Subpart is intended to be consistent with the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), 40 CFR Parts 1500–1508. CEQ's Regulations are incorporated by reference as part of this Subpart. CEQ's Regulations will not be repeated in this Subpart except when essential for clarification of important procedural or substantive points. Otherwise, citations to applicable sections of the Regulations will be provided. The Regulations will be available at all FmHA offices.

(c) This Subpart is designed to integrate the requirements of NEPA with other planning and environmental review procedures required by law or by Agency practice so that all such procedures run concurrently rather than consecutively. The environmental document which results from the implementation of this Subpart provides on a project basis a single reference point for the Agency's compliance and/or implementation of the following requirements and policies:

(1) The National Environmental Policy Act, 42 U.S.C. 4321
(2) Safe Drinking Water Act—Section 1424(e), 42 U.S.C. 300h
(3) Endangered Species Act, 16 U.S.C. 1531
(4) Wild and Scenic Rivers Act, 16 U.S.C. 1271
(5) Fish and Wildlife Coordination Act, 16 U.S.C. 662
(6) The National Historic Preservation Act, 16 U.S.C. 470 (See Subpart F of Part 1901 of this Chapter for more specific implementation procedures.)
(7) Archaeological and Historic Preservation Act, 16 U.S.C. 469 (See Subpart F of Part 1901 of this Chapter for more specific implementation procedures.)
(8) Coastal Zone Management Act—Section 307(c) (1) and (2), 16 U.S.C. 1456
(9) Executive Order 11593, Protection and Enhancement of the Cultural Environment (See Subpart F of Part 1901 of this Chapter for more specific implementation procedures.)
(10) Executive Order 11514, Protection and Enhancement of Environmental Quality
(11) Executive Order 11988, Floodplain Management
(12) Executive Order 11990, Protection of Wetlands
(13) Office of Management and Budget Circular A–95 (See Subpart H of Part 1901 of this Chapter for more specific implementation procedures.)
(14) Title 7, Part 3100, Code of Federal Regulations, Department of Agriculture's National Environmental Policy Act; Final Policies and Procedures
(15) Title 7, Part 3100, Code of Federal Regulations, Department of Agriculture's Enhancement, Protection, and Management of the Cultural Environment (See Subpart F of Part 1901 of this Chapter for more specific implementation procedures.)
(16) Secretary's Memorandum No. 1827, Revised, Statement on Land Use Policy (See Exhibit A.)

(d) The primary objectives of this Subpart are for the Agency to make better decisions by taking into account potential environmental impacts of proposed projects and by working with FmHA applicants, other federal agencies, Indian tribes, state and local governments, and interested citizens and organizations in order to formulate actions that both advance our program goals and protect, enhance, and restore environmental quality. To accomplish these objectives, the identification of potentially significant impacts on the human environment is mandated to occur early in the Agency's planning and decision-making processes. Important decision points are identified. The completion of the environmental review process is coordinated with these decision points and this review must be completed prior to the Agency's first major decision on whether or not to participate in the proposal. This early availability of the results of the environmental review process is intended to insure that Agency decisions are based on an understanding of their environmental consequences, as well as the consequences of alternative courses of action.

(e) Reducing delays, duplication of effort and superfluous analyses is provided for in the Subpart. FmHA environmental documents are to be supported by accurate analyses and will concentrate on the issues that are timely and relevant to the action in question rather than amassing needless detail. Such documents and their preparation and review will be coordinated with other federal or state agencies jointly participating in proposed actions or related actions in order to avoid duplication of effort and to achieve a coordinated and timely response.

(f) Public involvement is desirable and to facilitate public involvement, environmental documents will be available to interested citizens as early in the decision-making process as possible and before decisions are made. Provisions are included for citizens or interested-parties to express their views and any concerns.

(g) The FmHA officials responsible for the environmental review process are identified.

§ 1940.302 General policy.

(a) FmHA shall consider environmental quality as equal with economic, social, and other relevant factors in program development and decision-making processes. Implementing the requirements of this Subpart will serve as the method for ensuring that a proper balance between program objectives and environmental quality is achieved. This balance will also be pursued by the allocation of necessary FmHA resources, both money and human resources, to carry out the policies, objectives, and requirements of this Subpart.

(b) In assessing the potential environmental impacts of its actions, FmHA shall consult early with appropriate federal, state, and local agencies and other organizations to provide decision-makers with both the technical and human aspects of environmental planning. Broad public participation in defining environmental

quality objectives at the local level shall be encouraged as discussed in Section 1940.331.

(c) When adverse environmental impacts are identified, either direct or indirect, a thorough examination shall be made of alternative courses of action, including their potential environmental impacts. The objective of the environmental review shall be to develop a feasible alternative with the least adverse environmental impact. The alternative of not proceeding with the proposal shall also be considered particularly with respect to the need for the proposal. For the purposes of this Subpart, the term indirect impacts means those reasonably foreseeable environmental impacts that result from the additional public facility, residential, commercial, or industrial development or growth that a federally financed project may cause, induce or accommodate. Consequently, indirect impacts often occur later in time than the construction of the federal project and can be removed in distance from the construction site. For example, a water transmission line may be designed to serve additional residential development. The environmental impacts of that residential development represent an indirect impact of the federally funded water line. Those indirect impacts which deserve the greatest consideration include changes in the patterns of land use, population density or growth rate and the corresponding changes to air and water quality and other natural systems.

(d) If no feasible alternative exists, including the no-action alternative, measures to mitigate the identified adverse environmental impacts shall be included in the proposal. Examples of mitigation measures include, but are not limited to: (1) architectural and engineering redesigns, (2) the dedication of environmentally sensitive portions of project sites as natural areas, (3) soil erosion and sedimentation plans to control runoff during land disturbing activities, (4) the establishment of vegetative buffer zones between project sites and adjacent land uses, and (5) zoning.

(e) The performance of environmental reviews and the consideration of alternatives shall occur as early as possible in the FmHA decisionmaking processes. In this manner, the Agency will be in the most flexible and objective position to deal with these considerations; applicants will be made aware from the start of the environmental policies of the Agency; and potential delays in the subsequent approval and construction processes should be avoided or minimized.

§ 1940.303 Special policy.

(a) *Important Land Resources.*

(1) FmHA recognizes that its specific mission of assisting rural areas, composed of farms and rural towns, goes hand in hand with protecting the environmental resources upon which these systems are dependent. Basic resources necessary to both farm and rural settlements include important farmlands and forestlands, prime rangelands, wetlands, and floodplains. The definitions of these areas are contained in the Appendix to the Secretary of Agriculture's Memorandum No. 1827, Revised, *Statement on Land Use Policy,* which is included as Exhibit A. Given the importance of these resources as emphasized in the Secretary's Memorandum and Executive Order 11988. "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," it is FmHA's policy not to approve or fund any proposals that as a result of their identifiable impacts, direct or indirect, would lead to or accommodate either the conversion of these land uses or encroachment upon them. The only exception to this policy is if the approving official determines that (i) there is no practicable alternative to the proposed action, (ii) the proposal conforms to the planning criteria identified in paragraph (a)(2) of this Section, (iii) the proposal includes all practicable measures for reducing the adverse impacts and the amount of conversion/encroachment, and (iv) the requirements of the Executive Orders pertaining to wetland and floodplain protection have been fully met. For purposes of this Subpart, the term practicable alternative means an alternative (involving either a different project location, different project design, no action or a different project with similar benefits) that can be attained within the confines of relevant constraints. The test of practicability, therefore, depends upon the particulars of the situation under consideration of those constraints imposed by environmental, economic, legal and technological parameters.

(2) It is also recognized that unless carefully reviewed, some proposals designed to serve the needs of rural communities can adversely affect the existing economic base and settlement patterns of the community, as well as create development pressures on land and environmental resources essential to farm economies. An example of such a proposal might be the extension of utilities and other types of infrastructure beyond a community's existing settlement pattern and into important farmlands for the purpose of commercial or residential expansion, even though there is available space within the existing settlement pattern for such expansion. Not only may the loss of important farmlands unnecessarily result, but the community may be faced with the economic costs of providing public services to outlying areas, as well as the deterioration of its central business or commercial area; the latter may not be able to compete with the newer, outlying commercial establishments. These results are undesirable and to avoid their occurrence, projects designed to meet rural community needs (i.e., residential, industrial, commercial, and public facilities) will not be approved unless the following conditions are met:

(i) The project is planned and sited in a manner consistent with the land use policies of this Section and Department of Agriculture Secretary's Memorandum No. 1827;

(ii) There is clear evidence of alternatives to the proposal having been carefully considered, and no evidence that feasible alternatives having less community disruption or adverse socio-economic impacts were rejected;

(iii) If such a plan exists, the proposal conforms to a comprehensive and enforceable plan to guide growth which reflects a realistic strategy for protecting natural resources including important agricultural lands. (If no such plan exists, there is no FmHA requirement that one be prepared and adopted, as further specified below in paragraph (a)(3) of this Section.)

(iv) The project will encourage long-term, economically viable public investment by fostering or promoting development patterns that insure compact community development, that is development that is limited to serving existing settlement patterns or is located in existing settlement patterns, e.g., the rehabilitation and renovation of existing structures, systems and neighborhoods; infilling of development; the provision of a range of moderate to high residential densities appropriate to local and regional needs. When these development patterns or types are not practicable, the development must be contiguous with the existing settlement pattern and provide for a range of moderate to high residential densities appropriate to local and regional needs.

(3) The conditions specified in paragraph (a)(2) of this Section should not be construed as advocating excessive densities, congestion, or loss of open space amenities within rural communities. Desirable living conditions can be obtained under these objectives,

along with economic and social benefits for the community and the surrounding farm operations. Additionally, these conditions should not be construed as requiring localities to develop plans which contain the conditions or to so amend existing plans to incorporate the conditions. Such action is encouraged, however. In any instance in which these planning conditions or criteria do not exist within the project area, project reviews will not be postponed until the criteria are adopted. Rather, projects shall be reviewed and funding decisions made in light of a project's consistency with the contents of this Subpart (excluding item (iii) of paragraph (a)(2) of this Section, which would not be applicable).

(b) *Endangered Species.* FmHA shall not authorize, fund, or carry out any proposal or project that is likely to (1) jeopardize the continued existence of any plant or wildlife species listed by the Secretary of Interior or Commerce as endangered or threatened; or (2) destroy or adversely modify the habitats of listed species when such habitats have been determined critical to the species' existence by the Secretary of Interior or Commerce unless FmHA has been granted an exemption for such proposal by the Endangered Species Committee pursuant to subsection (h) of Section 7 of the Endangered Species Act.

(c) *Wild and Scenic Rivers.* FmHA shall not provide financial assistance or plan approval for any water resource project that would have a direct and adverse effect on the values for which a river has been either included in the National Wild and Scenic Rivers System or is designated for potential addition. Additionally, FmHA shall not approve or assist developments (commercial, industrial, residential, farming or community facilities) located below or above a wild, scenic or recreational river area or on any stream tributary thereto which will invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area. The definition of a water resource project includes any type of construction which would result in any change in the free-flowing characteristics of a particular river to include physical, chemical and biological characteristics of the waterway. This definition encompasses construction projects within and along the banks of rivers, as well as projects involving withdrawals from and discharges into such rivers. Projects which require Corps of Engineer's dredge and fill permits are also water resource projects.

(d) *Historic and Cultural Properties.* At the earliest stages of consideration of an application, FmHA shall identify any properties that are listed in or may be eligible for listing in the National Register of Historic Places and are located within the project's area of potential environmental impacts. Consultations will be undertaken with State Historic Preservation Officers and the Advisory Council on Historic Preservation, through the implementation of Subpart F of Part 1901, in order to determine the most appropriate course of action for protecting such identified properties or mitigating potential adverse impacts to them.

(e) *Reuse of the Built Environment.* FmHA supports the rehabilitation, adaptive reuse, the renovation of existing structures, systems, and neighborhoods where consistent with statutory requirements. These alternatives will be encouraged rather than new construction whenever there is a basis for cost savings, energy conservation, community or neighborhood cohesion, historic preservation, or resource conservation. When cost savings are not apparent, reuse will be encouraged by the approving official when these other benefits outweigh the additional cost.

(f) *Scenic Resources.* Section 101(b) of the National Enviornmental Policy Act states that it is one of the continuing responsibilities of the federal government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate its plans, functions, and programs to the end that all Americans are assured aesthetically and culturally pleasing surroundings. Additionally, Secretary's Memorandum No. 1827, Revised, directs all USDA agencies to advocate the conservation of natural and man-made scenic resources.

Accordingly, FmHA shall encourage the conservation of natural and man-made scenic resources in all of its funding programs in order to protect and enhance the visual quality of the rural landscape.

(g) *Barrier Islands.*

(1) As part of the President's Environmental Message of 1979, the President declared several major initiatives in the area of national coastal protection. One of these involves the protection of significant coastal resources such as wetlands, estuaries, beaches, dunes, barrier islands, coral reefs and fish and wildlife. The Executive Orders dealing with the protection of floodplains and wetlands protect many of these coastal areas by prohibiting construction in floodplains and wetlands unless there is no practicable alternative. These Executive Orders directly affect construction on barrier islands since much of the land areas of these islands is classified as floodplains and wetlands. Because of the recognized important natural and protective values that barrier islands provide to coastal areas and the mandate of Executive Order 11514, "Protection and Enhancement of Environmental Quality," that federal agencies "Shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals," FmHA shall not consider barrier islands as desirable areas in which to promote development. Assistance provided within these areas will be limited to meeting the health and safety needs of existing inhabitants of the project service area at the time of application.

(2) When the Agency is requested to fund projects geared to serving additional population and development needs particularly those which address the tourism and recreational elements of some barrier island economies, FmHA will work with prospective applicants to attempt to locate such facilities at inland sites having existing, convenient access to the recreational opportunities of the barrier island.

(3) Any financial assistance provided under paragraph (g) (1) or (2) of this Section shall be provided in a manner consistent with the floodplain management and wetland protection Executive Orders.

(h) *Energy Conservation.* FmHA shall encourage the conservation of energy in the development of its programs and policies and shall encourage applicants to incorporate all feasible energy saving features and designs within their proposals.

(i) *Water Conservation.* FmHA shall encourage the conservation of water in the development of its programs and policies and shall encourage applicants for financial assistance to incorporate all feasible water conservation features and designs within their proposals. Particular emphasis will be placed on this policy in arid areas and areas where there is a history of or strong potential for water shortages.

(j) *Intergovernmental Initiatives on Important Land Resources.*

(1) On a broader scale, FmHA shall advocate in coordination with other USDA agencies (through the USDA Land Use Committee System) the retention of important farmlands and forestlands, prime rangeland, wetlands and floodplains or other land resources designated important by State or local governments whenever conversions are

(i) caused or encouraged by actions or programs of a Federal agency, (ii) licensed by or require approval by a Federal agency, or (iii) inconsistent with local or State government plans.

(2) FmHA staff may, as FmHA resources permit, also assist, when requested, local and State governments, planning and development organizations or agencies, citizen groups, and individual landholders in identifying and defining their growth development and environmental needs, selecting and choosing among alternatives to meet these needs and implementing projects or programs to satisfy those needs.

§ 1940.304 Policy implementation.

(a) The implementation of the environmental impact analysis requirements described in this Subpart serves as the primary mechanism for FmHA (1) incorporating environmental quality considerations into our program and decision-making processes, (2) obtaining the views of the public and government agencies on potential environmental impacts associated with FmHA projects, and (3) developing methods for avoiding or mitigating adverse environmental impacts.

(b) Training and guidance in the implementation of this Subpart shall be provided to FmHA decision-makers and technical support staff by the Environmental and Technology Staff (ETS).

(c) *Natural Resource Management.*

(1) The State Director shall develop a natural resource management policy. This policy will serve as an essential mechanism for implementing Section 1940.303 of this Subpart, and, therefore, the policy must be consistent with and reflect the objectives and policies contained in Section 1940.303. At the same time, however, it must be tailored to take into account important State, regional, and local natural resource management objectives. The basic purposes and uses of the policy are enumerated in this Section and can be summarized as follows.

(i) The policy shall serve as a mechanism for assembling an inventory of the locations within the State of those natural resources, land uses, and environmental factors that have been specified by Federal, State and local authorities as deserving some degree of protection or special consideration;

(ii) The policy shall summarize the various standards or types of Federal, State, or local protection that apply to the natural resources, land uses, and environmental factors listed in the inventory;

(iii) The contents of the policy, particularly the inventory, shall be considered by the State Director in deciding how FmHA's various program funds will be generally allocated across the State, on a fiscal year basis; and

(iv) Applications for individual projects must be reviewed for consistency with the policy.

(2) The State Director shall complete the natural resource management policy within twelve months from the effective date of this Subpart. The policy shall be prepared in draft form and be provided to USDA agencies, appropriate Federal and State agencies, State and regional clearinghouses, as well as interested localities, groups, and citizens for review and comment. Also at least one public information meeting shall be held on the draft. Public notification of this meeting shall be made in the same manner as the notification process for a scoping meeting. (See Section 1940.320(c)). Additionally, the public shall be informed that copies of the draft policy will be made available from the State Office upon request. After completion of this public review, the draft will be revised as necessary in light of the comments received and provided as a final draft to the Administrator for review and approval. The appropriate Area Coordinator shall be responsible for coordinating and developing the Administrator's comments. Primary responsibility for ensuring the technical adequacy of the document shall rest with ETS. Any concerns and comments of the Administrator will then be addressed by the State Director and the policy statement completed. Upon the Administrator's approval, and the fulfillment of the requirements of paragraph (c)(4) of this Section, the natural resource management policy shall then become part of any program investment plans or strategies developed by the State Director for the purpose of addressing the rural needs of the State. Although a twelve-month period has been established for the completion of a natural resource management policy, this deadline is not to be construed as curtailing or postponing the implementation of existing environmental laws, regulations, Executive Orders or the Secretary's Memorandum with respect to individual project reviews.

(3) The natural resource management policy needs to be developed in full recognition of its role as an Agency planning tool and with sensitivity to the need for consistency between it and the elements of the State Director's program investment strategies. The basic purpose of this policy then is to establish a mechanism which focuses the Agency's state-wide investment strategies in an internally consistent manner which is likewise consistent with the resource management objectives contained in Section 1940.303. The adequacy of the natural resource management policy will be judged on its ability to meet this goal.

(4) After the Administrator approves the natural resource management policy, it will become effective four months from that date. This interim period shall be used to inform local, State and Federal agencies, localities, organizations, and interested citizens of the content of the policy. In this manner, those parties intending to seek FmHA assistance or to coordinate FmHA assistance programs with their own programs will be able to gain for their planning needs an understanding of our investment strategies. The number of requests for financial assistance from these parties that are inconsistent with FmHA's resource management objectives should, thereby, be substantially reduced.

(5) Completed natural resource management policies shall be reviewed annually and updated by the State Director to reflect newly identified geographical areas of concern or policy revisions at the national, state, regional or local level. They will also be revised, as necessary, through appropriate guidance from the Administrator. Annual revisions will be completed so that they are available prior to the development of new program investment strategies. These revisions shall be transmitted to the Administrator and shall be considered approved if either no comments are raised by the Administrator within 30 days of receipt of the State Director's transmittal letter or the Administrator specifically approves them before the 30 days expire. Public review of an annual revision will not be required. However, if in the opinion of the State Director the proposed revision will substantially change the previously adopted natural resource management policy, a public review shall be conducted of the revision in the same manner as that described in paragraph (c)(2) of this Section for the development of the original policy. Such review shall occur prior to the transmittal of the revision to the Administrator. If the State Director believes that in any particular fiscal year there is no need to update the policy, a statement to this effect shall be filed with the Administrator.

(6) The foundation for the natural resource management policy is the identification of the types of land uses or environmental factors deserving attention and their geographical location

within the state. An inventory shall be developed, therefore, of the important land uses within the state. This inventory will be accomplished by assembling existing data and information, and at a minimum shall consist of documents, listings, maps, or graphic materials describing the location of the following land uses and environmental factors:

(i) National Register of Historic Places to include monthly supplements as designated by the Department of the Interior (DOI), and the State Historic Preservation Plan;

(ii) Rivers designated as part of the Wild and Scenic Rivers System and rivers under study for inclusion in the System, as published by (DOI);

(iii) Important farmlands;

(iv) Prime rangelands;

(v) Prime forestlands;

(vi) Wetland inventory;

(vii) Floodplain inventory as issued by the Federal Insurance Administration;

(viii) Endangered Species and Critical Habitats as designated by DOI;

(ix) Sole source aquifer recharge areas as designated by the Environmental Protection Agency (EPA);

(x) Air Quality Control Regions as designated by EPA;

(xi) State inventories or planning documents identifying important land uses, particularly those not covered by the above items, such as wildlife refuges, important habitats, and areas of high water quality, or scenic or recreational value;

(xii) Agricultural districts or other similar zoning classifications for agricultural land protection; and

(xiii) Coastal Zone Management Areas.

(7) The National Office Environmental and Technology Staff (ETS) shall be responsible for assisting State directors in obtaining listings and inventories of resources protected by federal statutes and regulations. The State director has the responsibility for assembling documents on important environmental resources or areas identified in state and sub-state laws, regulations, plans, and policies.

(8) Development of the inventory by the State director will require consultation and assistance from a variety of agencies and experts. This consultation should begin with Department agencies and be accomplished through the State Land Use Committee and Rural Development Committee. The objective should be to determine the land classification data that has already been compiled and that which is in the process of being compiled either by USDA agencies or their counterparts at the state-level. The Memorandum of Agreement executed in May 1979 between the Soil Conservation Service (SCS) and FmHA should be utilized as the basis for seeking SCS's assistance in this data collection effort. (See FmHA Instruction 2000–D, Exhibit A which is available in any FmHA office.) Direct contacts should then be made with state agencies, in particular with the appropriate office of state planning, to determine the availability of state inventories and state land use policies and priorities. Similar discussions should be held with sub-state regional planning agencies and clearinghouses with assistance being provided in this effort by District Directors. County Supervisors shall be responsible for being familiar with and for providing to the State Office similar inventories, land use policies or protective requirements developed by the local government agencies within the Supervisor's territorial jurisdiction.

(9) Another important element of the natural resource management policy shall be the examination of any major environmental impacts on the state or a sub-state area resulting from the cumulative effects of FmHA assisted projects over the last several years. In this examination, particular emphasis should be given to the cumulative impacts of water resource projects such as irrigation systems. This should be done in consultation with experts within the appropriate state agencies and the U.S. Geological Survey. The housing programs should also be given a particular emphasis with respect to their cumulative impacts. More detailed guidance on the accomplishment of this cumulative impact section of the natural resource management policy, as well as the overall content of the policy, shall be provided by ETS. In preparing the State's natural resource management policy and in assembling inventories of critical resources, Agency staff should not lose sight of the basic purposes of this effort. The development of lengthy and complex policies and the amassing of huge inventories is not our goal. In the end, the material must be usable and serve as a tool for better decision-making. The basic purposes of this policy and inventory, then, are to provided a basis for developing comprehensive, state-wide, rural development investment strategies that (i) do not conflict with federal, state, and local mandates to preserve and protect important land and environmental resources, (ii) that do not create short or long-term development pressures which would lead to the unnecessary conversion of these resources, and (iii) which effectively support and enhance federal, state, and local plans to preserve these resources.

(d) *Intergovernmental Initiatives.* National Office staff and State Directors shall inform their counterparts in federal and state agencies of the contents of this FmHA natural resource management policy as well as the State Office policies. Area Coordinators shall inform other federal agencies at the Federal Regional Council level to ensure their awareness, input, and participation in the implementation of the State Office policies. When commenting on proposed federal actions subject to environmental impact statements, FmHA commentors will focus on the consistency of these actions with our national and appropriate state natural resource management policy. A similar focus or element shall be addressed in FmHA's review of the Environmental Protection Agency's 201 Wastewater Management Plans.

(e) *Endangered Species.*

(1) FmHA shall implement the consultation procedures required under Section 7 of the Endangered Species Act as specified in 50 CFR 402. It is important to note that these consultation procedures apply to all FmHA applications for financial assistance and subdivision approval, including those applicants which are exempt from environmental impact assessments, (See Section 1940.310). Unless repeated in this paragraph, the definitions for the terms utilized are found in 50 CFR 402.02.

(2) In order to effectively implement the consultation procedures, State Directors shall ensure that State, District, and County Offices maintain current publications of listed species as well as critical habitats found in their respective States.

(3) Each application for financial assistance or sudivision approval shall be reviewed by the FmHA official responsible for completing environment assessment within the reviewing office (See Section 1940.316) in order to determine if the proposal will jeopardize the continued existence of a listed species or result in the destruction or adverse modification of a critical habitat. For applications subject to environmental impact assessments, this review shall be accomplished as part of the assessment. For those applications that are excluded from an environmental impact assessment, this review shall be documented as part of Exhibit F, Environmental Checklist, and shall be accomplished as early as possible after receipt of the application and prior to approval of the application. To jeopardize the continued existence of a species means to engage in a project

which reasonably would be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild. The level of reduction necessary to constitute jeopardy would be expected to vary among listed species. The destruction or adverse modification of a critical habitat means a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for survival and recovery of a listed species. Such alterations include but are not limited to those diminishing the following requirements for:

(i) Space for individual and population growth and for normal behavior;

(ii) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(iii) Cover or shelter;

(iv) Sites for breeding, reproduction, or rearing of offspring; and

(v) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

(4) In completing the determinations specified in paragraph (e)(3) of this Section, the reviewer should consider the type of project and the nature of the environment in which it is proposed to be located. For all projects, the list of species and critical habitats shall be examined to determine the potential for impacts. Projects planned within established communities will probably not affect endangered species or their critical habitat. Projects to be located in remote areas, heavily forested areas and/or previously undisturbed areas may affect listed species. For projects located in such areas the reviewer shall, at a minimum, discuss the project's potential impact on endangered species with officials of the appropriate state wildlife protection agency or the Regional Office of the U.S., Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), as appropriate. The latter organization generally has responsibility for marine species. The specific list of species under NMFS's jurisdiction can be found at 50 CFR 222.23(a) and 227.4. Such discussions shall be considered as informal consultations and are not a substitute for the required consultation process outlined below.

(5) Whenever the reviewer formally determines that the proposal will have no effect on an endangered species or its critical habitat, these review procedures are completed, unless new information comes to light as discussed in paragraph (e)(11) of this Section, or consultation is requested by the appropriate Regional Director of FWS or NMFS.

(6) If the reviewer determines there may be an effect on a species or a critical habitat or is unable to make a clear determination, the reviewer shall so inform the State Environmentalist (assuming the reviewer is not the State Environmentalist). The latter shall either (i) convey a written request for consulation, along with available information to the appropriate Regional Director for the federal region where the proposal will be carried out or (ii) request ETS to perform such consultation. FmHA shall initiate this formal consultation process and not the applicant. Until the consultation process is completed, as outlined in 50 CFR 402.04, FmHA shall not approve the application. Should the need for consultation be indentifed after application approval, FmHA shall refrain from making any irreversible or irretrievable commitment of resources which would foreclose the consideration of modifications or alternatives to the identified activity or program.

(7) If the Regional Director informs FmHA that insufficient information exists to conclude the consultation process, the State Environmentalist, with assistance as feasible from the Regional Director and state sources of expertise, shall then obtain additional information and conduct, as needed, biological surveys or studies to determine how the proposal may affect listed species or their critical habitat. The cost and performance of such studies shall be handled in the same manner as in the preparation of an Environmental Impact Statement (see Section 1940.335).

(8) Whenever the results of the consultation process include recommendations by the Regional Director for modifications to the project which would enhance the conservation and protection of a listed species or its critical habitat, the State Director shall review these recommendations and require that they be incorporated into the project as either design changes or special conditions to the offer of assistance. If the State Director does not believe the Regional Director's recommendations can be so adopted, the Administrator shall be requested, through ETS, to review the recommendations and to assist in the further resolution of the matter.

(9) Whenever the appropriate Regional Director determines that the proposal is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the FmHA applicant shall be so informed and the project denied on this basis. However, if the State Director believes that funding or approval of the application is (i) of national, regional, or great local significance and (ii) that there are no reasonable and prudent alternatives to avoiding the endangered species impact, the State Director can request the Administrator, through ETS, to review the proposal and the results of the consultation process. Based upon this review, the Administrator shall either inform the State Director that a request for an exemption from Section 7 of the Endangered Species Act is not warranted and the application shall be denied or if the Administrator believes it is warranted, shall request an exemption from the Endangered Species Committee established by Section 7(e) of the Act. No action shall be taken by the State Director on the application until the Administrator informs the State Director of the results of the exemption request.

(10) When an application to FmHA involves financial assistance or permit approval from another federal agency(s), the FmHA reviewer shall work with the other agency to determine a lead agency for the consultation process. When FmHA is not the lead agency, the reviewer shall ensure that the lead agency informs the appropriate Regional Director of FmHA's involvement.

(11) Once completed, the consultation process shall be reinitiated by FmHA or upon request of the Regional Director if:

(i) New information or modification of the proposal reveals impacts that may affect listed species or their habitats; or

(ii) A new species is listed that may be affected by the proposal.

(f) *Wild and Scenic Rivers.*

(1) Each application for financial assistance or subdivision approval shall be reviewed to determine if it will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System, designated for potential addition to the System, or identified in the Nationwide Inventory prepared by the Heritage Conservation and Recreation Service (HCRS) in the Department of the Interior. The Nationwide Inventory identifies those river segments that, after preliminary review, appear to qualify for inclusion in the System. (For purposes of this Section, river segments in the Nationwide Inventory shall be treated the same as segments within the System with the exception of paragraph (f)(8).) For applications subject to environmental impact assessments, the review shall be accomplished as part of the assessment. For applications that are excluded from an environmental impact assessment, this review shall be

documented as part of Exhibit F, Environmental Checklist, within the reviewing office and shall be accomplished as early as possible after receipt of the application and prior to approval of the application. The FmHA official responsible for completing the environmental assessment shall accomplish this review. (See Section 1940.316.)

(2) In order to effectively implement this review, State Directors shall ensure that State, District, and County Offices maintain current listings of rivers within their respective states that are included in or designated for potential addition to the System as well as those identified in the Nationwide Inventory prepared by HCRS.

(3) For applications for water resources projects, as defined in Section 1940.303(c) of this Subpart, the purpose of this review shall be to determine whether the proposal would have a direct and adverse effect on the values which served as the basis for the river's inclusion in the System or designation for potential addition. For other applications, the purpose of the review shall be to determine if the proposal would invade the river area or unreasonably diminish the scenic recreational, and fish and wildlife values present in the area. To make these determinations the reviewer shall consult with the appropriate regional office of HCRS if the proposal (i) would be located within one-quarter mile of the banks of the river, (ii) involves withdrawing water from the river, or discharging water to the river via a point source, or (iii) would be visible from the river. The appropriate regional office of the Forest Service (FS) shall be contacted under similar circumstances when the affected river is on FS lands. Consultation shall be initiated by a written request for comments on the potential impacts accompanied by a description of the project and its location. The reviewer shall consult in other instances when the likelihood of an impact on a river in the system is identified as part of the environmental review. When the reviewer determines there is no potential impact on such a river, the documentation of this determination concludes the review process, unless reinitiation is required under paragraph (f)(10) of this section. In all other cases, the review is concluded as specified below in paragraphs (f)(4) through (9) of this section.

(4) If the reviewer is at the County or District Office level, the reviewer can request the State Environmental Officer (See Section 1940.306) to perform the above consultation. The State Environmental Officer can in turn make a similar request of ETS. If not requested to perform the consultation for applications approvable at the County and District Office levels, the State Environmental Officer shall be informed whenever HCRS or FS advises that there is a potential for an adverse impact on a river within the System or that protective measures need to be included or designed into the proposal. In all cases, consultation shall be initiated by FmHA and not the applicant. Until consultation is complete, FmHA shall not approve the application. Should the need for consultation be identified after application approval, FmHA shall, if still within its power at the time of identification, refrain from making any irreversible or irretrievable commitments of resources which would foreclose the consideration of modification or alternatives to the project.

(5) If HCRS or FS advises there is no potential for an adverse effect as described in paragraph (f)(3) of this Section, this review process is concluded, unless the need to reinitiate arises (See paragraph (f)(10) of this Section.)

(6) Whenever the results of the consultation process include recommendations by HCRS or FS to modify the proposal in order to avoid an adverse effect, as described in paragraph (f)(3) of this Section, the State Director shall review these recommendations and require that they be incorporated into the project as either design changes or special conditions to the offer of assistance. If the State Director does not believe that the Regional Director's recommendations can be so adopted, the Administrator shall be requested, through ETS, to review the recommendations and to assist in the further resolution of the matter.

(7) If HCRS or FS advises that the proposal will have an unavoidable adverse effect, as described in paragraph (f)(3) of this Section, on a river segment which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the System, the FmHA applicant will be informed by the reviewing office and the application denied on this basis. However, if the State Director disagrees with this determination, the State Director can request the Administrator through ETS, to review the proposal and attempt to further resolve the matter. The specific reasons for disagreement along with supporting documentation must be included in such a request. Based upon a review of this request, the Administrator shall either inform the State Director that no further consultation is warranted and the application shall be denied, or shall request the headquarters staff of HCRS or FS to further review the matter. No action shall be taken by the State Director on the application until the Administrator informs the State Director of the results of this further review and consultation.

(8) If HCRS or FS advises that the proposal will have an adverse effect, as described in paragraph (f)(3) of this Section, on a river segment identified in the Nationwide Inventory, the reviewer shall further consult with HCRS or FS in order to formulate adequate measures or modifications to avoid or mitigate the potential adverse effect. The propose of such measures or modifications is to ensure that the proposal does not effectively foreclose the designation of a wild, scenic, or recreational river segment. Once concurrence is reached and documented with HCRS or FS regarding modifications, the State Director shall require that they be incorporated into the proposal as either design changes or special conditions to the offer of assistance. If the State Director is not able to reach an agreement with HCRS or FS on appropriate modifications, the Administrator shall be requested, through ETS, to assist in the further resolution of the matter.

(9) if an application involves financial assistance or permit approval from another federal agency, the FmHA reviewer shall work with the other agency(s) to determine a lead agency for the consultation process. When FmHA is not the lead agency, the reviewer shall ensure that the lead agency informs HCRS or FS of FmHA's involvement.

(10) Once completed, the consultation process shall be reinitiated by FmHA if new information or modification of the proposal reveals impacts to a river within the System or National Inventory.

(g) *Historic and Cultural Properties.*

(1) At the earliest stages of consideration of an application, FmHA shall identify any properties that are listed in or may be eligible for listing in the National Register of Historic Places and located within the area of potential environmental impact. Identification shall consist of consulting the published lists of the National Register and formally contacting and seeking the comments of the appropriate State Historic Preservation Officer (SHPO). In addition, it may be necessary for FmHA to consult public records and other

individuals and organizations, such as university archeologists, local historical societies, etc., to determine if historic and cultural properties are present within the area. When insufficient information exists to document the presence or absence of potentially eligible National Register properties, and where the potential for previously unidentified properties is recognized by FmHA, the SHPO, or other interested parties, FmHA shall conduct the necessary investigations to determine if such properties are present within the area of potential environmental impact. FmHA will involve the SHPO in the planning and formulation of any historic, cultural, architectural or archeological testing, studies or surveys conducted to investigate the presence of such properties.

(2) If the information obtained as a result of the consultation and investigation conducted by FmHA indicates the presence of historic and cultural properties within the area of potential environmental impact that, in the opinion of the SHPO or FmHA, appear to meet the National Register Criteria (36 CFR 60.0), FmHA shall request a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR 63. Consultations shall be initiated with the SHPO and the Advisory Council on Historic Preservation in accordance with 36 CFR 800, through the implementation of Subpart F of Part 1901 of this Chapter, "Procedures for the Protection of Historic and Archeological Properties" to determine the most appropriate course of action to protect all National Register and eligible properties within the area of potential environmental impact.

(3) Further instructions detailing the procedures to be followed in considering and protecting historic and cultural properties and the responsible Agency officials are contained in Subpart F of Part 1901 of this Chapter. These procedures shall be followed whenever a proposal considered by FmHA has the potential to affect National Register or eligible properties.

(h) *Reuse of the Built Environment.* In the review of applications for construction projects, it shall be FmHA's policy that reuse of existing structures and systems will be the preferred alternative whenever such reuse meets the applicant's basic need and results in a cost-savings. In those instances in which there is not a cost savings, the additional cost of reuse shall be measured against any potential benefits derived from resource conservation, historic preservation, community or neighborhood cohesion, and energy conservation. If, in the judgment of the approving official, the additional cost is reasonable in light of these benefits to be derived, reuse will be the preferred alternative. The benefits of reuse will be given particularly great weight in the case of properties that are listed on the National Register of Historic Places or may be eligible for listing.

(i) *Scenic resources.* The protection and enhancement of the rural landscape will be accomplished on a project basis by considering this factor in the environmental assessment process.

(j) *Energy conservation.* Energy conservation shall be incorporated at both the program and project level. All practical means will be used to incorporate energy saving features and designs within construction and siting requirements. ETS can provide expertise in this area. At the project level, energy utilization and methods for conserving energy will be addressed as part of the environmental assessment.

(k) *Water conservation.*

(1) FmHA shall continue to encourage the cost-effective design of sewer and water systems and in this effort shall identify and reduce the potential for such systems to include excessive design capacities. Applicants for new water systems or major extensions to existing systems shall be required to provide water meters, as specified in Subpart A of Part 1942, Section 1942.18(c)(3)(vii) of this Chapter, and to establish realistic water rates which properly reflect all water system amortization, operation, maintenance, and appropriate replacement costs.

(2) FmHA shall shall also encourage the use of low-cost conservation measures within all funding programs. ETS shall be cognizant of new technologies in this area and shall develop implementation methods, in coordination with affected program offices, for incorporating such measures into these programs.

