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Monday
July 14, 1986

Briefings on How To Use the Federal Register—

For information on briefings in Seattle, WA, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

SEATTLE, WA

WHEN: July 22; at 1:30 pm.

WHERE: North Auditorium,
Fourth Floor, Federal Building,
915 2nd Avenue, Seattle, WA.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Seattle	206-442-0570
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Rules and Regulations

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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 week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

Adjustment of Status to That of Persons Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: The Immigration and Naturalization Service is amending the regulations to provide that Form I-643, Health and Human Services Statistical Data Sheet, and local police clearance letters for applicants over 14 years of age, be submitted as part of the adjustment of status application under section 1 of the Act of November 2, 1966. Technical changes are also made to comply with the Refugee Act of 1980.

EFFECTIVE DATE: August 13, 1986.

FOR FURTHER INFORMATION CONTACT:
For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 633-3048
For Specific Information: Joseph D. Cuddihy, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 633-3320

SUPPLEMENTARY INFORMATION: On February 27, 1985 (50 FR 7925), the Service published proposed regulations in the **Federal Register** relative to applications of adjustment of status under section 1 of the Act of November 2, 1966. Additionally, in the supplementary information section of that proposal, the Service stated that consideration may be given in the future to adding the local police clearance requirement to adjustment of status cases under section 245 of the Act.

The Service received two comments to the proposed rule. Neither commenter addressed either the addition of Form I-643 or the local police clearance requirements as part of the application package for adjustment of status under the Cuban Refugee Act of 1966. Rather, both commenters addressed the Service's statement of possible future adoption of the local police clearance requirements to adjustment of status cases under section 245 of the Act. Both commenters indicated their serious concern over the difficulties that would be experienced in obtaining local police clearances, including the contemplated lengthy delays.

With the exception of applications for adjustment of status under Section 1 of the Act of November 2, 1966, the Service is not adding the local police clearance requirement to other adjustment of status cases at this time.

The regulation is published as proposed, except for minor amendments that were made in an effort to make the language of the regulations more grammatically correct and easily understood.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule, if promulgated, will not have a significant impact on a substantial number of small entities.

This order is not major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 245

Aliens, Immigration and Nationality Act, Immigration, Passports and visas.

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

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for Part 245 continues to read as follows:

Authority: Secs. 103 and 245 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1103 and 1255).

2. Section 245.2 is amended by revising paragraphs (a)(2) through (a)(4) and adding a new paragraph (a)(5), to read as follows:

§ 245.2 Application.

(a) * * *

(2) *Proper filing of application*—(i) *General.* An applicant shall not be considered eligible for the benefits of section 245, the Act of October 28, 1977 (Adjustment of Status of Indochina Refugees), or the Act of November 2, 1966 (Cuban Refugee Adjustment Act), unless he or she has properly filed an application.

(ii) *Under section 245.* Before an application for adjustment of status under section 245 of the Act may be considered properly filed, a visa must be immediately available. If a visa would be immediately available upon approval of a visa petition, the application will not be considered properly filed unless such petition has first been approved. If a visa petition is submitted simultaneously with the adjustment application, the adjustment application shall be retained for processing only if approval of the visa petition would make a visa immediately available at the time of filing the adjustment application. If the visa petition is subsequently approved, the date of filing the adjustment application shall be deemed to be the date on which the accompanying petition was filed. If the applicant is claiming that the provisions of section 212(a)(14) of the Act do not apply to him or her because he or she is within the exemption described in § 212.8(b)(4) of this chapter, the application shall not be considered properly filed unless it is accompanied by Form I-526, Request for Determination that Prospective Immigrant is an Investor. An application for adjustment of status under section 245 of the Act as a nonpreference alien shall not be considered properly filed unless the applicant establishes that he or she is entitled to a priority date for allotment of a nonpreference visa number in accordance with § 245.1(e)(2) and that a visa is immediately available within the contemplation of § 245.1(e)(1). A nonpreference alien for whom a visa is not immediately available may not file an application for adjustment of status, but may seek to establish a nonpreference priority date through an application for an immigrant visa at a United States consular office.

(iii) *Under the Act of October 28, 1977.* An application for the benefits of section 101 or 104 of the Act of October

28, 1977 was not properly filed unless submitted on or before October 28, 1983. An applicant was ineligible for the benefits of the Act of October 28, 1977 unless he or she had been physically present in the United States for at least one year (amended from two years by the Refugee Act of 1980). The physical presence requirement was met only if the applicant had been actually physically present in the United States for a period or periods in the aggregate of at least one year subsequent to March 31, 1975 and prior to the date of filing the application. An application submitted by a spouse or child of a native or citizen of Vietnam, Laos, or Cambodia was not properly filed under the Act of October 28, 1977 unless the applicant was ineligible for the provisions of section 101 of the Act in his or her own right.

(iv) *Under the Act of November 2, 1966.* An application for the benefits of section 1 of the Act of November 2, 1966 is not properly filed unless the applicant was inspected and admitted or paroled into the United States subsequent to January 1, 1959. An applicant is ineligible for the benefits of the Act of November 2, 1966 unless he or she has been physically present in the United States for one year (amended from two years by the Refugee Act of 1980).

(3) *Submission of documents*—(i) *General.* A separate application shall be filed by each applicant for benefits under section 245, the Act of October 28, 1977, or the Act of November 2, 1966. Each application shall be accompanied by an executed Form G-325A, if the applicant has reached his or her 14th birthday. Form G-325A shall be considered part of the application. An application under this part shall be accompanied by the document specified in the instructions which are attached to the application.

(ii) *Under section 245.* An application for adjustment of status is submitted on Form I-485, Application for Permanent Residence. The application must be accompanied by the appropriate fee as explained in the instructions to the application.

(iii) *Under the Act of October 28, 1977.* An application for adjustment of status was made on Form I-485C. There was no fee required in an application for benefits of this Act.

(iv) *Under the Act of November 2, 1966.* An application for adjustment of status is made on Form I-485A. There is no fee required in an application for the benefits of this Act. The application must be accompained by Form I-643, Health and Human Services Statistical Data Sheet. The application must also include a clearance from the local police jurisdiction for any area in the United States *except* areas in Florida, New York, New Jersey, Illinois, and Texas where the applicant has lived for six months or more since his or her 14th birthday. In addition, any applicant who lives in California at the time of submission of the application for adjustment need not submit clearance for periods of residence in California

(4) *Effect of departure*—(i) *General.* The effect of a departure from the United States is dependent upon the law under which the applicant is applying for adjustment.

(ii) *Under section 245.* The departure from the United States of an applicant who is under deportation proceedings shall be deemed an abandonment of the application constituting grounds for termination of the deportation proceeding by reason of the departure. The departure of an applicant who is not under deportation proceedings shall be deemed an abandonment of his or her application constituting grounds for termination, unless the applicant was previously granted advance parole by the Service for such absence, and was inspected upon returning to the United States. If the application of an individual granted advance parole is subsequently denied, the applicant will be subject to the exclusion provisions of section 236 of the Act. No alien granted advance parole and inspected upon return shall be entitled to a deportation hearing.

(iii) *Under the Act of October 28, 1977.* If an applicant for adjustment temporarily departed the United States after March 31, 1975, but prior to January 1, 1979, had on intention of abandoning his or her residence, and was readmitted or paroled upon return, the temporary absence shall be disregarded for purpose of the applicant's "arrival" into the United States in regard to section 102.

(iv) *Under the Act of November 2, 1966.* If an applicant who was admitted or paroled subsequent to January 1, 1959, later departs from the United States temporarily with no intention of abandoning his or her residence, and is readmitted or paroled upon return, the temporary absence shall be disregarded for purposes of the applicant's "last arrival" into the United States in regard to cases filed under section 1 of the Act of November 2, 1966.

(5) *Decision*—(i) *General.* The applicant shall be notified of the decision of the district director and, if the application is denied, the reasons for the denial.

(ii) *Under section 245.* If the application is approved, the applicant's permanent residence shall be recorded as of the date of the order approving the adjustment of status. An application for adjustment of status as a preference or non-preference alien shall not be approved until an immigrant visa number has been allocated by the Department of State. No appeal lies from the denial of an application by the district director, but the applicant retains the right to renew his or her application in proceedings under Part 242 of this chapter, or under Part 236 if the applicant is a parolee and meets the two conditions outlined in § 245.2(a)(1).

(iii) *Under the Act of October 28, 1977.* If the application is approved under section 101, the applicant's permanent residence shall be recorded in accordance with the provisions of section 102. If an application is approved under section 104, the applicant's date of permanent residence shall be the same date accorded the permanent resident through whom the applicant derives eligibility or the date of the applicant's arrival in the United States, whichever is later. If the application is denied, the applicant shall be advised of his or her right to appeal in accordance with the provisions of Part 103 of this chapter. There is no fee for the appeal.

(iv) *Under the Act of November 2, 1966.* If the application is approved, the applicant's permanent residence shall be recorded in accordance with the provisions of section 1. No appeal lies from the denial of an application by the district director, but the applicant retains the right to renew his or her application in proceedings under Part 242 of this chapter, or under Part 236, if the applicant is a parolee and meets the two conditions outlined in paragraph 1 of § 245.2(a)(1).

* * * * *

Dated: June 12, 1986.

Richard E. Norton,

Associate Commissioner, Examinations: Immigration and Naturalization Service.

[FR Doc. 86-15756 Filed 7-11-86; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Docket No. R-0576]

Regulation K; International Banking Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has amended its Regulation K relating to the types of foreign investments that require the

specific consent of the Board. The regulation currently requires an application to the Board where the investor banking organization proposes to invest more than 10 percent of its capital and surplus in a foreign organization. The amendment removes this requirement and permits the investor to make the investment after prior notice to the Board 45 days in advance of the date the proposed investment would be made.

EFFECTIVE DATE: July 8, 1986.

FOR FURTHER INFORMATION CONTACT: James S. Keller, Manager, International Banking Applications, Division of Banking Surpervision and Regulation (202/452-2523); or Earnestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: Regulation K establishes the procedures governing investments by U.S. banking organizations in foreign companies engaged in permissible activities. Investments of less than $15 million and 5 percent of the investor's capital and surplus may be made under a general consent granted in the regulation. Investments not eligible for the general consent require 45 days' prior notice to the Board, after which the investment may be made.

Section 211.5(c)(2) of Regulation K (12 CFR 211.5(c)(2)) provided that the prior notice procedures only applied if the total proposed investment did not exceed 10 percent of the capital and surplus of the investor. The purpose of this requirement was to permit the Board to review applications involving significant commitments of the investor's resources. In reviewing such applications the Board has found that these invetments do not always raise issues that require Board consideration. Accordingly, the Board is removing the requirement that any investment that is greater than 10 percent of the investor's capital and surplus must be considered by the Board. Such investments may now be made under the prior notification procedures of § 211.5(c)(2). Investors will be required to continue to file full information on Form F.R. K-1, Attachment H (OMB No. 7100-0107) for proposed investments that exceed 10 percent of the capital and surplus of the investor so that the Board can determine whether individual notices raise other issue of concern to the Board.

The provisions of 5 U.S.C. 553 relating to notice, public participation and deferred effective date are not followed in connection with the adoption of this amendment because the changes involved are procedural in nature and do not constitute substantive rules subject to the requirement of that section.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that the amendment adopted will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

List of Subjects in 12 CFR Part 211

Banks, Banking, Federal Reserve System, Foreign banking, Investments, Reporting and recordkeeping requirement, Export trading companies, Allocated transfer risk reserve, Reporting and disclosure of international assets, Accounting for fees on intenational loans.

PART 211—[AMENDED]

12 CFR Part 211 is amended as follows:

1. The authority citation for Part 211 continues to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 211 *et seq.*), Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 (*et seq.*)); the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235); and the International Lending Supervision Act (Title IX, Pub. L. 98-181, 97 Stat. 1153).

§ 211.5 [Amended]

2. Section 211.5(c)(2) is amended by removing at the end of the first sentence the phrase "if the total amount to be invested does not exceed 10 percent of the investor's capital and surplus".

By order of the Board of Governors of the Federal Reserve System, July 8, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-15732 Filed 7-11-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371 and 377

[Docket No. 604 58-6058]

Agency Forms Approved by the Office of Management and Budget

AGENCY: Office of Industrial Resource Administration, International Trade Administration, Commerce.

ACTION: Final rule; notice of OMB approval.

SUMMARY: The Office of Management and Budget (OMB) has approved collection of information requests contained in §§ 371.16(b), 377.6(e), and 377.7(h) of the Export Administration Regulations under the provisions of the Paperwork Reduction Act. This final rule adds the approved control numbers issued by OMB to the regulations in accordance with 5 CFR 1320 display requirements. The collection of information requirements are now in effect.

EFFECTIVE DATE: OMB approved the reporting and recordkeeping requirements for § 371.16 on October 24, 1985; § 377.6 on October 30, 1985; and § 377.7 on October 29, 1985.

FOR FURTHER INFORMATION CONTACT: Rodney A. Joseph (202) 377-3984.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., the Office of Industrial Resource Administration submitted to OMB for approval the reporting and recordkeeping requirements as set forth in 15 CFR 371.16, 377.6 and 377.7. These requirements were needed to conform the short supply regulations to the Export Administration Act of 1979, as amended. The interim rule published October 9, 1985 (50 FR 41131) stated that these reporting and recordkeeping requirements were pending OMB approval OMB approved these requirements and assigned control numbers 0625-0153 (October 29), 0625-0154 (October 24), and 0625-0155 (October 30).

List of Subjects in 15 CFR Parts 371 and 377

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 371 and 377 of the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PART 371—GENERAL LICENSES

1. The authority citation for 15 CFR Part 371 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq;* E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

2. Section 371.16 is amended by adding, at the end of the section, the

approved OMB control number to read as follows:

§ 371.16 [Amended]

"(The recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 0625–0154)"

PART 377—SHORT SUPPLY CONTROLS AND MONITORING

3. The authority citation for 15 CFR Part 377 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97–145 of Dec. 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); sec. 103, Pub. L. 94–163, as amended, (42 U.S.C. 6212) as amended by Pub. L. 99–58 of July 2, 1985; sec. 28 Pub. L. 93–153, (30 U.S.C. 185); sec. 28 Pub. L. 95–372, (43 U.S.C. 1354); E.O. 11912 of April 3, 1976 (41 FR 15825, as amended); sec. 101 and 201(11)(e) Pub. L. 94–258, (10 U.S.C. 7420(e)); and Presidential Findings (50 FR 25189, June 18, 1985).