§ 1940.305 Environmental Responsibilities Within the National Office.

ETS shall be responsible for carrying out the requirements of this Subpart at the National Office level. These responsibilities are as follows:

(a) Provide for the Agency an interdisciplinary approach to environmental impact analysis and problem resolution as required by the CEQ regulations.

(b) Provide the leadership and technical expertise for the implementation of the Agency's environmental policies with special emphasis being placed on those policies relating to natural resource management, energy conservation, community cohesion and reuse of the built environment.

(c) Coordinate the implementation of this Subpart with affected program offices.

(d) Provide policy direction and advice on the implementation of this Subpart to Agency staff, particularly to the program support staff within State Offices (architects, engineers, and environmental officers).

(e) Consult and coordinate as needed or upon request with the Department's Office of Environmental Quality in the implementation of this Subpart and the resolution of difficult environmental issues.

(f) Monitor the Agency's record in complying with this Subpart and report, at least annually, to the Administrator on the status of compliance and the need, if any, for revisions or other measures to resolve an identified problem.

(g) Provide training programs and materials for the Agency staff assigned the functions identified in this Subpart.

(h) Review, as necessary, the Agency's activities and program involvements and recommend approval, disapproval, or modification of these activities and involvements by the Administrator based upon the balancing of anticipated adverse environmental impacts against the anticipated benefits of the project and upon the fulfillment of the requirements of this Subpart.

(i) Develop and direct Agency procedures for complying with other environmental legislation, Executive Orders, and regulations, including, but not limited to the following:

(1) Environmental Quality Improvement Act, 42 U.S.C. 4371;

(2) National Environmental Policy Act, 42 U.S.C. 4321;

(3) National Historic Preservation Act, 16 U.S.C. 470;

(4) Archaeological and Historic Preservation Act, 16 U.S.C. 469;

(5) Clean Air Act, 42 U.S.C. 7401;

(6) Federal Water Pollution Control Act, 33 U.S.C. 1251;

(7) Endangered Species Act, 16 U.S.C. 1531;

(8) Wild and Scenic Rivers Act, 16 U.S.C. 1271;

(9) Safe Drinking Water Act, 42 U.S.C. 300f;

(10) Coastal Zone Management Act, 16 U.S.C. 1451;

(11) Fish and Wildlife Coordination Act, 16 U.S.C. 662;

(12) Executive Order 11593, Protection and Enhancement of the Cultural Environment;

(13) Executive Order 11988, Floodplain Management;

(14) Executive Order 11990, Protection of Wetlands;

(15) Executive Order 11514, Protection and Enhancement of Environmental Quality;

(16) Office of Management and Budget Circular A-95;

(17) Title 7, Part 3100, Code of Federal Regulations, Department of Agriculture; National Environmental Policy Act, Final Policies and Procedures;

(18) Title 7, Part 3100, Code of Federal Regulations, Department of Agriculture's Enhancement, Protection and Management of the Cultural Environment; and

(19) Secretary's Memorandum No. 1827, Revised, Statement on Land Use Policy.

(j) Contain a position identified as the Senior Environmental Specialist (hereafter called the Environmental Specialist) having the following duties:

(1) Act as principal advisor to the Administrator in environmental affairs;

(2) Serve as the responsible Agency official under the National Environmental Policy Act of 1969 (NEPA);

(3) Serve as the responsible Agency official under the Advisory Council on Historic Preservation's regulations entitled "Protection of Historic and Cultural Properties," hereafter referred to as the Advisory Council;

(4) Serve as the point of coordination and contact for State Environmental Officers as well as provided them, when requested, technical assistance in the proper implementation of this Subpart.

(5) Coordinate the Agency's environmental program with the environmental programs of local, state, and other federal agencies, which become involved with FmHA programs;

(6) Represent the Administrator at conferences, meetings, and public hearings, and on interagency committees dealing with environmental matters;

(7) Maintain liaison on environmental matters with interested public groups and local, State, and other federal agencies;

(8) Consult and coordinate as needed or upon request with the Department's Office of Environmental Quality in the implementation of this Subpart and the resolution of difficult environmental issues;

(9) Review and evaluate legislative and administrative proposals in terms of their environmental impact;

(10) Assist in resolving questions of lead agency determination;

(11) Provide direction in resolving post approval environmental matters; and

(12) Serve as the focal point for developing and coordinating the Agency's procedures for the requirements listed in paragraph (i) of this Section.

§ 1940.306 Environmental Responsibilities Within the State Office.

(a) The State Director shall appoint one individual to serve as the State Environmental Office. Thereafter, the State Environmental Officer shall report directly to the State Director on the environmental matters contained in this Subpart. The State Director shall normally appoint to this position the State Architect or State Engineer, or one of the architects or engineers in those State Offices have more than one. The State Director may, however, in consultation with the Environmental Specialist, appoint a staff member having education or experience as or more appropriate than an engineer's or architect's for performing environmental impact analyses. Such areas of education or experience would include: water resource, land use, environmental or urban/regional planning; natural resource management; biology; ecology; hydrology; and implementing knowledge of environmental regulations.

(b) The State Director shall also be responsible for ensuring that governmental agencies, prospective applicants and interested groups and citizens are made aware of the requirements of this Subpart especially at conferences and meetings scheduled to acquaint these groups with FmHA programs.

§ 1940.307 Responsibilities of the State Environmental Officer.

The State Environmental Officer shall be a member of the State Office's program support staff which shall serve as the interdisciplinary team at the State level. The State Environmental Officer shall:

(a) Act as advisor to the State Director on environmental matters;

(b) Serve as the State Office's responsible official and coordinate the requirements of this Subpart;

(c) Review those Agency actions which are not exempt from this Subpart and which require the approval and/or clearance of the State Director and recommend to the State Director project approval, disapproval, or modification based upon the balancing of anticipated adverse environmental impacts against the anticipated benefits of the project, and upon the fulfillment of this Subpart's requirements;

(d) Represent the State Director at conferences and meetings dealing with environmental matters of a State Office nature;

(e) Maintain liaison on State Office environmental matters with interested public groups and local, state, and other federal agencies;

(f) Serve as the State Director's alternate on the USDA Land Use Committee;

(g) Solicit, whenever necessary, the expert advice and assistance of other professional staff members within the State Office in order to adequately implement this Subpart;

(h) Provide technical assistance as needed on a project by project basis to the District and County staff;

(i) Develop controls for avoiding or mitigating adverse environmental impacts and monitor their implementation;

(j) Provide assistance in resolving post approval environmental matters at the State Office level;

(k) Maintain a records management system for those actions required by this Subpart;

(l) Coordinate for the State Director the development of the State Office natural resource management policy;

(m) Provide direction and training to State, District, and County Office staff on the requirements of this Subpart; and

(n) Perform such other assignments of an administrative or operational nature as may be requested by the State Director or the Environmental Specialist in the performance of the latter's functions as identified in Section 1940.305.

§ 1940.308 Environmental Responsibilities at the District and County Office Levels.

(a) The District Director shall be responsible for carrying out the actions required by this Subpart to be completed at the District Office level.

(b) The County Supervisor shall be responsible for carrying out the actions required by this Subpart to be completed at the County Office level.

(c) When carrying out their environmental responsibilities, the point of contact and coordination within the State Office for the District Director and County Supervisor shall be the State Environmental Officer.

(d) In discussing FmHA assistance programs with potential applicants, District Directors and County Supervisors shall inform them of the Agency's environmental requirements as well as the environmental information needs and responsibilities that FmHA applicants are expected to address (See Section 1940.309).

§ 1940.309 Responsibilities of the Prospective Applicant.

(a) FmHA expects prospective applicants (and in the case of the loan

guarantee programs, prospective borrowers) to consider the potential environmental impacts of their requests at the earliest planning stages and to develop proposals that minimize the potential to adversely impact the environment. Prospective applicants should contact County Supervisors or District Directors, as appropriate, to determine FmHA's environmental requirements as soon as possible after they decide to pursue FmHA financial assistance.

(b) Applicants for FmHA assistance shall be required to provide information necessary to FmHA to evaluate their proposal's potential environmental impacts and alternatives to them. For example, the applicant shall be required to provide a complete description of the project elements and the proposed site(s) to include location maps, topographic maps, and photographs when needed. The applicant shall also be required to provide data on any expected gaseous, liquid, and solid wastes to be produced, and all permits and/or correspondence issued by the appropriate local, state, and federal agencies which regulate such disposal practices.

(c) Form FmHA 1940-20, "Request for Environmental Information," (Exhibit B) shall be used for obtaining environmental information from applicants whose proposals require an environmental assessment under the requirements of this Subpart. These same applicants must notify the appropriate State Historic Preservation Officer of the filing of the application and provide a detailed project description as specified in item 2 of Form FmHA 1940-20 and its accompanying instructions.

(d) Applicants shall ensure that all required materials are current, sufficiently detailed and complete and are submitted directly to the FmHA office processing the application. Incomplete materials or delayed submittals may seriously jeopardize consideration or postponement of a proposed action by FmHA.

(e) During the period of application review and processing, applicants shall not take any actions with respect to their proposed undertakings which are the subject of the application and which would have an adverse impact on the environment or limit the range of alternatives. This requirement does not preclude development by applicants of preliminary plans or designs or performance of other work necessary to support an application for federal, state, or local permits or assistance. However, the development of detailed plans and specifications is discouraged when the costs involved inhibit the realistic consideration of alternative proposals.

(f) Applicants are required to provide public notification and to fully cooperate in holding public information meetings as described in Sections 1940.318(e), 1940.320 (c) and (g), and 1940.331 (c) and (f) of this Subpart.

(g) Any applicant that is directly and adversely affected by an administrative decision made by FmHA under this Subpart may appeal that decision under the provisions of Subpart B of Part 1900 of this Chapter.

§ 1940.310 Categorical Exclusions from NEPA Reviews.

(a) The following actions have been determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. They will not be subject to environmental assessments or impact statements. It must be emphasized that even though these actions are excluded from further environmental reviews under NEPA, they are not excluded from either the policy considerations contained in Sections 1940.302–1940.304, or from compliance with other applicable local, State, or federal environmental laws. Also, the actions preceded by an asterisk (*) are not excluded from environmental reviews when located in or potentially affecting (1) a floodplain, (2) a wetland, (3) important farmlands, forestlands or prime rangelands, (4) a listed species or critical habitat for an endangered species, (5) a property that is listed on or may be eligible for listing on the National Register of Historic Places, (6) an area with an approved state coastal zone management program, or (7) a river or portion of a river included in, or designated for potential addition to the Wild and Scenic Rivers System. When one or more of these conditions is present, the action must be reviewed under the requirements of Section 1940.311. This requirement serves to implement Section 1508.4 of the CEQ Regulations which requires federal agencies to detect extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Further guidance on the use of these exclusions is contained in Section 1940.317.

(b) *Housing Assistance.*

*(1) The provision of financial assistance for construction of a single family dwelling or a multi-family project serving no more than four families, i.e. units;

*(2) The approval of an individual building lot that is located on a scattered site and not part of a subdivision;

*(3) Rehabilitation and renovation of any existing housing units, with no expansion in the number of units;

(4) Self-Help Technical Assistance Grants;

*(5) The approval of a subdivision that consists of four or fewer lots and is not part of, or associated with, building lots or subdivisions;

(6) Technical Supervisory Assistance Loans and Grants;

(7) Weatherization of any existing housing unit(s) unless the property is listed in the National Register of Historic Places or may be eligible for listing, or is located in a listed or potentially eligible historic district, in which case the application shall fall under Class I as defined in Section 1940.311.

(8) The financing of housing construction or the approval of lots in a previously approved FmHA subdivision provided that (i) the action is consistent with all previously adopted stipulations for the multifamily housing project or subdivision; and (ii) the environmental impact review that was previously completed for the original application is still current with respect to the environmental conditions present at the site and it assessed the lots or expansion for which approval is being requested;

(9) Loan closing and servicing activities; and

(10) Appraisals of non-farm tracts and small farms for rural housing loans.

(c) *Business and Industry Assistance.*

*(1) Financial assistance directed to existing businesses and/or structures that does not involve new construction and does not result in the increased production of gaseous, liquid, or solid wastes, or a change in the type or content of such wastes;

(2) Amendments to approved projects which meet the criteria of item (f)(2) of this Section; and

(3) Loan closing and servicing activities.

(d) *Community Programs.*

*(1) Applications that solely involve the acquisition, construction, reconstruction, or installation of facilities or structures for replacement purposes with minimal change in use, size, capacity, purpose or location from the original facility (e.g., replacement in-kind of water or sewer lines, reconstruction of curbs and sidewalks, street repaving, and building modification and improvements);

(2) Construction management actions for approved projects, such as approval for issuing an invitation for bids, the award of construction contracts, and the actual physical commencement of construction activities;

(3) Applications solely for the purchase of office equipment or health or safety equipment such as fire trucks, ambulances, or hospital equipment;

(4) Amendments to approved projects meeting the criteria of item (f)(2) of this section; and

(5) Loan closing and servicing activities.

(e) *Farm Programs.*

(1) Financial assistance for the purchase of livestock, an existing farm or an enlargement to one, provided no shifts in land use are proposed beyond the limits stated in paragraphs (e)(8), (9) and (10) of this Section;

(2) Financial assistance for the purchase of essential farm equipment including crop storing and drying equipment provided such equipment is not to be used to accommodate shifts in land use beyond the limits stated in paragraphs (e)(8), (9) and (10) of this Section;

(3) Financial assistance for (i) the payment of annual operating expenses which does not cover activities specifically addressed in this Section or Sections 1940.311 or 1940.312; (ii) family living expenses, and (iii) refinancing debts;

*(4) Financial assistance for the construction of essential farm dwellings and service buildings of modest design and cost, as well as repairs and improvements to them;

(5) Financial assistance for on-site water supply facilities to serve a farm dwelling, farm buildings, and livestock needs;

(6) Financial assistance for the installation, rehabilitation, or enlargement of irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres, provided that neither a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected (if a wetland is affected the application shall fall under Class II as defined in Section 1940.312. Potential effects to an historic property or the Wild and Scenic Rivers System require that a review be initiated under a Class I action as defined in Section 1940.311.)

(7) Financial assistance for the development of farm ponds, fish ponds, or lakes of no more than 2 acres in size, provided that neither a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected (if a wetland is affected the application shall fall under Class II as defined in Section 1940.312. Potential effects to an historic property or the Wild and Scenic Rivers System require that a review be initiated under a Class I action as defined in Section 1940.311.)

*(8) Financial assistance for land clearing or tree harvesting operations of no more than 10 acres;

(9) Financial assistance for the conversion of no more than 160 acres of land in agricultural production to pastures or forests; and

(10) Financial assistance for the conversion of no more than 160 acres of pasture to forests or agricultural production, provided that in a conversion to agricultural production no wetlands are affected, in which case the application shall fall under Class II as defined in section 1940.312; and

(11) Loan closing and servicing activities.

(f) *General Exclusions.*

(1) The award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analyses;

(2) Amendments and revisions to approved projects including the provision of additional financial assistance or their approval documents that do not alter the purpose, operation, location, or design of the project as originally approved;

(3) The issuance of regulations and instructions, as well as amendments to them, whose purpose is to describe administrative and financial procedures for processing, approving, and implementing the Agency's financial assistance programs;

(4) Procurement activities for goods and services, routine facility operations, personnel actions, and other such management activities related to the operation of the Agency; and

(5) Reduction in force or employee transfers resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar circumstances.

§ 1940.311 Environmental assessments for Class I actions.

The Agency's proposals and projects that are not identified in Section 1940.310 of this Subpart as categorical exclusions require the preparation of an environment assessment in order to determine if the proposal will have a significant impact on the environment. If there is a potential for a significant impact, an environmental impact statement (EIS) must be prepared. (In situations when there is clearly a potential for a significant impact, the EIS may be initiated directly without the preparation of an assessment.) It is recognized that many of the applications funded annually by FmHA involve small scale projects having limited environmental impacts. However, because on occasion they have the potential to create a significant impact, each must be assessed to determine the degree of impact. The scope and level of detail of an assessment for a small scale action, though, need only be sufficient to determine whether the potential impacts are minimal and no further study is required or the potential impacts are substantial and further analysis is necessary. Therefore, for the purpose of implementing NEPA, FmHA has classified its smaller scale approval actions as Class I Actions. The format which shall be used for accomplishing the environmental assessment of a Class I action is provided in Exhibit D as Form FmHA 1940–21, "Environmental Assessments for Class I Actions." An important aspect of this classification method is that it allows FmHA's environmental review staff to concentrate most of its time and efforts on those actions having the potential for more serious or complex environmental impacts. Following is a listing of Class I Actions. Additional guidance on the application of NEPA to Class I Actions is provided in Section 1940.319.

(a) *Housing Assistance.* If either of the following actions is an expansion of a previously approved FmHA housing project, see Section 1940.310(a)(8) to determine if it meets the requirements for a categorical exclusion. If an expansion and an environmental assessment was not done for the original FmHA project, the size of the proposal for assessment purposes is determined by adding the number of units in the original project(s) to those presently being requested.

(1) Financial assistance for a multi-family housing project including labor housing which comprises at least 5 units, but no more than 25 units; and

(2) Financial assistance for or the approval of a subdivision, as well as the expansion of an existing one which involves at least 5 lots but no more than 20 lots.

(b) *Farm Programs.*

(1) Financial assistance for the installation, rehabilitation or enlargement of irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate at least 80 acres, but no more than 160 acres and provided that no wetlands are to be drained, in which

case the application shall fall under Class II as defined in Section 1940.312;

(2) Financial assistance for the development of farm ponds, fish ponds, or lakes of more than 2 acres in size, but no more than 10 acres, provided that no wetlands are innundated, in which case the application shall fall under Class II as defined in section 1940.312;

(3) Financial assistance for land clearing or tree harvesting operations encompassing over 10 acres, but no more than 25 acres;

(4) Financial assistance for the conversion of more than 160 acres of land in agricultural production to pastures or forests; but no more than 320 acres;

(5) Financial assistance for the conversion of more than 160 acres of pasture to forests or agricultural production, but no more than 320 acres provided that in a conversion to agricultural production no wetlands are affected, in which case the application shall fall under Class II as defined in Section 1940.312;

(6) Financial assistance to grazing associations;

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or non-farm enterprises utilizing no more than 10 acres; and

(8) Financial assistance for a livestock holding facility or feedlot having a capacity for at least one-half of those listed in Section 1940.312(d)(9). (If the facility is located near a populated area, it shall be treated as a Class II action as required by Section 1940.312(d)(10).)

(c) *General.*

(1) Any action which is defined in Section 1940.310 as a categorical exclusion but is controversial for environmental reasons or is the subject of an environmental complaint raised by a government agency, interested group, or citizen; and

(2) Amendments and revisions to all approved actions listed in this Section which do not meet the criteria for a categorical exclusion pertaining to amendments as defined in Section 1940.310(f)(2) or (f)(3).

§ 1940.312 Environmental assessments for Class II actions.

Class II Actions are basically those which exceed the thresholds established for Class I Actions and, consequently, have the potential for resulting in more varied and substantial environmental impacts. A more detailed environmental assessment is, therefore, required for Class II actions in order to determine if the action requires an environmental impact statement. The format that shall be used for completing this assessment is included as Exhibit E. Further guidance on Class II actions is contained in Section 1940.318. Class II actions are defined as follows:

(a) *Housing Assistance.* If either of the following actions is an expansion of a previously approved FmHA housing project, see Section 1940.310(b)(8) to determine if it meets the requirements for a categorical exclusion, otherwise it is a Class II action.

(1) Financial assistance for a multi-family housing project, including labor housing, which comprises more than 25 units; and

(2) Financial assistance for or the approval of a subdivision, as well as the expansion of an existing one, which involves more than 20 lots; and

(b) *Business and Industry Assistance.* Any request for financial assistance which either does not meet the criteria for a categorical exclusion as stated in Section 1940.310, or does not involve a livestock holding facility or feedlot meeting the criteria for a Class I action as defined in Section 1940.311(b)(8).

(c) *Community Programs.* Any request for financial assistance which does not meet the criteria for a categorical exclusion as stated in Section 1940.310.

(d) *Farm Programs.*

(1) Financial assistance for the installation, rehabilitation, or enlargement or irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers either designed to irrigate more than 160 acres, or serving any amount of acreage that involves the drainage of or withdrawal from a wetland for irrigation purposes;

(2) Financial assistance for the development of farm ponds, fish ponds, or lakes either larger than 10 acres in size, or for any smaller size that would innundate a wetland;

(3) Financial assistance for land clearing or tree harvesting operations encompassing more than 25 acres;

(4) Financial assistance for the conversion of more than 320 acres of land in agricultural production to pastures or forests;

(5) Financial assistance for the conversion of more than 320 acres of pasture to forests or agricultural production or for any smaller conversion of pasture to agricultural production that affects a wetland;

(6) Financial assistance to an individual farmer or an association of farmers for soil conservation and water control facilities, such as dikes, terraces, detention reservoirs, stream channels, ditches, and other special land stabilization or structures;

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or non-farm enterprises utilizing more than 10 acres;

(8) Financial assistance for drainage of land.

(9) Financial assistance for a livestock holding facility or feedlot located in a sparsely populated farming area having a capacity as large or larger than one of the following capacities: 1,000 slaughter steers and heifers; 700 mature dairy cattle (whether milkers or dry cows); 2,500 swine; 10,000 sheep; 55,000 turkeys; 30,000 laying hens or broilers; 500 horses; and 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine, and sheep; and

(10) Financial assistance for a livestock holding facility or feedlot located near a town or collection of rural homes which could be impacted by the facility, particularly with respect to noise, odor, water quality, visual, or transportation impacts and having a capacity of at least one-half of those listed in paragraph (9) of this Section.

(e) *General.*

(1) Any action which meets the numerical criteria or other restriction for a Class I action contained in Section 1940.311 but is controversial for environmental reasons. If the action is the subject of isolated environmental complaints, or any questions/concerns that are raised focus on a single impact, air quality for example, the analysis of such a complaint or questions can be handled under the assessment format (Exhibit D) for a Class I action, as explained in Section 1940.319. When several potential impacts are questioned, however, the assessment format (Exhibit E) for a Class II action must be used to address these questions;

(2) Amendments and revisions to all approved actions listed in this Section that alter the purpose, operation, location, or design of the project as originally approved;

(3) The approval of plans and State Investment Strategies for Energy Impacted Areas, designated under Section 601 Energy Impacted Area Development Assistance Program, as well as the applications for financial assistance (excluding the award of planning funds) for Energy Impact Areas;

(4) Proposals for legislation as defined in CEQ's Regulations, Section 1508.17; and

(5) The issuance of regulations and instructions, as well as amendments to these, that describe either the entities, proposals and activities eligible for FmHA financial assistance or the manner in which such proposals and activities must be located, constructed, or implemented.

§ 1940.313 Actions that normally require the preparation of an Environmental Impact Statement (EIS).

The environmental assessment process will be used, as defined in this Subpart, to identify on a case by case basis those actions for which the preparation of an EIS is necessary. Given the variability of the types and locations of actions taken by FmHA, no groups or set of actions can be identified which in almost every case would require the preparation of an EIS.

§ 1940.314 Criteria for determining a significant environmental impact.

(a) Environmental Impact Statements (EIS) shall be done for those actions that are determined to have a significant impact on the quality of the human environment. The criteria for determining significant impacts are contained in Section 1508.27 of the CEQ Regulations.

(b) In utilizing the criteria for a significant impact, the cumulative impacts of other FmHA actions planned or recently approved in the proposal's area of environmental impact, other related or similarly located federal actions, and non-federal related actions must be given consideration. This is particularly relevant for frequently recurring FmHA actions that on an individual basis may have relatively few environmental impacts but create a potential for significant impacts on a cumulative basis. Housing assistance is one such example. Consequently, in reviewing proposals for subdivisions and multi-family housing sites, consideration must be given to the cumulative impacts of other federally assisted housing in the area, including FmHA's. The boundaries of the area to be considered should be based upon such factors as common utility or public service districts, common watersheds, and common commuting patterns to central employment or commercial areas. Additionally, the criteria for significant impacts utilized by the other involved housing agency(s) (VA and HUD, for example) must be reviewed when there is a potential for cumulative impacts. FmHA shall consult with HUD for determining a significant impact whenever the total of HUD and FmHA housing units being planned within a common area of environmental impact exceeds the HUD thresholds listed in its NEPA regulations (see Table 1, 44 FR 12857).

(c) Because the environmental values and functions of floodplains and wetlands are of critical importance to man and because these areas are often extremely sensitive to man-induced disturbances, actions which affect wetlands and floodplains will be considered to have a significant environmental impact whenever one or more of the following criteria are met:

(1) The public health and safety are identifiably affected. That is, whenever the proposed action may potentially result in a change in stream classification or affect any standards promulgated under the Safe Drinking Water Act (52 USC 300 f–j–9) or similar state authority.

(2) The preservation of natural systems is identifiably affected. That is, whenever the proposed action or related activities may potentially create or induce changes in the existing habitat that may affect species diversity and stability (both flora and fauna and over the short and long term) or affect ecosystem productivity over the long term.

(3) The proposal, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Examples of such actions include facilities which produce, use, or store, highly volatile, toxic, or water reactive materials or facilities which contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events, (i.e., hospitals, nursing homes, schools).

§ 1940.315 Timing of the environmental review process.

(a) The FmHA office to which a potential applicant would go to seek program information and request application materials shall notify the applicant of the major aspects of the Agency's environmental program applicable to the type of assistance being sought. Special emphasis should be placed on describing FmHA's natural resource management policies, the nature and purpose of the environmental impact assessment process, and the permissible actions of the applicant during this process. Additionally, when prospective applicants, interest groups, and government officials are invited to attend briefing sessions on FmHA programs, the environmental programs and policies shall also be described.

(b) When a pre-application is either filed by the applicant or required by FmHA in order to determine if the proposal is sufficiently feasible to warrant the applicant putting forth the time and effort to complete a full application, Form FmHA 1940–20 "Request for Environmental Information" (Exhibit B), shall be required to be completed as part of the pre-application review. FmHA will not authorize the completion of the application until (1) the applicant has properly completed the Form and (2) the environmental impact review (whether an environmental assessment or EIS) is completed by FmHA staff. In this manner, there will be as much flexibility as possible to consider alternatives to the project and to develop methods for mitigating identified adverse environmental impacts. Exhibit C, item I, contains the list of those programs or actions to be processed in this manner.

(c) When a pre-application is not filed, the prospective applicant shall be required to complete Form FmHA 1940–20, "Request for Environmental Information" at the earliest possible time after FmHA is contacted for assistance, but no later than when the application is filed with the appropriate FmHA office. For these programs or actions, FmHA shall not consider the application to be complete, until FmHA staff have completed the environmental impact review (whether an assessment or EIS). Exhibit C, item II, lists programs and actions to be processed in this manner.

(d) For those applications that meet the requirements of a categorical exclusion, Form FmHA 1940–22, "Environmental Checklist for Categorical Exclusions," (Exhibit F) shall be completed by FmHA as early as possible after receipt of the application. The application shall not be considered complete until either the Checklist is successfully completed or the need for any further environmental review is identified and completed.

(e) For those actions which are initiated within FmHA and subject to an environmental review, such as proposed regulations or legislation, the review process shall be initiated as early as feasible in consultation with ETS. The process shall be completed prior to the initiating office making its recommendation on the action and releasing it to the next level of Agency review.

§ 1940.316 Officials responsible for the environmental review process.

(a) The FmHA official responsible for executing the environmental impact determination and environmental findings for a Class I or Class II action shall be the official having approval authority for the action as specified in Subpart A of Part 1901 of this Chapter. When that official is the State Director, the State Environmental Officer shall complete the environmental assessment and provide the recommendations contained in either D or E, depending on whether the action is Class I or II. When the District Director is the approving official, the District Director shall perform both the tasks of preparing the

assessment and completing the environmental findings and impact determination. The County Supervisor shall have similar responsibilities when acting as approving official.

(b) When either (1) the appropriate official is the County Supervisor or the District Director but the project must be forwarded to the State Director for concurrence or (2) the application process is initiated at the County or District Office but the State Director is the approving official, a preliminary assessment shall be prepared by the District Director. The State Environmental Officer shall be responsible for the completion and content of the assessment. The District Director shall also ensure that the applicant properly completes Form FmHA 1940-20, "Request for Environmental Information," and shall assist, upon request, the State Environmental Officer in assembling additional information and performing coordination at the local level. Identical responsibilities and working relationships shall exist between the County Supervisor and District Director when the former forwards a project to the District Director for either concurrence or approval.

(c) When the State Director must forward a project to the Administrator for concurrence and the project requires the assistance of ETS in completing the assessment, ETS shall be provided a copy of the State Office's preliminary assessment as early as possible and consistent with the timing requirements for completing the environmental review process, as contained in section 1940.315 of this Subpart.

(d) It is recognized that in some instances, all of the necessary expertise may not exist at the level of the approving official to adequately assess the environmental impacts. All approving officials below the Administrator, therefore, have the responsibility to recognize when this situation exists and to forward the environmental review to the next level of authority for completion. That is, County and District offices will forward such actions to the State Environmental Officer for completion of the environmental review. In so doing, County Supervisors and District Directors have a continuing responsibility to assist the State Environmental Officer with data collection and any necessary coordination at the local level, as determined by the State Environmental Officer. Similarly, the State Environmental Officer will forward all actions which are too difficult for analysis at that level to the Environmental Specialist. The final reviewer, whether the State Environmental Officer or Environmental Specialist, shall complete the assessment and the recommended environmental findings and impact determination and forward them to the approving official for review and a final decision.

(e) The EST shall serve as the environmental reviewer for actions initiated at the National Office level. The office initiating the action shall be responsible for providing data and evaluations needed for the assessment process.

(f) Whenever the staff member performing the environmental review and the approving official do not concur on the environmental impact determination and/or the environmental findings, the action shall be forwarded to the next level for resolution between the responsible environmentalist and the approving official. Resolution of such a disagreement occurring at the State level shall be coordinated by the Environmental Specialist with the appropriate Assistant Administrator. Failure of these parties to resolve the matter shall require a final decision by the Administrator.

(g) The Administrator reserves the right to request a State Director to forward to the National Office for review and approval any action which is highly controversial for environmental reasons, involves the potential for unique or extremely complex environmental impacts or is of national, regional, or great local significance.

§ 1940.317 Methods for ensuring proper implementation of categorical exclusions.

(a) The use of categorical exclusions is provided for in Section 1508.4 of CEQ's Regulations. This authority, however, only excludes properly defined actions or proposals from the review requirements of NEPA. It does not mean that such proposals are likewise excluded from the requirements of other environmental laws, regulations or Executive Orders. Each proposal must be reviewed to determine the applicability of other environmental requirements. Also, although a given type of proposal may be defined as a categorical exclusion, it does not automatically follow that all similar type proposals are excluded from a NEPA review. Section 1508.4 of CEQ's Regulations state that "any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." For example, an application for approval of a subdivision of four lots is normally excluded from a NEPA review (See Section 1940.310(b)(5)) but is not exempt from the requirements of Executive Order 11990, "Protection of Wetlands." In the processing of this application, FmHA must determine if a wetland is to be impacted. Assuming that the development of the proposed subdivision site necessitates the filling of two acres of wetland, such a potential wetland impact, under the requirements of the introductory paragraph of Section 1940.310, represents an extraordinary circumstance that causes the application to lose its categorical exclusion. An environmental assessment for a Class I action must then be initiated. This assessment serves the purposes of providing for the extraordinary circumstance by analyzing the degree of potential impact and the need for further study as well as completing and documenting FmHA's compliance with the Executive Order. In this particular example, unless an alternative site could not be readily located and the approving official wanted to further pursue consideration of the application, the environmental assessment would determine that there was a significant impact and an EIS would be required. (See Section 1940.314, Criteria for Determining a Significant Environmental Impact.)

(b) The approving official for an action shall be responsible for insuring that no action which requires an environmental assessment is processed as a categorical exclusion. In order to fulfull this responsibility, Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions," (Exhibit F) shall be completed for each application for financial assistance or subdivision approval that would normally be categorically excluded. In completing this Checklist, if any block is checked "yes" an environmental assessment for a Class I action must be prepared under the requirements of Section 1940.319. If all blocks are checked "no", the Checklist is filed with the application and serves as FmHA's documentation of compliance with the environmental laws, regulations and Executive Orders listed on the Checklist. The Checklist shall be completed by the person who is responsible for completing environmental reviews within the approving office. If the approving official is the State Director or the Administrator, the FmHA office where the processing of the application was initiated is responsible for providing sufficient site and project information to the environmental reviewer in order to complete the Checklist.

(c) The Environmental Checklist (Exhibit F) shall be used for all categorical exclusions, e.g., the approval of financial assistance, subdivisions, or amendments to these which meet the requirements of Section 1940.310. The Checklist shall not be completed for loan closing and servicing activities, construction management activities, or the general exclusions listed in Section 1940.310(f). For proposed regulations and instructions that are normally excluded, ETS shall be responsible as part of its existing review and clearance responsibilities for these proposals, to ensure that any categorical exclusion is warranted.

(d) In applying the definition of a categorical exclusion to a project activity, the environmental reviewer must consider the following two elements in addition to the specific project elements for which approval is requested.

(1) If the application represents one of several phases of a larger proposal, the application shall undergo the environmental review required for the elements or the size of the total proposal. For example, if approval of a four-lot subdivision is requested and the application evidences or the reviewer knows that additional phases are planned and will culminate in a sixteen-lot subdivision, the categorical exclusion does not apply and an environmental assessment for a Class I action must be initiated and must address the impact of developing sixteen lots. Should the applicant subsequently apply for approval of any of these additional phases, no further environmental assessment shall be required (See Section 1940.310(b) as long as the original assessment still accurately reflects the environmental conditions found at the project site.

(2) If the application represents one segment of a larger project being funded by private parties or other government agencies, the size and elements of the entire project are used in determining the proper level of environmental assessment to be conducted by FmHA. if an environmental assessment is required, it shall address the environmental impacts of the entire project.

§ 1940.318 Completing environmental assessments for Class II actions.

(a) The first step for the environmental reviewer (as defined in Section 1940.316), is to examine the environmental data submitted by the applicant to determine if it is complete, consistent, signed and dated. (See Exhibit B) If not, it shall be returned to the applicant with a request for necessary clarifications or additional data.

(b) Once adequate data has been obtained, the assessment shall be initiated in the format and manner described in Exhibit E, FmHA Environmental Assessment for Class II Actions. In so doing, appropriate experts from state and federal agencies, universities, local and private groups shall be contacted for their views, as well as the Environmental Specialist when necessary. The environmental reviewer should communicate with these agencies or parties in the most appropriate and expeditious manner possible depending upon the seriousness of the potential impacts and the need for formal documentation. When correspondence is exchanged it shall be appended to the assessment. Oral discussions should be documented in the manner indicated in Exhibit E.

(c) At the earliest possible stage in the assessment process, the environmental reviewer shall identify the federal, state, and local parties which are carrying out related activities, either planned or under way. Discussions with the applicant and FmHA staff familiar with the project area should assist in this identification effort. If there is a potential for cumulative impacts, the reviewer shall consult with the involved federal agencies to determine the nature, timing and results of their environmental analysis. These consultations shall be documented in the assessment and considered or adopted when making the environmental impact determination. (See Section 1940.324 of this Subpart concerning adoption of assessments.) If it is determined that the cumulative impacts are significant, the environmental reviewer shall further contact the involved federal agencies and attempt to determine the lead federal agency as discussed in Sections 1940.320(b) and 1940.326.

(d) Consultations similar to those discussed in paragraph (c) of this Section shall also be undertaken with those federal and state agencies which are directly involved in the FmHA action, either through the provision of financial assistance or the review and approval of a necessary plan or permit. For example, a construction permit from the U.S. Army Corps of Engineers may be required for a project. In such an instance, the environmental assessment cannot be completed until the environmental reviewer has either reviewed the other agency's completed environmental analysis or consulted with the other agency and is reasonably sure of the scope, content and expected environmental impact determination of the forthcoming analysis and has so documented for the FmHA assessment this understanding. If the other agency believes that the project will have a significant impact, a joint or lead impact statement shall be prepared. If the other agency does not believe a significant impact will occur, the environmental reviewer shall consider this finding and its supporting analysis in completing the FmHA environmental impact determination.

(e) For actions having a variety of complex or interrelated impacts that are difficult for the environmental reviewer to assess, consideration should be given to holding a public meeting in the manner described in Section 1940.320(c). Such meetings should not be assumed as being limited to projects for which EISs are being prepared. Such a meeting can serve a useful purpose in better defining and identifying complex impacts, as well as locating expertise with respect to them. The results of a public meeting and the follow-up from it can also serve as a valuable tool in reaching an early understanding on the potential need for an EIS. When identified impacts are difficult to quantify (such as odor and visual and community impacts) or controversial, a public information meeting should be held near the project site in order to reach a better understanding of the magnitude of the impact and the local area's concern about it. Whenever held, it should be announced and organized in the manner described in Section 1940.320(g). However, a transcript of the meeting need not be prepared but the environmental reviewer shall make detailed notes for incorporation in the assessment (See Section 1940.311(f)).

(f) Throughout this assessment process, the environmental reviewer shall keep in mind the criteria for determining a significant environmental impact. If at any time in this process it is determined that a significant impact would result, the reviewer shall so notify the approving official and those actions specified in Section 1940.320 shall be initiated, unless the approving official disagrees with the reviewer's recommended determination in which case further review of the determination is required as explained in Section 1940.316(e) of this Subpart. As soon as possible after the need for an EIS is determined, the applicant shall also be advised of this in writing, as well as reinformed of the limitations on its actions during the period that the EIS is being completed (See Section 1940.309(e)). The applicant's failure to comply with these limitations shall be considered as grounds for postponement

of further consideration of the application until such problem is alleviated.