§ 377.6 [Amended]

4. Section 377.6 is amended by adding, at the end of the section, the approved OMB control number to read as follows:

Approved by the Office of Management and Budget under control numbers 0625–0154 and 0625–0155)

§ 377.7 [Amended]

5. Section 377.7 is amended by adding, at the end of the section, the approved OMB control number to read as follows:

(The reporting requirements contained in paragraph (h) were approved by the Office of Management and Budget under control number 0625–0153)

Dated: July 8, 1986

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86–15761 Filed 7–11–86; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 399

[Docket No. 60611-6111]

Validated License Controls on Automatic Sawing Equipment

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on certain automatic sawing equipment described in entry 1355A of the CCL pursuant to a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Automatic sawing equipment, specially designed for the processing of semiconductor wafers and capable of slicing ingots of 3 inches (76.2 mm) or greater in diameter, now requires a validated license for export only to destinations in Country Groups Q, S, W, Y and Z, the People's Republic of China, and Afghanistan.

Notice of the foreign availability determination on this equipment has been previously published (51 FR 24736).

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: John Pastore, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–3564.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a military affairs function of the United States, it is not a rule or regulation within the meaning of Section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of notice of proposed rulemaking, an opportunity for public comment and a delay in effective date. This rule is also exempt from APA requirements because it involves a military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Betty Ferrell, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

PART 399—[AMENDED]

Accordingly, the Export Administration Regulations 15 CFR Part 399 is amended as follows:

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended by revising the *Validated License Required* paragraph to read "Country Groups QSTVWYZ, except that automatic sawing equipment described in paragraph (b) (1) (xi) requires a validated license only for Country Groups QSWYZ, the People's Republic of China, and Afghanistan."

Dated: July 9, 1986.

James K. Pont,

Acting Director, Office of Foreign Availability.

[FR Doc. 86–15734 Filed 7–11–86; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240, 249 and 260

[Release No. 33-6652; 34-23406; 39-2022]

Reporting by Small Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of revisions to Rules 12g–1, 12g–4 and 12h–3 under the Securities Exchange Act of 1934 (the "Exchange Act")[1] which would increase the

[1] 15 U.S.C. 78a et seq.

number of issuers outside the scope of the registration and reporting requirements of the Exchange Act by adjusting the total assets threshold from $3 million to $5 million. These revisions represent a part of the continuing effort by the Commisssion to reduce the burdens to the smallest issuers of complying with such registration and reporting provisions to the greatest extent possible consistent with the protection of investors. Conforming changes also are being made to Form 15 and to certain of the Commission's definitions of a small entity for purposes of the Regulatory Flexibility Act.[2]

EFFECTIVE DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or Karen O'Brien, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On September 30, 1985, the Commission published for comment several proposed amendments to its rules to increase the number of issures classified as exempt from the registration and reporting provisions of the Exchange Act by changing the total asset threshold from $3 million to $5 million.[3] The proposals were a continuation of the Commission's efforts to reduce the costs to small issuers of complying with the registration and reporting provisions under the Exchange Act.[4] Having considered the comments received from the public, the Commission is adopting the revisions substantially as proposed.

I. Present Requirements and the Revisions

Section 12(g) provides that an issuer which has 500 or more record holders of a class of equity securities and total assets of $1 million must register its securities under the Exchange Act.[5] Rule 12g-1 exempts from that registration requirement any issuer whose total assets do not exceed $3 million. Rules 12g-4 and 12h-3 allow for termination of registration of a class of securities under section 12(g) and suspension of the duty to file reports under section 15(d)[6] when such class of securities is held of record by less than 300 persons or by less than 500 persons where the total assets of the issuer have not exceeded $3 million on the last day of each of the issuer's three most recent fiscal years.[7].

Under today's revisions to Rule 12g-1, an issuer is not required to register under section 12(g) of the Exchange Act until it has 500 or more record holders of a class of equity securities and total assets of $5 million or more.[8] The revisions to Rules 12g-4 and 12h-3 allow for the termination of registration of a class of securities under section 12(g) of the Exchange Act and suspension of the duty to file reports under section 15(d) of the Exchange Act when such class of securities is held of record by less than 300 persons or by less than 500 persons where the total assets of the issuer have not exceeded $5 million on the last day of each of the issuer's three most recent fiscal years.[9]

In addition, the description of Form 15 is amended to indicate that the total assets criterion is $5 million and the definition of a small entity for purposes of the Regulatory Flexibility Act is conformed to the total assets criterion of $5 million in Rules 12g-1, 12g-4 and 12h-3.[10]

II. Public Comments Regarding the Proposals

The Commission received six comment letters regarding the proposals, five of which supported the concept of classifying small issuers and exempting certain of them from Exchange Act reporting and other obligations.[11] Some commentators also offered general views on the concept of classification and proposed additional classification criteria. The Commission is today publishing an advance notice of proposed rulemaking elsewhere in today's issue seeking comments from the public with respect to these and other suggested criteria for governing entry into and exit from the Exchange Act disclosure system.[12]

The one opposing commentator viewed the proposals as harmful to the investing public because approximately 430 current issuers would no longer be subject to the Exchange Act disclosure system and in his view, the securities markets would be unable to price these issuers' securities in an accurate manner.[13] The Commission does not agree with the position that there would not be sufficient information for trading markets or for these markets to accurately price issuers securities. Issuers whose securities are quoted in the NASDAQ inter-dealer quotation system still have to register these securities pursuant to Section 12(g) of the Exchange Act. Issuers whose securities would trade in the ordinary over-the-counter market would have to publicly provide certain information because of the Commission's Rule 15c2-11.[14] Moreover, exemption from the reporting provisions does not relieve these companies from the application of the anti-fraud provisions of the federal securities law.

III. Availability of Final Regulatory Flexibility Analysis

A final Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act regarding the amendments has been prepared. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the proposing release.

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[2] 5 U.S.C. 604 et seq.

[3] Release Nos. 33-6605; 34-22483; 39-1038 (September 30, 1985) (50 FR 41162).

[4] These efforts are complementary to those required by the Small Business Investment Incentive Act of 1980, Pub. L. 96-477 (October 21, 1980), to remove unnecessary and burdensome regulatory restraints on the capital raising efforts of the small business community consistent with the purposes of investor protection. That statute principally amended the Securities Act of 1933 (the "Securities Act" the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940 and the Securities Investor Protection Act of 1970.

[5] If an issuer has a class of securities registered under section 12 of the Exchange Act, the issuer and, where applicable, specified persons are required to comply with the periodic reporting provisions of section 13, the proxy and tender offer requirements of section 14, and the short swing profit provisions of section 16 of the Exchange Act.

[6] Section 15(d) of the Exchange Act requires every issuer which has had a registration statement declared effective under the Securities Act, 15 U.S.C. 77a et seq. to comply with the periodic reporting requirements of section 13 of the Exchange Act.

[7] Release No. 34-20263 (October 5, 1983) (48 FR 48245) and Release No. 34-20784 (March 22, 1984) (49 FR 12688). The suspension provided by Rule 12h-3 from section 15(d) of the Exchange Act does not apply to an issuer with respect to any fiscal year in which the registration statement became effective or is required to be updated pursuant to section 10(a)(3) of the Securities Act.

[8] The proposed modification to Rule 12g-1 would retain the standard with respect to foreign private issuers which provides that if a foreign private issuer has securities quoted in an automated interdealer quotation system it would remain subject to registration under section 12(g) of the Exchange Act.

[9] In the case of foreign issuers the criteria for security holders is based on the number of security holders resident in the United States.

[10] It should be noted that the actions taken today raising the asset threshold requirements will affect the transfer agent registration requirement in section 17A (c)(1) of the Exchange Act. Issuers are reminded that registration under section 12 of the Exchange Act continues to be a prerequisite for including their securities on the NASDAQ system, and that only transfer agents registered pursuant to Section 17A(c)(1) may perform transfer agent functions for such securities.

[11] The comment letters and a Summary of Comments (File No. S7-43-85) are available for public inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

[12] Release No. 34-23407 (July 8, 1986).

[13] The Commission estimated that of the 700 companies which could be relieved of the Exchange Act reporting obligations, approximately 270 would continue to voluntarily report to maintain their NASDAQ listing.

[14] Rule 15c2-11, 17 CFR 240.15c2-11.

Members of the public who wish to obtain a copy of the Final Regulatory Flexibility Analysis should contact Richard K. Wulff or Karen O'Brien as specified above.

IV. Certain Findings

As required by section 23(a) of the Exchange Act, the Commission has specifically considered the impact that these rulemaking actions would have on competition and has concluded that they would not impose a significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

V. Statutory Basis and Text of the Amendments

The amendments to the Commission's rules and forms are being adopted by the Commission pursuant to section 19 of the Securities Act; Sections 12, 13, 15 and 23(a) of the Exchange Act; and Section 319 of the Trust Indenture Act of 1939.

List of Subjects in 17 CFR Parts 230, 240, 249 and 260

Reporting and recordkeeping requirements, Securities.

Text of Amendments

Accordingly, Parts 230, 240 and 260 of Chapter II of Title 17 of the Code of Federal Regulations are hereby amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: Sec. 230.100 to 230.174 issued under section 19, 48 Stat. 85, as amended: 15 U.S.C. 77s * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

2. The authority citation for Parts 240 and 249 continues to read as follows:

Authority. Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w.

PARTS 230, 240 and 249—[AMENDED]

3. 17 CFR Parts 230, 240, and 249 are amended by removing the reference to "$3,000,000" and replacing it with "$5 million" in the following sections:

(a) 17 CFR 230.157(a)
(b) 17 CFR 240.0–10(a)
(c) 17 CFR 240.12g–1
(d) 17 CFR 240.12g–4(a)(1) and 240.12g–4(a)(2)
(e) 17 CFR 240.12h–3(b)(1) and 240.12h–3(b)(2)
(f) 17 CFR 249.323(a).

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

4. The authority citation for Part 260 continues to read, in part, as follows:

Authority: Sec. 319, 53 Stat. 1149, as amended: 15 U.S.C. 77aaa * * *

§ 260.0–7 [Amended]

5. By amending § 260.0–7 by removing the reference to "$3 million" and replacing it with "$5 million".

By the Commission.

Jonathan G. Katz,

Secretary.

July 8, 1986.

[FR Doc. 86–15796 Filed 7–11–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 11, 13 and 375

[Docket No. RM83–57–000; Order No. 453]

Payments for Benefits From Headwater Improvements

Correction

In FR Doc. 86–14930 beginning on page 24308 in the issue of Thursday, July 3, 1986, make the following correction:

On page 24310, in the first column, in footnote 8, the second line should read:

$$P_n = C_p \times (V_n/V_f + v_d)$$

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 160

[Docket No. 85P–0028/CP]

Lysozyme and Avidin Reduced Dried Egg Whites; Amendment of the Standard of Identity; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with the final rule amending the standard of identity for dried egg whites published in the **Federal Register** of April 3, 1986 (51 FR 11434).

EFFECTIVE DATE: Effective July 1, 1987, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may have begun June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Arthur R. Johnson, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0112.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 3, 1986 (51 FR 11434), FDA issued a final rule amending the standard of identity for dried egg whites (21 CFR 160.145) to provide for the optional reduction of lysozyme and avidin content by cation exchange procedures before drying. The final rule was promulgated in consideration of a petition dated January 17, 1985, filed on behalf of Societa Prodotti Antibiotici and Henningsen Foods, Inc. The final rule provided that any person who would be adversely affected by the regulation could at any time on or before May 5, 1986, file written objections and request a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were filed in regard to the final rule.

List of Subjects in 21 CFR Part 160

Eggs; Food standards.

PART 160—EGGS AND EGG PRODUCTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.62), notice is given that Part 160, as amended in the **Federal Register** of April 3, 1986 (51 FR 11434), will become effective July 1, 1987. Voluntary compliance may have begun June 2, 1986.

Dated: July 2, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–15727 Filed 7–11–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 669

[FHWA Docket No. 85-8]

Certification of Enforcement of Heavy Vehicle Use Tax

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rulemaking.

SUMMARY: This notice sets forth procedures to be followed by each state for certifying that it is obtaining evidence of proof of payment of the Federal heavy vehicle use tax in accordance with 23 U.S.C. 141(d) for vehicles subject to the use tax imposed by Section 4481 of the Internal Revenue Code of 1954, as amended, before such vehicles are lawfully registered in the state. An annual certification of compliance is required. Procedures are specified for reducing a state's apportionment of highway funds in accordance with 23 U.S.C. 141(d) in the event a state fails to meet the requirements of this regulation.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas R. Weeks, Chief, Highway Users and Funding Division, (202) 426-0170; or Mr. David C. Oliver, Office of the Chief Counsel (202) 426-0825, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 143 of the Surface Transportation Assistance Act of 1982 (23 U.S.C. 141(d)) provides that a state's apportionment of funds under 23 U.S.C. 104(b)(5) shall be reduced in an amount up to 25 percent of the amount to be apportioned in any fiscal year beginning after September 30, 1984, during which vehicles, subject to the Federal heavy vehicle use tax imposed by Section 4481 of the Internal Revenue Code of 1954, as amended, are lawfully registered without having presented proof of payment of the use tax. On August 8, 1985, the FHWA published a notice of proposed rulemaking (Docket No. 85-8) for purposes of obtaining comments on proposed procedures for determining state compliance with the provisions of 23 U.S.C. 141(d). (Also see regulations issued by the Internal Revenue Service on May 23, 1985, at 50 FR 21243, which specify the circumstances under which a state must require evidence of proof of payment of the Federal heavy vehicle use tax and the required manner in which proof of payment must be received by the state as a condition of registering vehicles subject to the tax.)

Twelve responses were received within the 45-day comment period provided by the notice of proposed rulemaking, and eight responses were received within a few days after the close of the comment period. All comments have been included in the docket and considered in this final rulemaking action.