(g) Similarly, throughout the assessment process, consideration shall be given to incorporating mechanisms into the proposed action for reducing, mitigating or avoiding adverse impacts. Examples of such mechanisms which are commonly referred to as mitigation measures include (1) the deletion, relocation, redesign or other modifications of the project elements, (2) the dedication of environmentally sensitive areas which would otherwise be adversely affected by the action or its indirect impacts, (3) soil erosion and sedimentation plans to control runoff during land disturbing activities, (4) the establishment of vegetative buffer zones between project sites and adjacent land uses, (5) protective measures recommended by environmental agencies having jurisdiction or special expertise regarding the action's impacts, and (6) zoning. Mitigation measures must be tailored to fit the specific needs of the action, and they must also be practical and enforceable. Mitigation measures which will be taken must be documented in the assessment (Item XV of Exhibit E) and placed in the offer of financial assistance as special conditions, or in the implementation requirements when the action does not involve financial assistance. These measures shall be consistent with the basic goal of the proposed action and developed in consultation with the appropriate program office.

(h) As part of the assessment process, the reviewer shall initiate the consultation and compliance requirements for the environmental laws, regulations, and Executive Orders specified in the assessment format. The assessment cannot be completed until compliance with these laws and regulations is appropriately documented. The project's failure to meet the requirements specified in time 9b. of Exhibit D for a Class I action and item XVII b. of Exhibit D for a Class I action and item XVII b. of Exhibit E for a Class II action shall result in postponement of further consideration of the application until such problem is alleviated.

(i) When the environmental reviewer has completed the assessment, the related materials and correspondence utilized shall be attached. The environmental reviewer shall then either recommend to the approving official that the action has the potential for significantly affecting the quality of the human environment or shall recommend that the action does not have this potential and, therefore, the preparation of an EIS is not necessary. (Item 9 a. of Exhibit D for Class I action and item XVII a. of Exhibit E for a Class II action) The recommended environmental findings shall also be completed. (Item 9 b. of Exhibit D for a Class I action and item XVII b. of Exhibit E for a Class II action.) Whenever the environmental reviewer is unable to make a recommendation either because the project's environmental impacts are of a complex or unique nature and consequently require additional expertise to analyze, or such impacts verge on the threshold of significance and consequently uncertainty exists, the environmental reviewer shall so inform the approving official; and the environmental file shall be forwarded to the next level of environmental review (either from the County or District Office to the State Environmental Officer or from the latter to ETS). The environmental reviewer completing the assessment shall then report the conclusions to the approving official, and the further applicable requirements of this Subpart shall be implemented based upon the approving official's position regarding the assessment.

(j) For those actions for which the environmental reviewer is able to make recommendations, the approving official shall review the environmental file and recommendations. The official shall then execute the environmental impact determination and findings. If the conclusions reached are that there is no significant impact and there is compliance with the listed requirements, the format contained in Exhibit G, Finding of No Significant Environmental Impact, will be used. If a significant impact is determined, the steps specified in Section 1940.320 shall be initiated for the preparation of the EIS. If a determination is made that the action does not comply with the listed requirements and there are no feasible alternatives or modifications which could comply, the action shall be denied or disapproved. If the approving officer's determination or findings differ from those of the environmental reviewer, this difference shall be resolved in the manner specified in Section 1940.316.

(k) When there is no need for further review as discussed in paragraph (j) of this Section and findings of compliance and a determination of no significant impact are reached, the assessment process is conditionally concluded. The applicant shall then be requested to provide public notification of these results as indicated in Section 1940.331(c). The approving official shall not approve the pending application for at least 15 days from the date the notification is last published. If comments are received as a result of the notification, they shall be included in the environmental assessment and considered. Any necessary changes resulting from this consideration shall be made in the assessment, impact determinations, and findings. If the changes require further implementation steps, such as the preparation of an EIS, they shall be undertaken. If there are no changes in the findings and determinations, the approving official may continue to process the application. The environmental documents i.e., the assessment, related correspondence, Form FmHA 449-10, and the finding of no significant impact, shall be included with the approval documents which are assembled for review and clearance within the approving office.

(1) When comments are received after the action has been approved, the approving official will consider the environmental importance of the comments and the necessity and ability to amend both the action with respect to the issue raised and the action's stage of implementation. The Environmental Specialist should be consulted to assist in determining whether there are any remaining environmental requirements which need to be met under the specific circumstances. A similar procedure shall be followed when new or changed information is received after project approval. Amendments and revisions to actions will be handled as specified in Sections 1940.310 to 1940.313.

§ 1940.319 Completing environmental assessments for Class I actions.

(a) As stated previously, a main purpose of Form FmHA 1940-21, "Environmental Assessment for Class I Actions," (Exhibit D) is to provide a mechanism for reviewing actions with normally minimal impacts and for documenting a finding or no significant impact, as well as compliance determinations for other applicable environmental laws, regulations, and policies. The second major purpose is to serve as a screening tool for identifying those Class I actions which have more than minimal impacts and which, therefore, require a more detailed environmental review.

(b) The approach to reviewing a Class I action under the assessment format of Exhibit D is exactly environmental reviewer (as defined in Section 1940.316) must become the same as for a Class II action. The familiar with the elements of the action, the nature of the environment to be affected, the relationship to any other federal actions or related non-

federal actions, and the applicable environmental laws and regulations.

(c) The data submission requirements placed on the applicant for a Class I action are not as extensive as for a Class II action. The requirements are limited to completing the face of Form FmHA 1940–20, Exhibit B, as well as categories (1), (2), (13), (15), (16), and (17) of Item 1b of the instructions to the form whenever a previously completed environmental analysis covering these categories is not available. Should it later be determined that the magnitude of the Class I action's impact warrants a more detailed assessment, the applicant shall be required to submit the remaining items of the data request.

(d) The environmental reviewer must ensure that the data received from the applicant is complete, consistent, signed and dated before initiating the assessment. If it is not, the applicant shall be required to make the necessary changes and clarifications. The reviewer must also ensure that the application properly meets the definition of a Class I action. Phased or segmented projects, as discussed in Section 1940.317(d) shall be identified and the elements and the size of the entire project used to classify the action.

(e) An important element of this assessment is to determine if the action affects an environmental resource which is the subject of a special federal consultation or coordination requirement. Such resources are listed in the assessment format, Exhibit D, and include wetlands, floodplains, and historic properties, for example, If one of the listed resources is to be affected, the reviewer must demonstrate the required compliance by accomplishing the review and coordination requirements for that resource. Documentation of the steps taken and coordination achieved shall be attached. However, if more than one listed resource is to be affected, this shall be viewed as the action having more than minimal impacts and the environmental assessment format for a Class II action shall be initiated.

(f) Similarly in completing item 3, General Impacts of Exhibit D, the assessment format for a Class II action must be initiated if more than one category of impacts cannot be checked as minimal. If there is a single category which needs analysis, this can be accomplished by attaching an appropriate exhibit addressing the questions and issues for that impact, as specified in the environmental assessment format for a Class II action.

(g) The comments of the state and regional clearinghouses shall be incorporated into the assessment, if this review applies to the action. The receipt of negative comments of an environmental nature shall warrant the initiation of a more detailed assessment under the format for a Class II action, Exhibit E. Also, the issue of controversy must be addressed, and if the action is controversial for environmental reasons, the environmental assessment format for a Class II action, Exhibit E shall be completed. However, if the action is the subject of isolated environmental complaints or any questions or concerns that are raised focus on a single impact, air quality for example, the analysis of such a complaint or questions can be handled under the assessment format for a Class I action. This analysis shall then be provided by the approving official to the party or parties which raised the matter with FmHA. When several potential impacts are questioned, however, the more detailed assessment format shall be accomplished to address these questions.

(h) The potential cumulative impacts of this action, particularly as it relates to other FmHA actions recently approved in the area or planned, shall be analyzed. If the cumulative impact is not minimal, and for example, cumulatively exceeds the criteria and thresholds discussed in paragraphs (e), (f) and (g) of this Section, the environmental assessment format for a Class II action shall be completed. The actions of other federal agencies and related non-federal actions must also be assessed on this basis. When there is a federal action involved, the environmental review conducted by that agency shall be requested and, if it sufficiently addresses the cumulative impact, can be utilized by the environmental reviewer as the FmHA assessment, assuming the impacts are not significant. (See Section 1940.324 of this Subpart.) If the other agency is doing or planning an EIS, the environmental reviewer shall inform that agency of our action and request to be a cooperating agency.

(i) The environmental reviewer shall have the responsibility of initiating the assessment format for a Class II action, Exhibit E, whenever the need is identified. This should be done as early as possible in the review process. The reviewer should not complete the assessment for a Class I action when it is obvious that the assessment format for a Class II action will be needed. The reviewer shall simply start the more detailed assessment and inform the applicant of the additional data requirements.

(j) Public notification of the environmental finding completed as part of Exhibit D shall not be required. All other procedural requirements of the assessment process, such as the timing of the assessment and the limitations on the applicant's actions, do apply, however.

§ 1940.320 Preparing Environmental Impact Statements (EIS).

(a) *Responsibility.*

Whenever the District or County Supervisor determine there is a need to prepare an EIS, the State Environmental Officer shall be notified and shall assume responsibility for preparing it. The State Environmental Officer shall in turn notify the Environmental Specialist and the appropriate Assistant Administrator of these EISs as well as those needed EISs identified by a State Office review. EISs will be prepared in accordance with the following paragraphs. The ETS will take responsibility for preparing EISs on applicable actions initiated at the National Office and for issuance by the Administrator. The State Environmental Officer shall have the preparation responsibility for actions initiated within the state. However, in so doing the State Environmental Officer shall consult with the Environmental Specialist to determine that the document meets the requirements of NEPA. State Directors shall be responsible for issuing such EISs, however, unless delegated authority by the Administrator, based upon a demonstrated capability and experience in preparing EISs, the State Director shall not issue the EIS until reviewed and approved by the Administrator.

(b) *Organizing the EIS Process.*

Prior to initiating the scoping process outlined below, the environmental reviewer shall take several organizational steps to ensure that the EIS is properly coordinated and completed as efficiently as possible. To accomplish this, the below listed parties need to be preliminary identified; the list should be expanded as familiarity with the project increases. Those parties falling within the first four groups should be formally requested to serve as cooperating agencies. If any of these agencies appear to be a more appropriate lead agency than FmHA (using the criteria contained in Section 1501.5(c) of the CEQ Regulations), consultations should be initiated with that agency to determine the lead agency. If difficulties arise in completing this determination the Environmental Specialist shall be consulted for assistance. All of the parties identified below shall be sent a copy of the notice of intent to prepare the EIS and an invitation to the scoping meeting, as

discussed in paragraph (c) of this Section.

(1) All federal and state agencies that are being requested to provide financial assistance for the project or related projects;

(2) All federal agencies that must provide a permit for the project should it be approved;

(3) All federal agencies that have a specific environmental expertise in the major environmental issues identified to date;

(4) The agency responsible for the implementation of the state's environmental impact analysis requirement, if one has been enacted or promulgated by the state;

(5) All federal, state, and local agencies that will be requested to comment on the draft EIS;

(6) All individuals and organizations that have expressed an interest in the project; and

(7) National, regional, or local environmental organizations whose particular area of interest corresponds to the major impacts identified to date.

(c) *Scoping Process.* As soon as possible after a decision has been made to prepare an environmental impact statement, the following process shall be initiated by the State Environmental Officer for identifying the major issues to be addressed in the EIS and for developing a coordinated government approach to the preparation and review of the EIS.

(1) The first step in this process shall be the publication of a notice of intent to prepare the EIS. The notice will indicate that an EIS will be prepared and will briefly describe the proposed action and possible alternatives, state the name, address, and phone number of the environmental reviewer, indicating that this person can answer questions about the proposed action and the EIS, list any cooperating agencies, and include the date and time of the scoping meeting. If the latter information is not known at the time the notice of intent is prepared, it shall be incorporated into a special notice, when available, and published and distributed in the same manner as the notice of intent. It shall be the responsibility of the environmental reviewer to inform ETS of the need to publish a notice of intent. ETS will coordinate the publication of the notice in the Federal Register. The applicant shall be requested to publish a copy of the notice in the newspaper of greatest circulation in the vicinity of the proposed action and in any local or community oriented newspapers within the proposed action's area of environmental impact. The notice shall be published in easily readable type in the nonlegal section of the newspaper(s). It shall also be bilingual if the affected area is largely non-English speaking or bilingual. Individual copies of the notice shall be sent by the applicant to the appropriate regional EPA office, the state and regional A-95 clearinghouse, the State Historic Preservation Officer, local radio stations and other news media, any state or federal agencies planning to provide financial assistance to this or related actions or required to review permit applications for this action, any potentially affected Indian Tribe, any individuals, groups, local, state, and federal agencies known to be interested in the project, owners and occupants of nearby or affected property and to any other parties that the State Environmental Officer has identified to be so notified. It shall also be posted at a readable location on the project site. The applicant shall provide FmHA with a copy of the notice as it appeared in the newspaper(s), the date(s) published, and a list of all parties receiving an individual notice. Publication and individual transmittal of the notice for the scoping meeting shall be accomplished at least 14 days prior to the date of the meeting.

(2) To the extent possible, the scoping meeting should be integrated with any other early planning meetings of the Agency or other involved agencies. The scoping meeting shall be chaired by the environmental reviewer and shall be organized to accomplish the following purposes.

(i) Invite the participation of affected federal, state, and local agencies, any affected Indian Tribe, the proponent of the action, and any interested parties including those who may disagree with the action for environmental reasons;

(ii) Determine the scope and the significant issues to be analyzed in depth in the environmental impact statement;

(iii) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere;

(iv) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement;

(v) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration;

(vi) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement;

(vii) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule;

Minutes of the scoping meeting to include the major points discussed and decisions made shall be prepared and retained by the environmental reviewer as part of the environmental file. The environmental reviewer shall also offer, during the scoping meeting, to send copies of the minutes to any interested party upon written request.

(d) *Using an Interdisciplinary Approach.* The EIS shall be prepared using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers shall be appropriate to address the potential environmental impact associated with the project. This can be accomplished both in the information collection stage and the analysis stage by communication and coordination with environmental experts at local, state, and federal agencies (particularly cooperating agencies) and universities near the project site. When needed information or expertise is not readily available, these needs should be met through procurement contracts with qualified consulting firms. Consulting firms can be utilized to prepare the entire EIS or portions of it as specified in Section 1940.336.

(e) *Content and Format of EIS.* The EIS shall be prepared in the format and manner described in Part 1502 of the CEQ Regulations. There is a great deal of specific guidance in that Part which will not be repeated here.

(f) *Circulation of the EIS.* FmHA shall circulate for review and comment the draft and final EIS as broadly as possible. Therefore, it will be necessary for the environmental reviewer to have sufficient copies printed or reproduced for this purpose. In identifying the parties to receive a draft EIS, the same process should be utilized as is employed for inviting participants to the scoping meeting (see paragraph (b) above). Special emphasis should be given to transmitting the draft to those agencies with jurisdiction or expertise

on the proposed action's major impacts, as well as those parties who have expressed an interest in the action. The final EIS shall be provided to all parties that commented on the draft EIS.

(g) *Public Information Meetings.* A public information meeting shall be held near the project site to discuss and receive comments on the draft EIS. It shall be scheduled no sooner than 15 days after the release of the draft EIS. It shall be announced in the same manner as the scoping meeting and the list of parties receiving an individual notification should also be developed in the same manner. The meeting shall be chaired by the environmental reviewer and shall be fully recorded so that a transcript can be produced. The applicant shall be requested to assist in obtaining a facility for holding the meeting. To the extent possible, this meeting shall be combined with public meetings required by other involved agencies.

(h) *Response to Comments.* The environmental reviewer shall respond to comments on the draft EIS as required by Part 1503.4 of the CEQ Regulations. The major and most frequently raised issues during the public information meeting shall also be identified and addressed.

(i) *Timing of Review.* The environmental reviewer shall be responsible for ensuring that the timing requirements for FmHA actions and the review periods for draft and final EISs are fully met (part 1506.10 of CEQ Regulations).

§ 1940.321 Use of completed EIS.

(a) The final EIS shall be a major factor in the Agency's decisionmaking process. Agency staff making recommendations on the action and the approving official shall be familiar with the contents of the EIS and its conclusions and shall consider these in formulating their respective positions with respect to the action. The final EIS and all comments received on the draft shall accompany the proposal through the FmHA decisionmaking and clearance process. The alternatives considered by the approving official shall be those addressed in the final EIS.

(b) As part of this review process, the environmental reviewer shall complete the recommendations listed in Item XVII, b and c of Exhibit E and provide them to the approving official prior to a final decision.

§ 1940.322 Record of decision.

Upon completion of the EIS and its review within FmHA and before any action is taken on the decision reached on the proposal, the office within FmHA responsible for processing the application shall prepare, in consultation with the environmental reviewer, a concise record of the decision which will be available for public review. The record shall:

(a) State the decision reached;

(b) Certify that the timing requirements for the EIS process have been fully met;

(c) Identify all alternatives considered in reaching the decision specifying the alternative or alternatives that were considered to be environmentally preferable and discuss the relevant factors (environmental, economic, technical, statutory mission and, if applicable, national policy) that were considered in the decision;

(d) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why not; and

(e) If any mitigation measures have been adopted, specify the monitoring and enforcement program that will be utilized.

§ 1940.323 Preparing supplements to EIS.

(a) FmHA shall prepare supplements to either draft or final EISs if:

(1) A substantial change or changes occur in the proposed action and such changes are relevant to the environmental impacts previously presented; and

(2) Significant new circumstances or information arise which are relevant to environment concerns and bear on the proposed action or its impacts.

(b) If the environmental reviewer determines that the changes or new circumstances referenced in paragraph (a) of this Section do not require the preparation of a supplemental EIS, the reviewer shall prepare an environmental assessment for a Class II action which shall document the reasons for this determination.

(c) The environmental reviewer shall be responsible for advising the approving official of the need for a supplement.

(d) All of the requirements of this Subpart that apply to the completion of an initial EIS apply to the completion of a supplement with the exception of the scoping process, which is optional. Additionally, if the approving official believes that the circulation of a draft supplement is not necessary, the concurrence of the Department's Office of Environmental Quality and the approval of CEQ must be obtained before eliminating this step. The Environmental Specialist shall coordinate the request with CEQ. The final supplement shall be included in the project file or docket and shall be used in the Agency's decisionmaking process in the same manner as a final EIS (See Section 1940.321).

§ 1940.324 Adoption of EIS and Environmental assessment prepared by other Federal agency.

(a) FmHA may adopt an EIS or portion thereof prepared by another federal agency after completion of the following:

(1) An independent review of the document is conducted by the environmental reviewer and it is concluded that the EIS meets the requirements of the CEW Regulations and this Subpart.

(2) If the actions covered in the EIS are substantially the same as those proposed by FmHA and the environmental conditions in the project area have not substantially changed since its publication, FmHA will recirculate the EIS as a "final." The final EIS will contain an appropriate explanation of the FmHA involvement and will be sent to all parties who would typically receive a draft EIS published by FmHA. If there are differences between the actions or the environmental conditions as discussed in the original EIS, that EIS shall be updated to cover these differences and recirculated as a draft EIS. From that point, it shall be reviewed and processed in the same manner as any other FmHA EIS.

(b) If the adopted EIS is not final within the agency that prepared it, or if the action it assesses is the subject of a referral under Part 1504 of the CEQ Regulations, or if the statement's adequacy is the subject of a judicial action which is not final, FmHA must so specify and provide an explanation in the recirculated EIS.

(c) After recirculated (whether as a draft or final), the EIS shall be reviewed and processed in the same manner as any other FmHA EIS.

(d) FmHA may also adopt all or part of environmental assessments prepared by other Federal agencies. In this case paragraphs (b) and (c) of this Section do not apply, nor the recirculation requirement in paragraph (a).

§ 1940.325 FmHA as a cooperating agency.

(a) FmHA shall serve as a cooperating agency when requested to do so by the lead agency for an action in which FmHA is directly involved or for an action which is directly related to a proposed FmHA action. An example of the latter would be a request from EPA to participate in an EIS covering its sewage treatment plans for a

community, as well as the community's water system plans pending before FmHA. The State Environmental Officer shall coordinate FmHA's participation as a cooperating agency for an action at the state level. ETS shall have the same responsibility at the National Office level.

(b) When requested to be a cooperating agency on a basis other than that discussed above, the environmental reviewer at the level receiving the request shall consider the expertise which FmHA could add to the particular EIS process in question and existing workload commitments. If a decision is made on either of these two basis not to participate as a cooperating agency, a copy of the letter so informing the lead agency shall be sent to CEQ.

(c) As a cooperating agency, FmHA shall participate in the development and implementation of the scoping process; if requested by the lead agency, provide the lead agency with staff support and descriptive materials with respect to the analyses of the FmHA portion of the action(s) to be covered; review and comment on all preliminary draft materials prior to their circulation for public review and comment; and attend and participate in public meetings called by the lead agency concerning the EIS.

(d) The State Director shall request the lead agency to fully identify the Agency's involvement in all public documents and notifications.

(e) FmHA shall use the EIS as its own as long as (1) FmHA's comments and concerns are adequately addressed by the lead agency and (2) the final EIS is considered to meet the requirement of CEQ's Regulations and this Subpart. It shall be the responsibility of the environmental reviewer to formally advise the approving official on these two points. The failure of the lead agency's EIS to meet either of these stipulations shall require FmHA to follow the steps outlined in Section 1940.324, *Adoption of an EIS,* prior to the approving official's decision on the FmHA action.

§ 1940.326 FmHA as a lead agency.

(a) When other federal agencies are involved in an FmHA action or related actions that require the preparation of an EIS, the environmental reviewer shall consult with these agencies to determine a lead agency for preparing the EIS. The criteria for making this determination shall be those contained in Part 1505.5 of the CEQ Regulations. If there is a failure to reach a determination within a reasonably short time after consultation is initiated, the Environmental Specialist shall be contacted. The assistance of the Department's Office of Environmental Quality and CEQ shall then be requested by the Administrator in order to conclude the determination of a lead agency.

(b) When acting as lead agency, the FmHA environmental reviewer shall request other federal and state agencies to serve as cooperating agencies on the basis of the guidance provided in Section 1940.320(b).

§ 1940.327 Tiering.

To the extent possible, FmHA shall use the concept of tiering in the preparation of its EIS. Tiering refers to the coverage of general matters in broader environmental impact statements, such as one done for a national program or regulation, with subsequent narrower statements or environmental analyses incorporating by reference the broader matters and concentrating on the issues specific to the action under consideration. Tiering can be used when the sequence of analysis is from the program level to site-specific actions taken under that program or from an initial EIS to a supplement which discusses the issues requiring supplementation.

§ 1940.328 State Environmental Policy Acts.

(a) Numerous states have enacted environmental policy acts or regulations similar to NEPA, hereafter referred to as State NEPA's. It is important that FmHA staff have an understanding of which states have such requirements and how they apply to applicant's proposals. It shall be the responsibility of each State Environmental Officer to determine the applicable state requirements and to establish a working relationship with the state personnel responsible for their implementation.

(b) In processing projects located within states having State NEPA's the environmental reviewer shall determine as early as possible in the assessment process whether the project fails under the requirements of the State NEPA. If it does, one of the following cases will exist and the appropriate actions specified shall be taken.

(1) The applicant has complied with the State's NEPA and it was determined under the State's requirements that the proposed project would not result in sufficient potential impacts to warrant the preparation of an impact statement or other detailed environmental report required by the State NEPA. This finding or conclusion by the state shall be considered in the FmHA's review and any supporting information used by the state shall be requested. However, the state's finding can never be the total basis for FmHA's environmental impact determination. An independent and thorough review in accordance with the requirements of this Subpart must be conducted by the environmental reviewer.

(2) The applicant has complied with the State NEPA and it was determined under its implementing guidelines that a significant impact will result. This fact shall be given great weight in the Agency's environmental determination. However, the state's definition of significant environmental impact may encompass a much lower threshold of impacts compared to FmHA's. In such a case, if the State Environmental Officer does not believe that a significant impact will result under Agency guidelines for determining significant impacts, the environmental assessment should be prepared and include a detailed discussion with supporting information as to why the environmental reviewer's recommendation differs from that of the state's. However, the assessment cannot be completed until the state's impact statement requirements have been fulfilled by the applicant and the resulting impact statement has been reviewed by the environmental reviewer. An environmental impact determination shall then be executed based upon the assessment and the statement.

(c) It should be emphasized that at no time does the completion of an impact statement under the requirements of a State NEPA obviate the requirement for FmHA to prepare an impact statement. Consequently, as soon as it is clear to the State Environmental Officer that the Agency will have to prepare a statement, every attempt should be made to accomplish the statement simultaneously with the state's. Coordination with state personnel is necessary so that data and expertise can be shared. In this manner, duplication of effort and of the review periods for the separate statements can be minimized. This process clearly requires a close working relationship with the appropriate state personnel.

§ 1940.329 Commenting on other agencies' EISs.

(a) State Directors are authorized to comment directly on EISs prepared by other federal agencies. In so doing, comments should be as specific as possible. Any recommendations for the development of additional information or analyses should indicate why there is a need for the material.

(b) Comments should concentrate on those matters of primary importance to FmHA and on areas of Agency expertise, such as rural planning and

development. Any potential conflicts with FmHA programs, plans, or actions should be clearly identified. Special attention should be given to the relationship of the alternatives under study to the State Office's natural resource management policy and the objectives of the Secretary's land use memorandum (Exhibit A). Copies of comments addressing land use questions should be provided to the appropriate Chairman of the USDA State Land Use Committee.

(c) Whenever a State Director has serious concerns over the acceptability of the anticipated environmental impacts, the Director may recommend to the Administrator that the matter be handled under Part 1504 of the CEQ regulations, Predecision Referrals to the Council of Proposed Federal Actions Determined to be Environmentally Unsatisfactory. A copy of this recommendation shall be provided to the appropriate Chairman of the USDA State Land Use Committee. The Environmental Specialist shall then coordinate this recommendation with the Department's Office of Environmental Quality.

(d) Commenting at the National Office level shall be handled under the same guidelines, with the Environmental Specialist serving as the point of coordination.

§ 1940.330 Monitoring.

(a) FmHA staff who normally have responsibility for the post-approval inspection and monitoring of approved projects shall ensure that those measures which were identified in the pre-approval stage and required to be undertaken in order to reduce adverse environmental impacts are effectively implemented.

(b) This staff shall review the action's approval documents and consult with the environmental reviewer prior to making site visits or requesting project status reports in order to determine if there are environmental requirements to be monitored.

(c) The environmental reviewer should directly monitor actions containing difficult or complex environmental special conditions.

(d) Before certifying that conditions contained within offers of financial assistance have been fully met, the responsible monitoring staff shall obtain the position of the environmental reviewer for those conditions developed as a result of the environmental review.

(e) Whenever non-compliance with an environmental special condition is detected by FmHA staff, the environmental reviewer shall be immediately informed. The approving official shall then take appropriate steps, in consultation with the responsible program office and environmental reviewer, to bring the action into compliance.

§ 1940.331 Public involvement.

(a) The basic objective of FmHA's public involvement process is three-fold. It is to ensure that interested citizens (1) can readily obtain knowledge of the environmental review status of FmHA's funding applications, (2) have the opportunity to input into this review process before decisions are made, and (3) have access to the environmental documents supporting FmHA decisions.

(b) For projects that undergo the preparation of an environmental impact statement, public participation will be accomplished as specified in Section 1940.320 of this Subpart.

(c) For projects that are determined not to have a significant environmental impact, the Agency will require the applicant to publish a notification of this determination. This notice shall be published in the newspaper of greatest circulation in the vicinity of the proposed action and in any local or community-oriented newspapers within the proposed action's area of environmental impact. This notice shall appear for at least three consecutive days if published in a daily newspaper or otherwise in two consecutive publications and shall be published in easily readable type in the nonlegal section of the newspaper(s). All notices shall be bilingual if the affected area is largely non-English speaking or bilingual. Individual copies of the notice shall be sent by the applicant to the appropriate regional EPA office, the state and regional A-95 clearinghouse, any state or federal agencies planning to provide financial assistance for this or related projects or required to review permit applications for this project, any individuals, groups, local, state, and federal agencies known to be interested in the environmental aspects of the project, and to any other parties that the State Environmental Officer has identified to be so notified. The applicant shall provide FmHA with a copy of this notice, the date(s) the notice was published, and a list of all parties receiving an individual notice.

(d) The above notification procedure will not apply to actions reviewed solely on the basis of Exhibit D.

(e) FmHA officials shall promptly provide to interested parties, upon request, copies of environmental documents, including environmental assessments, draft and final environmental impacts statements, and records of decision. Interested parties can request these materials from the appropriate State Director for project activities and from the Administrator on other activities subject to environmental review.

(f) Public information meetings shall be held for an action undergoing environmental impact statements as specified in Section 1940.320. Such meetings may also be held in the completion of environmental assessments as indicated in Section 1940.318. Whenever a public information meeting is held as part of the preparation of an environmental assessment, as compared to an environmental impact statement, a completed transcript of the meeting shall not be required. However, a summary of the meeting to include the major issues raised shall be prepared by the environmental reviewer.

§ 1940.332 Emergencies.

When an emergency circumstance makes it necessary to take an action with significant environmental impact without observing the provisions of this Subpart or the CEQ Regulations, the Administrator shall be so notified. If possible, the Administrator shall consult with the Department's Office of Environmental Quality and CEQ about alternative arrangements before the proposed action is taken. It must be recognized that CEQ's Regulations limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review. For purposes of this Subpart, an emergency circumstance is defined as one involving an immediate or imminent danger to public health or safety.

§ 1940.333 Applicability to planning assistance.

(a) The award of grant funds for the purpose of providing technical assistance or planning assistance shall not be subject to any environmental review. However, grantees shall be expected to consider in the developmet of their plans and to generally document within their plans (1) the exisiting environmental quality and the important environmental factors within the planning area and (2) the potential environmental impacts on the planning area of the plan as well as the alternative planning strategies that were reviewed. The ETS shall work with the responsible program office(s) in order to develop and transmit environmental planning guidance to grantees.

(b) In accomplishing plan evaluations, the grantee's ability to incorporate environmental considerations into local plans and technical assistance projects

shall be analyzed by the responsible program office.

§ 1940.334 Direct participation of State agencies in the preparation of FmHA EISs.

The National Environmental Policy Act was amended on August 9, 1975, for the purpose of permitting appropriate state agencies to participate in the preparation of environmental impact statements sponsored by a federal counterpart agency. Pursuant to the amended portion of the Act, FmHA may be assisted by a state agency in the preparation of an environmental impact statement subject to the conditions indicated below. (At no time, however, is FmHA relieved of its responsibilities for the scope, objectivity, and content of the entire statement or any other responsibility under NEPA.)

(a) The FmHA applicant for financial assistance is a state agency having statewide jurisdiction and responsibility for the proposed action;

(b) FmHA furnishes guidance to the state agency as to the scope and content of the impact statement and participates in the preparation;

(c) FmHA independently evaluates the statement and rectifies any major deficiencies prior to its circulation by the Agency as an EIS;

(d) FmHA's provides, early in the planning stages of the project, notification to and solicits the views of any land management entity (state or federal agency responsible for the management or control of public lands) concerning any portion of the project and its alternatives which may have significant impacts upon such land management entities; and

(e) If there is any disagreement on the impacts addressed by the review process outlined in paragraph (d) of this Section, FmHA prepares a written assessment of these impacts and the views of the land management entities for incorporation into the draft impact statement.

§ 1940.335 Environmental review of FmHA proposals for legislation.

(a) As stated in Section 1940.312 (e)(4), all FmHA proposals for legislation shall receive an environmental assessment. The definition of such a proposal is contained in Section 1508.17 of the CEQ Regulations. It shall be the responsibility of the Agency staff that is developing the legislation to inform ETS of the proposal as early as possible in the development stage. The general content of the proposal shall be discussed with ETS and early drafts provided, as completed, so that the assessment process can run concurrently with the development of the legislation. Also, the initiating staff shall assist ETS in the preparation of the assessment by providing necessary background information and evaluations on the proposed legislation's potential program impacts.

(b) The environmental assessment shall be prepared by ETS along with a recommendation as to whether an EIS is needed and provided to the Adminstrator for a final decision.

(c) If an EIS is required, it shall be prepared in accordance with the requirements of Section 1506.8 of the CEQ Regulations.

§ 1940.336 Contracting for consulting services.

(a) Assistance from outside experts and consultants can be secured for the purpose of completing environmental impact statements, assessments or portions of them. Such assistance shall be secured in accordance with the Agency's contract procurement procedures.

(b) The contractor shall be selected by FmHA in consultation with any cooperating agencies. In order to avoid any conflict of interest, contractors bidding for the work shall be required to execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project.

(c) The Environmental Specialist shall provide the State Director with a proposed scope of work for use in securing such consulting services.

(d) Applicants of subsequently disapproved projects shall not be required to pay the costs of these consulting services. However, if an application that requires consulting services for environmental reviews is subsequently approved, the cost of the consulting services shall be included in the project cost if the applicant is an identifiable beneficiary of the consulting services other than the general public, for example, a private business in receipt of a Business and Industry loan guarantee. The cost assessed to the approved project shall not exceed the cost to FmHA of the consulting services. Additionally, required consulting expenses incurred to serve some independent public interest will not be charged against the approved project. An example of this latter category is an FmHA grant or loan for a community facility.

§§ 1940.337—1940.500 [Reserved]

Attachments:

Exhibit A

U.S. Department of Agriculture, Office of the Secretary,
Washington, D.C., October 30, 1978.

Secretary's Memorandum No. 1827, Revised

Statement on Land Use Policy

1. *Purpose.* This memorandum establishes a departmental policy to promote attainment of land use objectives that are responsive to the needs of the people. This policy is supportive of the constitutional responsibilities of State and local governments for making and implementing public policy regarding land use. This policy is designed to contribute to improved social and economic well-being and to protect the quality of the environment. In formulating and implementing this policy, it is the intent of the Department to (a) assist local and State governments and individual landholders in defining and meeting needs for growth and development; (b) protect the natural environment; and (c) assure adequate supplies of high-quality food, fiber, wood, and water.

The policy is supportive of the President's Urban Policy, Executive Order 11990, Protection of Wetlands, and Executive Order 11988, Floodplain Management, and is consistent with responsibilities assigned the Secretary under the provisions of 7 U.S.C. 1010 and 7 U.S.C. 2204.

2. *Background.* Environmental, economic, and social needs and related land use decisions are matters of concern to the Department of Agriculture. Decisions concerning land use arise from needs to maintain and stimulate economic development, maintain and enhance agricultural, rangeland, and forest production capabilities; provide or improve community services, facilities, and living space; to preserve the natural environment and associated wildlife and recreational values; and to assure adequate supplies of high-quality water. These needs are highly interdependent and often competitive for the limited supply of available and suitable land. Responsible levels of Government must encourage and facilitate the use of our Nation's land resources with wisdom and foresight.

The Department of Agriculture has numerous programs, and makes decisions, that affect the use and availability of land in public and private ownership. To help carry out these programs, the Department has established a program delivery capability at the local level and cooperative arrangements with State and local governments. The Department has the organizational structure, leadership capability, and the professional and technical skills essential to advise and assist local and State governments and private landholders in matters dealing with the Nation's land resources. In accordance with the authority contained in 7 U.S.C. 1010 and 7 U.S.C. 2204 and consistent with 7 CFR 2.19(f), the Department sets forth this statement of policy on land use. This statement reflects the Department's concern with the serious challenges the Nation faces in retaining an adequate natural resource base and in meeting environmental, social, and economic needs.

3. *Policy.* The Department will:

A. Continue to recognize and respect the rights and responsibilities of landholders in making private land use decisions, and the

rights and responsibilities of State and local governments in developing public policies regarding non-Federal land use.

B. Implement this policy in the administration of its public lands consistent with legislative authorities controlling their use. They will be administered in such manner as to demonstrate leadership in meeting short- and long-term needs for growth and development; to protect the natural environment; and to assure adequate supplies of food, fiber, wood, and water.

C. Manage USDA-administered lands with a sensitivity to the effect which their management will have on adjacent private and public land. Whenever logical, the management of these lands should be coordinated with the management of adjacent private and other public lands.

D. Make decisions and manage its land use-related programs to contribute to the Nation's short- and long-range needs for protecting the natural environment; assuring adequate supplies of food, fiber, wood, and water; and providing for economic growth and development, energy and other facilities and services, and living space in our communities.

E. Assist local and State governments, planning and development organization or agencies, citizens' groups, and individual landholders in identifying and defining their growth, development, and environmental needs; selecting and choosing among alternatives to meet those needs; and implementing projects or programs to satisfy those needs.

F. Advocate the retention of Important Farmlands and Forestlands, Prime Rangeland, Wetlands, or other lands designated by State or local governments whenever proposed conversions are: (1) caused or encouraged by actions or programs of a Federal agency; (2) licensed by or require approval by a Federal agency; or (3) inconsistent with local or State government plans. Provisions will be sought to assure that such lands are not irreversibly converted to other uses unless other national interests override the importance of preservation or otherwise outweigh the environmental benefits derived from their protection. In addition, the preservation of farmland in general provides the benefits of open space, protection of scenery, wildlife habitat and, in some cases, recreation opportunities, and controls on urban sprawl.

G. Advocate actions that reduce the risk of flood loss, minimize impacts of floods on human safety, health, welfare, and restore and preserve the natural and beneficial functions and values of flood plains.

H. Advocate and assist in the reclamation of abandoned surface-mined lands and in planning for the extraction of coal and other nonrenewable resources in such manner as to facilitate restoration that will reestablish the prior productivity of the land, as mining is completed in defined areas or sites.

I. Advocate the protection of threatened and endangered animal and plant species and their habitats, designated archeological, historic, and cultural sites, and designated ecosystems.

J. Advocate the conservation of natural and man-made scenic resources, improve the technical ability of agencies to identify and evaluate scenic resources, and assure that its agencies protect and enhance the visual quality of the landscape.

4. *Implementation.*

A. Each agency of the Department having programs or actions that may cause or encourage irreversible conversions of Important Farmlands and Forestlands, Prime Rangeland, and Wetlands, as defined in the Appendix, or that may cause or encourage encroachments on flood plains, will review such programs or actions and related administrative rules, regulations, bulletins, and practices. Within one year these agencies will make such changes as are necessary to bring agency programs or actions into compliance with the provisions of this Memorandum.

Agencies will assure that their actions, investments, and programs on non-Federal lands are consistent with State and local land use plans and programs to the extent practicable.

In carrying out the above, agencies will:

(1) cooperate to establish a coordinated land use data base and coordinated data collection systems for use within the Department and by the Federal, State, and local governments;

(2) attempt to integrate departmental and State and local land use policies and programs;

(3) identify and minimize to the extent practicable adverse environmental, economic, and social effects of agency projects and programs;

(4) provide landholders and other concerned people information about the alternatives to, and the associated environmental, social, and economic implications of proposed actions;

(5) refrain from converting or enabling others to irreversibly convert these lands or encroaching or enabling other encroachments on flood plains unless there are no practicable alternatives.

B. The Department will intercede, consistent with the policy contained in this Memorandum, in decisionmaking by other Federal agencies where conversions of Important Farmlands and Forestlands, Prime Rangeland, and Wetlands, are caused or enabled by an agency of the Federal Government, or where conversions require Federal licensing or approval. Intercession will be through participation in the planning of projects when invited and through review and comment on draft environmental impact statements or proposals for actions of Federal agencies consistent with authorized administrative review procedures for Federal or Federally assisted actions.

C. The Department will encourage State and local governments and individual landholders to retain Important Farmlands and Forestlands, Prime Rangeland, and Wetlands, and avoid encroachment on flood plains.

The Department will:

(1) generate and disseminate information and provide organizational, leadership, planning, and technical assistance in the application of knowledge useful to local or State officials, groups, or individual landholders in understanding the social, economic, and environmental implications of converting such lands;

(2) provide assistance to State, area-wide, and local planning and development groups, citizens groups, and individual landholders in evaluating alternative uses for land. Evaluations will consider soil suitability based on physical and chemical characteristics, site (location and adjacent uses), and other environmental, economic, and social factors;

(3) cooperate with others in defining, inventorying, evaluating, and publishing descriptions of the Nation's lands, including wetlands and flood plains, consistent with legislative and administrative authorities;

(4) provide decisionmakers and the general public with information on the kind, extent, location, ownership, and current status of the Nation's lands;

(5) conduct multidisciplinary land use research that is responsive to identified State, local, and national needs;

(6) conduct educational programs on land use and land use research findings;

(7) encourage and facilitate public participation in land use planning and decisionmaking;

(8) cooperate with local, State and other Federal agencies in locating and evaluating sites for:

a. extracting minerals and nonrenewable energy resources and the reclamation of surface mined lands;

b. energy-producing facilities;

c. economic growth and development;

d. facilities and services in local communities;

to limit adverse environmental impacts of these activities or to find alternatives to the conversion of Important Farmlands and Forestlands, Prime Rangeland, and Wetlands;

(9) cooperate with area-wide and State clearinghouses designated under the provisions of OMB Circular A-95 in the review of Federally aided projects with potential impacts on Important Farmlands and Forestlands, Prime Rangeland, and Wetlands.

D. The USDA Land Use Committee, created under Secretary's Memorandum No. 1807, Revised, dated December 14, 1977, will provide Department-wide leadership for the implementation of this policy statement. The Committee will encourage and monitor USDA agency responses and coordinate with other Federal agencies to carry out the provisions of this Memorandum. The Committee will advise the Secretary annually as to progress in the implementation of this policy.

This Memorandum supersedes Secretary's Memorandum No. 1827, dated Octover 26, 1973, and Supplement No. 1, dated June 21, 1976.

Bob Bergland,

Secretary of Agriculture.

Appendix

Definitions

The following definitions apply to the provisions of Secretary's Memorandum No. 1827, Revised.

Important Farmlands[1]

Prime Farmlands

Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water).

In addition to the criteria above, for purposes of this policy statement, site (location and adjacent uses) and other economic and social factors will be given due consideration.

Unique Farmland

Unique farmland is land other than prime farmland that is used for the production of specific high value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality and/or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables.

Additional Farmland of Statewide Importance

This is land, in addition to prime and unique farmlands, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies.

Additional Farmland of Local Importance

In some local areas, there is concern for certain additional farmlands for the production of food, feed, fiber, forage, and oilseed crops, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned.

Prime Forestlands[2]

Because of the multiple-use of forested lands, several categories, i.e., timber, wildlife, and recreation may be developed. For purposes of this Memorandum only, the following timberland definitions will apply.

Prime Timberland

Prime timberland is land that has soil capable of growing wood at the rate of 85-cubic feet or more/acre/year culmination of mean annual increment (site 3 or better) in natural stands and is not in urban or built-up land uses or water. Generally speaking, this is land currently in forest, but does not exclude qualifying lands that could realistically be returned to forest.

Unique Timberland

Unique timberlands are lands which do not qualify as prime timberland on the basis of producing less than 85-cubic feet/acre/year, but are growing sustained yields of specific high value species or species capable of producing specialized wood products under a silvicultural system that maintains soil productivity and protects water quality.

Timberland of Statewide Importance

This is land, in addition to prime and unique timberlands, that is of Statewide importance for the growing of wood. Criteria for defining and delineating these lands to be determined by State forestry planning committees or appropriate State organizations.

Timberland of Local Importance

In some local areas, there is concern for certain additional forest lands for the growing of wood even though these lands are not identified as having national or Statewide importance. Where appropriate, these lands are to be identified by a local agency or agencies concerned.

Prime Rangeland[3]

Prime rangeland is rangeland which because of its soil, climate, topography, vegetation, and location has the highest quality or value for grazing animals. The (potential) natural vegetation is palatable, nutritious, and available to the kinds of herbivores common to the area.

Because of the kind, quality, or seasonal characteristics of the forage produced on it, prime rangeland makes a significant contribution to the range livestock industry of the area and exerts a profound influence on well-being of local communities. Prudent grazing can be accomplished without significant degradation of the environment.

Wetland[4]

Wetlands means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetable or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mudflats, and natural ponds.

Other Farm, Forest, Range, or Wetlands Designated for Protection by State or Local Governments

Those lands, defined and identified by State or local jurisdictions or regional governing bodies which are of substantial importance to them. The importance might stem from the lands siting, economic, environmental, open space, or other values.

Other Terms

Flood Plains[5]

The term "flood plain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore island, including at a minimum, that area subject to a one-percent or greater chance of flooding in any given year.

Food, Fiber, and Wood

Food, fiber, and wood are the production of food, feed, forage, fiber, oilseed, ornamental plant materials, and wood for all purposes, including seed production and planting stock.

United States Department of Agriculture

Office of the Secretary, October 30, 1978.

Secretary's Memorandum No. 1827, Revised Supplement No. 1

Implementation of Executive Orders 11988, Flood Plain Management and 11990, Protection of Wetlands

BACKGROUND

Two Executive Orders were issued in May of 1977 as important components of the President's message on the environment. These Orders require all executive agencies to avoid disrupting wetlands or flood plains wherever there are practicable alternatives in delivering their programs and to minimize any environmental harm that might be caused by Federal actions where no practicable alternatives exist. The Orders require executive agencies to establish procedures for compliance. Specifically, executive agencies are required to issue or amend program regulations and procedures and to incorporate the provisions of the Executive Orders into agency planning and decisionmaking. Executive agencies are required to assure that consideration for wetlands and flood plains will be part of existing programs and will not cause unnecessary duplication or delay in government operations.

Scope of USDA Programs Covered

Land use-related programs of the following Administrations and Services are subject to the Orders' directives: Soil Conservation Service; Science and Education Administration; Rural Electrification Administration; Forest Service; Farmers Home Administration; Agricultural Stabilization and Conservation Service; and the Economics, Statistics, and Cooperatives Services.

Directives

1. The Soil Conservation Service, the Agricultural Stabilization and Conservation Service, the Forest Service, the Rural Electrification Administration, and the Farmers Home Administration will identify and review, and make necessary changes in their respective regulations and rules for all programs that may cause conversions of wetlands or which might enable others to convert wetlands to alternative uses, or that may cause or enable others to cause the construction of encroachments on flood plains. Such changes as necessary to comply with Executive Orders 11988 and 11990 shall be made by November 1, 1978.

2. Those services and administrations listed above, together with the Science and Education Administration, and the Economics, Statistics, and Cooperatives Service will identify and review and make necessary changes in those programs that may indirectly affect flood plains or wetlands

[1] USDA's Important Farmland Inventory, 7 CFR, Part 657.5.

[2] Prime Forest Land Definition and Criteria, USFS, May 26, 1977.

[3] Draft USDA Definitions (for intra-departmental use only).

[4] Executive Order 11990, Protection of Wetlands, May 24, 1977

[5] Executive Order 11988, Floodplain Management, May 24, 1977

by influencing decisions made by local and State government officials, planning and development organizations or agencies, or individual firms and landholders. In conducting these programs, increased attention will be given to:

A. Generating and disseminating knowledge and providing technical assistance in the application of knowledge that may be useful to local and State government officials, planning and development groups or agencies, or individual firms and landholders in understanding the natural and beneficial functions and values of wetlands and flood plains and in preserving and utilizing such lands.

B. Assisting State and local governing officals, planning and development groups or agencies, and individual firms and landholders to identify and study the feasibility of, and to implement, alternatives to converting or encroaching on flood plains in meeting their growth and development needs.

3. All affected services and administrations will utilize the systematic, interdisciplinary approach for the identification of environmental impacts of all actions on or affecting wetlands as contained in the National Environmental Protection Act of 1969, Section 102(2)(c). To the extent practicable, the decisionmaking process contained in part II, *Floodplain Management Guidelines for Implementing Executive Order 11988* (43 FR 6030, dated February 10, 1978) will be utilized.

4. All affected services and administrations will identify, define, specify, and propose remedies for any legal, legislative, or other constraints that limit the agency's capacity to comply fully with the provisions of these Executive Orders.

5. The Department of Agriculture's Land Use Committee, created under the provisions of Secretary's Memorandum No. 1807, Revised, will provide interagency leadership for bringing the Department into compliance with the spirit and intent of Executive Orders 11988 and 11990.

6. The Office of Environmental Quality Activites will monitor actions and progress of the Department in complying with Executive Orders 11988 and 11990.

Bob Bergland,

Secretary of Agriculture.

BILLING CODE 3410-07-M

Exhibit B

Form FmHA 1940-20 Request For Environmental Information

Item 1a. Has a Federal, State, or Local Environmental Impact Statement or Analysis been prepared for this project?

☐ Yes ☐ No ☐ Copy attached as EXHIBIT I -A

b. If "No," provide the information requested in Instructions as EXHIBIT I.

☐ *EXHIBIT I* *attached*

Item 2. The State Historic Preservation Officer (SHPO) has been provided a detailed project description and has been requested to submit comments to the appropriate FmHA Office. ☐ Yes ☐ No

Date description submitted to SHPO _____

Item 3. Are any of the following land uses or environmental resources either to be affected by the proposal or located within or adjacent to the project site(s)? *Check appropriate box for every item of the following checklist.*

	YES	NO	UNKNOWN
1. Industrial	☐	☐	☐
2. Commercial	☐	☐	☐
3. Residential	☐	☐	☐
4. Agricultural	☐	☐	☐
5. Grazing	☐	☐	☐
6. Mining, Quarrying	☐	☐	☐
7. Forests	☐	☐	☐
8. Recreational	☐	☐	☐
9. Transportation	☐	☐	☐
10. Parks	☐	☐	☐
11. Hospitals	☐	☐	☐
12. Schools	☐	☐	☐
13. Open spaces	☐	☐	☐
14. Aquifer Recharge Area	☐	☐	☐
15. Steep Slopes	☐	☐	☐
16. Wildlife Refuge	☐	☐	☐
17. Shoreline	☐	☐	☐
18. Beaches	☐	☐	☐
19. Dunes	☐	☐	☐
20. Estuary	☐	☐	☐
21. Wetlands	☐	☐	☐
22. Floodplain	☐	☐	☐
23. Wilderness *(designated or proposed under the Wilderness Act)*	☐	☐	☐
24. Wild or scenic river *(proposed or designated under the Wild and Scenic Rivers Act)*	☐	☐	☐
25. Historical, Archeological Sites *(Listed on the National Register of Historic Places or which may be eligible for listing)*	☐	☐	☐
26. Critical Habitats endangered/threatened species	☐	☐	☐
27. Wildlife	☐	☐	☐
28. Air Quality	☐	☐	☐
29. Solid Waste Management	☐	☐	☐
30. Energy Supplies	☐	☐	☐

Item 4. Are any facilities under your ownership, lease, or supervision to be utilized in the accomplishment of this project, either listed or under consideration for listing on the Environmental Protection Agency's List of Violating Facilities?

☐ Yes ☐ No

Date: _____ Signed: _____

Applicant

_____

Title

Perjury warning in Title 18 U.S.C. to be added

BILLING CODE 3410-07-C

Instructions

Federal Agencies are required by law to independently assess the expected environmental impacts associated with proposed Federal actions. It is extremely important that the information provided be in sufficient detail to permit FmHA to perform its evaluation. Failure to provide sufficient data will delay agency review and a decision on the processing of your application.

This information request is designed to obtain an understanding of the area's present environmental condition and the project's elements that will affect the environment. Should you believe that an item does not need to be addressed for your project, consult with the FmHA office from which you received this Form before responding. In all cases when it is believed that an item is not applicable, explain the reasons for this belief.

It is important to understand the comprehensive nature of the information requested. Information must be provided for (a) the site(s) where the project facilities will be constructed and the surrounding areas to be directly and indirectly affected by its operation and (b) the areas affected by any primary beneficiaries of the project. The amount of detail should be commensurate with the complexity and size of the project, and the magnitude of the expected impact. Some examples:

A small community center project may not require detailed information on air emissions, meteorological conditions and solid waste management.

A water resource, industrial development, or housing development project will require detailed information.

Item 1a—Compare the Environmental Impact Statement or Analysis that was previously prepared with the information requested in the instructions for Item 1b below to be sure that every point in the information request is covered in the Environmental Impact Statement or Analysis. If any of the requested information is not covered, attach to the Environmental Impact Statement or Analysis a supplemental document that corrects any deficiencies or omissions.

Item 1b—Provide responses to the following items in the order listed and attach as *exhibit I* (In order to understand the full scope of the land uses and environmental factors that need to be considered in responding to these items, it may be helpful to complete Item 3 of the Form before completing these narrative responses).

(1) *Primary Beneficiaries.*—Identify any existing businesses or major developments that will benefit from the proposal, and those which will expand or locate in the area because of the project. These businesses or major developments hereafter will be referred to as primary beneficiaries.

(2) *Area Description.*—(a) Describe the size, terrain, and present land uses as well as the adjacent land uses of the areas to be affected. These areas include the site(s) of construction or project activities, adjacent areas, and areas affected by the primary beneficiaries.

(b) For each box checked "Yes" in item 3, describe the nature of the effect on the resource. If one or more of boxes 17 through 21 is checked "Yes" or "Unknown," contact FmHA for instructions relating to the requirements imposed by the Floodplain Management and Wetland Protection Executive Orders.

(c) Attach as *Exhibit II* the following: (1) a U.S. Geological Survey "15 minute" ("7½ minute" if available) topographic map which clearly delineates the area and the location of the project elements; (2) the Department of Housing and Urban Development's floodplain map(s) for the project area; (3) site photos; and (4) if available, an aerial photograph of the site. If a floodplain map is not available, contact FmHA for additional instructions relating to the requirements imposed by the Floodplain Management Executive Order.

(3) *Air Quality.*—(a) Provide available air quality data from the monitoring station(s) either within the project area or, if none exist, nearest the project area.

(b) Indicate the types and quantities of air emissions to be produced by the project facilities and its primary beneficiaries. If odors will occur, indicate who will be affected.

(c) Indicate if topographical or meteorological conditions hinder the dispersal of air emissions.

(d) Indicate the measures to be taken to control air emissions.

(4) *Water Quality.*—(a) Provide available data on the water quality of surface or underground water in or near the project area.

(b) Indicate the source, quality, and available supply of raw water and the amount of water which the project is designed to utilize.

(c) Describe all of the effluents or discharges associated with the project facilities and its primary beneficiaries. Indicate the expected composition and quantities of these discharges prior to any treatment processes that they undergo and also prior to their release into the environment.

(d) Describe any treatment systems which will be used for these effluents and indicate their capacities and their adequacy in terms of the degree and type of treatment provided. Indicate all discharges which will not be treated. Describe the receiving waters and their uses (e.g., recreational) for any sources of treated and untreated discharge.

(e) If the treatment systems are or will be inadequate or overloaded, describe the steps being taken for necessary improvements and their completion dates.

(f) Describe how surface runoff will be handled if not discussed in (d) above.

(5) *Solid Waste Management.*—(a) Indicate the types and quantities of solid wastes to be produced by the project facilities and its primary beneficiaries.

(b) Describe the methods for disposing of these solid wastes plus the useful life of such methods.

(c) Indicate if recycling or resource recovery programs are or will be used.

(6) *Transportation.*—(a) Briefly describe the available transportation facilities serving the project area.

(b) Describe any new transportation patterns which will arise because of the project.

(c) Indicate if any land uses, such as residential, hospitals, schools or recreational, will be affected by these new patterns.

(d) Indicate if any existing capacities of these transportation facilities will be exceeded. If so, indicate the increased loads which the project will place upon these facilities, particularly in terms of car and truck traffic.

(7) *Noise.*—(a) Indicate the major sources of noise associated with the project facilities and its primary beneficiaries.

(b) Indicate the land uses to be affected by this noise.

(8) *Historic/Archeological Properties.*—(a) Identify any known historic/archeological resources within the project area that are either listed on the National Register of Historic Places or considered to be of local and state significance and perhaps eligible for listing in the National Register.

(b) Attach as *EXHIBIT III* any historical/archeological survey that has been conducted for the project area.

(9) *Wildlife and Endangered Species.*—(a) Identify wildlife resources located in the project area or its immediate vicinity.

(b) Indicate whether any endangered or threatened species have been identified in the project area or its immediate vicinity.

(10) *Energy.*—(a) Describe the energy supplies available to the project facilities and the primary beneficiaries.

(b) Indicate what portion of the remaining capacities of these supplies will be utilized.

(11) *Construction.*—Describe the methods which will be employed to reduced adverse impacts from construction, such as noise, soil erosion and siltation.

(12) *Toxic Substances.*—(a) Describe any toxic, hazardous, or radioactive substances which will be utilized or produced by the project facilities and its primary beneficiaries.

(b) Describe the manner in which these substances will be stored, used, and disposed.

(13) *Public Reaction.*—(a) Describe any objections which have been made to the project.

(b) If a public hearing has been held, attach a copy of the transcript as *EXHIBIT IV.* If not, certify that a hearing was not held.

(c) Indicate any other evidence of the community's awareness of the project such as through newspaper articles or public notification.

(14) *Alternatives to the Proposed Project.*—Provide a description of any of the following types of alternatives which were considered:

(a) Alternative locations.

(b) Alternative designs.

(c) Alternative projects having similar benefits.

(15) *Mitigation Measures.*—Describe any measures which will be taken to avoid or mitigate any adverse environmental impacts associated with the project.

(16) *Permits.*—(a) Identify any permits of an environmental nature which are needed for the project.

(b) Indicate the status of obtaining each such permit and attach as *EXHIBIT V* any that have been received.

(17) *Other Federal Actions.*—Identify other federal programs or actions which are either

related to this project or located in the same geographic area and for which you are filling an application, have recently received approval, or have in the planning stages.

Item 2—Applicants are required to provide the State Historic Preservation Officer (SHPO) with (a) a narrative description of the project's elements and its location, (b) a map of the area surrounding the project which identifies the project site, adjacent streets and other identifiable objects, (c) line drawings or sketches of the project and (d) photographs of the affected properties if building demolition or renovation is involved. This material must be submitted to the SHPO no later than submission of this Form to FmHA. Additionally, the SHPO must be requested to submit comments on the proposed project to the FmHA office processing your application.

Item 3—Self-explanatory.

Item 4—Self-explanatory.

Timing of FmHA Environmental Impact Review Process

Item I—Whenever a pre-application is either filed or required under the following programs, completion of the environmental impact review process shall be required prior to the authorization of an application.

Business and Industry Guaranteed and Insured Loans
Multi-Family Housing Programs
Water and Waste Disposal Loan and Grant Program
Community Facilities Loan Program
Industrial Development Grant Program
Watershed Loan Program
Resource, Conservation and Development Loan Program
Financial Assistance for Energy Impact Areas (excluding the award of planning funds)
Biomass Energy and Alcohol Fuels Loans and Loan Guarantees Program

Item II—For the following programs and actions, completion of the environmental impact review process shall be required prior to the application being considered complete.

Farm Programs
Single Family Housing Financial Assistance
Request for Subdivision Feasibility Analysis

Environmental Assessment For Class I Actions

1. Description:
a. Name of Project:
b. Project Number:
c. Location:
2. Protected Resources:

The following land uses or environmental resources will either be affected by the proposal or are located within the project site (Check appropriate box for every item of the following checklist. If more than one item is checked "yes" the environmental assessment format for a Class II action must be completed. The reviewer should not initiate the Assessment for a Class I action when it is obvious that the assessment format for a Class II action will be required).

a. Wetlands	___	___
b. Floodplains	___	___
c. Wilderness (designated or proposed under the Wilderness Act)	___	___
d. Wild or Scenic River (proposed or designated under the Wild and Scenic Rivers Act)	___	___
e. Historical, Archeological Sites (Listed on the National Register of Historic Places or which may be eligible for listing)	___	___
f. Critical Habitats endangered/threatened species	___	___
g. Important Farmlands	___	___
h. Important Forestlands	___	___
i. Prime Rangeland	___	___

For an item checked "yes", I have attached as Exhibit 1 both the necessary documentation to demonstrate compliance with the Agency's requirements for the protection of the resource and a discussion setting forth the reasons why the potential impact on the resource is not considered to be significant. If item e. is checked "no", the results of the consultation process with the State Historic Preservation Officer is also attached.

3. General Impacts

I have reviewed the environmental data submitted, dated and signed by the applicant as well as any previously completed environmental impact analysis and conclude the following:

(a) The project, the project area, and the primary beneficiaries are adequately identified;

(b) No incompatible land uses will be created nor direct impacts to parks, beaches, dunes, barrier islands, or important wildlife habitats or recreational areas; and

———Air Quality
———Water Quality
———Solid Waste Management
———Transportation
———Noise
———Wildlife
———Energy
———Construction Impacts
———Secondary Impacts

An analysis of an item which cannot be checked, therefore having a potential for more than minimal impacts, is attached as Exhibit——. (If more than one item is unchecked, the environmental assessment format for a Class II action must be completed).

4. Clearinghouse Comments

☐ yes ☐ no This project is subject to review by State and Regional Clearinghouses.

If yes is checked, complete (a) or (b) or (c) (If negative environmental comments have been received, the environmental assessment format for a Class II action must be completed).

a.———The review period has expired and no comments were received.

b.———No negative comments of an environmental nature were received and the review period is complete, with the comments attached.

c.———Negative comments of an environmental nature have been received.

5. Controversy

☐ yes ☐ no This action is controversial for environmental reasons or is the subject of an environmental complaint.

If yes, check one of the following:

———The action is the subject of isolated environmental complaints or questions have been raised which focus on a single impact. Attached as Exhibit —— is an analysis of the complaint or questions, and no further analysis is considered necessary.

———The environmental assessment format for a Class II action is required to analyze the relevance of the issues raised.

6. Cumulative Impacts

☐ yes ☐ no The cumulative impacts of this action nd other FmHA actions, other federal actions, or related non-federal actions exceed the criteria for a Class I action; or the action represents a phase or segment of a larger project, the latter which exceeds the criteria for a Class I action. (If yes, the environmental assessment format for a Class II action must be prepared).

7. Need For The Project And Alternatives To It

Attached as Exhibit —— is a brief statement of FmHA's position regarding the need for the project. Also, briefly discussed are (a) the alternatives which have been considered by the applicant and FmHA and (b) the environmental impacts of these alternatives. Alternatives include alternative locations, alternative designs, alternative projects having similar benefits, and no action.

8. Measures to Avoid or Mitigate Adverse Environmental Impacts

☐ yes ☐ no Mitigation measures are required. Attached as Exhibit —— is a description of the site or design changes that the applicant has agreed to make as well as the mitigation measures that will be placed as special conditions within the offer of financial assistance or subdivision approval.

9. Environmental Determinations

The following recommendations shall be completed and the environmental reviewer shall sign the assessment in the space provided below.

a. Based on an examination and review of the foregoing information and such supplemental information attached hereto, I recommend that the approving official determine that this project:

( ) will have a significant effect on the quality of the human environment and an Environmental Impact Statement must be prepared;

( ) will not have a significant effect on the quality of the human environment,

( ) will require further analysis through completion of the assessment format for a Class II action.

b. I recommend that the approving official make the following compliance determinations for the below listed environmental requirements.

Not in compliance	In compliance	
___	___	Clean Air Act.
___	___	Federal Water Pollution Control Act.

Not in compliance	In compliance	
——	——	Safe Drinking Water Act—Section 1424(e).
——	——	Endangered Species Act.
——	——	Coastal Zone Management Act-Section 307 (c) (1) and (2).
——	——	Wild and Scenic Rivers Act.
——	——	Fish and Wildlife Coordination Act.
——	——	National Historic Preservation Act.
——	——	Archeological and Historic Preservation Act.
——	——	Executive Order 11988, Floodplain Management.
——	——	Executive Order 11990, Protection of Wetlands.
——	——	Secretary's Memorandum No. 1827, Revised, Statement on Land Use.
——	——	State Office Natural Resource Management Policy.

c. I have reviewed and considered the types and degrees of adverse environmental impacts identified by this assessment. I have also analyzed the proposal for its consistency with FmHA environmental policies, particularly those related to land use, and have considered the potential benefits of the proposal. Based upon a consideration and balancing of these factors, I recommend from an environmental standpoint that the project.

——— be approved.

——— not be approved because of the attached reasons (see Exhibit ——).

Date ———

Signature of Prepared [1] ———

Title ———

Environmental Assessment for Class II Actions

In completing this assessment, it is important to understand the comprehensive nature of the impacts which must be analyzed. Consideration must be given to all potential impacts associated with the construction of the project, its operation and maintenance, the operation of all identified primary beneficiaries, and the attainment of the project's major objectives, whether they be an increased housing stock, community improvement, economic development, or greater agricultural productivity. This last category, the attainment of the project's major objectives, often induces or supports changes in population densities, land uses, community services, transportation systems and resource consumption. The scope of the assessment is broadened even further when there are related activities involved. The impacts of these activities must also be assessed.

The State Environmental Officer or the environmental reviewer, when the assessment is completed at the District or County Office level, shall consult with appropriate experts from federal, state, and local agencies, universities, and other organizations or groups whose views could be helpful in the assessment of potential impacts. In so doing, each discussion which is utilized in reaching a conclusion with respect to the degree of an impact shall be summarized in the assessment as accurately as possible and include the name, title, phone number, and organization of the individual contacted, plus the date of contact. Related correspondence should be attached to the assessment.

The FmHA environmental assessment shall be prepared in the following format. It shall address the listed items and questions and contain as attachments the indicated descriptive materials, as well as the environmental information submitted by the applicant, Form FmHA 1940-20.

The assessment has been designed to cover the wide variety of projects and environments with which the Agency deals. Consequently, not every issue or potential impact raised in the assessment may be relevant to each project. The purpose of the format is to give the preparer an understanding of a standard range of impacts, environmental factors, and issues which may be encountered. In preparing an assessment, each topic heading identified by a roman numeral and each environmental factor listed under topic heading IV, such as air quality for example, must be addressed.

The amount of analysis and material that must be provided will depend upon the type and size of the project, the environment in which it is located and the range and complexity of the potential impacts. The amount of analysis and detail provided, therefore, must be commensurate with the magnitude of the expected impact. The analysis of each environmental factor (i.e. water quality) must be taken to the point that a conclusion can be reached and supported concerning the degree of the expected impact with respect to that factor.

For example, a small community center may not require detailed information on air emissions or solid waste management, but an industrial facility would. Similarly, an irrigation project for a farming operation would concentrate on such factors as water quality and fish and wildlife, rather than land use changes. The extension of a water or sewer system or the approval of a subdivision on the other hand, would have to give close attention to all factors, with potential land use changes being a particularly important one.

I. Project Description and Need

Identify the name, project number, location, and specific elements of the project along with their sizes, and, when applicable, their design capacities. Indicate the purpose of the project, FmHA's position regarding the need for it, and the extent or area of land to be considered as the project site.

II. Primary Beneficiaries and Related Activities

Identify any existing businesses or major developments that will benefit from the project and those which will expand or locate in the area because of the project. Specify by name, product, service, and operations involved.

Identify any related activities which are defined as interdependent parts of a FmHA action. Such undertakings are considered interdependent parts whenever they either make possible or support the FmHA action or are themselves induced or supported by the FmHA action or another related activity. These activities may have been completed in the very recent past and are now operational or they may reasonably be expected to be accomplished in the near future. Related activities may or may not be federally permitted or assisted. When they are, identify the invovled federal agency(s).

In completing the remainder of the assessment, it must be remembered that the impacts to be addressed are those which stem from the project, the primary beneficiaries, and the related activities.

III. Description of Project Area.

Describe the project site and its present use. Describe the surrounding land uses; indicate the directions and distances involved. The extent of the surrounding land to be considered depends on the extent of the impacts of the project, its related activities, and the primary beneficiaries. Unique or sensitive areas must be pointed out. These include residential, schools, hospitals, recreational, historical sites, beaches, lakes, rivers, parks, floodplains, wetlands, dunes, estuaries, barrier islands, unstable soils, steep slopes, aquifer recharge areas, important farmlands and forestlands, prime rangelands, endangered species habitats, or other delicate or rare ecosystems.

Attach adequate location maps of the project area, as well as (1) a U.S. Geological Survey "15 minute" ("7½ minute" if available), topographic map which clearly delineates the area and the location of the project elements, (2) the Department of Housing and Urban Development's floodplain map(s) for the project area, (3) site photos, and (4) if available, an aerial photograph of the site. When necessary for descriptive purposes or environmental analysis, include land use maps or other graphic information. All graphic materials shall be of high quality resolution.

IV. Environmental Impact

1. Air Quality—Discuss, in terms of the amounts and types of emissions to be produced all aspects of the project including beneficiaries' operations and known indirect effects (such as increased motor vehicle traffic) which will affect air quality. Indicate the existing air quality in the area. Indicate if topographical or meteorological conditions hinder or affect the dispersal of air emissions. Evaluate the impact on air quality given the types and amounts of projected emissions, the existing air quality, and topgraphical and meteorological conditions. Discuss the project's consistency with the state's air quality implementation plan for the area, the classification of the air quality control region within which the project is located, and the status of compliance with air quality standards within that region. Cite any contacts with appropriate experts and agencies which must issue necessary permits.

2. Water Quality—Discuss in terms of amounts and types of effluents all aspects of the project, including primary beneficiaries' operations and known indirect effects which will affect water quality. Indicate the existing water quality of surface and/or underground water to be affected. Evaluate the impacts of

[1] See Section 1940.316 for listing of officials ponsible for preparing assessment.

the project on this existing water quality. Indicate if an aquifer recharge area is to be adversely affected. If the project lies within or will affect a sole source aquifer recharge area as designated by EPA, contact the appropriate EPA regional office to determine if its review is necessary. If it is, attach the results of its review.

Indicate the source and available supply of raw water and the extent to which the additional demand will affect the raw water supply. Describe the wastewater treatment system(s) to be used and indicate their capacity and their adequacy in terms of the degree of treatment provided. Discuss the characteristics and uses of the receiving waters for any sources of discharge. If the treatment systems are or will be inadequate or overloaded, describe the steps being taken for necessary improvements and their completion dates. Compare such dates to the completion date of the FmHA project. Analyze the impacts on the receiving water during any estimated period of inadequate treatment.

Discuss the project's consistency with the water quality planning for the area, such as EPA's Section 208 areawide waste treatment management plan. Describe how surface runoff is to be handled and the effect of erosion on streams.

Evaluate the extent to which the project may create shortages for or otherwise adversely affect the withdrawal capabilities of other present users of the raw water supply, particularly in terms of possible human health, safety, or welfare problems.

For projects utilizing a groundwater supply, evaluate the potential for the project to exceed the safe pumping rate for the aquifer to the extent that it would (1) adversely affect the pumping capability of present users, (2) increase the likelihood of brackish or saltwater intrusion, thereby decreasing water quality, or (3) substantially increase surface subsidence risks.

For projects utilizing a surface water supply, evaluate the potential for the project to (1) reduce flows below the minimum required for the protection of fish and wildlife or (2) reduce water quality standards below those established for the stream classification at the point of withdrawal or the adjacent downstream section.

Cite contacts with appropriate experts and agencies that must issue necessary permits.

3. Solid Waste Management—Indicate all aspects of the project including primary beneficiaries' operations, and known indirect effects which will necessitate the disposal of solid wastes. Indicate the kinds and expected quantities of solid wastes involved and the disposal techniques to be used. Evaluate the adequacy of these techniques especially in relationship to air and water quality. Indicate if recycling or resource recovery programs are or will be used. Cite any contacts with appropriate experts and agencies that must issue necessary permits.

4. Land Use—Given the description of land uses as previously indicated, evaluate (a) the effect of changing the land use of the project site and (b) how this change in land use will affect the surrounding land uses and those within the project's area of environmental impact. Describe the existing land use plan and zoning restrictions for the project area. Evaluate the consistency of the project and its impacts with these plans.

5. Transportation—Describe available facilities such as highways and rail. Discuss whether the project will result in an increase in motor vehicle traffic and the existing roads' ability to safely accommodate this increase. Indicate if additional traffic control devices are to be installed. Describe new traffic patterns which will arise because of the project. Discuss how these new traffic patterns will affect the land uses described above, especially residential, hospitals, schools, and recreational. Describe the consistency of the project's transportation impacts with the transportation plans for the area and any air quality control plans. Cite any contact with appropriate experts.

6. Natural Environment—Indicate all aspects of the project including construction, beneficiaries' operations, and known indirect effects which will affect the natural environment including wildlife, their habitats, and unique natural features. Cite contacts with appropriate experts.

7. Human Population—Indicate the number of people to be relocated and arrangements being made for this relocation. Discuss how impacts resulting from the project such as changes in land use, transportation changes, air emissions, noise, odor, etc. will affect nearby residents and their lifestyles or users of the project area and surrounding areas. Cite contacts with appropriate experts.

8. Construction—Indicate the potential effects of construction of the project on air quality, water quality, noise levels, solid waste disposal, soil erosion and siltation. Describe the measures that will be employed to limit adverse effects. Give particular consideration to erosion, stream siltation, and clearing operations.

9. Energy Impacts—Indicate the project's and its primary beneficiaries' effects on the area's existing energy supplies. This discussion should address not only the direct energy utilization, but any major indirect utilization resulting from the siting of the project. Describe the availability of these supplies to the project site. Discuss whether the project will utilize a large share of the remaining capacity of an energy supply or will create a shortage of such supply. Discuss any steps to be taken to conserve energy.

10. Discuss any of the following areas which may be relevant: noise, vibrations, safety, seismic conditions, fire prone locations, radiation, and aesthetic considerations. Cite any discussion with appropriate experts.

V. Coastal Zone Management Act

Indicate if the project is within or will impact a coastal area defined as such by the state's approved Coastal Zone Management Program. If so, consult with the state agency responsible for the Program to determine the project's consistency with it. The results of this coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings (Item XVII below.)

VI. Compliance With Advisory Council on Historic Preservation's Regulations.

In this section, the environmental reviewer shall detail the steps taken to comply with the above regulations as specified in FmHA Instruction 1901-F. First, indicate that the National Register of Historic Places, including its monthly supplements, has been reviewed and whether there are any listed properties located within the area to be affected by the project. Second, indicate the steps taken such as historical-archeological surveys to determine if there are any properties eligible for listing located within the affected area. Summarize the results of the consultation with the State Historic Preservation Officer (SHPO) and attach appropriate documentation of the SHPO's views. Discuss the views of any other experts contacted. Based upon the above review process and the views of the SHPO, state whether or not an eligible or listed property will be affected.

If there will be an effect, discuss all of the steps and protective measures taken to complete the Advisory Council's regulations. Describe the affected property and the nature of the effect. Attach to the assessment the results of the coordination process with the Advisory Council on Historic Preservation.

VII. Compliance With the Wild and Scenic Rivers Act

Indicate whether the project will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the System. This analysis shall be conducted through discussions with the appropriate regional office of the Hertiage Conservation and Recreation Service or the Forest Service when its lands are involved, as well as the appropriate state agencies having implementation authorities. See Section 1940.304(f) for specific implementation instructions for this Act. A summary of discussions held or any required formal coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings (Item XVII below).