Most of the comments stated that the procedures contained in the notice of proposed rulemaking are reasonable and can be implemented without undue difficulty. Several comments, however, questioned the proposed certification procedure on the basis that no specific language is included in the statute requiring a certification. This factor was carefully considered by FHWA in preparing the notice of proposed rulemaking, and it was determined that (1) FHWA has sufficient legal authority for establishing a certification procedure under the broad rulemaking authority provided under 23 U.S.C. 315, (2) the certification procedure is a reasonable means for administering the requirements of 23 U.S.C. 141(d) without undue administrative burdens being placed on the states and FHWA, and (3) the certification procedure is necessary to meet the responsibility of the Department of Transportation to make a determination that the policies and procedures of the states are consistent with the requirements of 23 U.S.C. 141(d). In light of the comments to the docket, however, FHWA has again reviewed the legal authority for administratively establishing a certification requirement. As a result, FHWA is satisfied that strong legal authority exists for promulgating this requirement and that the procedure is the most reasonable and practical means for FHWA to administer this statute without burdening the states with inordinate recordkeeping and subjecting the states to frequent compliance reviews.

Congress has clearly expressed its intent to impose conditions on the grant of Federal funds so that the states can knowingly decide whether to accept these funds. As a general matter, Federal administrative agencies have the power to oversee a cooperative Federal-state venture. But even where an agency has the power to cut off Federal funds, there is a shared perception that this is a remedy with possible injurious consequences to the proposed beneficiaries of the legislative scheme.

The states always retain the option of not participating in a Federal program, whereas here Congress authorizes conditions upon the granting of aid for that program.

This regulation sets forth what we think is necessary to comply with the Act, and allows each state the opportunity to decide in advance whether it wishes to give up the Federal funds and go its own way, or, if not, to articulate its plan for achieving compliance. Certification provides the state with the opportunity to incorporate its own procedures for registering vehicles and monitoring that registration with the least obtrusive Federal presence.

Although the statutory language does not create an express requirement for a state certification, the provisions of 23 U.S.C. 315 (1982) authorize the Secretary to prescribe and promulgate all needful rules and regulations to carry out the provisions of Title 23. The proven effectiveness of the certification as a device for monitoring a Federally assisted program is underscored by the other similar programs in Title 23, i.e., speed limit and size and weight. Without a certification and state assistance in this effort, there would be a need to set forth Federal standards governing the factual process of registration. Review criteria would be unnecessarily complex in order to establish a minimum uniformity.

One comment questioned the need for an annual certification *and* periodic compliance reviews by FHWA. The notice of proposed rulemaking stated that the state certification and supporting documentation, such as applicable laws, administrative procedures, and guidelines will serve as the principal means for determining the state compliance with the statute. The FHWA believes, however, that independent reviews on a periodic basis are not only necessary to meet its program management responsibilities, but are desirable and can help strengthen the state procedures by providing an independent assessment of implementation practices and procedures. This approach is based on a shared responsibility by the states and FHWA to implement congressional intent.

One comment stated that it is inappropriate for FHWA to base a determination of nonconformity on the failure of a state to certify. The FHWA disagrees with this contention. The certification procedure is the critical feature in establishing a manageable and reasonable procedure for determining state compliance with the

statute. Disregard for the certification would severely weaken the procedure and place the full burden of determining state compliance on FHWA.

Another comment questioned the appropriateness of FHWA initiating procedures for a reduction of funds based on a "proposed" determination of nonconformity. This comment further stated that the agency (FHWA) should complete its fact-finding and reach a "final" determination before a state is informed by FHWA. We have revised the procedures for reduction of funds to simplify the entire procedure. The statute does not provide for a hearing; however, it is FHWA's policy to provide a state faced with the potential loss of funds an opportunity to "show cause" why such action should not be taken. If a state is found in noncompliance, the Administrator with the concurrence of the Secretary, shall issue a decision; if a state is found in compliance, the Administrator shall issue a final decision. In the event that a Final Decision in a particular case has not been made before October 1, the beginning of a fiscal year, states subject to such proceedings are notified that the Department will apportion Federal-aid funds for the state, but reserve from obligation up to 25 percent of the funds. This process preserves the Department's ability to impose sanctions if they are deemed appropriate.

Several comments pointed out an apparent inconsistency between the notice of proposed rulemaking and the May 23, 1985, final regulation issued by the Internal Revenue Service (IRS). The IRS regulations allow a state to implement a suspension registration system; however, the scope and purpose (§ 669.1) and policy (§ 669.3) statements in the FHWA notice of proposed rulemaking did not recognize this provision. The FHWA agrees that the IRS provisions for a suspension registration system should be reflected in the final procedures, and §§ 669.1 and 669.3 have been revised accordingly.

Three comments proposed that additional alternatives for recordkeeping be provided. Specifically, two comments proposed the use of microfilm and microfiche, and the other proposed a more flexible approach to permit other methodologies specifically authorized and approved by FHWA. The FHWA agrees that microfilm and microfiche will provide suitable documentation and this alternative has been added to § 669.21. Other alternatives will be considered by the FHWA as they are devised and if they appear practicable. The FHWA intends to provide maximum flexibility to the states in this area; however, it believes that basic parameters for recordkeeping should be established on a national basis. Within these parameters, FHWA will work with individual states to implement variations where needed.

Several comments pertained to the procedures for implementing the proof of payment requirements established by the May 23, 1985, IRS final regulation. Specifically, one comment stated that the IRS procedures covering proof of payment for more than 21 vehicles eliminated the effective use of automated files since vehicle identification numbers (VIN) are not required. Two comments addressed difficulties of monitoring fleet registrations within VIN's, and one comment recommended that the states and the IRS exchange computer tapes for use in determining proof of payment of the heavy vehicle use tax. These comments have been brought to the attention of the IRS for consideration in possible amendments to the May 23, 1985, final regulation.

Finally, to allow the states adequate time to comply with § 669.7, which requires an annual certification that it is obtaining evidence of proof of payment before July 1, the initial certification will be accepted if submitted within thirty days of the publication date of this rulemaking.

Therefore, based upon further review and consideration of public comments, the FHWA is adopting the proposal published on August 8, 1985, subject to the revisions discussed herein.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory policies and procedures. The procedures in this document are being issued in order to implement a statutory mandate. A regulatory evaluation has not been prepared because of the ministerial nature of this action.

Since this rule will primarily impact the states under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation are being submitted to the Office of Management and Budget (OMB) for approval.

List of Subjects in 23 CFR Part 669

Grants programs—transportation, Highways and roads, Taxes, Motor vehicles.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

In consideration of the foregoing, FHWA amends Chapter I of Title 23, Code of Federal Regulations, by adding a new Part 669 to read as set forth below:

Issued on July 8, 1986.

Ray Barnhart,

Federal Highway Administrator.

PART 669—ENFORCEMENT OF HEAVY VEHICLE USE TAX

Sec.

669.1 Scope and purpose.
669.3 Policy.
669.5 Objective.
669.7 Certification requirement.
669.9 Certification content.
669.11 Certification submittal.
669.13 Effect of failure to certify or to adequately obtain proof of payment.
669.15 Procedure for the reduction of funds.
669.17 Compliance finding.
669.19 Reservation and reapportionment of funds.
669.21 Procedure for evaluating state compliance.

Authority: 23 U.S.C. 141(d) and 315; 49 CFR 1.48(b).

§ 669.1 Scope and purpose.

To prescribe requirements for certification by the states that evidence of proof of payment is obtained either before vehicles subject to the Federal heavy vehicle use tax are lawfully registered or within 4 months after being lawfully registered if a suspension registration system is implemented.

§ 669.3 Policy.

It is the policy of the FHWA that each state require registrants of heavy trucks as described in 26 CFR Part 41 to provide proof of payment of the vehicle use tax either before lawfully registering or within 4 months after lawfully registering such vehicles as provided for under a suspension registration system.

§ 669.5 Objective.

The objective of this regulation is to establish realistic and workable procedures for an annual certification process to provide suitable evidence that an effective program is being conducted by the states and to ensure that the states are not registering vehicles which have not been accounted for under the tax collection procedures instituted by the Internal Revenue Service (IRS).

§ 669.7 Certification requirement.

The Governor of each state, or his or her designee, shall certify to the FHWA before July 1 of each year that it is obtaining proof of payment of the heavy vehicle use tax as a condition of registration in accordance with 23 U.S.C. 141(d). The certification shall cover the 12-month period (8 months for the initial certification period) ending May 31.

§ 669.9 Certification content.

The certification shall consist of the following elements:

(a) A statement by the Governor of the state or a state official designated by the Governor, that evidence of payment of the heavy vehicle use tax is being obtained as a condition of registration for all vehicles subject to such tax. The statement shall include the inclusive dates of the period during which payment of the heavy vehicle use tax was verified as a condition of registration.

(b) The certifying statement required by paragraph (a) of this section shall be worded as follows: I (name of certifying official), (position, title), of the State of ( ), do hereby certify that evidence of payment of the heavy vehicle use tax pursuant to Section 4481 of the Internal Revenue Code of 1954, as amended, is being obtained as a condition of registration for vehicles subject to such tax in accordance with 23 U.S.C. 141(d) and applicable IRS rules. This certification is for the period ( ) to ( ).

(c) For the initial certification, submit a copy of any state law or regulation pertaining to the implementation of 23 U.S.C. 141(d); for subsequent certifications, submit a copy of any new or revised laws and regulations pertaining to the implementation of 23 U.S.C. 141(d).

§ 669.11 Certification submittal.

The Governor or an official designated by the Governor, shall each year submit the certification, including the supporting material specified in § 669.9 to the FHWA Division Administrator prior to July 1.

§ 669.13 Effect of failure to certify or to adequately obtain proof of payment.

Beginning July 1, 1986, if a state fails to certify as required by this regulation or if the Secretary of Transportation determines that a state is not adequately obtaining proof of payment of the heavy vehicle use tax as a condition of registration notwithstanding the state's certification, Federal-aid highway funds apportioned to the state under 23 U.S.C. 104(b)(5) for the next fiscal year shall be reduced in an amount up to 25 percent as determined by the Secretary.

§ 669.15 Procedure for the reduction of funds.

(a) If it appears to the Federal Highway Administrator that a state has not submitted a certification conforming to the requirements of this regulation or that the state is not adequately obtaining proof of payment of the heavy vehicle use tax under 23 U.S.C. 141(d), the Federal Highway Administrator shall make in writing a proposed determination of nonconformity, and shall notify the Governor of the state of the proposed determination by certified mail. The notice shall state the reasons for the proposed determination and inform the state that it may, within 30 days from the date of the notice, request a conference to show cause why it should not be found in nonconformity.

(b) The conference will be informal in nature and conducted by the Administrator, or his/her designee. In all instances where the state proceeds on this basis, a transcript will be made and furnished to the state by FHWA. The state may offer any information which it considers helpful to a resolution of the matter, and the scope of review at the conference shall include, but not be limited to, state legislative actions (including those proposed to remedy deficiencies), budgetary considerations, judicial actions, and proposals for specific actions which will be implemented to bring the state into compliance.

(c) The state has the option to request such a conference, or it may submit such information in writing to the Administrator, who will make a determination on the basis of such materials and other available information.

§ 669.17 Compliance finding.

(a) If, following the conference or review of submitted materials described in § 669.15, the Administrator concludes that the state is in compliance, the Administrator shall issue a decision which is the final decision, and the matter shall be concluded.

(b) If, following the conference or review of information submitted under § 669.15, the Administrator, with the concurrence of the Secretary, concludes that the state is in noncompliance, the Administrator shall issue a decision, which is the final decision, and the matter be concluded. The decision will be served on the Governor, or his/her designee.

§ 669.19 Reservation and reapportionment of funds.

(a) The Administrator may reserve from obligation up to 25 percent of a state's apportionment of funds under 23 U.S.C. 104(b)(5), pending a final determination.

(b) Funds withheld pursuant to a final administrative determination under this regulation shall be reapportioned to all other eligible states pursuant to the formulas of 23 U.S.C. 104(b)(5) and the apportionment factors in effect at the time of the original apportionments, unless the Secretary determines, on the basis of information submitted by the state, that the state has come into conformity with this regulation prior to the final determination. If the Secretary determines that the state has come into conformity, the withheld funds shall be released to the state subject to the availability of such funds under 23 U.S.C. 118(b).

(c) The reapportionment of funds under paragraph (b) of this section shall be stayed during the pendency of any judicial review of the Secretary's final determination of nonconformity.

§ 669.21 Procedure for evaluating state compliance.

The FHWA shall periodically review the state's procedures for complying with 23 U.S.C. 141(d), including an inspection of supporting documentation and records. The state shall retain a copy of the receipted IRS Schedule 1 (Form 2290), or an acceptable substitute prescribed by 26 CFR Part 41, § 41.60001-2, for a period of 1 year for purposes of evaluating state compliance with 23 U.S.C. 141(d) by the FHWA. In lieu of retention of Schedule 1, states may make an appropriate entry in an automated file or on registration documents retained by the state or retain a microfilm or microfiche copy of Schedule 1 or of the automated file as evidence that proof of payment has been received before vehicles subject to the Federal heavy vehicle use tax are registered.

[FR Doc. 86-15792 Filed 7-11-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-231; Ref. Notice No. 569]

Ozark Mountain Viticultural Area

Correction

In FR Doc 86-14934, beginning on page 24142, in the issue of Wednesday, July 2, 1986, make the following correction:

§ 9.108 [Corrected]

On page 24144, in § 9.108(c)(2), third column, the last three paragraphs designated (xxx), (xxxi) and (xxxii) should be correctly designated (xx), (xxi) and (xxii) respectively.

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 85-077]

Charges for Duplicate Medals

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule will eliminate the table depicting the "Cost of a Replacement Medal" presently included in Part 1 of Title 33 Code of Federal Regulations. Due to changes in the cost of these replacement medals, the list has become outdated. Maintaining an updated list in the **Federal Register** would require frequent publication. The final rule will provide an address where an updated list of the cost of replacement medals can be obtained.