VIII. Compliance With the Endangered Species Act

Indicate whether the project will adversely affect a "critical habitat" for an endangered or threatened species or jeopardize the continued existence of an endangered or threatened species. This analysis shall be conducted in consultation with the Fish and Wildlife Service and the National Marine Fisheries Service, when appropriate. See Section 1940.304(e) for specific implementation instructions for this Act.

The results of any required coordination shall be included in the assessment and considered in completing the environmental impact determination.

IX. State Environmental Policy Act

Indicate if the proposed project is subject to a state environmental policy act or similar regulation. Summarize the results of compliance with these requirements and attach available documentation. (See Section 1940.328 for further guidance.)

X. Clearinghouse Comments

Attach the comments of the State and Regional Clearinghouses (if this review process is required for the project) and respond to all comments that deal with the subject matters discussed in this assessment format or are otherwise of an environmental nature.

XI. Environmental Analysis of Participating Federal Agency

Indicate if another federal agency is participating in the project either through the provision of additional funds, a companion project, or a permit review authority. Summarize the results of the involved agency's environmental impact analysis and attach available documentation. (See Section 1940.318(d) for further guidance.)

XII. Reaction to Project

Discuss any negative comments or public views raised about the project and the consideration given to these comments. Indicate whether a public hearing or public information meeting has been held either by the applicant or FmHA to include a summary of the results and any objections raised. Indicate any other examples of the community's awareness of the project, such as newspaper articles or public notifications.

XIII. Cumulative Impacts

Summarize the cumulative impacts of this project and the related activities. Give particular attention to land use changes and air and water quality impacts. Summarize the results of the environmental impact analysis done for any of these related activities and/or your discussion with the sponsoring agencies. Attach available documentation of the analysis.

XIII. Adverse Impact

Summarize the potential adverse impacts of the proposal as pointed out in the above analysis.

XIIV. Alternatives

Discuss the feasibility of alternatives to the project and their environmental impacts. These alternatives should include (a) alternative locations, (b) alternative designs, (c) alternative projects having similar benefits, and (d) no project.

XV. Mitigation Measures

Describe any measures which will be taken or required by FmHA to avoid or mitigate the identified adverse impacts. Such measures shall be included as special requirements or provisions to the offer of financial assistance.

XVI. Consistency With FmHA Environmental Policies

For those which are applicable, discuss the project's consistencies and inconsistencies with the Agency's environmental policies regarding important farmlands and forestlands, prime rangelands, wetlands, barrier islands, floodplains, community planning criteria, reuse of the built environment, scenic resources, energy conservation, and water conservation. See Sections 1940.303 and .304 for a discussion of these policies.

XVII. Environmental Determinations

The following recommendations shall be completed:

a. Based on an examination and review of the foregoing information and such supplemental information attached hereto, I recommend that the approving official determining that this project will have ( ) a significant effect on the quality of the human environment and an Environmental Impact Statement must be prepared. Will not have ( ) a significant effect on the quality of the human environment.

b. I recommend that the approving official make the following compliance determinations for the below listed environmental requirements.

Not in compliance	In compliance	
____	____	Clean Air Act.
____	____	Federal Water Pollution Control Act.
____	____	Safe Drinking Water Act—Section 1424(e).
____	____	Endangered Species Act.
____	____	Coastal Zone Management Act—Section 307(c) (1) and (2).
____	____	Wild and Scenic Rivers Act.
____	____	Fish and Wildlife Coordination Act.
____	____	National Historic Preservation Act.
____	____	Archeological and Historic Preservation Act.
____	____	Executive Order 11988, Floodplain Management.
____	____	Executive Order 11990, Protection of Wetlands.
____	____	Secretary's Memorandum No. 1827, Revised, Statement on Land Use.
____	____	State Office National Resource Management.

c. I have reviewed and considered the types and degrees of adverse environmental impacts identified by this assessment. I have also analyzed the proposal for its consistency with FmHA environmental policies, particularly those related to land use, and have considered the potential benefits of the proposal. Based upon a consideration and balancing of these factors, I recommend from an environmental standpoint that the project.

____ be approved.

____ not be approved because of the attached reasons.

Date _____

Signature of Preparer* _____

Title _____

Form FmHA 1940–22

Exhibit F.—Environmental Checklist For Categorical Exclusions

1. Description:
   a. Name of Project:
   b. Project Number:
   c. Location:
2. Protected Resources

The following land use or environmental resources will either be affected by the proposal or are located within the project site. (Check appropriate box for every item of the following checklist. If one item is checked "yes" the environmental assessment for a Class I action must be completed). For phases of a project or a segmented project, the entire project must be considered.

	Yes	No
a. Wetlands	____	____
b. Floodplains	____	____
c. Wilderness (designated or proposed under the Wilderness Act).	____	____
d. Wild or Scenic River (proposed or designated under the Wild and Scenic River Act).	____	____
e. Historical, Archeological Sites (Listed on the National Register of Historic Places or which may be eligible for listing).	____	____
f. Critical Habitats endangered/threatened species.	____	____
g. Important Farmlands	____	____
h. Important Forestlands	____	____
i. Prime Rangeland	____	____
j. Approved Coastal Zone Management Area.	____	____

3. Finding

This proposal meets, in terms of its size and components, the critera for a categorical exclusion as difined in Sections 940.310 and 1940.317. As indicated in item 2 above, the proposal does not affect any important environmental resources that would subject it to disqualification as a categorical exclusion. Finally, the proposal is neither a phase or segment of a project that when viewed in its entirely would not meet the requirements of a categorical exclusion per Section 1940.317(d).

Date _____

Signature of Preparer* _____

Title _____

FmHA Instruction 1940–G

Exhibit G

Subject: Finding of No Significant Environmental Impact and Necessary Environmental Findings for (insert name, location and any identification number of project)

To: Project File

The attached environmental assessment has been completed for the subject proposal by the FmHA environmental reviewer. After reviewing the assessment and the supporting materials attached to it, I find that the subject proposal will not significantly affect the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

I also concur with the environmental findings made by the reviewer with respect to the environmental laws and policies referenced in the assessment.

Insert signature and title of approving official

[FR Doc. 81-663 Filed 1-9-81; 8:45 am]

BILLING CODE 3410-07-M

* See Section 1940.316 for listing of officials responsible for preparing assessment.

*See Section 1940.316 for listing of officials responsible for preparing environmental reviews.

Federal Register

Monday
January 12, 1981

Part IV

Environmental Protection Agency

Coil Coating Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 465

[WH-FRL 1671-6]

Coil Coating Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA proposes regulations to limit effluent discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from facilities engaged in coil coating. The purpose of this proposal is to provide effluent limitations guidelines for "best practicable technology," "best available technology," and "best conventional technology," and to establish new source performance standards and pretreatment standards under the Clean Water Act. After considering comments received in response to this proposal, EPA will promulgate a final rule.

DATES: Comments on this proposal must be submitted on or before March 13, 1981.

ADDRESS: Send comments to: Mr. Ernst P. Hall, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, Attention: EGD Docket Clerk, Proposed Coil Coating Rules (WH-552). The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (EPA Library Rear) PM-213. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information and copies of technical documents may be obtained from Mr. Ernst P. Hall, at the address listed above, or call (202) 426-2726. The economic analysis may be obtained from Ms. Renee Rico, Economic Analysis Staff (WH-586), Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460, or call (202) 755-2484.

SUPPLEMENTARY INFORMATION:

Overview

The Supplementary Information section of this preamble describes the legal authority and background, the technical and economic bases, and other aspects of the proposed regulations. That section also summarizes comments on a draft technical document circulated on September 20, 1979, and solicits comments on specific areas of interest. The abbreviations, acronyms, and other terms used in the Supplementary Information section are defined in Appendix A to this notice.

This proposed regulation is supported by three major documents available from EPA. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants.* EPA's technical conclusions are detailed in the *Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Coil Coating Point Source Category.* The Agency's economic analysis is found in *Economic Analysis of Proposed Effluent Standards and Limitations for the Coil Coating Industry.*

Organization of This Notice

I. Legal Authority
II. Background
A. The Clean Water Act
B. Prior EPA Regulations
C. Overview of the Industry
III. Scope of this Rulemaking and Summary of Methodology
IV. Data Gathering Efforts
V. Sampling and Analytical Program
VI. Industry Subcategorization
VII. Available Wastewater Control and Treatment Technology
A. Status of In-Place Technology
B. Control Technologies Considered
VIII. Best Practicable Technology (BPT) Effluent Limitations
IX. Best Available Technology (BAT) Effluent Limitations
X. New Source Performance Standards (NSPS)
XI. Pretreatment Standards for Existing Sources (PSES)
XII. Pretreatment Standards for New Sources (PSNS)
XIII. Best Conventional Technology (BCT) Effluent Limitations
XIV. Regulated Pollutants
XV. Pollutants and Subcategories Not Regulated
XVI. Monitoring Requirements
XVII. Costs, Effluent Reduction Benefits, and Economic Impacts
XVIII. Non-Water Quality Aspects of Pollution Control
XIX. Best Management Practices (BMPs)
XX. Upset and Bypass Provisions
XXI. Variances and Modifications
XXII. Relationship to NPDES Permits
XXIII. Summary of Public Participation
XXIV. Solicitation of Comments
XXV. Appendices:
A-Abbreviations, Acronyms and Other Terms Used in this Notice
B-Toxic Pollutants Considered for Specific Limitations
C-Toxic Pollutants Not Detected
D-Toxic Pollutants Detected Below the Nominal Quantification Limit
E-Toxic Pollutants Detected in Environmentally Insignificant Amounts

I. Legal Authority

The regulations described in this notice are proposed under authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 *et seq.*, as amended by the Clean Water Act of 1977, P.L. 95-217) (the "Act"). These regulations are also proposed in response to the Settlement Agreement in *Natural Resources Defense Council, Inc.*, v. *Train*, 8 ERC 2120 (D.D.C. 1976), modified March 9, 1979, 12 ERC 1833.

II. Background

A. The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a). By July 1, 1977, existing industrial dischargers were required to achieve "effluent limitations requiring the application of the best practical control technology currently available" ("BPT"), Section 301(b)(1)(A); and by July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of the best available technology economically achievable * * * which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" ("BAT"), Section 301(b)(2)(A). New industrial direct dischargers were required to comply with Section 306 new source performance standards ("NSPS"), based on best available demonstrated technology; and new and existing dischargers to publicly owned treatment works ("POTWs") were subject to pretreatment standards under Sections 307(b) and (c) of the Act. While the requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under Section 402 of the Act, pretreatment standards were made enforceable directly against dischargers to POTWs (indirect dischargers).

Although section 402(a)(1) of the 1972 Act authorized the setting of requirements for direct dischargers on a case-by-case basis, Congress intended that, for the most part, control requirements would be based on regulations promulgated by the Administrator of EPA. Section 304(b) of the Act required the Administrator to promulgate regulations providing guidelines for effluent limitations setting

forth the degree of effluent reduction attainable through the application of BPT and Bat. Moreover, Sections 304(c) and 306 of the Act required promulgation of regulations for NSPS, and Sections 304(f), 307(b), and 307(c) required promulgation of regulations for pretreatment standards. In addition to these regulations for designated industry categories, Section 307(a) of the Act required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants. Finally, Section 501(a) of the Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

The EPA was unable to promulgate many of these regulations by the dates contained in the Act. In 1976, EPA was sued by several environmental groups, and in settlement of this lawsuit EPA and the plaintiffs executed a "Settlement Agreement" which was approved by the Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgating for 21 major industries BAT effluent limitations guidelines, pretreatment standards, and new source performance standards for 65 "priority" pollutants and classes of pollutants. See *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), modified March 9, 1979.

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Although this law makes several important changes in the Federal water pollution control program, its most significant feature is its incorporation into the Act of several of the basic elements of the Settlement Agreement program for toxic pollution control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984 of effluent limitations requiring application of BAT for "toxic" pollutants, including the 65 "priority" pollutants and classes of pollutants which Congress declared "toxic" under Section 307(a) of the Act. Likewise, EPA's programs for new source performance standards and pretreatment standards are now aimed principally at toxic pollutant controls. Moreover, to strengthen the toxics control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" ("BMPs") to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

In keeping with it emphasis on toxic pollutants, the Clean Water Act of 1977 also revises the control program for non-toxic pollutants. Instead of BAT for "conventional" pollutants identified under Section 304(a)(4) (including biochemical oxygen demand, suspended solids, fecal coliform and pH), the new Section 301(b)(2)(E) requires achievement by July 1, 1984, of "effluent limitations requiring the application of the best conventional pollutant control technology" ("BCT"). The factors considered in assessing BCT for an industry include the costs of attaining a reduction in effluents and the effluent reduction benefits derived compared to the costs and effluent reduction benefits from the discharge from publicly owned treatment works (Section 304(b)(4)(B)). For non-toxic, nonconventional pollutants, Sections 301(b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment or July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of these proposed regulations is to provide effluent limitations guidelines for BPT, BAT and BCT, and to establish NSPS, pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS), under Sections 301, 304, 306, 307, and 501 of the Clean Water Act.

B. Prior EPA Regulations

EPA has not previously promulgated regulations for the coil coating point source category.

C. Overview of the Industry

The coil coating industry is not specifically included within any of the U.S. Department of Commerce Census Standard Industrial Classifications; however, it could possibly be considered as part of SIC 3479.

"Coil coating" is a term generally used to describe the combination of processing steps involved in converting a coil—a long thin strip of metal rolled into a coil—into a coil of painted metal ready for further industrial use. Three basis materials are commonly used for coil coating: steel, galvanized (steel), and aluminum. Additionally, there is some minor coating of other material such as brass, galvalum and coated steels. There are three major groups or standard process steps used in manufacturing coated coils: (1) cleaning to remove soil, oil, corrosion, and similar dirt; (2) chemical conversion coating in which a coating of chromate, phosphate or complex oxide materials is chemically formed in the surface of the metal; and (3) the application and drying of one or more coats of organic polymeric material such as paint.

Water is used throughout the coil coating processes. The cleaning processes for removing oil and dirt usually employ water-based alkaline cleaners, and acid pickling solutions are sometimes used to remove oxides and corrosion. Water is used to rinse the strip after it has been cleaned. Most of the chemical conversion coating processes are water based and water is used to rinse excess and spent solutions from the strip. After painting, the strip is baked in an oven to dry the paint and then chilled with water to prevent burning or charring of the organic coating. The characteristics of the wasterwater generated by coil coating may vary depending on the basis material and the process options selected for cleaning and chemical conversion coating.

The most important resulting pollutants or pollutant parameters are: (1) toxic pollutants—chromium, zinc, nickel, lead, copper, cyanide; (2) conventional pollutants—suspended solids, pH, and oil and grease, and (3) unconventional pollutants—iron, aluminum, phosphorous, and fluoride. Toxic organic pollutants were not found in large quantities. Because of the amount of toxic metals present, the sludges generated during wastewater treatment generally contain substantial amounts of toxic metals.

EPA estimates that there are more than 75 coil coating plants in the United States, operating over 125 coil coating lines. Sixty-five percent of the coil coating lines are located in six states: Alabama, California, Illinois, Michigan, Ohio, and Pennsylvania. The remaining plants are distributed geographically throughout the United States. Coil coating as a process originated in the mid-1930's and has shown substantial and rapid progress since that time. Because it is an efficient and low cost way of applying a high quality coating to sheet metal, its use is continuing to increase, and there appears to be a high probability of new and enlarged plants in both the merchant and captive segments of the industry.

III. Scope of This Rulemaking and Summary of Methodology

This proposed regulation is a part of a new chapter in water pollution control requirements. For most industries the 1973–1976 round of rulemaking emphasized the achievement of best practicable technology (BPT) by July 1, 1977. In general, that technology level represented the average of the best existing performances of well known

technologies for control of familiar (i.e., "classical") pollutants.

In this round of rulemaking EPA's emphasis is directed toward insuring the achievement by July 1, 1984, of the best available technology economically achievable (BAT) which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. In general, this technology level represents the very very best economically achievable performance in any industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a lengthy list of toxic substances.

In its 1977 legislation, Congress recognized that it was dealing with areas of scientific uncertainly when it declared the 65 "priority" pollutants and classes of pollutants "toxic" under Section 307(a) of the Act. The "priority" pollutants have been relatively unknown outside of the scientific community, and those engaged in wastewater sampling and control have had little experience dealing with these pollutants. Additionally, these pollutants ofter appear (and have toxic effects) at concentrations which severely tax current analytical techniques. Even though Congress was aware of the state-of-the-art difficulties and expense of "toxics" control and detection, it directed EPA to act quickly and decisively to detect, measure and regulate these substances.

In developing this regulation, EPA studied the coil coating category to determine whether differences in raw materials, final products, manufacturing processes, equipment, age and size of plants, water use, wastewater constituents, or other factors required the development of separate effluent limitations and standards for different segments (or subcategories) of the industry. This study included the identification of raw waste and treated effluent characteristics, including the sources and volume of water used, the processes employed, and the sources of pollutants and wastewaters. Such analysis enabled EPA to determine the presence and concentration of priority pollutants in wastewater discharges.

EPA also identified both actual and potential control and treatment technologies (including both in-plant and end-of-process technologies). The Agency analyzed both historical and newly generated data on the performance of these technologies, including the performance, operational limitations, and reliability. In addition, EPA considered the non-water quality environmental impacts of these technologies on air quality, solid waste generation, water scarcity, and energy requirements.

The Agency then estimated the costs of each control and treatment technology using a computer program developed using standard engineering cost analysis. EPA derived unit process costs for each of 58 plants using data and characteristics (production and flow) applied to each treatment process (i.e., hexavalent chromium reduction, metals precipitation, sedimentation, multi-media filtration, etc.). These unit process costs were added to yield total cost at each treatment level. After confirming the reasonableness of this methodology by comparing EPA cost estimates to treatment system costs supplied by the industry, the Agency evaluated the economic impacts of these costs.

On the basis of these factors, EPA identified various control and treatment technologies as BPT, BAT, BCT, NSPS, PSES and PSNS. The proposed regulation, however, does not require the installation of any particular technology. Rather, it requires achievement of effluent limiatations equivalent to those achieved by the proper operation of these or equivalent technologies.

Except for pH requirements, the effluent limitations for BPT, BAT, BCT and NSPS are expressed as mass limitations—a mass of pollutant per unit of production (mg/m^2). They were calculated by combining three figures: (1) treated effluent concentrations determined from analysis of control technology performance data; (2) wastewater flow for each subcategory; and (3) any relevant process or treatment variability factor (e.g., mean vs. maximum day). This basic calculation was performed for each regulated pollutant or pollutant parameter and for each subcategory of the industry.

Pretreatment standards—PSES and PSNS—are also expressed as mass limitations rather than concentration limits to assure achieving the benefits of quantification of pollutant reduction.

IV. Data Gathering Efforts

The data gathering program is described in brief summary in Section III and in substantial detail in Section V of the Development Document. At the start of the study, the National Coil Coaters Association was contacted and meetings were held with their technical committee and others to review the data collection program and gain from the experience and insight of the industry. A data collection portfolio (dcp) was developed to collect information about the industry and was mailed, under the authority of section 308, to each company known or believed to perform coil coating in the United States. The list of companies was developed from Dunn & Bradstreet listings, from a previous unpublished study done for the Agency, and from discussions with the industry association. Data were received from 73 plants representing about 125 coil coating lines. In addition to previous studies and the data collection effort for this study, supplemental data were obtained from NPDES permit files and engineering studies on treatment technologies used in coil coating and other categories with similar wastewater characteristics. The data gathering effort solicited all known sources of data and all available pertinent data were used in developing these limitations.

V. Sampling and Analytical Program

As Congress recognized in enacting the Clean Water Act of 1977, the state-of-the-art ability to monitor and detect toxic pollutants is limited. Most of the toxic pollutants were relatively unknown until a few years ago, and only on rare occasions had these unusual pollutants been regulated. Nor had industry monitored or developed methods to monitor most of these pollutants. As a result, analytical methods for many of the toxic pollutants under section 304(h) of the Act are not commonly available and the toxic organics can be monitored only using state-of-the-art analytical procedures.

Faced with these problems, EPA developed a sampling and analytical protocol. This protocol is set forth in "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants" revised April, 1977. Methods promulgated under section 304(h) (40 CFR Part 136) were available and were used to analyze most toxic metals, pesticides, cyanides, and phenols. Thus the new and relatively untried chemical analysis methods applied largely to toxic organics. At the outset of the study EPA expected that the pollutants of greatest concern in coil coating would be toxic metals rather than organics. This has been borne out by the findings of the study.

The sampling and analysis program was carried out in two stages. First, screen sampling was performed at one plant in each subcategory, and this sample was analyzed (screened) for the presence and magnitude of each of the 129 specific toxic pollutants plus conventional and selected non-conventional pollutants. Second, additional (or verification) samples at the same and other plants were

analyzed to determine more precisely the magnitude, presence and process source of pollutants determined to be present or believed to be present on the basis of screening analysis and engineering evaluations. Three plants were analyzed for screening and a total of 13 plants were sampled and analyzed during verification. Full details of the sampling and analysis program and the water and wastewater data derived from that program are presented in Section V of the Development Document.

Analysis for the toxic pollutants is both expensive and time consuming, costing between $650 and $1,000 per sample for a complete analysis. The cost in dollars and time tended to limit the amount of sampling and chemical analysis performed. Although EPA fully believes that the available data support the limitations proposed, the Agency would, of course, have preferred a larger data base and will continue to seek additional data. EPA will periodically review these limitations as required by the Act and make any revisions supported by new data.

VI. Industry Subcategorization

In developing this regulation, it was necessary to determine whether different effluent limitations and standards were appropriate for different segments (subcategories) of the industry. The major factors considered in identifying subcategories included: waste characteristics, basis material used, manufacturing processes, products manufactured, water use, water pollution control technology, treatment costs, solid waste generation, size of plant, age of plant, number of employees, total energy requirements, non-water quality characteristics, and unique plant characterists. Section IV of the Development Document contains a detailed discussion of the factors considered and the rationale for subcategorization.

EPA has subcategorized the coil coating industry based on the basis material coated. The subategories are defined as coil coating on: (1) steel, (2) galvanized (zinc-coated steel either hot dipped or electrolytically coated), and (3) aluminum (including aluminum coated steel). The galvanized subcategory includes copper, (including copper alloys such as brass) and galvalum, a zinc-aluminum alloy. The steel subcategory includes chromium, nickel and tin-coated steels.

In addition to the direct coil coating subcategories, the Agency is considering including limitations and standards for can making as a separate subcategory of coil coating. The reason for this consideration is the very substantial similarity of processes and wastewater generation between coil coating and the production of large volumes of drawn beverage containers. Comments are requested on this possibility.

VII. Available Wastewater Control and Treatment Technology

A. Status of In-Place Technology

Current wastewater treatment practices in the coil coating category range from no treatment to a high level of physical chemical treatment combined with water conservation practices. Of the 73 plants for which data is available, about 15 percent of the plants employ no treatment, 56 percent employ some from of chemical reduction, 59 percent have sedimentation or clarification devices, 54 percent have alkaline pH adjust systems, and 35 percent have acid pH adjust systems. There is no apparent difference between direct or indirect dischargers in the nature or degree of treatment employed.

B. Control Technologies Considered

The control and treatment technologies available for this category include both in-process and end-of-pipe treatments. In-process treatment includes a variety of water flow reduction steps and major process changes such as: cascade rinsing (to reduce the amount of water used to remove unwanted materials from the product surface); cooling and recycling of quench water; and substitution of non-wastewater generating conversion coating processes (no-rinse conversion coating). End-of-pipe treatment includes: cyanide oxidation or precipitation; hexavalent chromium reduction; chemical precipitation of metals using hydroxides, carbonates, or sulfides; and removal of precipitated metals and other materials using settling, sedimentation, filtration, and combinations of these technologies. Because the amount of priority organic materials in the wastewater is small, no specific organic removal wastewater treatment except oil removal has been considered. Similarly, because of high energy costs and low product recovery values, distillation has not been seriously considered as an end-of-pipe treatment.

The effectiveness of these treatment technologies has been evaluated and established by examining the performance of these technologies on coil coating and other similar wastewaters. The data base for hydroxide precipitation-sedimentation technology is a composite of data drawn from EPA sampling and analysis of copper and aluminum forming, battery manufacturing, porcelain enameling, electroplating, metal finishing and coil coating. These wastewaters are judged to be similar in all material respects for treatment because they contain a range of dissolved metals which can be removed by precipitation and solids removal. Similarly precipitation-sedimentation and filtration technology performance is based on the performance of full scale commercial systems treating multicategory wastewaters which also are essentially similar to coil coating wastewaters. This is discussed fully in Section VII of the development document.

VIII. Best Practicable Technology (BPT) Effluent Limitations

The factors considered in defining best practicable control technology currently available (BPT) include the total cost of applying technology in relation to the effluent reduction benefits derived, the age of equipment and facilities involved, the process employed, non-water quality environmental impacts (including energy requirements) and other factors the Administrator considers appropriate. In general, the BPT level represents the average of the best existing performances of plants of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or category. Limitations based on transfer technology must be supported by a conclusion that the technology is, indeed, transferable and a reasonable prediction that it will be capable of achieving the prescribed effluent limits. See *Tanners' Council of America* v. *Train* (540 F.2d 1188, 4th Circ. 1976). BPT focuses on end-of-pipe treatment rather than process changes or internal controls, except where such are common industry practice.

The cost-benefit inquiry for BPT is a limited balancing, committed to EPA's discretion, which does not require the Agency to quantify benefits in monetary terms. See, e.g., *American Iron and Steel Institute* v. *EPA*, 526 F.2d 1027 (3rd Cir. 1975). In balancing costs in relation to effluent reduction benefits, EPA considers the volume and nature of existing discharges, the volume and nature of discharges expected after application of BPT, the general environmental effects of the pollutants, and the cost and economic impacts of the required pollution control level. The Act does not require or permit consideration of water quality problems attributable to particular point sources or industries, or water quality

improvements in particular water bodies. Therefore, EPA has not considered these factors. See *Weyerhaeuser Company* v. *Costle*, 11 ERC 2149 (D.C. Cir. 1978).

In developing the proposed BPT limitations, the Agency first considered the amount of water used per unit area of material coated by each plant which supplied usable dcp data. This data was used to determine the median water use for each subcategory. Next, the treatment technology which appeared to be appropriate for BPT level treatment and which was practiced in some plants throughout the industry was selected. This treatment consists of: hexavalent chromium reduction; oil skimming; pH adjustment; sedimentation to remove the resultant precipitate and other suspended solids and cyanide destruction where cyanides are used. Sludge from the settling tank is concentrated to facilitate landfill disposal. The effluent which would be expected to result from the application of these technologies was evaluated against the known performance of some of the best plants in the subcategory. From this examination, the Agency found that there is uniformly inadequate performance due to improper operating practices throughout the industry. This finding is detailed in Sections 7 and 9 of the development document.

The BPT technology outlined above applies to all of the coil coating subcategories and the final effluent concentrations resulting from the application of the technology are identical for all three subcategories. However, the mass limitations for each subcateogry vary due to different water uses among the subcategories and the absence of some pollutants in some subcategories. Also, certain treatment technologies and limitations such as cyanide oxidation may not be required in all subcategories since cyanides are used in only one subcategory.

Thirty-two plants would incur additional costs to comply with the BPT limitations. EPA estimates that total capital investment would be $3.5 million and that annual costs would be $1.6 million, including interest and depreciation. EPA expects no plant closures, unemployment, or changes in industry production capacity as a result of this effluent limitation.

IX. Best Available Technology (BAT) Effluent Limitations

The factors considered in assessing best available technology economically achievable (BAT) include the age of equipment and facilities involved, the process employed, process changes, non-water quality environmental impacts (including energy requirements) and the costs of applying such technology (Section 304(b)(2)(B)). At a minimum, the BAT technology level represents the best economically achievable performance of plants of various ages, sizes, processes or other shared characteristics. As with BPT, where existing performance is uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may include feasible process changes or internal controls, even when not common industry practice.

The required assessment of BAT "considers" costs, but does not require a balancing of costs against effluent reduction benefits (see *Weyerhaeuser* v. *Costle, supra*). In developing the proposed BAT, however, EPA has given substantial weight to the reasonableness of costs. The Agency has considered the volume and nature of discharges, the volume and nature of discharges expected after application of BAT, the general environmental effects of the pollutants, and the costs and economic impacts of the required pollution control levels.

Despite this consideration of costs, the primary determinant of BAT is effluent reduction capability. As a result of the Clean Water Act of 1977, the achievement of BAT has become the principal national means of controlling toxic water pollution. The coil coating process discharges over twenty different toxic pollutants and EPA has selected among three available BAT technology options which will reduce this toxic pollution by a significant amount.

The Agency has considered three major sets of technology options which might be applied at the BAT level. Each of these options would substantially reduce the discharge of toxic pollutants. These options, were set forth in a draft development document and presented to the technically interested public for preliminary comment. They are described in detail in Section X of the Development Document and are outlined below.

Option 1—BAT Option 1 utilizes the same in-process wastewater flow control and all of the end-of-pipe treatment technology required for BPT. In addition, a polishing filter such as a mixed media filter is added to remove additional metals and incidentally remove more suspended solids from the clarifier overflow.

Thirty-two direct dischargers would incur additional costs to comply with this option. EPA estimates that total capital investment would be $6.2 million and that annual costs would be $2.5 million, including interest and depreciation. Nine plants responded that they had both direct and indirect discharged status and are included in the above total investment and annual costs. EPA expects no plant closures, unemployment, or changes in production capacity as a result of this option.

Option 2—BAT Option 2 as originally outlined would combine the end-of-pipe treatment system of BAT Option 1 with in-process control technology to substantially reduce the flow of wastewater and reduce the generation of pollutants. These in-process technology changes would include:

1. recirculation and reuse of quench water;
2. counter-current rinsing to reduce the amount of process wastewater generated by rinsing the coil; and
3. substitution of no rinse conversion coating for the present phosphate or chromate coatings; or
4. the use of cyanide-free treatment chemical systems.

Thirty-two direct dischargers would incur additional costs to comply with this option. EPA estimates that total capital investment (above equipment now in place) would be $5.9 million and that annual costs would be $2.4 million, including interest and depreciation. Nine plants responded that they had both direct and indirect discharge status and are included in the above total investment and annual costs. EPA expects no plant closures, unemployment, or changes in industry production capacity as a result of this option.

The capital costs of BAT Option 2 are less than BAT Option 1. This is caused by the savings in reduced treatment equipment size when wastewater flows are substantially reduced. This is a direct economic benefit from water reuse.

Option 3—BAT Option 3 builds on BAT Option 2, substituting an ultrafilter system in place of the end-of-pipe mixed media filter to enhance the removal of metals and incidentally remove more suspended solids.

Thirty-two dischargers would incur additional costs to comply with this option. EPA estimates that total capital investment would be $14.9 million and that annual costs would be $6.3 million, including interest and depreciation. Nine plants responded that they had both direct and indirect discharge status, and are included in the above total investment and annual costs. EPA expects no plant closures, unemployment, or changes in industry production capacity as a result of this option.

The effectiveness and costs of the BAT options were evaluated and considered in making a selection of

BAT. BAT-2 reduces wastewater generation from an estimated 7,647 million liters per year (raw waste basis) (2,020 million gal) to 2,814 million 1/yr (743 million gal/yr), and removes substantial amounts of toxic metals. With no treatment (raw waste) 361 metric tons of toxic metals would be released (annually) from coil coating. BPT would remove 352.7 metric tons of toxic metals per year and the BAT Options 1, 2 (as modified, see below) and 3 would remove 357.9, 359.7 and 360.0 metric tons, respectively.

The development of these costs is detailed in Section VIII of the development document and treatment effectiveness is displayed in Section X. The high cost of BAT Option 3 plus the low additional removal of toxic metals contributed to the EPA decision that BAT Option 3 was inappropriate.

BAT SELECTION AND DECISION CRITERIA—EPA has selected a modified Option 2 as the basis for proposed BAT effluent limitations. This option was selected because it removes significant amounts of the toxic pollutants of concern in this category (primarily toxic metals) by in-plant control, pretreatment, and end-of-pipe treatment. Although the Act does not require a balancing of costs against effluent reduction benefits, the Agency considered the costs of the technology options (see Section X of the Development Document for detailed discussion). A modified version of BAT Option 2 was selected for technical reasons. This choice was confirmed by industry comments and further Agency analysis indicating that Option 1 does not achieve as high a level of effluent control as is achievable at a reasonable cost through Option 2.

A careful examination of Option 2 indicates that some aspects of it may not be implementable at this time. Specifically, the total cost of installing either counter current rinsing or no rinse conversion coating cannot be adequately estimated. The cost of equipment and mechanical work can be estimated; however, the installation of this equipment would require almost a complete rebuilding of each process line and would require each line to be shut down for substantial periods with resultant production loss and costs. This loss of production and related costs cannot, in the Agency's opinion, be adequately estimated for existing plants at this time. Thus these technology options are ot further considered for existing sources.

The Agency considered a requirement which would essentially ban the use of cyanide chemical systems for processing. This was reconsidered, however, because of comment that the non-cyanide coating systems operate at substantially reduced production speeds and produced reduced quality products. The Agency cannot adequately evaluate these claims at this time. For these reasons, the Agency has revised Option 2 to allow the continued use of cyanide containing metal treatment chemical systems. The Agency believes that this limitation can best be met by changing to non-cyanide chemical systems and expects most if not all coil coating establishments to meet the cyanide requirement by changing chemical systems rather than by effluent treatment.

The Agency is also establishing limitations on oil and grease as an indicator to control polynuclear aromatic hydrocarbons and certain organic solvents. The use of indicators is discussed below under regulated pollutants and in Section X of the development document.

The Agency rejected Option 3 because it is relatively unproven and because it has a far greater cost with little environmental gain. Further development of this kind of process water treatment to remove metals and to promote recycle could possibly allow its requirement at some later revision of this regulation.

X. New Source Performance Standards (NSPS)

The basis for new source performance standards (NSPS) under Section 306 of the Act is the best available demonstrated technology. New plants have the opportunity to design the best and most efficient coil coating processes and wastewater treatment technologies, and, therefore, Congress directed EPA to consider the best demonstrated process changes, inplant controls, and end-of-pipe treatment technologies which reduce pollution to the maximum extent feasible. EPA considered three options for selection of NSPS technology.

Originally, NSPS Options 1 and 2 were identical to BAT options 2 and 3 and NSPS option 3 added more sophisticated final filtration. As discussed under BAT Option 2, some of the requirements appear to be infeasible as BAT because of the costs of required major modifications and downtime to existing plants. These costs are not a factor in a new plant under construction. The greater benefits and operability of NSPS options 2 and 3 have not been adequately demonstrated. Hence, the Agency has selected NSPS Option 1 (equivalent to unmodified BAT Option 2) as the best available demonstrated technology. This option relies upon the achievement of no discharge of process wastewater pollutants from conversion coating through the use of no rinse conversion coating technique.

EPA estimates that for NSPS Option 1, the average plant investment cost is $200,000. This level of cost comprises 1.3 percent of the estimated equipment costs for one new coil coating line. This proportion of capacity expansion costs accounted for by NSPS Option 1 is not on the order of magnitude that should cause significant adverse impact on the addition of new lines. For NSPS Option 2, the average plant investment cost is $450,000. This level of cost comprises 3.0 percent of the estimated equipment costs for one new coil coating line.

XI. Pretreatment Standards for Existing Sources (PSES)

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing indirect dischargers (PSES), which must be achieved within three years of promulgation. PSES are designed to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of POTWs. The Clean Water Act of 1977 adds a new dimension by requiring pretreatment for pollutants, such as toxic metals, that pass through the POTW in amounts that would violate direct discharge effluent limitations or limit POTW sludge management alternatives, including the beneficial use of sludges on agricultural lands. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based and analogous to the best available technology for removal of toxic pollutants. The general pretreatment regulations (40 CFR Part 403), which served as the framework for these proposed pretreatment standards for coil coating, can be found at 43 FR 27736 (June 26, 1978).

The four pretreatment options considered are parallel to BPT and to the BAT 1, 2, and 3 options previously described. Most of the pollutants regulated are toxic metals wich are not degraded in POTW. These metals either pass through a POTW or are concentrated in the sludge, thereby limiting sludge management alternatives. The small amount of toxic organic pollutants present are not regulated. The combination of incidental oil and grease removal in the treatment train for metals and further oil and grease removal in the POTW, provides effluent loadings equal to or less than BAT. Pretreatment Option 0 (BPT) does not provide reasonable protection of the environment. The rationale for rejection of BAT Option 1 as preteatment, the modification of BAT Option 2 which

was seleced as pretreatment, and the rejection of BAT Option 3 as pretreatment are identical to the rationale set forth in the BAT Options discussion.

The equipment required for the selected preteatment option is of reasonable size, appropriate for installation within an urban plant which discharges to POTW. The mass limitations set forth for BAT Option 2 have been presented here as the only method of designating pretreatment standards because the water flow reductions specified at BAT are major features of the treatment and control system. To regulate on the basis of concentration only is not adequate because it will not adequately control the release of persistent toxics to POTW. The Agency has considered the possible complications which mass based limitations might cause when applied as pretreatment standards. Since coil coating facilities are usually separate rather than part of a larger complex and since production records are routinely maintained the complications of applying a mass based standard appear to be minimal. Therefore, the policy that concentration be used to express pretreatment standards (40 CFR Part 403.6(c); and Appendix A, B.2.e) as it applies to PSES in this part is set aside. The Agency is considering establishing minimum requirements for monitoring to insure compliance with the standards, but no requirements are proposed at this time.

Thirty-eight indirect dischargers would incur additional costs to comply with the preteatment options. EPA estimates that for the pretreatment option parallel to BPT (pretreatment Option O), total capital investment would be $5.7 million and that annual costs would be $1.7 million, including interest and depreciation. EPA estimates that for pretreatment Option 1, total capital investment would be $9.3 million and that annual costs would be $2.5 million, including interest and depreciation. For pretreatment Option 2, the additional total investment and annual costs would be $9.0 million and $2.5 million, respectively. EPA estimates that for pretreatment Option 3, total capital investment would be $17.9 million and that annual costs would be $5.1 million. EPA expects no plant closures, unemployment, or changes in industry production capacity as a result of any of the pretreatment options.

XII. Pretreatment Standards For New Sources (PSNS)

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. New indirect discharges will produce wastes having the same pass through problems that existing discharge have. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies including process changes, in-plant controls, and end-of-pipe treatment technologies, and to use plant site selection to ensure adequate treatment system installation.

The PSNS treatment options considered are identical to the NSPS options. As in the case of existing sources, the majority of pollutants regulated are toxic metals which are not degraded in a POTW. The small amount of toxic organic pollutants present are not regulated. The combination of incidental oil and grease removal in the treatment train for metals, and further oil and grease removal in the POTW, provides effluent loadings equal to or less than BAT. Option 1 of NSPS is selected as the most appropriate pretreatment technoloy option for PSNS. This option encourages new plants to treat their own wastewaters, thereby reducing the hydraulic loading on POTW and limiting the amount of toxic metals which would be introduced to a POTW.

The mass limitations set forth as NSPS Option 1 are presented here as the only method of designating pretreatment standards. The water flow reductions specificed at NSPS are the major features of the treatment and control system. Therefore, to regulate on the basis of concentration only is not adequate because it will not adequately control the release of persistent toxics to POTW. The requirement that concentration be used to express pretreatment standards (40 CFR Part 403.6(c); and Appendix A, B.2.e) as it applies to PSNS in this part is set aside for the reasons discussed in Section XI, above. The Agency is considering establishing minimum requirements for monitoring to insure compliance with the standards, but no requirements are proposed at this time.

EPA estimates that for PSNS Option 1, the average plant investment cost is $200,000, which comprises 1.3 percent of the estimated equipment cost for one new coil coating line. This order of magnitude should not create significant negative impact on the construction of new lines. For PSNS Option 2, the average plant investment cost is $45,000. This level of cost comprises 3.0 percent of the estimated equipment costs for one new coil coating line.

XIII. Best Conventional Technology (BCT) Effluent Limitations

The 1977 amendments added Section 301(b)(4)(E) to the Act, establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in Section 304(b)(4)—BOD, TSS, fecal coliform and pH—and any additional pollutants defined by the Administrator as "conventional." On July 30, 1979, EPA added oil and grease to the conventional pollutant list (44 FR 44501).

BCT is not an additonal limitation, but replaces BAT for the control of conventional pollutants. BCT requires that each limitation for conventional pollutants be assessed in light of a new "cost reasonableness" test, which involves a comparison of the cost and level of reduction of conventional pollutants from the discharge of publicly owned treatment works with the cost and level of reduction of such pollutants from a class or category of industrial source. In its review of BAT for "secondary" industries, the Agency promulgated BCT levels based on a methodology described at 44 FR 50732 (Aug. 29, 1979). A BCT option will be considered "cost reasonable" under this methodology if its incremental cost (dollars per pound of pollutant measuring BPT to BCT) is less than or equal to the costs for an average POTW. In 1978 dollars the POTW comparison figure is $1.27 per pound.

Only three conventional pollutant parameters—pH, TSS and oil and grease—were considered under the BCT limitation. They were assessed at levels that are achievable through the use of technology analyzed for modified BAT Option 2. The limitation on oil and grease has been established as an indicator at BAT to limit the amount of PAH's discharged and is considered to be an indicator of the probable effectivenesss of technology in removing polynuclear aromatic hydrocarbon (PAH) compounds. The pH limitations at BCT is the same as at BPT.

Inasmuch as the technology would be installed and operated to meet other requirements, it can be argued that BCT limitations in fact have no cost. However, EPA has taken a more generous approach in its BCT methodology. The total cost of adding technology beyond BPT to meet BCT is calculated and assessed against the amount of suspended solids and oil and grease removed by that technology. When this is done, the CCT costs for the steel subcategory are $0.54 per pound of conventional pollutant removed. $0.05

for the galvanized subcategory, and $1.43 for the aluminum subcategory. These apparently erratic costs are numerically correct. The unusual pattern is caused by the effect of the BAT flow reductions on the size of equipment needed for the end-of-pipe part of the treatment technology.

The cost of removal of conventional pollutants by BCT does meet the cost test for the steel and galvanized subcategories. Therefore, the BCT limitations for the steel and galvanized subcategories will be equal to BAT. Since the aluminum subcategory fails the cost test the BCT limitations based on BAT technology will not be applied. Since the intermediate technology standards assessed as BAT Option 1 are even less cost-efficient, they too cannot be applied. EPA therefore will set the BCT limit for the aluminum subcategory at performance standards achievable with BPT technology. However the oil and grease limitation for the alumunim subcategory is independently set under BAT since it is used as an indicator of control for organic toxics regulated under BAT.

XIV. Regulated Pollutants

The basis upon which the controlled pollutants were selected, as well as the general nature and environmental effects of these pollutants, is set out in Sections V, VI, IX and X of the Development Document. Some of these pollutants are designated toxic under Section 307(a) of the Act, and no evidence has been found to warrant removal of any pollutant from the toxics list.

A. BPT—The pollutants controlled by the BPT limitations are aluminum, cadmium, chromium, copper, cyanide, iron, lead, nickel, zinc, TSS, oil and grease, and pH. Not all of these pollutants are controlled in all subcategories; regulation is established only where the pollutant appears in significant concentration in the raw waste. The discharge is controlled by maximum daily and monthly average mass effluent limitations stated in milligrams of each pollutant per square meter of metal processed (lbs/1,000,000 sq ft).

B. BAT and NSPS—The pollutants specifically limited by BAT and NSPS are the same as those limited by BPT. There are, however, different rationales for limiting these pollutants.

C. BCT—The pollutants specifically limited by BCT are pH, TSS and oil and grease.

D. PSES and PSNS—The pollutants regulated at PSES and PSNS are the same as those limited by BAT and NSPS respectively except that iron, aluminum, TSS, and oil and grease are not limited in pretreatment.

1. Toxic Pollutants—The toxic pollutants expressly controlled for direct dischargers in each subcategory are cadmium, chromium, copper, cyanide, lead, nickel and zinc. These toxic pollutants represent the highest concentrations of toxic materials in each of the subcategories. There are a number of other pollutants in the raw waste which are present at low concentrations but which might be considered for control through the use of other pollutants used as indicators. The Agency is soliciting comments on the monitoring of selected pollutants to indicate compliance or the determination of requiring plants to monitor each pollutant. Should each plant be able to make its own choice about this?

2. Indicator Pollutants—The difficulties of analyses for many toxic organic pollutants have prompted EPA to propose a new method of regulating certain toxic pollutants. For toxic pollutants for which historical data is limited and relatively inexpensive analytical methods are not well developed, EPA is proposing numerical limitations on an "indicator" pollutant—oil and grease. The coil coating data available to EPA generally show that when this "indicator" pollutant is controlled, the concentrations of toxic organic pollutants is significantly lower than when the "indicator" pollutant is present in high concentrations. This may be due to the preferential solubility of many toxic organics in oil and grease. While the relationships between "indicator" pollutants and toxic pollutants are not quantifiable on a one-to-one basis, control of an "indicator" will reasonably assure control of toxics with similar physical and chemical properties responsive to similar treatment mechanisms. This method of toxics regulation obviates the difficulties, high costs, and delays of monitoring and analyses that would result from limitations solely on the toxic pollutants.

Appendix B to this notice contains a tabulation for each subcategory of the toxic pollutants which were considered for specific limitation. EPA concludes that the not-specifically regulated group of these toxic organic pollutants will be effectively controlled by limitation of the "indicator" pollutant even though these toxics are not expressly regulated by numerical limitations.

The toxic pollutants regulated by indicator pollutants include volatile (purgeable) organics and polynuclear aromatic hydrocarbon (PAH) compounds. Toxic pollutants such as PAH compounds and phthalate esters are partially treated by oil-water separation because they are immiscible in water. Thus, control of oil and grease as an "indicator" will provide control of these toxic pollutants.

The Agency also considered using TSS as an indicator for the control of low levels of toxic metals but is not proposing this at this time. Instead, limits have been proposed on all toxic metals not eligible for exclusion under Paragraph 8. The use of TSS as an indicator would eliminate the need for analysis of some metals in each subcategory. Also the use of TSS plus some metals rather than all of the metals listed of control has been considered for possible use as an alternate control procedure on a permit by permit basis. EPA invites comments on this issue.

XV. Pollutants and Subcategories Not Regulated

The Settlement Agreement contained provisions authorizing the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories. These provisions have been re-written in a Revised Settlement Agreement which was approved by the District Court for the District of Columbia on March 9, 1979.

Paragraph 8(a)(iii) of the Revised Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by Section 304(h) analytical methods of other state-of-the-art methods. The toxic pollutants not detected and therefore, excluded from regulation are listed for each subcategory in Appendix C to this notice.

Paragraph 8(a)(iii) of the Revised Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants detected in the effluent in only trace quantities and not likely to cause toxic effects. Appendix D to this notice lists the toxic pollutants in each subcategory which were detected in the effluent in trace amounts, at or below the nominal limit of analytical quantification, which are not likely to cause toxic effects and which, therefore, are excluded from regulation.

Paragraph 8(a)(iii) of the Revised Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants detected in the effluent in only trace amounts and not likely to cause toxic effects. Appendix E to this notice lists for each subcategory the toxic pollutants which were detected in the effluents of only one plant, and are uniquely related to

that plant, are not related to the manufacturing process under study, are not treatable using technologies considered or which were found in environmentally insignificant amounts and which therefore are excluded from regulation.

No subcategories or subsets of the coil coating industry meet these criteria for the absence of toxic pollutants. Thus none are excluded from this regulation.

XVII. Costs, Effluent Reduction Benefits, and Economic Impacts

Executive Order 12044 requires EPA and other agencies to perform Regulatory Analyses of certain regulations. 43 FR 12661 (March 23, 1978). EPA's proposed regulations for implementing Executive Order 12044 require a Regulatory Analysis for major significant regulations involving annualized compliance costs of $100 million or meeting other specified criteria. 44 FR 30988 (May 29, 1979). Where these criteria are met, the proposed regulations require EPA to prepare a formal Regulatory Analysis, including an economic impact analysis and an evaluation of regulatory alternatives. The proposed regulations for the coil coating industry do not meet these criteria and thus do not require a formal Regulatory Analysis. Nonetheless, this proposed rulemaking satisfies the formal Regulatory Analysis requirements.

EPA's economic impact assessment is set forth in Economic Impact Analysis of Proposed Effluent Standards and Limitations for the Coil Coating Industry, May 1980, EPA. This report details the capital investment and annual costs for the industry as a whole and for the subcategories covered by the proposed coil coating regulation. The report also assesses the impact of compliance costs in terms of plant closures, production changes, price change, employment effects, community impacts and balance of trade effects.

EPA estimates that the total capital investment costs for the coil coating industry will be $14.9 million and that the annual compliance costs will be $4.9 million. This level of annual compliance costs is 0.7 percent of industry revenues and will be responsible for minimal industry-wide price and quantity changes of 0.8 percent and 0.4 percent, respectively. No plant closures are projected for either the baseline (without this regulation) or for the proposed regulation. Other impacts on the coil coating industry such as product substitution, foreign trade effects and changes in discharge status are negligible. Also, secondary impacts on employment and the community are not anticipated.

The economic analysis basically utilizes plant-specific production data and compliance costs estimated by EPA for 58 sample plants to determine the impact of the proposed regulation. However, the first step of the analytical procedure was to determine the industry-wide price change and resulting quantity change at each compliance level. Those estimates served as the basis for the screening analysis which identified plants that may potentially incur significant costs and economic impacts. The criterion for determining high impact potential plants was a significant decrease in their profit margins after compliance with the regulation. The screening analysis identified fifteen coil coating plants (twenty-six percent of the sample) as potentially facing adverse economic impact.

The potentially vulnerable plants were then subjected to further financial analysis to quantify the level of anticipated impact and to assess the likelihood of plant closure. Financial profiles were developed and subsequently used to calculate financial ratios in order to analyze plant profitability and the magnitude of capital investment requirements. The plant-specific ratios were compared to threshold values established at levels at which closures became likely. The plant closure threshold values differed among three categories developed for the economic analysis: (1) toll coaters, which coat customer-owned metal on a service basis; (2) captive operations, which coat metal as part of a proprietary product manufacturing process; and (3) adjunct operations, which are performed in plants with rolling mills on the plant site. The differences in the threshold levels were established to account for differences in the financial characteristics of the plants within the three sectors. However, in general, the conclusions of the study are relatively insensitive to the economic categorization.

BPT—EPA estimates that the BPT effluent limitation will cause the coil coating industry to incur additional total capital investment and annual compliance costs (including interest and depreciation) of $3.5 million and $1.6 million, respectively. The economic analysis based on the profitability and capital investment requirement ratios, indicates that the plants will not face noticeable reductions in profitability, therefore no plant closures are estimated.

BAT—EPA estimates that the coil coating industry will incur additional capital investment and annual compliance costs of $5.9 million and $2.4 million, respectively. These figures were extrapolated from the plant-specific cost data for 27 direct dischargers to the projected universe of 32 plants. The costs reflect the original treatment level, not the revised proposed regulation. The proposed regulation requires fewer in-process technology changes than the BAT Option 2 studied in the economic report. The compliance costs for the proposed regulation will be approximately 20 to 25 percent less than the figures cited above. These lower costs will be analyzed for economic impacts during the period between proposal and promulgation of the regulation.

The economic analysis based on the profitability and capital investment requirement ratios indicates that a few coil coating plants may incur noticeable decreases in profitability but will not face closure. The projected price increases resulting from compliance costs were found to be minimal for direct discharging coil coating plants. Therefore, other impacts upon this segment of the industry such as product substitution, foreign trade effects and changes in discharge status will be negligible.

PSES—EPA estimates that the indirect discharging segment of the coil coating industry will incur additional capital investment and annual compliance costs of $9.0 million and $2.5 million, respectively. These figures were extrapolated from the plant-specific cost data for 31 indirect dischargers to the projected universe of 38 plants. As with the costs for the BAT limitations, the above figures reflect the original treatment level, not the modified treatment option. The proposed regulation requires fewer in-process technology changes than the option analyzed in the economic study. The compliance costs will be approximately 20 to 25 percent less than the figures cited above. These lower costs will be assessed for economic impacts during the period between proposal and promulgation.

The economic analysis based on the profitability and capital investment requirement ratios indicates that three indirect discharging plants may incur noticeable decreases in profitability but will not face closure. The projected price increases resulting from compliance costs were found to be minimal for this segment of the industry. Therefore, other impacts such as product substitution, foreign trade effects and changes in discharge status will be negligible.

NSPS—PSNS—The coil coating industry experienced strong growth in

the period from 1962 to 1978 and this trend is forecast to continue through 1985. EPA estimates that the industry will require $400 million to $600 million of capital investment in coil coating equipment (not including the plant site or building construction costs) to provide the expected increase in production from 1980 through 1985. For comparison, the average plant investment cost for complying with the proposed regulation will be $200,000. This amount represents 1.3 percent of the estimated equipment costs for one new line. Because of this high growth rate and the relatively low capital investment required by the NSPS and PSNS regulation, the construction of new coil coating lines is not expected to be adversely impacted. The competitive advantages of coated coil over other products combined with the forecasted growth and expanded end-product uses through 1985 shoud allow the plants to earn a level of profits sufficient to attract needed capital funding.

Economic Impact: The Agency estimates that total capital investment to bring 70 existing coil coating plants into compliance with the proposed BAT limitations will be $14.9 million. The annual costs of compliance may reach $4.9 million, including depreciation and interest. This level of annual costs represents 0.7 percent of industry revenues and may be responsible for minimal industry-wide price and quantity changes of 0.8 percent and 0.4 percent, respectively. No plant closures are projected as a result of complying with proposed regulation. Other impacts on the coil coating industry status are negligible. Also, secondary impacts on employment and the community are not anticipated.

This proposed regulation does not require a regulatory analysis because annual compliance costs are less $100 million and the other criteria for performing a regulatory analysis are not met. This determination is in accordance with the Agency's procedures for improving environmental regulations, published in 44 FR 30988 (May 29, 1979). Nevertheless, this proposed regulation satisfies the formal regulatory analysis requirements.

XVIII. Non-Water Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider the non-water quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of this regulation on air pollution, solid waste generation, water scarcity, and energy consumption. This proposal was circulated to and reviewed by EPA personnel responsible for non-water quality environmental programs. While it is always difficult to balance pollution problems against each other and against energy utilization, EPA is proposing regulations which it believes best serve often competing national goals.

The following are the non-water quality environmental impacts (including energy requirements) associated with the proposed regulations:

A. Air Pollution—Imposition of BPT, BAT, BCT, NSPS, PSES, and PSNS will not create any substantial air pollution problems.

B. Solid Waste—EPA estimates that coil coating facilities generate 43,900 metric tons of solid wastes (wet basis) per year (1976). These wastes were comprised of treatment system sludges containing toxic metals, including chromium, copper, lead, nickel and zinc.

EPA estimates that the proposed BPT limitations will contribute an additional 45,700 metric tons per year of solid wastes. Proposed BAT and PSES will increase these wastes by approximately 8,100 metric tons per year beyond BPT levels. These sludges will necessarily contain additional quantities (and concentrations) of toxic metal pollutants.

On the other hand, EPA estimates that implementation of proposed pretreatment standards will result in POTW sludges having commensurately lesser quantities and concentrations of toxic pollutants. POTW sludges will become more amenable to a wider range of disposal alternatives, possibly including beneficial use on agricultural lands. Moreover, disposal of these vastly greater quantities of adulterated POTW sludges would be significantly more difficult and costly than disposal of smaller quantities of wastes generated at individual plant sites.

These wastewater treatment sludges may furthermore be identified as hazardous under the regulations implementing subtitle C of the Resource Conservation and Recovery Act (RCRA). Under those regulations, generators of these wastes must test the wastes to determine if the wastes meet any of the characteristics of hazardous waste (see 40 CFR § 262.11, 45 FR 33142–33143 (May 19, 1980)). The Agency may also list these sludges as hazardous pursuant to 40 CFR § 261.11 (45 FR at 33121 (May 19, 1980), and is likely to do so based upon high concentrations of cadmium in these wastes and the large quantity of wastes generated.

If these wastes are identified as hazardous, they come within the scope of RCRA's "cradle to grave" hazardous waste management program, requiring regulations from the point of generation to point of final disposition. EPA's generator standards would require generators of coil coating wastes to meet containerization, labeling, recordkeeping and reporting requirements; if they dispose of wastes off-site, coil coaters would have to prepare a manifest which will track the movement of the wastes from the generator's premises to a permitted off-site treatment, storage, or disposal facility. See 45 FR 33143 (May 19, 1980). The transporter regulations require transporters of coil coating wastes to comply with the manifest system to assure that the wastes are delivered to a permitted facility. See 45 FR 33151–33152 (May 19, 1980). Finally, RCRA regulations establish standards for hazardous waste treatment, storage and disposal facilities allowed to receive such wastes. Final standards for permitted hazardous waste disposal are expected to be promulgated during the fall of 1980. See 45 FR 33154 (May 19, 1980).

Even if these wastes are not identified as hazardous, they still must be disposed of in compliance with the subtitle D open dumping standards, implementing § 4004 of RCRA. See 44 FR 53438 (Sept. 13, 1979).

EPA's Office of Solid Waste recently completed a pilot analysis of the solid waste management and disposal cost required for coil coating to comply with RCRA. The costs of compliance with proposed RCRA regulations were not specifically included in the economic impact analysis for these proposed regulations. However, EPA considered estimated RCRA compliance costs for coil coating when it selected the technology options for these proposed regulations.

C. Consumptive Water Loss—Treatment and control technologies which require extensive recycling and reuse of water may, in some cases, require cooling mechanisms. Where evaporative cooling mechanisms are used, water loss may result and contribute to water scarcity problems, a concern primarily in arid and semi-arid regions. This proposed regulation envisions the evaporative cooling and recycling of relatively small quantities of cooling water. For the average size coil coating plant, this could result in evaporative loss of about 2000 gal/day of water. This is an insignificant quantity of water which does not

constitute a significant consumptive water loss.

D. Energy Requirements—EPA estimates that the achievement of proposed BPT effluent limitations will result in a net increase in electrical energy consumption of approximately 0.55 million kilowatt-hour per year. Proposed BCT and BAT limitations are projected to add another 2.84 million kilowatt-hours to electrical energy consumption. To achieve the proposed BPT, BCT and BAT effluent limitations, a typical direct discharger will increase total inergy consumption by less than one percent of the energy consumed for production purposes.

The Agency estimates that proposed PSES will result in a net increase in electrical energy consumption of approximately 3.54 million kilowatt-hours per year. To achieve proposed PSES, a typical existing indirect discharger will increase energy consumption less than one percent of the total energy consumed for production purposes.

The energy requirements for NSPS and PSNS are estimated to be similar to energy requirements for BAT. However, this can only be quantified in kwh/year after projections are made for new plant construction.

XIX. Best Management Practices (BMP)

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" ("BMP"), described under Authority and Background. EPA intends to develop BMPs which: 1) are applicable to all industrial sites; 2) are applicable to a designated industrial category; and 3) offer guidance to permit authorities in establishing MBMPs required by unique circumstances at a given plant.

EPA is not now considering promulgating BMP specific to coil coating.

XX. Upset and Bypass Provisions

An issue of recurrent concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations guidelines is necessary because such upsets will inevitably occur due to limitations in even properly operated control equipment. Because technology-based limitations are to require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have been divided on the question of whether an explicit upset or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle, supra*, and *Corn Refiners Association, et al.* v. *Costle*, No. 78-1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F.2d 1320 (8th Cir. 1976); *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976).

While an upset is an unintentional episode during which effluent limits are exceeded, a bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. Bypass provisions have, in the past, been included in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits, and has recently promulgated NPDES regulations which include upset and bypass permit provisions. See 40 CFR 122.60. 45 FR 33290 (May 19, 1980). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury or severe property damage. Permittees in coil coating will be entitled to the general upset and bypass provisions in NPDES permits. Thus these proposed regulations do not address these issues.

XXI. Variances and Modifications

Upon the promulgation of final regulations, the numerical effluent limitations for the appropriate subcategory must be applied in all federal and state NPDES permits thereafter issued to coil coating direct dischargers. In addition, on promulgation, the pretreatment limitations are directly applicable to indirect dischargers.

For the BPT and BCT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E. I. duPont de Nemours and Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle, supra*; *EPA* v. *National Crushed Stone Association, et al.* ——— U.S. ——— (No. 79-770, decided Dec. 2, 1980). This variance recognizes that there may be factors concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. This variance clause was originally set forth in EPA's 1973-1976 industry regulations. It now will be included in the general NPDES regulations and will not be included in the coil coating or other specific industry regulations. See the NPDES regulation, 40 CFR 125, Supart D, 44 FR 32854, 32893 (June 7, 1979) and 45 FR 33512 (May 19, 1980) for the text and explanation of the "fundamentally different factors" variance.

The BAT limitations in this regulation also are subject to EPA's "fundamentally different factors" variance. In addition, BAT limitations *for non-toxic and nonconventional pollutants* are subject to modifications under Sections 301(c) and 301(g) of the Act. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines. See 43 FR 40859 (Sept. 13, 1978). Under Section 301(1) of the Act, these statutory modifications are not applicable to "toxic" pollutants. Likewise, limitations on nonconventional pollutants used as "indicators" for toxic pollutants are not subject to Section 301(c) or Section 301(g) modifications.

Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTWs. See 40 CFR §§ 403.7, 403.13; 43 FR 27736 (June 26, 1978). Pretreatment standards for new sources are subject only to the credits provision in 40 CFR § 403.7. New source performance standards are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. See *duPont* v. *Train, supra*.

XXII. Relationship to NPDES Permits

The BPT, BAT, BCT, and NSPS limitations in this regulation will be applied to individual coil coating plants through NPDES permits issued by EPA or approved state agencies under Section 402 of the Act. The preceding section of this preamble discussed the binding effect of this regulation on NPDES permits, except to the extent that variances and modifications are expressly authorized. This section describes several other aspects of the interaction of these regulations and NPDES permits.

One matter which has been subject to different judicial views is the scope of NPDES permit proceedings in the absence of effluent limitations, guidelines and standards Under currently applicable EPA regulations, states and EPA Regions issuing NPDES

permits prior to promulgation of this regulation and before June 30, 1981 must include a "re-opener clause," providing for permits to be modified to incorporate "toxics" regulations when they are promulgated. Permits issued after June 30, 1981 must meet the requirements of Section 301(b)(2) of the Clean Water Act whether or not applicable effluent limitations guidelines have been promulgated. See 40 CFR 122.62(c), 45 FR 33290, 33339. May 19, 1980. At one time EPA had a policy of issuing short-term permits, with a view toward issuing long-term permits only after promulgation of these and other BAT regulations. While EPA continues to encourage EPA and state permit writers to issue short term permits to primary industry dischargers until June 30, 1981. EPA has changed its policy to allow more flexibility. See 45 FR 33340, May 19, 1980. EPA permit writers may issue long-term permits to primary industries even if guidelines have not yet been promulgated provided that the permits require BAT and BCT and contain reopener clauses. The appropriate technology levels and limitations will be assessed by the permit issuer on a case-by-case basis on consideration of the statutory factors. See *U.S. Steel Corp.* v. *Train,* 556 F. 2d 822, 844, 854 (7th Cir. 1977). In these situations, EPA documents and draft documents (including these proposed regulations and supporting documents) are relevant evidence, but not binding, in NPDES permit proceedings. See 44 FR 32854, June 7, 1979).

Another noteworthy topic is the effect of this regulation on the powers of NPDES permit issuing authorities. The promulgation of this regulation does not restrict the power of any permit-issuing authority to act in any manner not inconsistent with law or these or any other EPA regulations, guidelines or policy. For example, the fact that this regulation does not control a particular pollutant does not preclude the permit issuer from limiting such pollutant on a case-by-case basis, when necessary to carry out the purposes of the Act. In addition, to the extent that state water quality standards or other provisions of state or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

One additional topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which have been considered in developing this regulation. The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the intiation of enforcement proceedings by EPA is discretionary (*Sierra Club vs Train,* 557 F 2nd 485, 5th Circ. 1977). EPA has exercised and intends to exercise that discretion in a manner which recognizes and promotes good faith compliance efforts and conserves enforcement resources for those who fail to make good faith efforts to comply with the Act.

XXIII. Summary of Public Participation

On September 7, 1979, EPA circulated a draft technical development document to a number of interested parties, including the National Coil Coaters Association and several member firms, the Natural Resources Defense Council (NRDC), and affected state and municipal authorities. This document did not include recommendations for effluent limitations and standards, but rather presented the technical basis for this proposed regulation. A meeting was held in Washington, D.C. on October 23, 1979, for public discussion of comments on this document. A brief summary of these comments follows.

1. Comment: Numerous comments were received indicating that many parts of the draft development document were difficult to follow and understand. Many typographical and minor errors were pointed out as well.

Response: The Agency has substantially modified the development document to improve its clarity and to present technical data and information in a logical and understandable fashion. Many changes were made to correct typographical and the minor errors, and are not addressed specifically in this summary of comments.

2. Comments: Commentors indicated that the capital costs estimates for effluent treatment systems were substantially below the actual costs for constructing waste treatment systems.

Response: The Agency has revised the development document to more clearly state the costing methodology used. Additionally, the Agency has requested detailed information on the example installation cited by comments so that costing allowances and specific costs can be compared to identify specific differences.

3. Comment: One commenter pointed out that the cost of land for a treatment system is not included in the cost estimates.

Response: The amount of land required for treatment systems in the flow range needed for coil coating is quite small and can be made extremely small by appropriate engineering design. Because the minimum area required for treatment is so small, the Agency believes that most, if not all, coil coaters will be able to install the necessary equipment within their present available space.

4. Comment: One commenter questioned the validity of the Agency's assumption that higher influent pollutant loading will not alter the effluent concentration of pollutants achieved by a treatment system.

Response: The Agency examined its records of sampled wastewater treatment performance and studied long-term data for treatment system effluent for two industrial plants with wastewater characteristics similar to coil coating wastewaters. These data, shown in Section VII of the development document, support the Agency's position that achieved effluent concentration for metals is relatively independent of influent concentration.

5. Comment: The practicality of using ultrafiltration and membrane filtration in advanced treatment systems was questioned in view of the reported operational difficulties of using these technologies for solids removal.

Response: The Agency is not proposing the use of these technologies for BAT or NSPS and the development document reflects the changes.

6. Comment: A commenter pointed out that Figure 10–1, the diagram for BAT Levels I and II, did not indicate provision for return of backwash from the polishing filter to the system. The commenter asked if provisions for additional capacity for the backwash had been made in the cost of the system.

Response: The errant diagram for the proposed BAT treatment system has been corrected to show proper handling of backwash. The need to allow additional treatment capacity for backwash is recognized and an allowance for handling backwash is included in costing of the system.

7. Comment: One commenter stated that the discussion of environmental hazards of cyanide does not apply to the coil coating industry because the form used is a complex ferricyanide. Also it was stated that "free" cyanide rather than total cyanide, should be the control parameter for cyanide, based on the Water Quality Criteria publication which selects free cyanide as the criteria pollutant.

Response: EPA recognizes that cyanide complexed as ferricyanide is the form used in some conversion coating formulations for coil coating aluminum. Under exposure to ultraviolet light (i.e. sunlight) the complex cyanide forms decompose to release cyanide ion. Such a process occurring in open waters receiving complexed cyanides will

produce the environmentally hazardous cyanide ion. Therefore, the Agency is proposing regulation of total cyanide.

Comment: Two commenters noted that the discussion of polishing filters to be used in BAT Levels I and II, called for achieving 3.8 mg/1 TSS for polishing filters, without statisfactory justification.

Response: EPA's response is incorporated in Section VII of the revised Development Document. The TSS concentrations upon which proposed BAT, TSS mass discharge limitations are based, have been set at 10 mg/1 average and 20 mg/1 maximum.

9. Comment: Commenters questioned the median predicted level of 3.8 mg/1 for suspended solids which was set forth at page 340 of the draft development document.

Response: Section VII of the development document to support this proposed regulation contains data on the operation of five industrial wastewater filtration systems. These data have a mean TSS concentration of 2.6 mg/1 and form the basis of technology performance for the BAT limitations.

10. Comment: One commenter contended that the effluent predicted quality is "ideal" and not predictably achieved.

Response: The limitations proposed in this regulation are based primarily on empirical performance data for the technologies suggested. This empirical data and the variation of regulatory levels is displayed in section VII of the development document.

11. Comment: One commenter questioned the requirement for no-rinse conversion coating at BAT Level II on the grounds that retrofitting existing plants for this process will require extensive replacement of existing equipment at very high capital cost.

Response: The Agency recognized that undetermined production losses would be incurred during retrofitting of the no-rinse system to existing lines. Therefore, this pollutant reduction technology has been eliminated from the proposed BAT system. It is retained in the proposed BDT (NSPS) system for new sources where installation as original design equipment will not impose the burden of production loss.

12. Commenters stated that complex cyanides are used only in conversion coating formulations applied to some aluminum strip and no cyanide is used in cleaning or treating steel or galvanized strip. A commenter stated that the presence of cyanide in raw wastewaters from steel and galvanized lines must be due to analytical methods.

Response: Analytical data from thirteen different laboratories established the presence of cyandie in samples from coil coating facilities. In only one coil coating facility was cyanide detected in inlet water. The presence of cyanide in other facilities is attributed to crossover or carryover of cyanides from aluminum processing solutions to rinse waters used in common for steel and alumiunm or galvanized and aluminum processing. Therefore, provision for cyanide treatment is made only for the aluminum subcategory, but cyanide is regulated in all subcategories to assure that discharges of cyanide from multiple subcategory facilities are limited.

13. Comment: One commenter questioned the impact of no-rinse conversion coating on industrial hygiene contending that it introduces the potential of toxic, fugitive dust in the work place; pointed out that the process has not been FDA approved for use in sanitary coating containers; and contended that the process is not proven and must be further developed.

Response: The Agency has reviewed the chemicals used in no-rinse conversion coating formulations and finds that they are essentially identical to the kinds of chemicals used in conventional conversion coating formulations. Hence it appears that there is no more likelihood of potential, toxic, fugitive dust in the work place from no-rinse conversion coating than from conventional conversion coating solutions. EPA does not expect that there will be problems in obtaining FDA approval when application is made for such approval. The no-rinse process is being used in three commercial plants in the United States leaving little doubt about its commercial availability and development.

14. Comment: Commenters stated that many technologies discussed such as starch xanthate, ion exchange, evaporation and chromium regeneration are not usable technologies in coil coating.

Response: Although these (and several other technologies) are discussed the Agency has not relied upon them as a basis for this proposed regulations even though they are discussed in the development document. These technologies are discussed in the development document because they may have some merit and applicability in specific or special situations.

15. Comment: One commenter contended that the oil removal techniques, as described, are incomplete and that they do not include the techniques of acid cracking and polyelectrolite addition to remove emulsified oils.

Response: On the bases of sampling data collected from coil coating plants it appears that oil skimming in conjunction with other chemical treatments will adequately remove oil to meet the limitations. If however a particular plant chooses to use a special or unusual oil, appropriate technology, such as deemulsification, may need to be applied at the plant to meet the effluent standards.

16. Comment: Industry comments contend that the application of water conserving techniques do not achieve the water rates used as a basis for limitations.

Response: As discussed in Sections IX and X the water use rates on which these limitations are based are the median water flows for each subcategory as taken from the industry supplied data. This means that half of the plants in the industry are presently meeting the overall water use on which BPT is based. Further the BAT water flow is based on recirculation and reuse of the quench water stream. This reduces the wastewater discharge potential by 60 to 70 percent without reducing the amount of water which is used for cleaning and conversion coat rinses.

17. Comment: One commenter stated that dissolved metals should be regulated rather than total metals. The basis for this statement was that all discussions in the report deal with dissolved salts of the metals rather than the metals themselves.

Response: The Agency recognizes that dissolved metal ions are environmentally hazardous entities. However, the metallic elements and the undissolved compounds of these elements are subject to different sets of conditions after they leave the treatment system. Most metallic particles readily oxidize in the oxygen-containing waters of receiving water bodies. In receiving waters, the oxidized metal particles and undissolved metal compounds dissolve to produce the more environmentally hazardous ionic species. Only a few metals, such as gold, would not oxidize in usual receiving water bodies, but even gold compounds could dissolve. Thus, total metals are regulated.

18. Comment: It was suggested that special (presumably less stringent) limitations be established to facilitate treatment of coil coating wastewaters with other process wastewaters in large integrated facilities.

Response: The Agency does not object to the joint treatment of compatible wastewaters when appropriate. The Agency does insist that the treatment

afford wastewaters treated jointly be such that the amount of pollutants discharged from joint treatment be not greater than allowed by the sum of the individual discharge limitations.

XXIV. Solicitation of Comments

EPA invites and encourages public participation in this rulemaking. The Agency asks that any deficiencies in the record of this proposal be specifically addressed and particularly asks that suggested revisions or corrections be supported by data.

EPA is particularly interested in receiving additional comments and information on the following issues:

The Agency is now considering regulating the production of two piece beverage type cans (either aluminum or steel) as a subcategory of the coil coating category. Some can making processes were originally projected to be part of the aluminum forming category. Information gathered under the aluminum forming data collection effort indicated that can making does not correspond to any other aluminum forming operation. However, the can making process is very similar to the coil coating process and would fit in better as a subcategory in the coil coating category. Both industries prepare the metal by cleaning baths and rinsing, apply a chemical conversion coat, and each may paint the product. Both processes are done on a continuous motion basis. Coil coating uses a continuous strip moving through the process steps, while can making uses a continuous web of cans. Similar treatment of the wastewaters would be probable due to the similarities in the processes. The Agency recognizes that factors are somewhat different in can making than in coil coating and is soliciting comments on the general issue of adding can making to the coil coating category and on the applicability of three specific items: the coil coating regulatory methodology, the treatment methods recommended, and the production normalizing factor.

The Agency is continuing to seek additional data to support these proposed limitations. The Agency specifically solicits long term sampling data which will help to better define the operability of the treatment technologies relied upon for regulation.

In order to determine the economic impact of this regulation, the Agency has calculated the cost of installing BPT, BAT, PSES, NSPS, and PSNS for each coil coating facility for which data was available. The cost of BCT for the steel and galvanized subcategories is the same as BAT; the cost for aluminum is the same as BPT. The details of the cost estimations are outlined in the Technical Development Document. Based on these estimates, the Agency has determined that no adverse economic burden will result from these regulations. Informal review of the Draft Technical Development Document by industry revealed that industry considers the cost estimates are too low. The Agency invites comments on this issue and requests that commenters submit any relevant cost data to the Agency.

The treatment effectiveness data set forth in the Technical Development Document is based on results of Agency sampling of the raw wastewaters and treated effluents from a broad range of plants generating similar wastewaters. The Agency invites comments on the treatment effectiveness, and requests data (especially paired raw wastewater-effluent data) from plants having well operated BPT or BAT treatment systems.

The Agency considered regulating TSS as an indicator for removal of small amounts of metals, and oil and grease as an indicator for removal of small amounts of organics. As proposed, the regulation will use oil and grease as an indicator, but will not use TSS as an indicator. The Agency invites comments on this approach and suggestions for alternative approaches.