EFFECTIVE DATE: August 13, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Grey, Project Manager, Commandant (G-PS-5), 2100 Second St., SW., Washington, DC., 20593, telephone: 202-426-6464.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this rulemaking. Publishing a notice of proposed rulemaking is unnecessary in accordance with 5 U.S.C. 553(b). This rulemaking is administrative in nature and merely deletes an outdated price list which reflects the cost of replacement medals to the Coast Guard. The public is advised of an address where current price list information can be obtained. The Coast Guard has determined that notice and public procedure thereon are unnecessary.

This final rule is considered to be nonmajor under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 1034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rulemaking merely deletes an outdated price list which reflects the cost of replacement medals to the Coast Guard. The public is advised of an address where current price list information can be obtained. Due to frequent changes in price, maintenance of this list in the **Federal Register** would require frequent publication. Since the impact of the final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 1

Administrative practice and procedures, Authority delegations, Government agencies, Freedom of Information, Penalties.

PART 1—[AMENDED]

In consideration of the foregoing, Subpart 1.26 of Part 1 of Title 33, Code of Federal Regulations is revised to read as follows:

1. The authority citation for Subpart 1.26 is revised to read as follows:

Authority: 14 U.S.C. 633, 49 CFR 1.46(k).

2. In § 1.26-5, paragraph (b) is revised to read as follows:

§ 1.26-5 Replacement of Medals

* * * * *

(b) A medal, a bar, emblem or insignia in lieu thereof, that is lost, destroyed, or rendered unfit for use due to the fault or neglect of the person to whom it was awarded, is replaced after the Coast Guard is reimbursed for its cost. Current prices may be obtained from Commandant (G-PS-5), 2100 2nd St. SW. Washington, DC 20593.

Dated July 9, 1986.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel.

[FR Doc. 86-15769 Filed 7-11-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-3048-5; AL-012]

Approval and Promulgation of Implementation Plans; Alabama: Lead Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan revision submitted by Alabama. This revision establishes a lead attainment and maintenance plan for all areas of Alabama except Jefferson County, as required under section 110 of the Clean Air Act. The lead plan for Jefferson County will be addressed in a separate notice.

EFFECTIVE DATE: This action will be effective on August 13, 1986.

ADDRESSES: Copies of the submittal are available for public inspection at the following locations:

Region IV, Air Programs Branch, 345 Courtland Street, N.W. Atlanta, Georgia 30365.

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

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC

Alabama Department of Environment Management, Air Division, 1751 Federal Drive, Montgomery, Alabama 36130

FOR FURTHER INFORMATION CONTACT: Mr. Raymond S. Gregory, Environmental Protection Agency, Region IV, Air Programs Branch, at the above listed address and telephone number 404/347-3286, or FTS: 257-3286.

SUPPLEMENTARY INFORMATION: On January 2, 1986 (51 FR 41) EPA published a Notice of Proposed Rulemaking (NPR) for the Alabama State Implementation Plan (SIP) for lead (which applies to all areas of Alabama except Jefferson County). As stated in the NPR, a separate notice will address the lead SIP for Jefferson County.

The lead plan and the rationale for EPA's proposed approval were explained in the NPR. It will not be restated here. One point concerning "discretionary authority" is being repeated below. No public comments were received on the NPR.

Alabama's source regulations include several provisions that allow the Director to exercise certain discretionary authority. These include: (1) 4.15.6(c), which allows exclusions from the requirement that lead-bearing material be unloaded and stored in enclosed buildings; (2) 4.15.6(e), which allows exclusions from the twice daily vacuum sweeping requirement for paved areas; and (3) 4.15.6(g), which allows approval of an alternative compliance schedule with a required final compliance date of not later than December 31, 1987, upon petition from the source.

Exercise of discretionary authority under these provisions has the potential to increase lead emissions at Sanders Lead. EPA has informed Alabama that all such revisions and appropriate demonstrations must be submitted for approval as plan revisions.

As a note of clarification, the phrase "in the form of operating permits and will be submitted in the near future as state regulations," was included at the end of the first sentence under *Regulatory Flexibility Analysis* in the NPR. This sentence should read, "Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities because the requirements are already in place at the state level."

Final action

EPA is approving Alabama's SIP for the attainment and maintenance of the National Ambient Air Quality Standard for lead for all areas except Jefferson County.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Intergovernmental relations, and Incorporation by Reference.

Incorporation by reference of the State Implementation Plan for the State of Alabama was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 23, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.50 is amended by adding paragraph (c)(42) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(42) State implementation plan for attainment and maintenance of the lead standards in all areas except Jefferson County, submitted on March 28, 1985, by the Alabama Department of Environmental Management.

(i) Incorporation by reference.

(A) Regulation for existing secondary lead smelters located in Pike County, Alabama (Regulation 4.15.6), which was adopted by the Alabama Department of Environmental Management on March 13, 1985. Under applicable law, EPA approval is required for discretionary actions of the Director of the Alabama Department of Environmental Management that may increase lead concentrations in the ambient air.

(B) Letter of May 6, 1985 from Ababama Department of Environmental Management to EPA, and Regulation pertaining to secondary lead smelter exhaust stack gases (Regulation 4.15.3), which was adopted by the Alabama Air Pollution Control Commission on March 23, 1982.

(ii) Other material.

(A) Narrative SIP, titled, "State of Alabama'a Plan for the Attainment of the National Ambient Air Quality Standard for Lead," dated December 1984.

§ 52.54 [Amended]

3. In § 52.54, Attainment dates for national standards, the table is amended by adding a column for the pollutant "Lead," with the notation "i" for every entry except Jefferson County (to be completed later), and a corresponding line is added to the legend as follows: "i. March 13, 1986."

[FR Doc. 86–15763 Filed 7–11–86; 8:45 am]

BILLING CODE 6560-50-M

48 CFR Parts 1527 and 1552

[OAR-FRL-3048-8]

Rights in Data and Copyrights Under EPA Contracts

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document establishes a final rule on Rights in Data and Copyrights under EPA Contracts. This action is necessary since the Federal Acquisition Regulation, which was effective on April 1, 1984, has not yet been amended to include regulatory coverage on rights in data and copyrights. The intended effect of this action is to finalize an EPA Acquisition Regulation (EPAAR) Temporary Regulation which established contractual rights and obligations between EPA and its contractors with respect to data and copyrights.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Edward Murphy, Environmental Protection Agency, Procurement and Contracts Management Division (PM-214), 401 M Street, SW., Washington, DC 20460, Telephone: (202) 382-5034.

SUPPLEMENTARY INFORMATION: A Temporary Regulation on Rights in Data and Copyrights under EPA contracts was published on page 29222 of the **Federal Register** on July 19, 1984 and invited submission of comments by September 15, 1984. No public comments were received. This final rule makes no changes to the Temporary Regulation.

Executive Order 12291

OMB Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for OMB review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, Pub. L. 96-354, requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. The EPA certified in the Temporary Regulation that the rule will not have a significant impact on a substantial number of small entities. No comments were received contesting the certification. The EPA has, however, accomplished the following final regulatory flexibility analysis.

1. A description of the reasons why action by the Agency is being considered:

It is essential that EPA have in its contracts terms and conditions establishing the rights of EPA and its contractors in data produced during or used in contract performance. The EPAAR Temporary Regulation on this subject expires on July 14, 1986. FAR coverage on the subject, which would supersede the EPAAR coverage, may not be in place by that date. The EPAAR Temporary Regulation must therefore be made a final rule to ensure continued EPAAR coverage on the subject.

2. A succinct statement of the objectives of, and legal basis for the proposed rule:

The objective of the rule is to establish a policy for the acquisition of data and for the protection of contractors' legitimate proprietary interests. It is necessary for EPA, in order to carry out its missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of its contracts. Such data may be required to obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of its activities, ensure appropriate utilization of the results of research, development, and demonstration activities including the dissemination of technical information to foster subsequent technological developments; and meet other programmatic and statutory requirements. At the same time, EPA recognizes that its contractors may have a legitimate proprietary interest (e.g., a property right or other valid economic interest) in data resulting from private investment. Protection of such data from unauthorized use and disclosure is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the contractor's commercial position, and preclude impairment of EPA's ability to obtain access to or use of such data. The protection of such data by EPA is necessary to encourage qualified contractors to participate in EPA programs and apply innovative concepts to such programs. In applying these considerations, this rule strikes a balance between EPA's need for data and the contractor's legitimate proprietary interest. The legal basis for this regulation is 48 CFR 1.301.

3. A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply:

This final rule will apply to small entities which submit offers to EPA, and enter into contracts which require data to be produced, furnished or acquired. Of the 358 different contractors under active contract to EPA as of January 6, 1986, 191 small businesses had contracts with data rights provisions.

4. Description of the projected reporting, recordkeeping, and other compliance requirements of the rule:

The basic issues in the final rule which effect small business are access to data, and protection of proprietary data.

For access to data, the final rule states that the EPA acquires unlimited rights in the following data (except as provided in 1527.7003(b)(6) for copyrighted data): (1) data first produced in the performance of a contract; (2) form, fit, and function data delivered under the contract; (3) data (except as may be included with restricted computer software) that constitutes manuals or instructional and/or training material delivered under a contract; and (4) all other data delivered under the contract unless such data qualifies as limited-rights data or restricted computer software.

Concerning protection of proprietary data, the Contractor may protect its data by withholding such data from delivery and providing form, fit, and function data instead. If the EPA specifies the delivery of proprietary data, it is delivered with limitations on its use and disclosure. Such data will not, without permission of the Contractor, be used by EPA for purposes of manufacture and will not be disclosed outside EPA except for certain limited purposes, and then only if EPA makes the disclosure subject to prohibition against further use and disclosure by the recipient.

Concerning recordkeeping, contractors will have to differentiate between data first produced under the contract, its proprietary data, and data it receives from third parties. Contractors do this as a part of normal business practice to protect this proprietary data. The burden EPA places is to differentiate and deliver data that EPA funds. This is no different from what a contractor must do when receiving funds for sponsored research under normal commercial arrangements.

The "Additional Data Requirements" clause permits EPA the right to order data for a period of three years after acceptance of deliverable items. The Contractor will be paid for its expenses in so doing. The three year period is the period of time in the "Examination of Records by Comptroller General" clause that these records must be kept. That clause is required by 41 U.S.C. 254(c). No costs can be associated with this recordkeeping; however, the contractor may use the data as it sees fit.

5. Identification of all relevant Federal rules which may duplicate, overlap, or conflict with this rule:

This final rule applies only to contractors doing business with EPA. Other Federal agencies, such as NASA and the Department of Energy (DOE), have coverage in their FAR supplements on this subject. The EPA coverage is similar to that of NASA and DOE.

6. Discussion of significant alternatives to the final rule which accomplish its objectives:

This regulation is essential for EPA to carry out its missions and programs for the reasons set forth in paragraph No. 2 above. The final rule balances the legitimate proprietary interest of EPA and its contractors in data. The needs and rights of the public, including small business entities, in data developed with public funds are established. Such data is available to EPA with unlimited rights.

Conversely, contractors' proprietary data is protected. Contractors may withhold such data, and deliver form, fit, and function data instead. If delivery of proprietary data is necessary, clear restrictions on its use are set forth on the data.

To exempt small entities from this final rule is not practicable, since data rights must be established for all contractors.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2030–0012.

List of Subjects in 48 CFR Parts 1527 and 1552

Government procurement, Patents, data and copyrights.

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

The EPA Acquisition Regulation Temporary Regulation, published on page 29222 of the **Federal Register** on July 19, 1984, is hereby established as a final rule.

Dated: July 8, 1986.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 86–15765 Filed 7–11–86; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 51, No. 134
Monday, July 14, 1986

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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-23407; S7-16-86]

Reporting by Small Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is seeking information as to other appropriate criteria to establish the threshold level for companies to enter into the reporting system under the Securities Exchange Act of 1934 (the "Exchange Act")[1] which would complement or be substituted for the present size criteria of 500 shareholders and total assets of $5 million. Other criteria for establishing termination of registration of a class of securities or suspension of the duty to file reports are also being sought. The Commission will review comments made in response to this invitation with a view to determining whether future rulemaking would be necessary and appropriate.

DATES: Comments should be received on or before September 30, 1986.

ADDRESSES: Comment letters should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Comments should be referred to file No S7-16-86. The Commission will make all comments available for public inspection and copying at its Public Reference Room, 450 5th Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Richard Wulff or Karen O'Brien, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20459, (202) 272-2644.

[1] 15 U.S.C. 78a et seq.

SUPPLEMENTARY INFORMATION: In a companion action elsewhere in today's issue, the Commission amended several rules to increase the total assets threshold for registration and reporting under the Exchange Act to $5 million.[2] As a result, issuers are now required to register classes of their equity securities pursuant to section 12(g) of the Exchange Act only when such securities are held of record by at least 500 investors and the issuer has at least $5 million in total assets. Once these levels are reached, the entire expanse of the Exchange Act reporting system becomes applicable to the issuer.[3] Likewise, for purposes of exiting the system, Rules 12g-4 and 12h-3 have been amended to permit the termination of registration of a class of securities under section 12(g) and suspension of the duty to file reports under section 15(d) of the Exchange Act when such class of securities is held of record by less than 300 persons or by less than 500 persons where the total assets of the issuer have not exceeded $5 million on the last day of each of the issuer's three most recent fiscal years.[4]

During the course of its consideration of the proposals to raise the total assets threshold, the Commission determined that it would be worthwhile to investigate other touchstones for entry into and exit from the Exchange Act reporting system. Such other measurements could be in addition to or in lieu of the present thresholds. The Commission is not at this time proposing any amendments to its rules but rather wishes to elicit comments and suggestions to assist the Office of Small Business Policy in the Division of Corporation Finance in the development of future rulemaking proposals.