The Agency is considering adding an alternative regulatory strategy. The proposed regulatory strategy calls for meeting numerical limits for each of several specific metals and other pollutants. The additional alternative would require control of a few (two or three) metals plus close control of pH and total suspended solids (TSS). Such an alternative could reduce analytical costs of monitoring. The Agency invites comments on the inclusion of such optional alternative in the regulations.

Dated: December 31, 1980.

Douglas M. Costle,

Administrator.

Appendix A.—Abbreviations, Acronyms and Other Terms Used in This Notice

Act—The Clean Water Act

Agency—The U.S. Environmental Protection Agency

BAT—The best available technology economically achievable under Section 304(b)(2)(B) of the Act

BCT—The best conventional pollutant control technology, under Section 304(b)(4) of the Act

BDT—The best available demonstrated control technology processes, operating methods, or other alternatives, including where practicable, a standard permitting no discharge of pollutants under section 306(a)(1) of the Act.

BMP—Best management practices under Section 304(e) of the Act

BPT—The best practicable control technology currently available under Section 304(b)(1) of the Act

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Public Law 95-217)

Direct discharger—A facility which discharges pollutants into waters of the United States

Indirect discharger—A facility which introduces pollutants into a publicly owned treatment works

NPDES permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act

NSPS—New source performance standards under Section 306 of the Act

POTW—Publicly owned treatment works

PSES—Pretreatment standards for existing sources of indirect discharges under Section 307(b) of the Act

PSNS—Pretreatment standards for new sources of direct discharges under Section 307 (b) and (c) of the Act

RCRA—Resource Conservation and Recovery Act (Pub. L. 94-580) of 1976, as amended.

Appendix B.—Toxic Pollutants Considered for Specific Limitation

(a) Subpart A—Steel Basis Material Subcategory

039 Fluoranthene
072 1,2-benzanthracene (benzo(a)anthracene)
073 Benzo(a)pyrene (3,4-benzo-pyrene)
074 3-4Benzofluoranthene (benzo(b)fluoranthene
075 11,12-benzofluoranthene (benzo(b)fluoranthene
076 Chrysene
077 Acenaphthylene
078 Anthracene
079 1,12-benzoperylene (benzo(ghi)perylene)
080 Fluorene
081 Phenanthrene
082 1,2,5,6-dibenzanthracene dibenzo(,h)anthracene)
083 Indeno(1,2,3-cd) pyrene (2,3,-o-pheynylene pyrene)
084 Pyrene
087 Trichloroethylene
118 Cadmium
119 Chromium
121 Cyanide, Total
122 Lead
124 Nickel
128 Zinc

(b) Subpart B—Galvanized Basis Material Subcategory

039 Fluoranthene
072 1,2,-benzanthracene (benzo(a)anthracene)
073 Benzo(a)pyrene (3,4-benzo-pyrene)
074 3,4-Benzofluoranthene (benzo(b)fluoranthene
075 11,12-benzofluoranthene (benzo(b)fluoranthene)
076 Chrysene
077 Acenaphthylene
078 Anthracene
079 1,12-benzoperylene (benzo(ghi)perylene)
080 Fluorene

081 Phenanthrene
082 1,2,5,6-dibenzanthracene (dibenzo(,h)anthracene)
083 Indeno(1,2,3-cd) pyrene 2,3-o-pheynylene pyrene)
084 Pyrene
087 Trichloroethylene
118 Cadmium
119 Chromium
120 Copper
121 Cyanide, Total
122 Lead
124 Nickel
128 Zinc

(c) Subpart C—Aluminum Basis Material Subcategory

118 Cadmium
119 Chromium
120 Copper
121 Cyanide, Total
122 Lead
128 Zinc

Appendix C.—Toxic Pollutants Not Detected

(a) Subpart A—Steel Basis Material Subcategory

001 Acenaphthene
002 Acrolein
003 Acrylonitrile
005 Benzidine
006 Carbon tetrachloride (tetrachloromethane)
007 Chlorobenzene
008 1,2,4-trichlorobenzene
009 Hexachlorobenzene
010 1,2-dichloroethane
012 Hexachloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 Chloroethane
017 Bis (chloromethyl) ether
018 Bis (2-chloroethyl) ether
019 2-chloroethyl vinyl ether (mixed)
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 Parachlorometa cresol
023 Chloroform (trichloromethane)
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-trans-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene (1,3-dichloropropene)
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 Bis (2-chloroisopropyl) ether
043 Bis (2-chloroethoxy) methane
045 Methyl chloride (dichloromethane)
046 Methyl bromide (bromomethane)
047 Bromoform (tribromomethane)
048 Dichlorobromomethane
049 Trichlorofluoromethane
050 Dichlorodifluoromethane
051 Chlorodibromomethane
052 Hexachlorobutadiene
053 Hexachloromyclopenta-
056 Nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 Pentachlorophenol
088 Vinyl chloride (chloroethylene)
089 Aldrin
090 Dieldrin
091 Chlordane (technical mixture and metabolites)
092 4,4-DDT
093 4,4-DDE (p,p-DDX)
094 4,4-DDD (p,p-TDE)
095 Alpha-endosulfan
096 Beta-endosulfan
097 Endosulfan sulfate
098 Endrin
099 Endrin aldehyde
100 Heptachlor
101 Heptachlor epoxide (BHC-hexachlorocyclohexane
102 Alpha-BHC
103 Beta-BHC
104 Gamma-BHC (lindane)
105 Delta-BHC (PCB-polychlorinated biphenyls)
106 PCB–1242 (Arochlor 1242)
107 PCB–1254 (Arochlor 1254)
108 PCB–1221 (Arochlor 1221)
109 PCB–1232 (Arochlor 1232)
110 PCB–1248 (Arochlor 1248)
111 PCB–1260 (Arochlor 1260)
112 PCB–1016 (Arochlor 1016)
113 Toxaphene
116 Asbestos
117 Beryllium
125 Selenium
127 Thallium
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

(b) Subpart B—Galvanized Basis Material Subcategory

001 Acenaphthene
002 Acrolein
003 Acrylonitrile
004 Benzene
005 Benzidine
006 Carbon tetrachloride (tetrachloromethane)
007 Chlorobenzene
008 1,2,4-trichlorobenzene
009 Hexachlorobenzene
010 1,2-dichloroethane
012 Hexachloroethane
013 1,1-dichloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 Chloroethane
017 Bis (chloromethyl) ether
018 Bis (2-chloroethyl) ether
019 2-chloroethyl vinyl ether (mixed)
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 Parachlorometa cresol
023 Chloroform (trichloromethane)
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3-dichlorobenzidine
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene (1,3-dichloropropene)
034 2,4,-demethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 Ethylbenzene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 Bis (2-chloroisopropyl) ether
043 Bis(2-chloroethoxy) methane
044 Methylene chloride (dichloromethane)
045 Methyl chloride (dichloromethane)
046 Methyl bromide (Bromomethane)
047 Bromoform (tribromomethane)
048 Dichlorobromomethane
049 Trichlorofluoromethane
050 Dichlorodifluoromethane
051 Chlorodibromomethane
052 Hexachlorobutadiene
053 Hexachloromyclopentadiene
056 Nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 Pentachlorophenol
065 Phenol
085 Tetrachloroethylene
086 Toluene
088 Vinyl chloride (chloroethylene)
089 Aldrin
090 Dieldrin
091 Chlordane (technical mixture and metabolites)
092 4,4-DDT
093 4,4-DDE (p,p-DDX)
094 4,4-DDD (p,p-TDE)
095 Alpha-endosulfan
096 Beta-endosulfan
097 Endosulfan sulfate
098 Endrin
099 Endrin aldehyde
100 Heptachlor
101 Heptachlor epoxide (BHC-hexachlorocyclohexane)
102 Alpha-BHC
103 Beta-BHC
104 Gamma-BHC (lindane)
105 Delta-BHC (PCB-polychlorinated biphenyls)
106 PCB-1242 (Arochlor 1242)
107 PCB-1254 (Arochlor 1254)
108 PCB-1221 (Arochlor 1221)
109 PCB-1232 (Arochlor 1232)
110 PCB-1248 (Arochlor 1248)
111 PCB-1260 (Arochlor 1260)
112 PCB-1016 (Arochlor 1016)
113 Toxaphene
114 Antimony
115 Arsenic
116 Asbestos
117 Beryllium
123 Mercury
125 Selenium
126 Silver
127 Thallium
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

(c) Subpart C—Aluminum Basis Material Subcategory

001 Acenaphthene

002 Acrolein
003 Acrylonitrile
005 Benzidine
006 Carbon tetrachloride (tetrachloromethane)
007 Chlorobenzene
008 1,2,4-trichlorobenzene
009 Hexachlorobenzene
010 1,2-dichloroethane
011 1,1,1-trichlorethane
012 Hexachloroethane
013 1,1-dichloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 Chloroethane
017 Bis (chloromethyl) ether
018 Bis (2-chloroethyl) ether
019 2-chloroethyl vinyl ether (mixed)
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 Parachlorometa cresol
023 Chloroform (trichloromethane)
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-trans-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene (1,3-dichloropropene)
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 Ethylbenzene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 Bis (2-chloroisopropyl) ether
043 Bis (2-chloroethoxy) methane
045 Methyl chloride (dichloromethane)
046 Methyl bromide (bromomethane)
047 Bromoform (tribromomethane)
048 Dichlorobromomethane
049 Trichlorofluoromethane
050 Dichlorodifluoromethane
051 Chlorodibromomethane
052 Hexachlorobutadiene
053Hexachloromyclopentadiene
054 Isophorone
056 Nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 Pentachlorophenol
065 Phenol
088 Vinyl chloride (chloroethylene)
089 Aldrin
090 Dieldrin
091 Chlordane (technical mixture and metabolites)
092 4,4-DDT
093 4,4-DDE (p,p-DDX)
094 4,4-DDD (p,p-TDE)
095 Alpha-endosulfan
096 Beta-endosulfan
097 Endosulfan sulfate
098 Endrin
099 Endrin aldehyde
100 Heptachlor
101 Heptachlor epoxide (BHC-hexachlorocyclohexane)
102 Alpha-BHC
103 Beta-BHC
104 Gamma-BHC (lindane)
105 Delta-BHC (PCB-poly-chlorinated biphenyls)
106 PCB-1242 (Arochlor 1242)
107 PCB-1254 (Arochlor 1254)
108 PCB-1221 (Arochlor 1221)
109 PCB-1232 (Arochlor 1232)
110 PCB-1248 (Arochlor 1248)
111 PCB-1260 (Arochlor 1260)
112 PCB-1016 (Arochlor 1016)
113 Toxaphene
114 Antimony
115 Arsenic
116 Asbestos
117 Beryllium
123 Mercury
125 Selenium
126 Silver
127 Thallium
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Appendix D.—Toxic Pollutants Detected Below the Nominal Quantification Limit

(a) Subpart A—Steel Basis Material Subcategory

004 Benzene
038 Ethylbenzene
044 Methylene chloride (dichloromethane)
071 Dimethyl phthalate
085 Tetrachloroethylene
086 Toluene
123 Mercury

(b) Subpart B—Galvanized Basis Material Subcategory

069 Di-n-octyl phthalate
071 Dimethyl phthalate

(c) Subpart C—Aluminum Basis Material Subcategory

004 Benzene
039 Fluoranthene
044 Methylene chloride (dichloromethane)
055 Naphthalene
069 Di-n-octyl phthalate
085 Tetrachloroethylene
086 Toluene
087 Trichloroethylene

Appendix E.—Toxic Pollutants Detected in Environmentally Insignificant Amounts

(a) Subpart A—Steel Basis Material Subcategory

011 1,1,1-trichlorethane
013 1,1-dichloroethane
034 2,4-dimethylphenol
054 Isophorone
055 Naphthalene
065 Phenol
066 Bis(2-ethylhexyl)phthalate
067 Butyl benzyl phthalate
068 Di-N-Butyl Phthalate
069 Di-n-octyl phthalate
070 Diethyl Phthalate
114 Antimony
115 Arsenic
120 Copper
126 Silver

(b) Subpart B—Galvanized Basis Material Subcategory

011 1,1,1-trichlorethane
029 1,1-dichloroethylene
030 1,2-trans-dichloroethylene
054 Isophorone
055 Naphthalene
066 Bis(2-ethylhexyl)phthalate
067 Butyl benzyl phthalate
068 Di-N-Butyl Phthalate
070 Diethyl Phthalate

(c) Subpart C—Aluminum Basis Material Subcategory

066 Bis(2-ethylhexyl)phthalate
067 Butyl benzyl phthalate
068 Di-N-Butyl Phthalate
070 Diethyl Phthalate
071 Dimethyl phthalate
072 1,2-benzanthracene (benzo(a)anthracene)
073 Benzo(a)pyrene (3,4,benzopyrene)
074 3,4-Benzofluoranthene (benzo(b)fluoranthene)
075 11,12-benzofluoranthene (benzo(b)fluoranthene)
076 Chrysene
077 Acenaphthylene
078 Anthracene
079 1,12-benzoperylene (benzo(ghi)perylene)
080 Fluorene
081 Phenanthrene
082 1,2,5,6-dibenzanthracene (dibenzo(,h)anthracene)
083 Indeno(1,2,3-cd) pyrene (2,3-o-pheynylene pyrene)
084 Pyrene
124 Nickel

EPA proposes to add Part 465 to Title 40 of the Code of Federal Regulations to read as follows:

PART 465—COIL COATING POINT SOURCE CATEGORY

General Provisions

Sec.
465.01 Applicability
465.02 General definitions
465.03 Monitoring and reporting requirements [Reserved]

Subpart A—Steel Basis Material Subcategory

465.10 Applicability; description of the steel basis material subcategory.
465.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
465.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
465.13 New source performance standards (NSPS).
465.14 Pretreatment standards for existing sources (PSES).
465.15 Pretreatment standards for new sources (PSNS).
465.16 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart B—Galvanized Basis Material Subcategory

465.20 Applicability; description of the galvanized basis material subcategory.
465.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
465.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
465.23 New source performance standards (NSPS).
465.24 Pretreatment standards for existing sources (PSES).
465.25 Pretreatment standards for new sources (PSNS).
465.26 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart C—Aluminum Basis Material Subcategory

465.30 Applicability; description of the aluminum basis material subcategory.
465.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
465.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
465.33 New source performance standards (NSPS).
465.34 Pretreatment standards for existing sources (PSES).
465.35 Pretreatment standards for new sources (PSNS).
465.36 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Authority: Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (The "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

General Provisions

§ 465.01 Applicability.

This part applies to any coil coating facility which discharges a pollutant to waters of the United States or which introduces pollutants to a publicly owned treatment works.

§ 465.02 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) "Coil" means a strip of basis material rolled into a roll for handling.

(b) "Coil coating" means the process of converting basis material strip into coated stock. Usually cleaning, conversion coating, and painting are performed on the basis material. This regulation covers processes which perform any two or more of the three operations.

(c) "Basis material" means the coiled strip which is processed.

(d) "Area processed" means the area actually exposed to process solutions. Usually this includes both sides of the metal strip.

(e) "Steel basis material" means cold rolled steel, hot rolled steel, and chrome, nickel and tin coated steel which are processed.

(f) "Galvanized basis material" means zinc coated steel, galvanized, brass and other copper base strip which is processed in coil coating.

(g) "Aluminum basis material" means aluminum, aluminum alloys and aluminum coated steels which are processed in coil coating.

(h) "BPT" means the best practicable control technology currently available under Section 304(b)(1) of the Act.

(i) "BAT" means the best available technology economically achievable under Section 304(b)(2)(B) of the Act.

(j) "NSPS" means new source performance standards under Section 306 of the Act.

(k) "PSES" means pretreatment standards for existing sources, under Section 306(b) of the Act.

(l) "PSNS" means pretreatment standards for new sources, under Section 306(c) of the Act.

(m) "BCT" means the best conventional pollutant control technology, under Section 304(b)(4) of the Act.

§ 465.03 [Reserved]

Subpart A—Steel Basis Material Subcategory

§ 465.10 Applicability; description of the steel basis material subcategory.

This subpart applies to discharges to waters of the United States, and introductions of pollutants into publicly owned treatment works from coil coating of steel basis material coils.

§ 465.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR §§ 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

Subpart A

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	Mg/m² (lb/1,000,000 ft²) of area processed	
Cadmium	0.18 (0.036)	0.089 (0.018)
Chromium	5.42 (1.11)	1.95 (0.40)
Copper	5.78 (1.18)	2.34 (0.48)
Cyanide, Total	0.65 (0.13)	0.27 (0.055)
Lead	0.30 (0.061)	0.15 (0.03)
Nickel	4.27 (0.87)	3.23 (0.66)
Zinc	4.44 (0.91)	1.93 (0.39)
Iron	6.43 (1.32)	2.19 (0.45)
Oil and Grease	59.2 (12.1)	29.6 (6.07)
TSS	104. (21.2)	74.1 (15.2)
pH—Within the range of 7.5 to 10.0 at all times.		

§ 465.12 Effluent limitations representiong the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR §§125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

Subpart A

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	mg/μ² (lb/1,000,000 ft²) of area processed	
Cadmium	0.050 (0.010)	0.024 (0.005)
Chromium	.33 (.067)	.12 (.025)
Copper	1.59 (.33)	64. (.13)
Cyanide, Total	.17 (.035)	.073 (.015)
Lead	.12 (.025)	.054 (.011)
Nickel	.78 (.16)	.35 (.072)
Zinc	.84 (.17)	.37 (.075)
Iron	2.64 (.54)	.90 (.18)
Oil and Grease	12.2 (2.49)	12.2 (2.49)

§ 465.13 New source performance standards.

Any new source subject to this subpart must achieve the follwoing performance standards:

(a) There shall be no discharge of wastewater pollutants from conversion coating operations.

(b) The discharge of wastewater pollutants from all coil coating operations other than conversion coating operations shall not exceed the values set forth below:

Subpart A

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	mg/μ² (lb/1,000,000 ft²) of area processed	
Cadmium	0.014 (0.003)	0.007 (0.001)
Chromium	.094 (.019)	.035 (.007)
Copper	.46 (.094)	.19 (.038)
Cyanide, Total	.052 (.01)	.021 (.004)
Lead	.035 (.007)	.015 (.003)
Nickel	.22 (.046)	.1 (.021)
Zinc	.24 (.049)	.11 (.021)
Iron	.75 (.15)	.26 (.053)
Oil and Grease	3.49 (.72)	3.49 (.72)
TSS	5.24 (1.07)	3.49 (.72)

pH—Within the range of 7.5 to 10.0 at all times.

§ 465.14 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, an existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The provision of 40 CFR Part 403.6(c) and Appendix A, B.2.e requiring that pretreatment standards be established as concentration is set aside for this subpart. The mass wastewater pollutants in coil coating process wastewater introduced into a POTW shall not exceed the following values:

Subpart A

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	mg/μ² (lb/1,000,000 ft²) of area processed	
Cadmium	0.050 (0.010)	0.022 (0.005)
Chromium	.33 (.067)	.12 (.025)
Copper	1.59 (.33)	.64 (.13)
Cyanide, Total	.18 (.037)	.073 (.015)
Lead	.12 (.025)	.054 (.011)
Nickel	.78 (.16)	.35 (.072)
Zinc	.84 (.17)	.37 (.075)

§ 465.15 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The provision of 40 CFR Part 403(c) and Appendix A, B.2.e. requiring that pretreatment standards be established as concentration is set aside for this subpart. The mass wastewater pollutants in coil coating process wastewater introduced into a POTW shall not exceed the following values:

Subpart A

Pollutant of pollutant property	PSNS	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	mg/m² (1b/1,000,000 ft²) of area processed	
Cadmium	0.014 (0.003)	0.007 (0.001)
Chromium	.094 (.019)	.035 (.007)
Copper	.46 (.094)	.19 (.004)
Cyanide, Total	.052 (.01)	.021 (.004)
Lead	.035 (.007)	.015 (.003)
Nickel	.22 (.046)	.1 (.021)
Zinc	.24 (.049)	.11 (.021)

§ 465.16 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology.

Except as provided in 40 CFR §§ 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representating the degree of effluent reduction attainable by the application of the best conventional pollutant control technology:

Subpart A

Pollutant of pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	mg/m² (1b/1,000,000 ft²) of area processed	
Oil and Grease	12.2 (2.49)	12.2 (2.49)
TSS	18.2 (3.73)	12.2 (2.49)

pH—Within of 7.5 to 10.0 at all times.

Subpart B—Galvanized Basis Material Subcategory

§ 465.20 Applicability; description of the galvanized basis material subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from coil coating of galvanized basis material coils.

§ 465.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR §§ 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practical control technology currently available:

Subpart B

Pollutant of pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	mg/m² (1b/1,000,000 ft²) of area processed	
Cadmium	0.2 (0.041)	0.1 (0.021)
Chromium	6.13 (1.26)	2.21 (.45)
Copper	6.53 (1.34)	2.65 (.54)
Cyanide, Total	.74 (.15)	.3 (.062)
Lead	.34 (.069)	.17 (.034)
Nickel	4.82 (.99)	3.65 (.75)
Zinc	5.02 (1.03)	2.18 (.45)
Iron	7.27 (1.49)	2.48 (.51)
Oil and Grease	67.0 (13.7)	33.5 (6.86)
TSS	117.2 (24.)	83.7 (17.1)

pH—Within of 7.5 to 10.0 at all times.

§ 465.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR §§ 125.30–.32, any existing point source subject to this subject must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

Subpart B

Pollutant of pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	mg/m² (1b/1,000,000 ft²) of area processed	
Cadmium	0.049 (0.010)	0.022 (0.005)
Chromium	.33 (.067)	.12 (.025)
Copper	1.58 (.32)	.64 (.13)
Cyanide, Total	.17 (.035)	.072 (.015)
Lead	.12 (.025)	.053 (.011)
Nickel	.77 (.16)	.35 (.072)
Zinc	.83 (.17)	.36 (.074)
Iron	2.61 (.53)	.89 (.18)
Oil and Grease	12.1 (2.47)	12.1 (2.47)

§ 465.23 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following performance standards.

(a) There shall be no discharge of wastewater pollutants from conversion coating operations.

(b) The discharge of wastewater pollutants from all coil coating operations other than coversion coating operations shall not exceed the values set forth below:

Subpart B

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	mg/m² (lb/1,000,000 ft²) of area processed	
Cadmium	0.018 (0.004)	0.009 (0.002)
Chromium	.12 (.024)	.043 (.009)
Copper	.56 (.12)	.23 (.047)
Cyanide, Total	.06 (.012)	.026 (.005)
Lead	.043 (.009)	.019 (.004)
Nickel	.28 (.056)	.12 (.026)
Zinc	.3 (.061)	.13 (.026)
Iron	.93 (.19)	.32 (.065)
Oil and Grease	4.29 (.088)	4.29 (.88)
TSS	6.44 (1.32)	4.29 (.88)
pH—Within the range of 7.5 to 10.0 at all times.		

§ 465.24 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The provision of 40 CFR Part 403.6(c) and Appendix A, B.2.e requiring that pretreatment standards be established as concentration is set aside for this subpart. The mass wastewater pollutants in coil coating process wastewater introduced into a POTW shall not exceed the following values:

Subpart B

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	mg/m² (lb/1,000,000 ft²) of area processed	
Cadmium	0.049 (0.010)	0.022 (0.005)
Chromium	.33 (.067)	.12 (.025)
Copper	1.58 (.32)	.64 (.13)
Cyanide, Total	.18 (.035)	.072 (.015)
Lead	.12 (.025)	.053 (.011)
Nickel	.77 (.16)	.35 (.072)
Zinc	.83 (.17)	.36 (.074)

§ 465.25 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The provision of 40 CFR Part 403(c) and Appendix A, B.2.e requiring that pretreatment standards be established as concentration is set aside for this subject. The mass wastewater pollutants in coil coating process waste water introduced into a POTW shall not exceed the following values:

Subpart B

Pollutant or pollutant property	PSNS	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	Mg/m² (lb/1,000,000 ft²) of area processed	
Cadmium	0.018 (0.004)	0.008 (0.002)
Chromium	.12 (.024)	.043 (.009)
Copper	.56 (.12)	.23 (.047)
Cyanide, Total	.06 (.012)	.026 (.005)
Lead	.043 (.009)	.019 (.004)
Nickel	.28 (.056)	.12 (.026)
Zinc	.3 (.061)	.13 (.026)

§ 465.26 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR §§ 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology:

Subpart B

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	mg/m² (lb/1,000,000 ft²) of area processed	
Oil and Grease	12.1 (2.47)	12.1 (2.47)
TSS	18.1 (3.70)	12.1 (2.47)
pH—Within the range of 7.5 to 10.0 at all times.		

Subpart C—Aluminum Basis Material Subcategory

§ 465.30 Applicability; description of the aluminum basis material subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from coil coating of aluminum basis material coils.

§ 465.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT)

Except as provided in 40 CFR §§ 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

Subpart C

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	Mg/m² (lb/1,000,000 ft²) of the area processed	
Cadmium	0.17 (0.035)	0.086 (0.018)
Chromium	5.24 (1.07)	1.89 (.39)
Copper	5.58 (1.14)	2.26 (.46)
Cyanide, Total	.63 (.13)	.26 (.053)
Lead	.29 (.059)	.14 (.029)
Nickel	4.12 (.84)	3.12 (.64)
Zinc	4.29 (.88)	1.86 (.38)
Aluminum	1.83 (.38)	.74 (.15)
Iron	6.21 (1.27)	1.86 (.38)
Oil and Grease	57.3 (11.7)	28.6 (5.86)
TSS	100.0 (20.5)	71.6 (14.7)
pH—Within the range of 7.5 to 10.0 at all times.		

§ 465.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR §§ 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

Subpart C

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	Mg/m² (lb/1,000,000 ft²) of the area processed	
Cadmium	0.040 (0.008)	0.02 (0.004)
Chromium	.26 (.054)	.097 (.02)
Copper	1.27 (.26)	.52 (.11)
Cyanide, Total	.14 (.028)	.058 (.012)
Lead	.097 (.02)	.043 (.009)
Nickel	.62 (.13)	.28 (.058)
Zinc	.67 (.14)	.29 (.06)
Aluminum	.44 (.09)	.18 (.036)
Iron	2.11 (.43)	.72 (.15)
Oil and Grease	9.73 (1.99)	9.73 (1.99)

§ 465.33 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following performance standards.

There shall be no discharge of waste water pollutants from conversion coating operations.

The discharge of wastewater pollutants from all coal coating operations other than conversion coating operations shall not exceed the values set forth below:

Subpart C

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	Mg/m² (lb/1,000,000 ft²) of area processed	
Cadmium	0.015 (0.003)	0.008 (0.002)
Chromium	.1 (.021)	.038 (.008)
Copper	.5 (.1)	.2 (.041)
Cyanide, Total	.057 (.012)	.023 (.005)
Lead	.038 (.008)	.017 (.003)
Nickel	.24 (.05)	.11 (.023)
Zinc	.26 (.053)	.11 (.023)
Aluminum	.17 (.035)	.068 (.014)
Iron	.82 (.17)	.28 (.06)
Oil and Grease	3.78 (.77)	.378 (.77)
TSS	5.67 (.116)	.378 (.77)

pH—Within the range of 7.5 to 10.0 at all times.

§ 465.34 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The provision of 40 CFR Part 403.6(c) and Appendix A, B.2.e requiring that pretreatment standards be established as concentration is set aside for this subpart. The mass wastewater pollutants in coil coating process wastewater.

Subpart C

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	Mg/m² (lb/1,000,000 ft²) of area processed	
Cadmium	0.040 (0.008)	0.02 (0.004)
Chromium	.26 (.054)	.097 (.02)
Copper	1.27 (.26)	.52 (.11)
Cyanide, Total	.14 (.028)	.058 (.012)
Lead	.097 (.02)	.043 (.009)
Nickel	.62 (.13)	.28 (.058)
Zinc	.67 (.14)	.29 (.06)

§ 465.35 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The provision of 40 CFR Part 403(c) and Appendix A, B.2.e requiring that pretreatment standards be established as concentration is set aside for this subpart. The mass wastewater pollutants in coil coating process wastewater introduced into a POTW shall not exceed the following values:

Subpart C

Pollutant or pollutant property	PSNS	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	Mg/m² (lb/1,000,000 ft²) of area processed	
Cadmium	0.015 (0.003)	0.008 (0.002)
Chromium	.1 (.021)	.038 (.008)
Copper	.5 (.1)	.2 (.041)
Cyanide, Total	.057 (.012)	.023 (.005)
Lead	.038 (.008)	.017 (.003)
Nickel	.24 (.05)	.11 (.023)
Zinc	.26 (.053)	.11 (.023)

§ 465.36 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR §§ 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology:

Subpart C

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive sampling days
	Mg/m² (lb/1,000,000 ft²) of area processed	
Oil and Grease	9.73 (1,99)	9.73 (1.99)

pH—Within the range of 7.5 to 10.0 at all times.

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federal register

Monday
January 12, 1981

Part V

Department of Energy

Economic Regulatory Administration

Reports on Major Electric Utility System Emergencies

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 205

[Docket No. FRA-R-80-04A]

Reports on Major Electric Utility System Emergencies

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues rules to implement reporting of major electric utility system emergencies pursuant to sections 202(a) and 311 of the Federal Power Act. Section 202(a) of the Federal Power Act authorized the Federal Power Commission (FPC) to take such action as necessary to assure an abundant supply of electric energy throughout the country. Section 311 of the Federal Power Act authorized and directed the FPC to collect data for the purpose of reporting the problems and developments of the electric power industry to the Congress. The DOE Organization Act transferred the responsibilities under sections 202(a) and 311 of the Federal Power Act to the Secretary of Energy. ERA has been delegated authority by the Secretary to receive reports of incidents affecting the reliability of the electric power supply system.

DATES: Effective: January 1, 1981.

FOR FURTHER INFORMATION CONTACT:
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Lise Courtney Howe, Office of General Counsel, Department of Energy, Room 5E-064, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2900.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Comments and DOE Response.
III. The Final Regulations.
IV. Other Matters.

I. Background

On March 27, 1980, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gave notice of a proposed rulemaking pursuant to sections 202(a) and 311 of the Federal Power Act (45 FR 20109) and invited public comments and requests for a public hearing on the proposed rules. On the basis of the many comments received and an intra-agency review of the regulations as initially proposed, ERA determined that the proposed regulations should be revised and reissued. On May 9, 1980, ERA ordered the comment period on the original regulations extended and a public hearing to be held after issuance of the revised proposal.

On August 5, 1980, the ERA issued a revised proposal for regulations covering the reporting of major electric utility system emergencies (45 FR 51833). A public hearing on these proposed regulations was held on September 3, 1980. The DOE received 13 written comments on the proposed regulations. The commenting parties made several suggestions, resulting in some changes in the regulations issued today.

II. Discussion of Comments and DOE Response

The following is a discussion of comments received and the DOE's response to these comments.

A. General Comments

Duke Power Company commented that the proposed rule does not discuss the role of distribution systems and, therefore, problems occurring on the distribution system should not be reported. DOE points out that §§ 205.351 (c) & (e) require a report when the specified amount of firm load is affected regardless of where on the system the problem occurs. Further, § 205.351(f) requires a report when the specified number of customers experience an outage of three hours or longer. In these cases, problems occurring on the distribution system which meet the specified criteria are to be reported.

The Edison Electric Institute commented that the proposed reporting requirements, the information collected, and the type of Federal emergency assistance that can be provided do not contribute to the continuity of service to customers. DOE disagrees with this comment. Federal assistance may, in fact, be able to speed restoration activities following a disruption. Reports of this tpe also assist in insuring the continuity of government functions. Further, DOE believes that there have been tangible benefits to system reliability as a result of detailed investigations conducted into the causes of reported disturbances.

The Edison Electric Institute also questioned the DOE finding that the proposed rule is nonsignificant, since they estimate that it may as much as double the reporting effort and associated costs. DOE estimates that the number of reports will increase by up to 50 percent. However, even if the reporting does increase by 100 percent, DOE finds that the incremental costs would still not be in excess of $100 million per year. Therefore, DOE still finds this rule to be nonsignificant within the meaning of the DOE procedures implementing Executive Order 12044, "Improving Government Regulations."

B. General Purpose § 205.350

Duke Power Company commented that this section did not address DOE's emergency powers under section 202(c) of the Federal Power Act or wartime situations. They therefore suggested that DOE review this rule in its entirety to determine if this proposed action is within DOE's authority.

The Federal emergency response measures referred to in § 205.350 involve making government resources available (e.g., aircraft, trucks, portable electric generators, etc.) that may be of assistance in service restoration efforts following a major interruption. DOE's emergency authorities under section 202(c) of the Federal Power Act or wartime situations are contained in separate regulations. This proposed reporting rule is implemented pursuant to DOE's responsibilities under sections 202(a) and 311 of the Federal Power Act.

C. Reporting Requirements § 205.351

1. General.—The Edison Electric Institute suggested that all the reporting times be changed to within three days, or as soon thereafter as practicable. Carolina Power & Light Company suggested a uniform reporting time of one month following the incident except for data needed to alert other utilities of an impending emergency or when DOE assistance was required.

DOE reviewed all the reporting times and made some changes as discussed under the comments received on specific subsections. However, DOE feels that, due to a need for the Federal government to be promptly informed of certain critical events that occur on the electric energy supply system, it is not possible to make all reporting times uniform.

2. Subsection (a), Conservation Appeals.—The Southern Company suggested that interruptible loads should be excluded from this subsection. The same suggestion was also received from the Southwest Power Pool, Florida Power & Light Company and the Florida Electric Power Coordinating Group.

DOE was persuaded by these comments and this subsection has been changed to exclude interruptible customers except when they are requested to reduce their use of electricity for reasons of maintaining the

continuity of service of the bulk electric power supply system.

3. Subsection (b), Voltage Reductions.—The Edison Electric Institute suggested that voltage reductions of less than five percent and load reductions of less than 20 percent not be reportable. They further suggested that voltage reductions be reported when done for reasons of insufficiencies in generating capacity rather than for maintaining the continuity of service. Florida Power & Light Company and the Florida Electric Power Coordinating Group suggested that only intentional voltage reductions be reported.

The amount of load reduction attributable to reducing system voltage is difficult to quantify. Voltage is an important element in the quality of electric service. Variation of the system voltage levels can cause abnormal and excessive flows on certain transmission lines. To accommodate the comments and reduce the reporting burden, this subsection was changed to specify only intentional voltage reductions of three percent or greater.

4. Subsection (c), Load Shedding.—The Southern Company questioned whether reduction of load to a customer under provisions of an interruptible contract would, in some instances, be counted toward the 100 MW limit. DOE intends the phrase "firm customers" to exclude any service under the provisions of an interruptible contract.

The Southwest Power Pool suggests that this subsection be changed to distinguish between "load shedding" and automatic tripping of particular circuit elements. DOE has changed the wording of this subsection to eliminate the phrase "by manual switching, automatic devices, or other means" to clarify this point. Also, the incident is only reportable when done to maintain the continuity of service on the bulk electric power system. This would preclude emergency lockout of a device so as to protect that particular element.

The Southwest Power Pool suggested that the 100 MW limit in this subsection be raised to 200 MW. Gulf States Utilities also requested the raising of this limit to 200 MW but only for utilities with a peak load during the prior year of 3,000 MW or greater. DOE feels that the necessity of shedding 100 MW of load to maintain continuity of service of the bulk power system is a serious enough action to require reporting regardless of the size of the system. Therefore, the limit of 100 MW has been retained.

Florida Power & Light Company and the Florida Electric Power Coordinating Group suggested that load shedding actions only be reported if they affect over 100 MW for 15 minutes or longer. DOE does not agree that incidents lasting for less than 15 minutes are not significant, particularly if there is a trend toward repeated short interruptions. Therefore, no time limit was added to this requirement.

5. Subsection (d), Hazard Reporting.—All of the comments received on this subsection addressed the examples provided. DOE again stresses that these are examples only and are not intended to be an exhaustive list. The judgment of the operating management of the utility is the key element in ascertaining those situations that may represent a hazardous condition on their system. However, the comments were helpful and these examples have been reworded to clarify our intent as discussed below.

The Southwest Power Pool, Florida Power & Light Company, Gulf States Utilities and the Florida Electric Power Coordinating Group all pointed out that large quantities of energy are often transferred into an area on a routine basis without constituting a threat to system reliability, especially for a period as short as one hour. DOE agrees with this point and has reworded example (1) to indicate unscheduled deliveries to supply the load for longer than three consecutive hours.

The Southwest Power Pool commented on example (2) that increases in natural gas or distillate oil use may be a normal occurrence when this is a primary fuel. They also recommended changing the phrase (replacement fuel) "may be a problem" to "is not assured." DOE has changed this example to say "any fuel for generating equipment" rather than just natural gas or distillate oil. The wording "may be a problem" was maintained since this subsection relies on the judgment of the utility and DOE does not want to dictate what would constitute a problem.

Duke Power Company recommended that we define "acts of sabotage" in example (3). This example was changed to read "acts of physical sabotage" and again relies on the judgment of the utility management.

Illinois Power Company suggested that example (4) be modified so that frequency declines resulting in system separation and loss of over 50 MW of firm load should be reported. Florida Power & Light Company and the Florida Electric Power Coordinating Group suggested adding "for 15 minutes or more" to the example. DOE does not feel adopting either of these suggestions would clarify the example. Again, this subsection relies on the judgment of the utility management and DOE experience has been that this judgment has been used in a proper and expeditious manner.

As a result of its own review of the proposed rule and in response to the general comments received, DOE has changed the reporting time under this subsection to the next business day from the three hours originally proposed.