A. Background

In 1964, the Congress expanded the scope of the disclosure system under the Exchange Act. Prior to that time, only issuers with securities registered on a national securities exchange were subject to the reporting and other provisions of sections 13, 14, and 16 of the Exchange Act. Thereafter, issuers with a class of equity securities held of record by 500 or more securityholders and assets in excess of $1 million were also made subject to these provisions.[5] A part of the reason for this increase in the scope of the disclosure system was attributable to a belief that issuers in these categories had sufficiently active trading markets and public interest and consequently were in need of mandatory disclosure to ensure the protection of investors. The steadily increasing costs of this system upon affected persons prompted the Commission to seek public comments in 1980 about classifying issuers for purposes of modifying the disclosure system.[6] While this concept release suggested that a classification system be addressed and many comments, suggestions and ideas in this regard were received, the actual system implemented in 1982 simply changed the total assets ceiling for purposes of entering and remaining subject to the Exchange Act disclosure system.[7] The Commission determined that at least initially the focus should be on alleviating the reporting burdens for the smallest of issuers. The action taken today by the Commission with respect to the threshold again addresses only the asset ceiling. This rulemaking effort did not reconsider whether a conceptual framework focused on the number of shareholders plus total assets was the appropriate measure of public ownership and federal interest.

The Commission has received some comments indicating that too many small issuers in which there is little public investor interest may still be subject to the reporting requirements of the Exchange Act; for too many of these issuers, the costs of reporting may exceed the benefits to their investors.

[2] Release No. 34-23406 (July 8, 1986).

[3] Issuers with securities listed on a national securities exchange by virtue of section 12(b) of the Exchange Act also are subject to these provisions. Section 15(d) of the Exchange Act also imposes a modified reporting requirement upon issuers who have had effective registration statements under the Securities Act of 1933 ("Securities Act").

[4] Rule 12h-3 is not available to an issuer subject to section 15(d) during the fiscal year in which its registration statement under the Securities Act become effective or is subject to the updating provisions of section 10(a)(3) of that Act.

[5] Issuers with effective registration statements under the Securities Act and more than 300 shareholders continued to be subject to the reporting provisions of the Exchange Act pursuant to section 15(d).

[6] Release No. 34-16866 (June 2, 1980) (45 FR 40145). See also Small Business Investment Incentive Act of 1980, Pub. L. 96-477 (October 21, 1980), directed toward the removal of unnecessary and burdensome regulatory restraints on the capital raising efforts of the small business community consistent with the purposes of investor protection.

[7] Release No. 34-18647 (April 15, 1982) (47 FR 17046).

The Commission believes it is time to reexamine the basic definition of issuers in whom there is sufficient public investor interest to warrant imposition of the responsibility of reporting under the Exchange Act.

B. Possible Alternative Classification Systems

The Commission solicits specific comment on the alternative classifications discussed below. Commentators are also encouraged to propose other approaches to defining those issuers in whom there is insufficient public interest and investor benefit to justify the costs of compliance with the reporting requirements of the Exchange Act.

(1) Costs of Compliance relative to Value of Issuer or Securities

Under this approach, the cost of complying with the Exchange Act registration and reporting provisions is balanced against some measurement of an issuer's value or capitalization, or the market value of the equity securities themselves. A possible approach would be to consider the aggregate market value of all of an issuer's publicly-owned securities, the total number of holders of these securities and value of the issuer—measured by net worth or revenues, for instance. Under such approach, the public interest would be defined by market value and number of public security holders, whether debt, equity or combinations thereof, and the costs would be assessed relative to the resources of the issuer.

(2) Public Interest as reflected through Trading Activity

A long-standing recommendation of the American Bar Association has related to revising the system in some way with limited partnerships in view. The proposal would require partnerships to provide only an annual report to limited partners containing certified financial statements if there is limited trading activity, e.g. 25 trades, in the limited partnership interests over the past fiscal year. While that recommendation was devised with limited partnerships in view, it is apparent that other issuers may also have limited market activity in their securities which suggests insufficient public interest in the securities to warrant Exchange Act reporting. Commentators are asked to indicate their views as to whether trading volume alone, or together with other criteria, should be a factor in determining applicability of the reporting requirements. If trading volume is an appropriate factor to be considered, specific suggestions for appropriate criteria are requested. In addition, the Commission requests that commentators address what obligations, if any, should be imposed on a inactively trading issuer that suddenly becomes the subject to increased trading interest. Should the system, in other words, be hinged to past activity alone, or is there some intervening event that should cause additional disclosure to be required, and if so what added information should be provided?

(3) Tiering the Disclosure System

The Commission requests comment on whether there should be a class of issuers that, while not wholly exempt from the reporting requirements, are subject to less burdensome provisions. For instance, this middle tier might only be required to file an annual report. The financial statements in this report might parallel those required to be included in a registration statement under the Securities Act on Form S-18.[8]

Commentators are requested to suggest criteria for defining this middle tier and to address those reporting obligations that could be reduced. Commentators are specifically requested to address whether there would be any significant savings in eliminating the interim reports where an annual report continues to be required. Specific information is requested with respect to the current costs of interim report preparation. The Commission also requests comment on the appropriate scope and content of the annual report to be required of this middle tier. The costs of preparing such a report should be specifically identified, as well as the cost of preparing the annual report under current rules, in order to place in perspective the savings that could be realized in such a tiered disclosure system. The Commission also requests information about the effect limited reporting by middle tier companies may have upon the interest institutional or other professional investors would have in these securities and the impact a possible lack of professional interest in such securities might have upon the markets for these securities.

(4) Revising the Current Thresholds

An obvious alternative involves the revision of the present system, i.e., reworking the present securityholder and/or total assets levels. Some commentators have suggested that the total asset level be increased to $15 million and the shareholder measures revised to 750 or perhaps 1000. The basis for the cost-benefit data for these thresholds and any other proposed increased levels should be detailed. Any studies or other empirical data in this regard would be welcome.

C. Legislative or Regulatory Revision

The Commission's ability to make regulatory changes in this area is governed by sections 12(h) and 13(c) of the Exchange Act.[9] The Commission has very broad authority under these sections which it believes would suffice to implement a new classification approach. However, to the extent commentators believe changes are warranted that do not fall within the rulemaking authority of sections 12(h) and 13(c), the Commission is prepared to consider legislative proposals.

D. Cost-benefit Analysis

Comments are specifically requested on the cost-benefits of the present system which brings companies into the Exchange Act reporting system when the 500 securityholders and $5 million in total asset levels are reached, in balance with the overall concerns of the public interest and investor protection. Similar analysis should be provided for any proposed change in the current system. Any studies or analyses which reflect the costs of compliance with the Exchange Act reporting provisions on a per shareholder basis are requested.

All interested persons are invited to submit their written views or comments on the foregoing matters. These comments should be sent in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC 20549 on or before September 30, 1986. Such communications should refer

[8] 17 CFR 239.28 (Two years of certified financial statements are presently required).

[9] Section 12(h) states: The Commission may by rules and regulations exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from sections 13, 14, or 15(d) or may exempt from section 16 any officer, director or beneficial owner of securities of any issuer, any security of which is required to be registered pursuant to subsection (g) thereof, upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The Commission may, for purposes of any of the above mentioned sections or subsections of this title, classify issuers and prescribe requirements appropriate for each such class.

Section 13(c) states: If in the judgment of the Commission any report required under subsection (a) is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such reports of comparable character as it may deem applicable to such class or classes of issuers.

to File No. S7-16-86 and will be available for public inspection.

By the Commission.

Jonathan G. Katz,

Secretary.

July 8, 1986.

[FR Doc. 86-15797 Filed 7-11-86; 8:45 am]

BILLING CODE 8010-01-M

POSTAL SERVICE

39 CFR Part 111

Discontinuance of Post Offices and Emergency Suspension of Service; Extension of Time for Comment

AGENCY: Postal Service.

ACTION: Proposed rule; extension of time.

SUMMARY: On June 19, 1986, the Postal Service published in the **Federal Register** (51 FR 22314) a proposed rule change intended to reflect the Postal Service's new management organizational structure, and to streamline internal procedures by reducing the number of management reviews required, eliminating excess paperwork, and clarifying language. The Postal Service requested comments on the proposed rule change on or before July 19, 1986.

Certain members of Congress requested a thirty day extension of the comment period order to make a more complete assessment of the proposal and its potential impact.

The Postal Service believes that comments resulting from such assessments may provide valuable information. Accordingly, the Postal Service is extending the deadline for comments on the proposed rule change until August 19, 1986.

DATE: Comments on the proposed rule change must be received on or before August 19, 1986.

ADDRESS: Written comments should be mailed or delivered to the Retail and Customer Services Clerical Operations Division, Room 7226, 475 L'Enfant Plaza West SW., Washington, DC 20260-7225. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 7226, at the above address.

FOR FURTHER INFORMATION CONTACT: Mario Principe, (202) 268-3538.

Fred Eggleston,

Assistant General Counsel, Legislative Divison.

[FR Doc. 86-15755 Filed 7-11-86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3048-4]

Approval and Promulgation of Implementation Plans, Connecticut; Reasonably Available Control Technology for Connecticut Charcoal Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Connecticut Charcoal Co. in Union, Connecticut. The required RACT control methods center on incineration of VOC emissions and recordkeeping. The intended effect of this action is to propose approval of a source-specific RACT determination made by the State in accordance with commitments from its Ozone Attainment Plan approved by EPA on March 21, 1984 (49 FR 10542).

DATES: Comments must be received on or before August 13, 1986.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Bldg., 165 Capitol Ave., Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David Conroy, (617) 223-4869; FTS-223-4869 or Lynne Naroian, (617) 223-4873.

SUPPLEMENTARY INFORMATION: Regulation 22a-174-20(ee), "Reasonably Available Control Technology for Large Sources," was approved by EPA on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. This regulation requires the Connecticut Department of Environmental Protection (DEP) to determine and impose RACT on all stationary sources with potential VOC emissions of one hundred tons per year (TPY) or more that are not already subject to Connecticut's regulations developed pursuant to the Control Techniques Guideline (CTG) documents. All RACT determinations must be submitted to EPA for approval as source-specific SIP revisions. On February 28, 1986, the DEP submitted a revision to its SIP. This revision is Connecticut proposed State Order #943 to be issued to Connecticut Charcoal Co. in Union, Connecticut. This proposed order defines and imposes RACT. It will be effective upon issuance (April 1986). Connecticut Charcoal manufactures charcoal for industrial and commercial use. The facility consists of seven "beehive" kilns made of brick and cement. The company burns hardwood in the kilns, with little air, to convert the wood into charcoal by burning off the volatile organic matter. Each batch takes about five days, and usually only one kiln is in operation at a time.

The exhaust from the operating kiln is routed to one of two portable incinerators which Connecticut Charcoal hand built specifically for control of its particulate and VOC emissions. The incinerators consist of three combustion chambers and are mounted on wheels so that they can be moved to the kiln that is operating.

Connecticut Charcoal is considered a major VOC source (potential emissions over 100 TPY) and is subject to RACT under Connecticut's Regulations 22a-174-2-0(ee). The total VOC emissions for this facility were calculated as 229 TPY using the nonmethane VOC emission factor for charcoal manufacturing from AP-42 (Section 5.4, May 1985).

On February 28, 1986, the DEP submitted proposed State Order #943 to be issued to Connecticut Charcoal Co. of Union, Connecticut. The proposed Order includes a Compliance Timetable requiring on-going control methods that Connecticut Charcoal must utilize to achieve RACT. The requirements in the Order are summarized below:

(1) Maintain full and continued use of the incinerators such that no kiln is operated without controls.

(2) Maintain specified records for each batch charcoal burn necessary to determine compliance.

(3) Maintain draft and leakage controls to maintain emission capture efficiency at greater than ninety percent (90%).

(4) Maintain the following incinerator operating parameters:

—All burner nozzles, including any subsequent replacement systems, must be air atomization type.

—A minimum operating temperature of 1500 °F must be achieved and demonstrated throughout the burn by monitoring. A temperature of 1800 °F

must also be reached at some point during the burn.

—A minimum residence time (theoretical time that the kiln exhaust remains in the incinerator) of 0.5 seconds must be maintained at all times.

(5) Operate both burners of the incinerator upon start-up of a kiln. (As temperatures increase in the combustion chambers, the use of additional burners may be discontinued only if there is no discernable change in the emission rate.) Inspect burner operation at least once per day. Measure and record incinerator operating temperatures at the start of the production cycle and midway through each cycle to note compliance with the minimum 1500 °F operating temperature.

(6) Maintain compliance records and reports on file at the site to be made available upon request.

EPA has reviewed these requirements and their compliance dates, and has determined that they constitute RACT for Connecticut Charcoal Co.

EPA is proposing to approve DEP's proposed Order as a revision to the Connecticut SIP, and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

This revision is being proposed under a procedure called parallel-processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made to the proposed revision, EPA will publish a final rulemaking notice. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the State of Connecticut and submitted for incorporation into the SIP.

Proposed Action

EPA is proposing to approve Connecticut's proposed State Order #943 as a revision to the Connecticut SIP. The provisions of Connecticut's proposed State Order #943 define and impose RACT for Connecticut Charcoal Co. as required by Regulation 22a-174-20(ee) of the Connecticut Ozone Attainment Plan. The Order will be effective upon issuance (April 1986).

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

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

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of sections 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to sections 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Dated: March 20, 1986.

Paul Keough,

Acting Regional Administrator, Region I.

[FR Doc. 86-15764 Filed 7-11-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 131

[FRL-OW-3048-6]

Water Quality Standards for Surface Waters of the State of Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: EPA is withdrawing portions of a proposed rule which would have established certain water quality standards for the State of Idaho. The Agency is withdrawing its proposal for a dissolved oxygen criterion for waters below dams and that portion of the proposal concerning the exemption of dams from the anti-degradation policy. In both cases, the State adopted provisions that meet the requirements of the Clean Water Act, thus making the EPA proposal unnecessary.

DATE: This withdrawal is effective immediately.

FOR FURTHER INFORMATION CONTACT: David K. Sabock, United States Environmental Protection Agency, Criteria & Standards Division, 401 M St. SW.,—WH-585, Washington, DC 20460, (202) 245-3042.

SUPPLEMENTARY INFORMATION: On August 20, 1985, (50 FR 33672) EPA proposed water quality standards for the State of Idaho relating to: (1) A criterion for dissolved oxygen for water discharged from dams, (2) a statewide ammonia criterion, (3) an ammonia criterion for Indian Creek, and (4) elimination of the exemption for dams contained in the State's antidegradation policy.