6. Subsection (e), Major Outages.—The Southwest Power Pool commented that only interruptions lasting for over eight hours be reported and that large utilities be defined as those having a prior year peak load of 2000 MW instead of 3000 MW. Commonwealth Edison suggested that this subsection may be redundant with subsection (f) and, if maintained, should require reporting within the same time frame as (f). The Edison Electric Institute (EEI) agreed with Commonwealth Edison that the reporting time was too short. EEI further commented that reportable losses of load due to weather conditions happen so frequently that utilities and DOE would be unduly burdened by this requirement. Therefore, EEI suggested that weather-related outages be excluded, a similar comment also received from the Florida Electric Power Coordinating Group.

Outages affecting 100 MW of load are felt to be significant when they last for over 15 minutes and DOE has not changed this time limit. Further, DOE is not persuaded that the proposed definition of a large utility should be changed and the 3000 MW peak load limit was maintained. While some outages would be reportable under both this subsection and subsection (f), there are other incidents that fall into only one category. Therefore, both subsections have been retained. The reporting time was left at three hours since DOE cannot effectively coordinate any appropriate Federal response or insure the continuity of government unless it receives timely notice. Under the current regulations, weather related outages of 100 MW or greater are reported to DOE and are not so numerous as to be an undue burden. Since some of these outages are reported by large utilities, the new rule should actually decrease the number of these reports. DOE believes that outages caused by weather can cause significant public discomfort and possible injury. They are, therefore, of interest to the Federal government. The requirement for reporting these incidents is retained.

7. Subsection (f), Widespread Outages.—The Edison Electric Institute commented that it is often impossible to determine when the number of customers reaches the threshold since storms interrupt small numbers of

customers in different geographic locations of the same utility's service area. The Florida Electric Power Coordinating Group again suggested that weather-related outages not be reported. The Southwest Power Pool suggested that the time of a reportable outage be raised from three to eight hours and the number of customers be increased from 50,000 to 100,000. The Virginia Electric & Power Company (VEPCO) also suggested that 50,000 customers was too few and recommended changing this to 10 percent of the system's customers. VEPCO further requested clarification of whether this meant the same customers sustaining a continuous three-hour outage of different groups averaging 50,000 customers for three hours. Finally, the company questioned whether there was any reason to report these outages to DOE. Public Service Electric & Gas Company also questioned the need for reporting these occurrences and commented that 50,000 customers was too few.

DOE feels that this reporting criteria is reasonable due to the possibility of significant public socio-economic consequences from such outages. The use of Federal government resources to mitigate the impacts could be appropriate. The final rule has been changed to clarify that only significant incidents affecting the same 50,000 customers continuously for three hours are reportable. The limit of 50,000 customers was maintained but clarified to emphasize that this refers to meters or delivery points rather than number of persons. Since the average residential meter serves two or more people, such an outage would affect at least 100,000 people. This number of citizens is of such significance that the reporting requirement is retained.

8. Subsection (g), Ordered Operating Limitations.—The Florida Electric Power Coordinating Group suggested that only significant deratings or restrictions be reported. Illinois Power Company agreed with this comment and suggested reporting only when the order affected 400 MW of capacity. Commonwealth Edison made the same suggestion as Illinois Power Company with the further stipulation that the lost capacity be necessary to maintain continuity of service. Virginia Electric & Power Company agreed that only shutdowns or limitations that jeopardize the reliability or adequacy of the bulk power supply system should be reported. The Southwest Power Pool suggested that only units representing 20 percent of the system's capacity or 500 MW for more than 10 days be reportable.

DOE agrees with these commentors that only significant restrictions should be reported. The final rule has been changed to require reporting only when the order affects 25 percent or more of the unit's capability. The unit size was left at 400 MW since this constitutes a significant unit on most systems. The final rule was further changed to require an initial report when the limitation is a long-term one based on ambient environmental conditions with further reports required only when a change in the order occurs.

D. Fuel Emergencies § 205.353

The Southwest Power Pool (SPP) commented that this section did not recognize that the downward trend in fuel stocks or hydro storage may be appropriate or desired by the utility. SPP suggested rewording factor (2) to alleviate this problem.

DOE intends (1) and (2) to be general guidelines only. The key phrase in this section is ". . . at a level which would threaten the reliability or adequacy of electric service." Therefore, a downward trend that is desired by the utility would not be reportable. DOE has not changed this section in the final rule.

III. The Final Regulations

The Economic Regulatory Administration of the Department of Energy (DOE) hereby gives notice of the issuance of regulations under the provisions of sections 202(a) and 311 of the Federal Power Act. In accordance with section 202(a) of the Federal Power Act, DOE is responsible for encouraging actions to assure an abundant supply of electric energy throughout the country. Under section 311 of the Federal Power Act, DOE is authorized and directed to collect information regarding the generation, transmission and distribution of electric energy and to report the problems and developments of the electric utility industry to Congess.

The regulations are adopted as proposed except for the modifications described above, and other minor clarifying and conforming modifications.

IV. Other Matters

The DOE has determined that this rulemaking is nonsignificant as that term is used in Executive Order 12044 and DOE Order 2030. The rule is not considered likely to have a major impact as defined by Executive Order 12044, as amplified in DOE Order 2030. Accordingly, no regulatory analysis has been performed.

Section 404 of the Department of Energy Organization Act (DOE Act) requires that the Federal Energy Regulatory Commission (FERC) be notified whenever the Secretary proposes to prescribe rules, regulations and statements of policy of general applicability in the exercise of functions transferred to him under sections 301 and 306 of the DOE Act. The FERC was notified of these regulations on July 17, 1980, and requested to make the necessary determination regarding impact on any function within its jurisdiction. FERC notified ERA on September 11, 1980, that it would not take referral of these regulations.

In consideration of the foregoing, Chapter II of Title 10, Code of Federal Regulations, is amended by establishing sections 205.350–205.355 as set forth below.

Issued in Washington, D.C., on January 5, 1981.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

Sections 205.350–205.355 are added to Subpart W of Part 205 to read as follows:

Subpart W—Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

* * * * *

Report of Major Electric Utility System Emergencies

Sec.
205.350 General purpose.
205.351 Reporting requirements.
205.352 Information to be reported.
205.353 Fuel emergencies.
205.354 Special investigations and reports.
205.355 Contingency planning reports.

Authority: Department of Energy Organization Act, Pub. L. No. 95–91, Stat. 565 (42 U.S.C. Section 7101), Federal Power Act, Pub. L. 66–280, 41 Stat. 1063 (16 U.S.C. Section 792) *et seq.*, Department of Energy Delegation Order No. 0204–4 (42 FR 60726).

Subpart W—Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

Report of Major Electric Utility System Emergencies

§ 205.350 General Purpose.

The purpose of this rule is to establish a procedure for the Economic Regulatory Administration (ERA) to maintain current information regarding the status of the electric energy supply systems in the United States so that appropriate Federal emergency response measures are implemented in a timely and effective manner. This data also may be utilized in developing legislative recommendations and other reports to the Congress.

§ 205.351 Reporting Requirements.

For the purpose of this section, a report or a part of a report may be m jointly by two or more entities. Every electric utility or other subject entity engaged in the generation, transmiss or distribution of electric energy shall report promptly to the DOE/ERA Electric Power Monitoring Center (EPMC) any events as described in subparagraphs (a) through (g) of this section:

(a) The issuance of any pubic or private request to any customer or the general public to reduce the use of electricity for reasons of maintaining the continuity of service of the reporting entity's bulk electric power supply system. Requests to a customer(s) served under provisions of an interruptible contract are not a reportable action unless the request is made for reasons of maintaining the continuity of service of the reporting entity's bulk electric power supply system. (ERA shall be notified as soon as practicable, but no later than 24 hours after the issuance of such a request.)

(b) Any intentional reduction of system voltage by 3 percent or greater for reasons of maintaining the continuity of service of the reporting entity's bulk electric power supply system. (ERA shall be notified as soon as practicable, but no later than 24 hours after the initiation of the action.)

(c) Any load shedding action that results in the reduction of over 100 megawatts (MW) of firm customer load for reasons of maintaining the continuity of service of the reporting entity's bulk electric power supply system. The routine use of load control equipment that reduces firm customer load is not considered to be a reportable action. (ERA shall be notified within three hours after such action is taken if practicable, or as soon thereafter as practicable.)

(d) Any electric power supply equipment or facility failure or other event that, in the judgment of the reporting entity, constitutes a hazard to the current or prospective adequacy and/or reliability of the reporting entity's bulk electric power supply system. (ERA shall be notified as soon as practicable; however reports are expected within one business day after such determination.) Examples of situations which *may* be reportable under this provision could be ones which:

(1) Cause the operating area to be dependent upon neighboring utilities for large quantities of unscheduled electricity deliveries to supply the operating area's loads for longer than three consecutive hours;

(2) Cause a signficant increase in the use of a fuel for generating equipment, such that replacement of this fuel may be a problem;

(3) Are caused by a suspected act of physical sabotage;

(4) A power system frequency decline to 59.7 Hz or lower that results in the loss of any firm customer load.

(e) Any outage that extends for greater than 15 minutes and affects firm loads totaling over 100 MW, or more than 50 percent of the total load being supplied by the reporting entity's system immediately prior to incident, whichever is less. However, utilities with a peak load in the prior year of over 3000 MW are only to report those losses of service to firm loads totaling over 200 MW for greater than 15 minutes. (ERA shall be notified as soon as practicable without unduly interfering with service restoration and, in any event, within three hours after the beginning of the interruption.)

(f) Any significant incident on an electric utility system which results in a continuous outage of three hours or longer to over 50,000 customers (meters, delivery points) or more than one half of the reporting entity's total customers, whichever is less. (ERA shall be notified within 24 hours of the occurrence if practicable, or as soon thereafter as practicable.)

(g) The ordered shutdown or operating limitation by any Federal, State or local government agency of any generating unit with a nameplate rating greater than 400 MW which results in a reduction exceeding 25 percent of the nameplate rating. Long-term limitations based on ambient environmental conditions should be reported initially and thereafter only when a change occurs. (ERA shall be notified as soon as practicable after the issuance of such an order, but not later than the next working day.)

§ 205.352 Information to be Reported.

The power supply data shall be supplied to the EPMC in accordance with the current DOE pamphlet on reporting procedures. The initial report should include the utility name; the area affected; the time of occurrence of the initiating event; the duration or an estimate of the likely duration; an estimate of the number of customers and amount of load involved; and whether any known critical services such as hospitals, military installations, pumping stations, or air traffic control systems, were or are interrupted. To the extent known or suspected, the report shall include a description of the events initiating the disturbance. The ERA may require further clarification during or after restoration of service.

§ 205.353 Fuel Emergencies.

Utilities shall notify the EPMC by telephone whenever a utility or other subject entity determines that a fuel supply emergency exists or is projected to occur. A fuel supply emergency exists when supplies of fuels or hydroelectric storage for generation are at a level or projected to be at a level which would threaten the reliability of adequacy of electric service. The following factors should be taken into account to determine that a fuel emergency exists: (a) Fuel stocks or hydro storage levels are 50 percent or less of normal for that particular time of the year and; (b) a continued downward trend in fuel stocks or hydro storage levels is projected. (ERA shall be notified as soon as practicable, but no later than three days after the determination is made.)

§ 205.354 Special Investigations and Reports.

If directed by ERA's Director of the Division of Power Supply and Reliability in writing and noticed in the **Federal Register**, a utility or other subject entity experiencing a condition described in § 205.351 above shall submit a full report of the technical circumstances surrounding the power system disturbance, including the restoration procedures utilized. The report shall be filed at such time as may be directed by the Director, Division of Power Supply and Reliability.

§ 205.355 Contingency Planning Reports.

(a) When incidents and emergency situations occur, utilities or other subject entities may be required to continue operating with power supply deficiencies or interruptions.

(b) Each electric utility and its appropriate regional Reliability Council or subgroup should prepare and

maintain contingency plans for emergency operations including load reductions and curtailments, and should coordinate such procedures with those of neighboring utilities. Such plans should be in a format acceptable to the appropriate State or local government authority. A copy of these plans should be filed with the ERA.

(c) If these plans or procedures contain proprietary information which the utility believes should not be released to the general public, the submitting entity must so state and explain, in writing, the reasons for the requested proprietary treatment.

(d) Because the contingency plans affect consumers and other utilities, and may require local, State or Federal government response, utilities should make their contingency plans available for review by local government emergency action officials.

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Part VI

Department of Justice

Bureau of Prisons

Control, Custody, Care, Treatment and Instruction of Inmates; Proposed Rulemaking and Requests for Comments

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 524, 544, 545 and 547

Control, Custody, Care, Treatment and Instruction of Inmates; Proposed Rulemaking and Request for Comments

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rules.

SUMMARY: The Bureau of Prisons is proposing a set of rules for the management of inmates in Federal correctional institutions. This proposal is part of the Bureau's program to publish in the Federal Register, and subsequently in the Code of Federal Regulations, Bureau rules relating to the control, custody, care, treatment, and instruction of inmates. This installment encompasses the Bureau of Prisons' proposed rules on (1) Classification and Program Review of Inmates, (2) Inmate Library Services, (3) Scholarship Program, and (4) Introduction into Institutions of Special Food or Meals from Outside Sources.

DATE: Comments must be received on or before March 16, 1981.

ADDRESS: Submit comments to Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street, N.W., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724/3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(t), notice is hereby given that the Bureau of Prisons intends to publish in the Federal Register its proposed rules on:

(1) Classification and Program Review of Inmates;

(2) Inmate Library Services;

(3) Scholarship Program; and

(4) Introduction into Institutions of Special Food or Meals from Outside Sources.

The rule on classification and program review of inmates ensures that each inmate receives an initial classification and, thereafter, periodic program reviews. The rule on inmate library services requires inmates be provided library services necessary for educational, cultural, and leisure activity. The rule on Federal Prison Industry's scholarship program is intended to provide an interested inmate with the opportunity to take courses or programs related to that inmate's industrial assignment. The rule on introduction into institutions of special foods or meals from outside sources specifies that special food or meals prepared for and/or served to any group(s) of inmates must ordinarily also be served to that insitution's entire inmate population. The proposed rules are not considered to meet the definition of significant regulations as given in Executive Order 12044.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 760, 320 1st Street, N.W., Washington, D.C. 20534. Comments received on or before March 16, 1981 will be considered before final action is taken. Copies of all written comments received will be available for examination by interested persons at the Bureau of Prisons, Room 760, 320 1st Street, N.W., Washington, D.C. 20534. The proposed rules may be changed in light of the comments received. No oral hearings are contemplated.

In consideration of the foregoing, it is proposed to amend Subchapter B and Subchapter C of 28 CFR, Chapter V as follows: in Subchapter B, add Subpart B to Part 524; in Subchapter C, add Subpart K to Part 544; a new Part 545; and Subpart C to Part 547.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

1. By adding Subpart B to Part 524 to read as follows:

PART 524—CLASSIFICATION OF INMATES

* * * * *

Subpart B—Classification and Program Review of Inmates

Sec.

524.10 Purpose and scope.
524.11 Classification team.
524.12 Procedures for initial classification.
524.13 Program reviews.
524.14 Unscheduled reviews.
524.15 Appeals procedure.
524.16 Study and observation cases.

* * * * *

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart B—Classification and Program Review of Inmates

§ 524.10 Purpose and scope

It is the policy of the Bureau of Prisons to classify each newly committed inmate within four weeks of the inmate's arrival at the institution designated for service of sentence. Subsequent program reviews for each inmate shall be conducted at least once every 90 days. The Warden shall establish procedures to ensure that a newly committed inmate is promptly assigned to a classification team.

§ 524.11 Classification team.

The Warden shall ensure that each department within the institution has the opportunity to contribute to the classification process.

(a) At a minimum, each classification team shall include the unit manager, a casemanager, correctional counselor, and education representative. Where the institution does not have unit management, the classification team shall include a casemanager, correctional counselor, and education representative.

(b) Each member of the classification team shall individually interview the newly arrived inmate within five working days of the inmate's assignment to that team.

§ 524.12 Procedures for initial classification.

(a) The Warden or designee shall ensure that each newly committed inmate is scheduled for initial classification within four weeks of the inmate's arrival at the designated institution.

(b) Staff shall notify an inmate at least 48 hours prior to that inmate's scheduled appearance befor the classification committee. The inmate is expected to attend the initial classification meeting. If the inmate refuses to appear, staff shall document in the record of the meeting the inmate's refusal and, if known, the reasons for refusal.

(c) Staff shall prepare a classification packet on each inmate scheduled to appear before the classification committee. This packet ordinarily shall include information on the apparent needs of the inmate, and shall offer a correctional program designed to meet those needs. With the exception of a work assignment, and as provided in Part 544, Subpart H (Optional Programming), the inmate may choose not to participate in the offered program.

(d) Staff shall complete a program review report at the inmate's initial classification. The inmate is to be provided and sign for a copy of this report. If the inmate refuses to sign for a copy of this report, staff witnessing the refusal shall place a signed statement to this effect on the report. Staff shall place a copy of the program review report in the inmate's central file.

(e) Within five working days of the initial classification meeting, staff shall prepare a staff summary, discussing those facts which were available at the time of the initial classification. The staff summary is to include information

on the inmate's current offense and prior record, social situation, recommended programs, and community resources. A copy of the staff summary is provided to the inmate, upon the inmate's request.

§ 524.13 Program reviews.

(a) Staff shall conduct a program review for each inmate at least once every 90 days.

(b) Staff shall prepare a program review report to document each program review. The inmate is to sign for and receive a copy of this report. If the inmate refuses to sign for a copy of this report, staff witnessing the refusal shall place a signed statement to this effect on the report.

(c) Staff shall notify an inmate of the scheduled program review at least 48 hours prior to a staff originated meeting. An inmate may elect not to attend the program review. If this occurs, staff shall indicate the refusal, and if known, the reasons for refusal on the program review report. An inmate who elects not to appear for a program review is to be provided, and is to sign for, a copy of the program review report. If the inmate refuses to sign for a copy of this report, staff witnessing the refusal shall place a signed statement to this effect on the report.

§ 524.14 Unscheduled reviews.

Staff may establish a schedule to ensure that inmates are provided program reviews as required by this rule. Upon request of either the inmate or staff, and with the concurrence of the team chairman, and advanced or previously unscheduled program review may occur.

§ 524.15 Appeals procedure.

An inmate may appeal, through use of the Administrative Remedy Procedure, a decision made at initial classification or at a program review.

§ 524.16 Study and observation cases.

Inmates committed to the custody of the U.S. Attorney General for purposes of study and observation are excluded from the provisions of this rule.

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SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

2. By adding Subpart K to Part 544 to read as follows:

PART 544—EDUCATION

* * * * *

Subpart K—Inmate Library Services

Sec.
544.100 Purpose and scope.
544.101 Procedures.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 5015, 5039; 28 USC 509, 510; 28 CFR 0.95–0.99.

* * * * *

Subpart K—Inmate Library Services

§ 544.100 Purpose and scope.

The Bureau of Prisons provides inmates within each of its institutions with library services necessary for educational, cultural, and leisure activity. The Warden shall ensure that the institution's inmate library offers an inmate a variety of reading material, to include material which is current and up-to-date.

§ 544.101 Procedures.

(a) The Warden shall designate a staff member (normally the Supervisor of Education) with responsibility for the inmate library.

(b) The inmate library shall offer an inmate a variety of current and up-to-date reading materials, including, but not limited to, periodicals, newspapers, fiction, non-fiction, and reference books.

(c) Where the population of an institution includes inmates of foreign origin, staff shall attempt to provide reading materials in the inmates' language.

(d) The inmate library shall have hours sufficient to provide access by all inmates within the institution. Inmate library services shall also be made available to inmates in special housing units.

3. By adding Part 545 to read as follows:

PART 545—WORK AND COMPENSATION

Subpart A-D—[Reserved]

Subpart E—Scholarship Program

Sec.
545.40 Purpose and scope.
545.41 Eligibility.
545.42 Selection.
545.43 Limitations.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 4126, 5015, 5039; 28 USC 509, 510; 28 CFR 0.95–0.99.

Subpart A-D—[Reserved]

Subpart E—Scholarship Program

§ 545.40 Purpose and scope.

Federal Prison Industries, Inc. (UNICOR) annually awards post-secondary scholarships to selected inmates assigned to FPI, Inc. These scholarships provide an interested inmate with an opportunity to take courses or programs related to the inmate's industrial assignment while still employed by FPI, Inc.

§ 545.41 Eligibility.

(a) The Superintendent of Industries at each institution shall develop application procedures to include, at a minimum, the following considerations.

(1) The inmate shall be assigned as a full-time worker of Federal Prison Industries, Inc.

(2) The inmate shall have received a favorable recommendation from the inmate's immediate industrial supervisor.

(b) The inmate must be accepted by the institution of higher learning where the course or program is to occur.

(c) The inmate meets the relevant institutional requirements (for example custody) for participation.

§ 545.42 Selection.

Scholarship selections shall be made by a three person committee comprised of the Superintendent of Industries, the Supervisor of Education, and the affected Industrial Department head.

§ 545.43 Limitations.

(a) Federal Prison Industries, Inc. may grant up to 150 scholarships annually.

(b) Scholarship amounts may not exceed $200 per semester or quarter.

(c) An inmate may receive no more than three scholarships in any one year.

4. By adding Subpart C to Part 547, to read as follows:

PART 547—FOOD SERVCE

* * * * *

Subpart C—Introduction Into Institutions of Special Food or Meals From Outside Sources

Sec.
547.20 Policy.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 5015, 5039; 28 USC 509, 510; 28 CFR 0.95–0.99.

Subpart C—Introduction Into Institutions of Special Food or Meals From Outside Sources

§ 547.20 Policy

Except as provided in paragraphs (a)-(d) of this section, the Bureau of Prisons requires that special foods or meals prepared for and/or served to any group(s) of inmate also be served to the institution's entire inmate population.

(a) The Warden may exempt from this requirement food which does not enter into the living and functional areas of the institution, but is restricted to the controlled environment of a designated visiting area(s).

(b) Food items sold in the institution's commissary are exempt from the provisions of this rule.

(c) Meals served in accordance with the provision of Part 548, Subpart B (Religious Beliefs and Practices of Committed Offenders) are exempt from the provisions of this rule.

(d) Special foods (e.g., Kosher food, food for medical diet) purchased by food service staff to augment main line foods are exempt from the provisions of this rule.

Dated: January 5, 1981.

Norman A. Carlson,

Director.

[FR Doc. 81-926 Filed 1-9-81; 8:45 am]

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Federal Register

Monday
January 12, 1981

Part VII

Department of Transportation

Federal Aviation Administration

Airspace Designations; Compilation of Regulations; Correction

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71, 73, 75

[Airspace Docket No. 80-AWA-18]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Special Use Airspace; Establishment of Jet Routes and Area High Routes; Compilation of Regulations

Correction

In FR Doc. 80-40450, appearing at page 402 in the issue of Friday, January 2, 1981, the table of contents on page 403 contains incorrect page numbers. That page is reprinted below with the correct page references.

TABLE OF CONTENTS

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

SUBPART A—GENERAL

Sec.
71.1 Applicability.
71.3 Classification of Federal Airways.
71.5 Extent of Federal Airways.
71.6 Extent of Area Low Routes.
71.7 Control Areas.
71.9 Continental Control Area.
71.11 Control Zones.
71.12 Terminal Control Areas.
71.13 Transition Areas.
71.15 Positive Control Areas.
71.17 Reporting Points.
71.19 Bearings; Radials; Miles.

SUBPART B—COLORED FEDERAL AIRWAYS

71.101 Designation. Page 407
71.103 Green Federal Airways. Page 407
71.105 Amber Federal Airways. Page 407
71.107 Red Federal Airways. Page 408
71.109 Blue Federal Airways. Page 408

SUBPART C—VOR FEDERAL AIRWAYS

71.121 Designation. Page 409
71.123 Domestic VOR Federal Airways. Page 409
71.125 Alaskan VOR Federal Airways. Page 443
71.127 Hawaiian VOR Federal Airways. Page 445

SUBPART D—CONTINENTAL CONTROL AREA

71.151 Restricted areas included. Page 446

SUBPART E—CONTROL AREAS AND CONTROL AREA EXTENSIONS

71.161 Designation of Control Areas Associated with Jet Routes Outside the Continental Control Area. Page 448
71.163 Designation of Additional Control Areas. Page 449
71.165 Designation of Control Area Extensions. Page 454

SUBPART F—CONTROL ZONES

71.171 Designation. Page 455

SUBPART G—TRANSITION AREAS

71.181 Designation. Page 540

SUBPART H—POSITIVE CONTROL AREAS

71.193 Designation of Positive Control Areas. Page 747

SUBPART I—REPORTING POINTS

71.201 Designation. Page 747
71.203 Domestic Low Altitude Reporting Points. Page 747
71.207 Domestic High Altitude Reporting Points Page 754
71.209 Other Domestic Reporting Points. Page 757
71.211 Alaskan Low Altitude Reporting Points Page 758
71.213 Alaskan High Altitude Reporting Points. Page 760
71.215 Hawaiian Reporting Points. Page 761

SUBPART J—AREA LOW ROUTES

71.301 Designation. Page 762

SUBPART K—TERMINAL CONTROL AREAS

71.401 Designation. Page 762

PART 73—SPECIAL USE AIRSPACE

73.87 Prohibited Areas. Page 832

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

75.100 Jet Routes. Page 834
75.400 Area High Routes. Page 848

BILLING CODE 1505-01-M

Reader Aids

Federal Register
Vol. 46, No. 7
Monday, January 12, 1981

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419
	523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Public Inspection Desk	633-6930
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

Privacy Act Compilation	523-3517
United States Government Manual	523-5230

SERVICES

Agency services	523-3408
Automation	523-3408
Dial-a-Reg	
Chicago, Ill.	312-663-0884
Los Angeles, Calif.	213-688-6694
Washington, D.C.	202-523-5022
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public briefings: "The Federal Register—What It Is and How To Use It"	523-5235
Public Inspection Desk	633-6930
Regulations Writing Seminar	523-5240
Special Projects	523-4534
Subscription orders and problems (GPO)	783-3238
TTY for the deaf	523-5239

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-858.....2
859-1248.....5
1249-1658.....6
1659-2022.....7
2023-2312.....8
2313-2588.....9
2589-2968.....12

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
11063 (Amended by EO 12259).....1253
11145 (See EO 12258).....1251
11183 (See EO 12258).....1251
11287 (See EO 12258).....1251
11562 (See EO 12258).....1251
11776 (See EO 12258).....1251
11922 (See EO 12258).....1251
11970 (See EO 12258).....1251
12022 (Revoked by EO 12258).....1251
12050 (See EO 12258).....1251
12054 (Revoked by EO 12258).....1251
12059 (See EO 12258.....1251
12061 (Revoked by EO 12258).....1251
12063 (Revoked by EO 12258).....1251
12064 (See EO 12258).....1251
12078 (Revoked by EO 12258).....1251
12084 (See EO 12258).....1251
12093 (Revoked by EO 12258).....1251
12103 (Revoked by EO 12258).....1251
12110 (Superseded by EO 12258).....1251
12130 (Revoked by EO 12258).....1251
12131 (See EO 12258).....1251
12137 (See EO 12258).....1251
12157 (Revoked by EO 12258).....1251
12190 (See EO 12258).....1251
12195 (Revoked by EO 12258).....1251
12196 (See EO 12258).....1251
12216 (See EO 12258).....1251
12258.....1251
12259.....1253
12260.....1653
12261.....2023
12262.....2313
12263.....2315

Proclamations:
4600 (Revoked by Proc. 4812).....1249
4811.....1
4812.....1249

5 CFR

531.....2317
550.....2323
738.....2582
1203.....2326

Proposed Rules:
715.....1278

7 CFR

Subtitle A.....2328
6.....1659
180.....2328
210.....3, 2329
215.....3, 2329
220.....2329
226.....4
230.....2329
235.....2329
250.....2331
271.....1421
272.....1421, 2332
273.....1421, 2332
274.....1421
277.....2336
354.....1661
907.....5, 2025
910.....5, 6, 2336
916.....1662
917.....1662
982.....2337
1701.....6
1945.....2589
2851.....1257
2855.....7
2856.....7
2858.....1257
2859.....7
2870.....7

Proposed Rules:
979.....2084
982.....2622
987.....1742
1040.....1279
1421.....2630
1901.....2900
1940.....2900

8 CFR

211.....2590
292.....2025

9 CFR

82.....859
307.....1258

319 ... 1257
331 ... 2338
350 ... 1258
351 ... 1258
354 ... 1258
355 ... 1258
362 ... 1258
381 ... 1258
Proposed Rules:
318 ... 1286
381 ... 1286

10 CFR
73 ... 2025
205 ... 2956
212 ... 1246
456 ... 1616
Proposed Rules:
Ch. I ... 1742
205 ... 71
212 ... 1287
456 ... 2522

12 CFR
208 ... 2026
211 ... 2027
225 ... 2026
226 ... 1662
265 ... 1663, 2027
400 ... 1132
523 ... 2029
Proposed Rules:
701 ... 920, 922
741 ... 922

13 CFR
101 ... 10
121 ... 2591
305 ... 859
309 ... 859
Proposed Rules:
113 ... 931

14 CFR
1 ... 2280
39 ... 14–17, 861–867, 2030, 2031, 2594
71 ... 18, 402, 868, 2032, 2595, 2596, 2967
73 ... 18, 402, 868, 2967
75 ... 402, 868, 2596, 2967
91 ... 19, 2280
97 ... 2033
121 ... 2280
203 ... 1664
Proposed Rules:
21 ... 931
36 ... 931
67 ... 75
71 ... 932, 2085, 2088, 2630
91 ... 76
93 ... 932, 933
121 ... 76
125 ... 76
135 ... 76
221 ... 934
296 ... 934
297 ... 934

15 CFR
Subtitle A ... 2339
19 ... 1574
368 ... 868
370 ... 868
371 ... 20, 1665
372 ... 868
373 ... 868, 1665
374 ... 20
376 ... 1665
378 ... 1665
379 ... 868
385 ... 868, 1258, 1665
399 ... 1258, 1665

16 CFR
13 ... 2034, 2035
Proposed Rules:
13 ... 2355–2361
423 ... 935

17 CFR
1 ... 21
240 ... 1665
249 ... 2339
249b ... 1665
250 ... 2035
Proposed Rules:
210 ... 1288
229 ... 78
230 ... 78, 2631, 2637
231 ... 78
239 ... 78, 2637
240 ... 78, 1288
241 ... 78
249 ... 78

18 CFR
282 ... 1666, 2036
290 ... 2596
Proposed Rules:
4 ... 1291
141 ... 1743
260 ... 1744
271 ... 941
375 ... 1291
430 ... 23

19 CFR
152 ... 2597
353 ... 1667

20 CFR
Proposed Rules:
404 ... 2093
416 ... 2093

21 CFR
145 ... 2339
178 ... 27, 2341
203 ... 28, 1259
431 ... 28
510 ... 1260
520 ... 1259, 1260
522 ... 30
524 ... 1261
558 ... 31
Proposed Rules:
20 ... 2364
101 ... 2364
207 ... 2456
210 ... 2456
225 ... 2456
226 ... 2456
310 ... 2365
436 ... 1298
501 ... 2456
510 ... 2456
514 ... 2456
558 ... 2456
803 ... 2364
1020 ... 111
1308 ... 943

22 CFR
18 ... 2608
51 ... 2343
306 ... 1611
Proposed Rules:
41 ... 2365

23 CFR
Ch. I ... 32
655 ... 2038
656 ... 2298
1217 ... 32
Proposed Rules:
625 ... 1228, 2020, 2093
630 ... 943
655 ... 2020, 2093
1221 ... 2097

24 CFR
200 ... 2343
300 ... 1261

25 CFR
52 ... 1668
53 ... 1674
Proposed Rules:
115 ... 2366
251 ... 1298
256 ... 33
260 ... 944

26 CFR
1 ... 1676–1719
154 ... 2042
Proposed Rules:
1 ... 112, 114, 116, 1744, 1753
26 ... 120
48 ... 129
51 ... 1754

27 CFR
4 ... 1725

28 CFR
51 ... 870
Proposed Rules:
59 ... 1302
524 ... 2962
544 ... 2962
545 ... 2962
547 ... 2962

29 CFR
2 ... 34
2520 ... 1261, 1265
2550 ... 1266
Proposed Rules:
2520 ... 1304

30 CFR
Ch. VII ... 2043
Proposed Rules:
901 ... 1306
914 ... 1309
915 ... 2368
936 ... 2369
942 ... 1309
944 ... 946
948 ... 1311

31 CFR
51 ... 1120

32 CFR
Ch. I ... 2344
286f ... 880
298a ... 881

33 CFR
117 ... 2043
Proposed Rules:
1 ... 946
92 ... 946
117 ... 2120, 2652
161 ... 946

34 CFR
78 ... 881

36 CFR
223 ... 2611
Proposed Rules:
7 ... 1312, 1313
261 ... 1758
262 ... 1758

37 CFR
1 ... 2611
306 ... 884
307 ... 891
308 ... 892
Proposed Rules:
1 ... 2653

38 CFR
Proposed Rules:
21 ... 2654

39 CFR
111 ... 35
232 ... 897
Proposed Rules:
3001 ... 952

40 CFR
51 ... 1267
52 ... 35, 36, 898, 2043
81 ... 899
86 ... 1590, 1599, 1603
87 ... 2044
122 ... 2045, 2344, 2802
123 ... 1727
160 ... 2344
162 ... 2008
264 ... 2802
265 ... 2802
401 ... 2264
Proposed Rules:
Ch. V ... 2369
7 ... 2306
12 ... 2306
52 ... 133, 953, 1314–1316, 1760, 1761
58 ... 2655
60 ... 1102, 1136, 1317
61 ... 1165, 1318
86 ... 1910
123 ... 954, 2120
192 ... 2556
264 ... 2893
265 ... 2893
408 ... 2544

420 ... 1858
430 ... 1430, 2369
431 ... 1430, 2369
465 ... 2934

41 CFR

Ch. 101 ... 1731
1-4 ... 1196
5-6 ... 908
5-14 ... 911
5-60 ... 900
5A-6 ... 908
5A-14 ... 911
5A-60 ... 900
5B-60 ... 900
14-2 ... 1730
101-35 ... 1213
101-36 ... 1213
Proposed Rules:
9-15 ... 955
9-50 ... 959

42 CFR

442 ... 1268
Proposed Rules:
36 ... 1318
405 ... 959
481 ... 959
482 ... 959

43 CFR

Subtitle A ... 2348
2091 ... 1634
2200 ... 1634
2210 ... 1634
2220 ... 1634
2230 ... 1634
2240 ... 1634
2250 ... 1634
2260 ... 1634
2270 ... 1634
Public Land Orders:
1362 (Revoked by PLO 5799) ... 2047
2307 (Revoked by PLO 5798) ... 2046
3917 (Partially revoked by PLO 5802) ... 2047
4849 (Partially revoked by PLO 5799) ... 2047
4863 (Revoked by PLO 5806) ... 2348
5791 ... 2613
5797 ... 2046
5798 ... 2046
5799 ... 2047
5800 ... 1734
5801 ... 1734
5802 ... 2047
5803 ... 1734
5804 ... 2047
5805 ... 2048
5806 ... 2348

44 CFR

Ch. I ... 1270
10 ... 2049
59 ... 1273
60 ... 1273
64 ... 1273
65 ... 1274, 1736
67 ... 1275
332 ... 2349
Proposed Rules:
67 ... 1319

45 CFR

304 ... 1275
1067 ... 1234
1225 ... 1608
Proposed Rules:
Ch. XII ... 960
16 ... 1644
74 ... 1644
301 ... 1319
302 ... 1321
303 ... 1321
1062 ... 961

46 CFR

225 ... 913
284 ... 913
286 ... 913
291 ... 913
502 ... 1276
Proposed Rules:
381 ... 2370
401 ... 2653

47 CFR

0 ... 2352

49 CFR

Subtitle A ... 2352
201 ... 2613
512 ... 2049
525 ... 2063
537 ... 2063
555 ... 2063
571 ... 2064, 2618
1002 ... 2294, 2295
1003 ... 2294
1011 ... 2294
1033 ... 1738
1100 ... 2294
1136 ... 2295
1137 ... 2294
1207 ... 2076
1331 ... 2295
Proposed Rules:
23 ... 969
172 ... 2121, 2126
173 ... 2121, 2126
175 ... 2126
178 ... 2126
179 ... 2126
192 ... 39
195 ... 39, 2130
571 ... 40, 55, 2132, 2136
1039 ... 134
1201 ... 1323, 2146
1206 ... 1323
1207 ... 1323
1208 ... 1323
1209 ... 1323
1210 ... 1323
1241 ... 2146
1300 ... 1324
1301 ... 1324
1303 ... 1324
1305 ... 1324

50 CFR

26 ... 913, 916, 2076
33 ... 917, 918, 2078, 2352
250 ... 66
296 ... 2302
611 ... 1738, 2079, 2081
652 ... 1740
Proposed Rules:
216 ... 1761, 2153
611 ... 2153, 2154
643 ... 2153
672 ... 2154

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

FEDERAL COMMUNICATIONS COMMISSION

81203 12-10-80 / TV broadcast stations in Mansfield and Marion, Ohio, changes in table of assignments

INTERIOR DEPARTMENT

Geological Survey—

81562 12-11-80 / Oil, gas, and sulphur operations in the Outer Continental Shelf, lease royalty requirements

Surface Mining Reclamation and Enforcement Office—

82084 12-12-80 / Blasters and members of blasting crews; training and certification programs;

JUSTICE DEPARTMENT

Immigration and Naturalization Service—

82154 12-15-80 / Contracts with transportation lines; irregularly operated charter flights

81732 12-12-80 / Right to representation regulations

PERSONNEL MANAGEMENT OFFICE

81725 12-12-80 / Reduction in force regulations; clarification of policies

SECURITIES AND EXCHANGE COMMISSION

81556 12-11-80 / Filing of disclosure requirements relating to beneficial ownership

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration—

81574 12-11-80 / Adjudicative procedures

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.