While EPA was reviewing the public comments received from the four public hearings held on the proposal and other written comments which were submitted, the State adopted revised dissolved oxygen criteria and deleted the exemption of dams from its anti-degradation policy. These standards were submitted to EPA for review on April 14, 1986, and approved by the Agency as meeting the requirements of the Clean Water Act on May 27, 1986.

This action by the State in adopting approval standards makes it unnecessary for EPA to continue with these portions of the proposal rule. EPA still has under consideration the proposed actions on ammonia.

Dated: July 3, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-15767 Filed 7-11-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3047-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Notification of availability of data and request for comment.

SUMMARY: Today's notice announces the availability of ground-water monitoring data for Lake City Army Ammunition Plant's landfill that was submitted in support of their delisting petition to exclude specific wastes from hazardous waste control. The Agency requests public comment on this data in relation to the proposed exclusion of Lake City's waste (see 51 FR 7820-7822, March 6, 1986).

DATES: EPA will accept public comments on this data until August 13, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this notice as it relates to the proposed exclusion of Lake City's waste by filing a request with Bruce Weddle, whose address appears below, by July 29, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be

sent to the Docket Clerk, Office of Solid Waste (WH-562), 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variance Section, Assistance Branch, PSPD/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this docket number: "F-86-LCNA-FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The public docket where this information can be viewed is located at the U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Ms. Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: On March 6, 1986, the Agency proposed to grant a final exclusion to Lake City Army Ammunition Plant under 40 CFR 260.20 and 260.22 (see 51 FR 7820-7822 and regulatory docket number "F-86-CP-FFFFF"). During the public comment period for that proposal, one respondent expressed concern over the possiblity of ground-water contamination and the adequacy of the monitoring wells in the vicinity of the landfill cells which contain the subject waste. Subsequent to the publication of the proposed exclusion, Lake City submitted ground-water monitoring information. Consequently, this information was not included in the docket for the proposed rule. This information consists of three additional quarters of ground-water monitoring data, additional maps of the monitoring well locations, and boring logs for the wells. The Agency notes that Lake City's monitoring system is a RCRA approved system as required under Part 265 subpart F. The Agency believes that this additional information supports Lake City's contention that the management of the subject waste in the landfill has not adversely affected the ground water.

Dated: July 7, 1986.

J.W. McGraw,

Acting Assistant Administrator Office of Solid Waste and Emergency Response.

[FR Doc. 86-15766 Filed 7-11-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6720]

Proposed Flood Elevation Determinations; Florida et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed modified base (100-year) flood elevation determinations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirements; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

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

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Unincorporated Areas of Hillsborough County.	Tampa Bay	At the intersection of Coco Palm Circle and Bal Harbor Drive.	*13	*12
			At the west end of Finale Lane	*13	*12
			At the intersection of Adagio Lane and Allegro Lane	*12	*12
Maps available for inspection at the Department of Development Coordination, P.O. Box 1110, Tampa, Florida.					
Send comments to The Honorable Norman W. Hickey, Hillsborough County Administrator, Hillsborough County, P.O. Box 1110, Tampa, Florida 33601.					
Florida	City of La Belle Hendry County	Stream A	Just downstream of Withlecoochee Avenue	*12	*12
			About 50 feet downstream of the confluence of Stream C.	*15	*16
			Just downstrean of confluence of Stream D	*17	*17
Maps available for inspection at the Public Works Department, Superintendent Frank P. Johnston, City Hall, P.O. Box 458, La Belle, Florida.					
Send comments to The Honorable Thomas A. Smith, Mayor, City of La Belle, City Hall, P.O. Box 398, La Belle, Florida 33935.					
Indiana	City of Lebanon Boone County	Prairie Creek	Just upstream of Interstate 65	*924	*924
			About 150 feet upstream of Lafayette Avenue	*931	*930
			About 0.68 mile upstream of East Main Street	*938	*938
Maps available for inspection at the Building Inspector's Office, 201 East Main Street, Lebanon, Indiana.					
Send comments to The Honorable Ann Garoffolo, Mayor, City of Lebanon, 201 East Main Street, Lebanon, Indiana 46052.					
Indiana	City of New Haven Allen County	Dannenfelser-Cochoit Ditch	Just upstream of Werling Road	*769	*769
			About 0.25 mile upstream of Werling Road	*770	*769
			Just downstream of Green Street	*775	*775
Maps available for inspection at the City Administration Building, 1235 Lincoln Highway East, New Haven, Indiana.					
Send comments to the Honorable Eugene Taylor, Mayor, City of New Haven, City Administration Building, 1235 Lincoln Highway East, New Haven, Indiana 46774.					
Missouri	City of Fenton, St. Louis County	Meramec River	About 0.3 mile downstream of Gravois Road	*422	*421
			Just upstream of Interstate 44	*425	*425
			About 3.1 miles upstream of Interstate 44	*430	*429
		Fenton Creek	Just downstream of State Highway 141	*422	*421
			About 0.2 mile downstream of Gravios Road	*425	*425
Maps available for inspection at the Planning Department, City Hall, 625 New Smizer Mill Road, Fenton, Missiouri.					
Send comments to The Honorable Joseph Morgan, Mayor, City of Fenton, City Hall, 652 Smizer Mill Road, Fenton, Missouri 63026.					
Nebraska	Village of Waterloo, Douglas County	Elkhorn River	About 0.93 mile downstream of Union Pacific Railroad	None	*1121
			About 1.10 miles upstream of State Highway 64	None	*1130
Maps available for inspection at the Village Hall, 105 Washington Street, P.O. Box 50, Waterloo, Nebraska.					
Send comments to the Honorable Nick Oyster, Mayor, Village of Waterloo, 105 Washington Street, P.O. Box 50, Waterloo, Nebraska 68069.					
New York	Brookhaven, Town, Suffolk County	Great South Bay	Intersection of Noble Street and Blue Point Avenue	*4	*6
			Shoreline at Mott Avenue (extended)	*6	*11
		Moriches Bay	Intersection of Elm Road and Diana Drive	*7	*8
			Shoreline at Bay Avenue (extended)	*9	*12
		Atlantic Ocean	Shoreline at First Walk (extended)	*14	*15
			Intersection of Ocean Walk and Pine walk	*10	*12
Maps available for inspection at the Town Clerk's Office, 205 South Ocean Avenue, Patchoque, New York.					
Send comments to The Honorable Stanley Altan, Brookhaven Town Clerk, Suffolk County, 205 South Ocean Avenue, Patchoque, New York 11772.					
New York	East Hampton, Town, Suffolk County	Atlantic Ocean	Shoreline at South Edison Street (extended)	*14	*15
			Intersection of Osprey Road and Marlin Drive	*11	*9
Maps available for inspection at the Town Clerk's Office, Town Hall, 159 Pantigo Road, East Hampton, New York.					
Send comments to The Honorable Charles Anderson, Town Clerk of East Hampton, Suffolk County, 159 Pantigo Road, East Hampton, New York 11937.					
New York	East Hampton, Village, Suffolk County	Altantic Ocean	Shoreline of Lily Pond	*10	*9
			50 feet north of shoreline at Nichols Avenue (extended).	*14	*12
Maps available for inspection at the Village Hall, 27 Main Street, East Hampton, New York.					
Send comments to The Honorable Kenneth Wessberg, Mayor of the Village of East Hampton, Suffolk County, 27 Main Street East Hampton, New York 11937.					
New York	Ocean Beach, Village, Suffolk County	Atlantic Ocean	200 feet south of intersection of Ocean Walk and Bayberry Walk.	*12	*13
			Intersection of Bay View Walk and Cottage Walk	*5	*6
Maps available for inspection at the Village Hall, Box 457, Ocean Beach, New York.					
Send comments to The Honorable Thomas Schwarz, Mayor of the Village of Ocean Beach, Suffolk County, Box 457, Ocean Beach, New York 11770.					
New York	Quogue, Village, Suffolk County	Atlantic Ocean	Entire shoreline within community	*14	*15
			South corner of intersection of Post Lane and Dune Road.	*11	*12
		Quogue Canal	Approximately 300 feet northwest of intersection of Post Lane and Dune Road.	*10	*11
			Approximately 300 feet northwest of intersection of Ocean Avenue and Niamogue Lane.	*7	*8
		Shinnecock Bay	Shoreline at Bay Road (extended)	*9	*10
			Approximately 600 feet south of intersection of Stone Lane and Montauk Highway.	*7	*8
		Quantuck Bay	Approximatly 800 feet south of intersection of Barkers Lane and Main Street.	*7	*9
			Approximately 500 feet north of Dune Road at the south western corporate limits.	*10	*11

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Village Office, Jessup Avenue, Quogue, New York.					
Send comments to The Honorable T. Decker Orr, Mayor of the Village of Quogue, Suffolk County, P.O. Box 926, Quogue, New York 11959.					
North Carolina	City of Durham, Durham County	Sandy Creek Tributary A	At mouth	*254	*253
			Just downstream of Westgate Drive	*268	*273
Maps available for inspection at the Planning Department, 101 City Hall Plaza, Durham, North Carolina.					
Send comments to The Honorable Wilbur P. Gulley, Mayor, City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.					
North Dakota	City of Napoleon, Logan County (Unincorporated Areas).	McKenna Coulee	50 feet downstream from center of State Highway 3	*1,954	*1,948
Map are available for inspection at the City Hall, 105 West Third, Napoleon, North Dakota.					
Send comments to the Honorable Richard Schwartzenberger, Mayor, City of Napoleon, Box 2, Napoleon, North Dakota 58561.					
Oklahoma	Ardmore, City, Carter County	Hickory Tributary B	At upstream side of U.S. Highway 70 (without floodway).	*828.1	*827.9
			At downstream side of Rockford Road bridge (regulatory).	*828.5	*828.7
Maps available for inspection at the City Hall, 23 South Washington Street, Ardmore, Oklahoma.					
Send comments to the Honorable Bud Morrison, Mayor of the City of Ardmore, Carter County, P.O. Box 249, Ardmore, Oklahoma 73402.					
Oklahoma	Clinton, City, Custer County	Washita River	Approximately 2,120 feet upstream of Gary Freeway	None	*1,485
			Approximately 152 feet downsteam of upstream corporate limits.	None	*1,486
Maps available for inspection at the City Hall, 415 Gary Freeway, Clinton, Oklahoma.					
Send comments to The Honorable Patrick Cornell, Mayor of the City of Clinton, Custer County, P.O. Box 1177, Clinton, Oklahoma 73601.					
Oklahoma	Oklahoma City, City, Oklahoma, Canadian, Cleveland, McClain, and Pottawatomie Counties.	Spring Creek of Bluff Creek	Approximately 600 feet downstream of NW 122nd Street.	*1,098	*1,099
			Upstream side of MacArthur Boulevard	*1,109	*1,105
			Approximately 1,585 feet downstream of Blue Stem Lake Dam.	*1,115	*1,116
		Spring Creek West Branch	Approximately 200 feet downstream of MacAuthur Boulevard.	*1,102	*1,101
			Approximately 375 feet upstream of small dam	*1,132	*1,131
Maps available for inspection at City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma.					
Send comments to the Honorable Andrew Coats, Mayor of the City of Oklahoma City, Oklahoma County, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.					
Oklahoma	Oklahoma County	Deep Fork River	Approximately 1,140 feet downstream of Anderson Road.	None	*953
			Approximately 1,200 feet upstream of Anderson Road	None	*957
			Downstream side of West Minister Road	None	*962
Maps available for inspection at the District 1 Warehouse, 7321 Northeast 23rd Street, Oklahoma City, Oklahoma.					
Send comments to The Honorable F.G. Buchanan, Oklahoma County Commissioner, 320 Robert S. Kerr, Room 119, Oklahoma City, Oklahoma 73102.					
Oregon	City of Veneta (Lane County)	Long Tom River	Approximately 1,250 feet north of the intersection of 7th Street and Dunham Avenue.	*386	*385
Maps are available for review at the City Hall, 24951 McCutcheon, Veneta, Oregon.					
Send comments to The Honorable John W. Smigley, Mayor, City of Veneta, Post Office Box 458, Veneta, Oregon 97487.					
Pennsylvania	Hempfield, Township, Westmoreland County.	Jacks Run	Confluence with Sewickley Creek	*953	*951
			Downstream side of Depot Street at corporate limits	*953	*952
			Approximately 530 feet downstream of the Borough of Youngwood corporate limits.	*962	*956
			Upstream side of CONRAIL	*973	*969
			Confluence with Slate Creek	*979	*976
			Upstream corporate limit of City of Greensburg	*1,009	*1,002
			Confluence of Tributary No. 2	*1,023	*1,022
		Tributary No. 1 to Jacks Run	Confluence with Jacks Run	*984	*977
			Upstream side of Hunter Road (first crossing of Tributary No. 1).	*984	*983
		Tributary No. 2 to Jacks Run	Confluence with Jacks Run	*1,023	*1,022
			Approximately 1,000 feet upstream of Jacks Run	*1,031	*1,026
Maps available for inspection at the Township Building, Greensburg, Pennsylvania.					
Send comments to Honorable John Skiavo, Hempfield Township Supervisor, P.O. Box 500, Greensburg, Pennsylvania 15601.					
Tennessee	City of Athens, McMinn County	Oostanaula Creek	At confuence of Black Brancy	*844	*843
			Just downstream of Dam located about 250 feet upstream of Louisville and Nashville Railroad.	*888	888
			Just upstream of Dam located about 250 feet upstream of Louisville and Nashville Railroad.	*893	*894
			About 1,200 feet upstream of Tellico Avenue	None	*897
		Black Branch	At confluence with Oostanaula Creek	*844	*843
			About 700 feet upstream of confluence with Oostanaula Creek.	*844	*844
		Sokey Branch	At confluence with Oostanaula Creek	*874	*873
			About 750 feet upstream of Central Avenue	*874	*874
		Forest Branch	At confluence with Oostanaula Creek	*882	*881
			Just upstream of U.S. Highway 11	*884	*884

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, P.O. Box 849, Athens, Tennessee.					
Send comments to The Honorable William Brakebill, Mayor, City of Athens, P.O. Box 849, Athens, Tennessee 37303.					
Texas	Mesquite, City Dallas County	Stream 2J2	Approximately 3,350 feet upstream of confluence with North Mesquite Creek.	*500	*499
			Downstream side of Hollow Bend Drive	*501	*500
			Downstream side of Americana Lane	*507	*506
			Upstream side of Americana Land	*507	*508
		South Mesquite Creek	Approximately 1,050 feet downstream of Peachtree Road.	*455	*456
			Approximately 50 feet downstream of Peachtree Road	*456	*458
			Approximately 50 feet downstream of Peachtree Road	*457	*459
			Approximately 50 feet downstream of Gross Road	*459	*461
			Approximately 700 feet downstream of Gross Road	*460	*462
			Approximately 800 feet downstream of South Frontage Road.	*463	*465
			Approximately 50 feet downstream of South Frontage Road.	*465	*466
		West Fork of South Mesquite Creek.	Approximately 650 feet upstream of confluence with South Mesquite Creek.	*458	*461
			Approximately 910 feet upstream of confluence with South Mesquite Creek.	*460	*461
		Stream 2B8	Approximately 310 feet downstream of Interstate 20 and 635.	*461	*462
Maps available for inspection at the Engineering Division, 117 North Galloway Avenue, Mesquite, Texas.					
Send comments to The Honorable Brunhilde Nystrom, Mayor of the City of Mesquite, Dallas County, P.O. Box 137, Mesquite, Texas 75149.					
Wisconsin	Village of Fremont Waupaca County	Wolf River	About 2100 feet downstream of U.S. Highway 10	*755	*754
			About 1.06 miles upstream of U.S. Highway 10	*756	*755
Maps available for inspection at the Planning Commission, P.O. Box 278, Fremont, Wisconsin.					
Send comments to The Honorable Charles Gilbert, Village President, Village of Fremont, P.O. Box 278, Fremont, Wisconsin 54940.					
Wisconsin	City of Milwaukee Milwaukee County	Kinnickinnic River	Just upstream of Kinnickinnic Avenue	*584	*584
			About 300 feet downstream of South 20th Street	*625	*626
			Just upstream of South 20th Street	*630	*632
			Just downstream of South 20th Street	*632	*634
			Just upstream of State Highway 24	*639	*639
Maps available for inspection at the Department of City Development, 809 North Broadway, Milwaukee, Wisconsin.					
Send comments to The Honorable W. Maier, Mayor, City of Milwaukee, City Hall, Room 201, 200 East Wells Street, Milwaukee; Wisconsin 53202.					
Wisconsin	Village of Pewaukee Waukesha County	Pewaukee River	About 0.42 mile downstream of Wisconsin Avenue	*846	*845
			About 0.94 mile upstream of Sussex Road	*854	*853
Maps available for inspection at the City Hall, West 240—North 3065 Pewaukee Road, Pewaukee, Wisconsin.					
Send Comments to The Honorable Brent Redford, Chairman, Pewaukee Board, West 240—North 3065 Pewaukee Road, Pewaukee, Wisconsin 53072.					
Wisconsin	Unicorporated Areas of Waukesha County.	Pewaukee River	At mouth	*822	*821
			Just upstream of State Highway 164	*824	*823
			About 1.0 mile downstream of State Highway SS	*848	*846
			About 1,350 feet downstream of State Highway JF	*854	*853
			About 1.0 mile upstream of Lisbon Road	*None	*894
Maps available for inspection at the Waukesha County Park and Planning Commission, 500 Riverview Avenue, Waukesha, Wisconsin.					
Send comments to The Honoable Betty Cooper, Waukesha County Board Chairman, 515 West Moreland Boulevard, Waukesha, Wisconsin 53188.					
Wisconsin	Unincorporated Areas of Waupaca County.	Wolf River	About 5.0 miles downstream of Soo Line Railroad	*756	*754
			About 2.83 miles upstream of County Trunk Highway X.	*760	*760
Maps available for inspection at the Waupaca County Zoning Administrator, Courthouse, 109 South Main Street, Waupaca, Wisconsin.					
Send Comments to The Honorable Loran Frazier, County Board Chairman, 116 Pine Street, Waupaca, Wisconsin 54981.					

Issued: June 30, 1986.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 86-15733 Filed 7-11-86; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Parts 26, 36 and 96

Alaska National Wildlife Refuges Proposed Management Regulations; Reopening of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This action reopens the comment period for the Alaska National Wildlife Refuges, Management Regulations proposed rule that appeared on page 16083 in the **Federal Register** on April 30, 1986 (51 FR 16083). A request by the general public to allow additional time for comments has necessitated this action to reopen the date by which comments should be submitted. Therefore, the comment period has been extended to July 31, 1986.

DATE: Comments must be submitted on or before July 31, 1986.

ADDRESS: Regional Director (Attn: William Knauer, Wildlife Resources), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, Telephone (907) 786–3399.

FOR FURTHER INFORMATION CONTACT: William Knauer, 907–786–3399.

Dated: July 8, 1986.

Frank Dunkle,
Director.

[FR Doc. 86–15749 Filed 7–11–86; 8:45 am]
BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 134
Monday, July 14, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Low Income Assistance Programs; Meetings

AGENCY: The Advisory Commission on Intergovernmental Relations.

ACTION: Notice of meetings, solicitation of comments on Low Income Assistance Programs.

SUMMARY: In the State of the Union Message in January 1986, the President called upon the White House Domestic Policy Council to evaluate Federal programs and develop a strategy to meet the financial, educational, social and safety concerns of poor families.

At the request of the Domestic Policy Council the Advisory Commission on Intergovernmental Relations, (ACIR) an independent agency established by Congress in 1959, will hold a series of public meetings at selected locations around the country during the summer of 1986 to solicit public input on the issues involved with low income assistance. State and local government officials, public interest groups, public assistance recipients and other interested parties are invited to attend and participate in the hearings. In addition, a docket is being maintained to receive comments on welfare reforms. The docket will remain open through September. Individuals and groups are invited to submit testimony and suggestions throughout the study.

DATES AND LOCATIONS: All hearings will take place from 9:00 a.m.–4:30 p.m.

July 2, 1986: Faneuil Hall, Boston, Massachusetts
July 14, 1986: Tishman Building, 30th Floor—Far East Room, 525 Market Street, San Francisco, California
August 4, 1986: The Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania
August 25, 1986: City Hall, Council Chambers, 68 Mitchell Street SW., Atlanta, Georgia
September 8, 1986: Chicago, Illinois
September 11, 1986: Washington, DC
September 22, 1986: City County Building, Room 30, Denver, Colorado

Conduct of Meeting

Each meeting will begin at 9:00 a.m. There will be a morning and an afternoon session. The morning session will be reserved for witnesses speaking as individuals. The afternoon session will be reserved for public officials and representatives of interested organizations.

All persons wishing to testify should call ACIR at 800–624–8430 or write to: Kelly McManus, The Advisory Commission on Intergovernmental Relations, 1111 20th Street NW., Washington, DC 20575.

Requests to testify at the morning and afternoon sessions will be granted in the order they are received. Witnesses should indicate their name, address, telephone number, affiliation (if any) and the location where they wish to speak. In addition, those wishing to testify are requested to bring at least five copies of their testimony to the meetings. In order to accommodate as many views as possible, each oral presentation will be limited to five minutes. Testimony that cannot be accommodated at the meeting can be submitted for the record.

At each meeting, one hour will be set aside for brief presentations from members of the audience who have not been scheduled to testify. There will be a sign-up sheet at the hearing site at 8:30 a.m. to accommodate those individuals.

Maintenance of Docket

A docket will be maintained at ACIR throughout the study. This will contain the full record of the public meetings and the written statements of those who testify. Those who are not able to testify are invited to submit material to the docket by writing to: Kelly McManus, ACIR, 1111 20th Street NW., Washington, DC 20575.

The docket will remain open through September.

FOR FURTHER INFORMATION CONTACT: Kelly McManus, Information Officer, The Advisory Commission on Intergovernmental Relations, 202–653–5536.

John Shannon,
Executive Director.

[FR Doc. 86–15747 Filed 7–10–86; 8:45 am]
BILLING CODE 6115–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Fort Berthold Reservation Affiliated Indian Tribes in North Dakota; Extension of Time

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

The termination date for the Notice published in the **Federal Register** (50 FR 49737) on December 4, 1985, shall be extended through July 15, 1986, because of later receipt of grain from the Commodity Credit Corporation, causing needed grain not to be disbursed to the affiliated Indian Tribes by the end of the eligibility period.

Signed at Washington, DC, July 9, 1986.

Earle J. Bedenbaugh,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86–15793 Filed 7–11–86; 8:45 am]
BILLING CODE 3410–05–M

COMMISSION ON CIVIL RIGHTS

Rhode Island Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Subcommittee of the Rhode Island Advisory Committee to the Commission will convene at 12:00 noon and adjourn at 2:00 p.m., on August 12, 1986, at the Girl Scouts of Rhode Island, 125 Charles Street, Providence,

Rhode Island. The purpose of the meeting is for the Political Participation Subcommittee to review the report on redistricting.

Persons desiring additional information, or planning a presentation to the Subcommittee, should contact Committee Chairperson, David Sholes or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671, (TDD 617/223-0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 9, 1986.

Donald A. Deppe

Program Specialist for Regional Program.

[FR Doc. 86-15752 Filed 7-11-86; 8:45 am]

BILLING CODE 6335-01-M

Rhode Island Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 12:00 noon and adjourn at 1:30 p.m., on August 13, 1986, at the Rhode Island Commission for Human Rights, 10 Abbott Park Place, Providence, Rhode Island. The purpose of the meeting is to discuss progress on the local civil rights project, and receive a report from the Political Participation Subcommittee on the redistricting report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, David Sholes or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671, (TDD 617/223-0344). Hearing impaired persons who will attend the meeting and require the service of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 9, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86-15753 Filed 7-11-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-351-604, C-427-603]

Extension of the Deadline Dates for the Final Countervailing Duty Determinations and Postponement of the Public Hearings; Brass Sheet and Strip From Brazil and France

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, American Brass, Bridgeport Brass Corporation, Chase Brass and Copper Company, Hussey Copper Ltd., the Miller Company, Olin Corporation-Brass Group, and Revere Copper Products, Inc., domestic manufacturers of brass sheet and strip, and the International Association of Machinists and Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL-CIO), the Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL-CIO/CLC) (petitioners), we are extending the deadline dates for the final determinations in the countervailing duty investigations of brass sheet and strip from Brazil and France to correspond to the date of the final determinations in the antidumping duty investigations of the same products pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573). In keeping with Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), the Department will terminate the suspension of liquidation in the countervailing duty investigation 120 days after the date of publication of the preliminary determination in the investigation of brass sheet and strip from France. In addition, we are postponing the hearing dates originally scheduled for these investigations.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Loc Nguyen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3174 or 377-0167.

SUPPLEMENTARY INFORMATION:

Case Histories

On March 10, 1986, we received antidumping and countervailing duty petitions filed by American Brass, Bridgeport Brass Corporation, Chase Brass and Copper Company, Hussey Copper Ltd., the Miller Company, Olin Corporation-Brass Group, and Revere Copper Products, Inc., domestic manufacturers of brass sheet and strip, and the International Association of Machinists and Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL-CIO), the Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL-CIO/CLC) (petitioners), on brass sheet and strip from Brazil and France. We also received antidumping petitions against the same products from Brazil, France, Canada, Italy, the Federal Republic of Germany, Sweden, and the Republic of Korea.

In compliance with the filing requirements of section 353.36 of our regulations (19 CFR 353.36), the antidumping petitions alleged that imports of brass sheet and strip from Brazil and France are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act) and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petitions contained sufficient grounds upon which to initiate countervailing duty investigations, and on March 31, 1986, we initiated such investigations (51 FR 11771, and 51 FR 11773). The preliminary determinations in these countervailing duty investigations will be made on or before August 18, 1986.

In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the countervailing duty petitions alleged that manufacturers, producers, or exporters in Brazil and France of brass sheet and strip directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petitions contained sufficient grounds upon which to initiate countervailing duty investigations, and on March 31, 1986, we initiated such investigations (51 FR 11776, and 51 FR 11778). On April 24, 1986, the ITC preliminarily determined that there is a reasonable indication that imports of brass sheet and strip from Brazil and France cause material injury to a U.S.

industry (51 FR 16235). We issued a negative preliminary determination in the Brazilian countervailing duty investigation (51 FR 20864) and an affirmative preliminary determination in the French countervailing duty investigation (51 FR 20867) on June 3, 1986.

On June 6, 1986, petitioners filed requests for extensions of the deadline dates for the final determinations in the countervailing duty investigations to correspond with the date of the final determinations in the antidumping investigations.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an (antidumping) investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination (in the countervailing duty investigation) to the date of the final determination" in the antidumping investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, we are granting an extension of the deadline dates for the final determinations in the countervailing duty investigations of brass sheet and strip from Brazil and France from August 18, 1986 to October 31, 1986, the current deadline for the final determinations in the antidumping duty investigations.

To comply with the requirements of Article 5, paragraph 3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation of brass sheet and strip from France on October 7, 1986, which is 120 days from the date of publication of the preliminary determination in that case. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters after October 7, 1986. The suspension of liquidation will not be resumed unless and until the Department publishes a countervailing duty order in this case. We will also direct the U.S. Customs Service to hold any entries suspended prior to October 7, 1986, until the conclusion of these investigations.

In addition, due to the extension of the final determinations in the countervailing duty investigations, we have postponed the dates of the public hearings scheduled for July 11 and July 16, 1986. They will be rescheduled if requests for public hearings are received by the Department by July 30, 1986. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary seven days prior to the hearing date. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

July 3, 1986.

[FR Doc. 86-15778 Filed 7-11-86; 8:45 am]

BILLING CODE 3510-DS-M

Fabricated Automotive Glass From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

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

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on fabricated automotive glass from Mexico. The review covers the period October 24, 1984 through December 31, 1985 and 22 programs.

As a result of the review, the Department hs preliminarily determined the bounty or grant to be 6.51 percent *ad valorem* for 1984 and 0.12 percent *ad valorem* for 1985, a rate we consider *de minimis*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Stephen Nyschot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 1906) a countervailing duty order on fabricated automotive glass from Mexico. On January 2, 1986, two Mexican exporters requested, in accordance with section 355.10 of the Commerce Regulations, an administrative review of the order. We published the initiation of the administrative review on February 10, 1986 (51 FR 5751). The Department has now conducted that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican fabricated automotive glass, including tempered and laminated automotive glass. Such merchandise is currently classifiable under items 544.3100 and 544.4120 of the Tariff Schedules of the United States Annotated.

The review covers the period October 24, 1984 through December 31, 1985 and 22 programs: (1) FOMEX; (2) extra-CEDI; (3) Reembolso; (4) CEPROFI; (5) FICORCA II; (6) CEDI; (7) DIMEX; (8) FOGAIN; (9) FONEI; (10) import duty reductions and exemptions; (11) NDP preferential discounts; (12) Article 94 of the Banking Law; (13) export services offered by IMCE; (14) preferential state investment incentives; (15) state tax incentives; (16) FOMIN; (17) FIDEIN; (18) accelerated and immediate depreciation allowances; (19) BANCOMEXT loans; (20) NAFINSA loans; (21) delay of payments on loans; and (22) delay of payments of fuel charges to PEMEX.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at non-commercial rates to manufacturers and exporters for two purposes: pre-export (production) financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or

grants since these loans are given only on merchandise destined for export. We found that the annual interest rates that financial institutions charged borrowers for FOMEX pre-export financing, denominated in Mexican pesos, were 17.5 percent in September 1984, 25.5 percent from October to December 1984, and 24.7 percent in 1985. The annual interest rates for FOMEX export financing, denominated in the currency of the importing country, were 8.5 percent in 1984 and 6.9 percent in 1985.

During verification, we inquired about the use of compensating balances in the Mexican banking industry. We found that no nation-wide requirements for compensating balances exist, but that informal arrangements involving compensating balances or minimum balance requirements may exist in all industries. Based on the information currently available to us, it appears that such arrangements are just as likely to take place with non-commercial loans, such as those given under FOMEX, as with commercial loans. We are continuing to collect information on factors that may raise nominal interest rates. We do not now have sufficient information to measure effective rates.

For those preliminary results, we therefore chose nominal peso and dollar rates as our benchmarks. For peso-denominated loans, we used as a benchmark for the commercial interest rate in Mexico the average of the nominal interest rates published monthly by the Banco de Mexico in the *Indicadores Economicos*. For dollar-denominated loans, we used interest information obtained from the U.S. Federal Reserve Board. Based on this information, we preliminarily determine that in 1984 comparable peso-denominated loans were available commercially at 53.19 percent and comparable dollar-denominated loans were available at 14.13 percent. In 1985, comparable peso-denominated loans were available commercially at 51.96 percent and comparable dollar-denominated loans were available at 13.21 percent. Using the weighted average of the two FOMEX pre-export rates for 1984, 27.09 percent, we found the resulting interest differential in 1984 to be 31.10 percent for peso-denominated loans. The FOMEX pre-export loan interest differential in 1985 was 27.26. The FOMEX export loan interest differential was 5.63 percent in 1984, and 6.31 percent in 1985.

The two known exporters of this merchandise, Cristales Inastillables de Mexico, S.A., ("CRINAMEX") and Vitro Flex, S.A., used these programs during the period of review. Because both exporters were able to tie all FOMEX loans to exports to specific countries, we used only the FOMEX loans on U.S. shipments and allocated the benefit over only the value of U.S. shipments during the period of review. On this basis, we preliminarily determine the benefit from FOMEX pre-export loans to be 1.09 percent for 1984, and 0.03 percent for 1985. We preliminarily determine the benefit from FOMEX export loans to be 5.42 percent for 1984, and 0.09 percent for 1985, for a total benefit during the review period of 6.51 percent *ad valorem* for 1984, and 0.12 percent *ad valorem* for 1985.

As of February 7, 1985, CRINAMEX and Vitro Flex renounced both pre-export and export FOMEX loans on U.S. shipments. The companies also certified that they would not apply for such loans on U.S. shipment in the future. Based on the verified data for 1985 and the renunciations, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, that Mexican exporters of this merchandise are currently receiving no benefit from this program.

(2) Extra-CEDI

The petitioner, PPG Industries, Inc., alleges that the Mexican automotive glass industry benefits from extra-CEDIs, which it defines as CEDIs paid to export consortia. One such consortium, Fomento de Comercio Exterior ("FCE"), is a subsidiary of Vitro, S.A., which in turn is the parent company of the two exporting companies under review, Vitro Flex and CRINAMEX. PPG contends that FCE received extra-CEDIs which benefited the two exporting companies during the period of review.

During verification, we found no evidence that a program called "extra-CEDI" exists. We also examined but found no evidence of any receipt or use of CEDI's by FCE, nor did we find any evidence of sales by FCE on behalf of the two exporting companies.

(3) Reembolso

During the government level verification, we found that a tax rebate program called the "Reembolso" was in effect during the period of review. The program, which had been administered by the Secretary of Finance ("SECOFI"), was discontinued on December 31, 1985.

During the company-level verification of CRINAMEX and Vitro Flex, we found no evidence that either company had received any form of tax rebate during the period of review. Therefore, we preliminarily determine that this program was not used during the period of review.

(4) CEPROFI

Vitro Flex received two CEPROFI certificates in February 1985. However, we verified that the company returned both certificates, unused, in August 1985. Therefore, we preliminarily determine that this program was not used during the period of review.

(5) Other Programs

We also examined the following programs and preliminarily find that neither company used them during the review period:

(A) New Exchange Risks Trust Fund Program ("FICORCA II");
(B) Tax Rebate Certificates ("CEDI");
(C) Import License Certificates ("DIMEX");
(D) Guarantee and Development Fund for Medium and Small Industries ("FOGAIN");
(E) Fund for Industrial Development ("FONEI");
(F) Import duty reductions and exemptions;
(G) National Development Program ("NDP") preferential discounts;
(H) Article 94 of the General Law of Credit Institutions and Auxiliary Organizations;
(I) Export services offered by the Mexican Institute for Foreign Trade ("IMCE");
(J) Preferential state investment incentives;
(K) State tax incentives;
(L) National Industrial Development Fund ("FOMIN");
(M) Accelerated and immediate depreciation allowances;
(N) BANCOMEXT loans;
(O) Nacional Financiera, S.A. ("NAFINSA") loans;
(P) Delay of payments on loans;
(Q) Delay of payments of fuel charges to PEMEX; and
(R) Trust Fund for the Study and Development of Industrial Parks ("FIDEIN").

Preliminary Results of Review

As a result of our review, we preliminarily determine the bounty or grant to be 6.51 percent *ad valorem* for 1984, and 0.12 percent *ad valorem* for 1985. The Department considers any rate less than 0.50 percent to be *de minimis*.

The Department therefore intends to instruct the Customs Service to assess countervailing duties of 6.51 percent *ad valorem* of the f.o.b. invoice price on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 24, 1984, and exported on or before December 31, 1984.

The Department also intends to instruct the Customs Service not to assess countervailing duties for shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1985.

Further, the Department intends to instruct the Customs Service to waive deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 55 days after the date of publication or the last workday preceding. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10; 50 FR 32556, August 13, 1985).

Dated: July 8, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-15779 Filed 7-11-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-601]

Extension of the Deadline Date for the Final Countervailing Duty Determination and Rescheduling of the Public Hearing: Oil Country Tubular Goods From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, Lone Star Steel Company and CF&I Steel Corporation, we are extending the deadline date for the final determination in the countervailing duty investigation of oil country tubular goods from Israel to correspond to the date of the final determination in the antidumping duty investigation of the same product pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573). In keeping with Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), the Department will terminate the suspension of liquidation in the countervailing duty investigation 120 days after the date of publication of the preliminary determination in this case. In addition, we are rescheduling the public hearing.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Laura Winfrey, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0161 or 377-1784.

SUPPLEMENTARY INFORMATION:

Case History

On March 12, 1986, we received antidumping and countervailing duty petitions filed by Lone Star Steel Company and CF&I Steel Corporation on oil country tubular goods from Israel. In compliance with the filing requirements of section 353.36 of our regulations (19 CFR 353.36), the antidumping petition alleged that imports of oil country tubular goods from Israel are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act) and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation, and on April 1, 1986, we initiated such investigation (51 FR 11963). The preliminary determination in this antidumping investigation will be made on or before August 19, 1986.

In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Israel of oil country tubular goods directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 1, 1986, we initiated such investigation (51 FR 11965). On April 29, 1986, the ITC preliminarily determined that there is a reasonable indication that imports of oil country tubular goods cause material injury to a U.S. industry (51 FR 16907). On June 5, 1986, we issued a preliminary affirmative determination in the countervailing duty investigation on Israel (51 FR 21201).

On June 12, 1986, petitioners filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the antidumping investigation.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an (antidumping) investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination (in the countervailing duty investigation) to the date of the final determination" in the antidumping investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, we are granting an extension of the deadline date for the final determination in the countervailing duty investigation of oil country tubular goods from Israel to November 3, 1986, the current deadline for the final determination in the antidumping duty investigation.

To comply with the requirements of Article 5, paragraph 3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation on October 9, 1986, which is 120 days from the date of publication of the preliminary determination in this case. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters after October 9, 1986. The suspension of liquidation will not be resumed unless and until the Department publishes a countervailing duty order in this case. We will also direct the U.S. Customs Service to hold any entries suspended prior to October 9, 1986, until the conclusion of this investigation.

In addition, due to the extension of the final determination in the countervailing duty investigation, we are rescheduling the date of the public hearing, originally set for July 11, 1986.

This hearing, will now be held on July 30, 1986 at 10:00 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by July 23, 1986. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received within 10 days after the hearing transcript is available.

This notice is published pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

July 13, 1986.

[FR Doc. 86-15780 Filed 7-11-86; 8:45 am]

BILLING CODE 3510-DS-M

Sodium Gluconate From the European Communities; Preliminary Results of Countervailing Duty, Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on sodium gluconate from the European Communities. The review covers the period November 1, 1983 through December 31, 1984 and two programs.

As a result of the review, the Department has preliminarily determined that the signatories have complied with the terms of the suspension agreement, and that their combined shipments constituted more than 85 percent of the imports of sodium gluconate into the United States from the European Communities, during the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3786.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 21107) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on sodium gluconate from the European Communities ("the EC") (46 FR 58132, November 30, 1981). On October 7, 1985, the petitioner requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the agreement. We published the initiation of the administrative review on January 21, 1986. The Department has now conducted that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of the chemical sodium gluconate from the EC. Such merchandise is currently classifiable under item 437.5250 of the Tariff Schedules of the United States Annotated.

The review covers the period November 1, 1983 through December 31, 1984 and two programs: (1) production refunds and (2) export restitution payments. Funds for these programs are provided through the Guidance and Guarantee Fund operated under the Common Agricultural Policy of the EC.

The review covers two exporters, Joh. A. Benckiser Gmbh of West Germany ("Benckiser") and Akzo Chemie Nederland B.V. of the Netherlands ("Akzo"), signatories to the suspension agreement.

Analysis of Programs

(1) Production Refunds

The EC provides production refunds to companies involved in the transformation of certain agricultural goods into manufactured products. Dextrose and glucose, ingredients used in the production of sodium gluconate, are manufactured products of corn and potatoes and are eligible for production refunds. Benckiser and Akzo received no production refunds for merchandise shipped to the United States during the period of review.

(2) Restitution Payments

Restitution payments are fixed on a periodic basis and granted when the world price of sodium gluconate is lower than the EC "market" price. Benckiser and Akzo did not apply for or receive export restitution payments or any equivalent payments under this program from the EC for merchandise shipped to the United States during the period of review.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that Benckiser and Akzo have complied with the terms of the suspension agreement for the period November 1, 1983 through December 31, 1984. The agreement can remain in force only so long as shipments covered by it account for at least 85 percent of exports of such merchandise to the United States. Our information indicates that Benckiser and Akzo accounted for more than 85 percent of the imports into the United States of EC sodium gluconate during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 55 days after the date of publication or the last workday preceding. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10; 50 FR 32556, August 13, 1985).

Dated: July 8, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-15781 Filed 7-11-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Montana College of Mineral Science & Technology; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientic, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 86-183. Applicant: Montana College of Mineral Science and Technology, Butte, Mt 59701. Instrument: Inductive Ground Conductivity Meter, Model EM34-3. Manufacturer: Geonics Ltd., Canada. Intended use: See notice at 51 FR 16729.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides for in situ measurement of ground conductivity in milliohm per meter at variable depths to 40 meters. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

FR Doc. 86-15782 filed 7-11-86; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 4659-01]

Export Privileges of Hans Michael Ludwig; Order

On June 6, 1986, the Administrative Law Judge issued his Decision and Order in the matter of Hans Michael Ludwig, which was referred to me for final decision pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. app. 2401-2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.8(a).

Pusuant to the charging letter of December 13, 1984, Hans Michael Ludwig was charged with one count of violating the Export Administration Act of 1979. He was found guilty of a criminal charge for having attempted to export an array processing board to the Federal Republic of Germany without obtaining the required validated license.

Having reviewed the record and based on the facts addressed in this case, the Order of the Administrative Law Judge is affirmed in part and reversed in part.

The part of the Administrative Law Judge's Order relating to the administrative fine, is hereby *affirmed.* Thus, Hans Michael Ludwig, Kurfurstenstrasse 29, D-8000 Muenchen 40, Federal Republic of Germany, is assessed a civil penalty of $50,000 which is suspended for five years. If no further violations of the Export Administration Act of 1979 occur during this time, then the fine will be vacated forthwith.

However, the evidence presented by the Department of Commerce in the administrative proceedings was insufficient to demonstrate the need for the denial of export privileges. Therefore, the Order of the Administrative Law Judge relating to the denial of export privileges is *reversed,* and Hans Michael Ludwig and all named related parties are free to engage in any and all export transactions.

This constitutes final agency action in this matter.

Dated: July 7, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-15762 Filed 7-11-86; 8:45 am]

BILLING CODE 3510-25-M

University of Chicago, Operator of Argonne National Laboratory; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-188. Applicant: University of Chicago, Operator of Argonne National Laboratory, Argonne, IL 60439. Instrument: FTIR Vacuum Spectrometer Accessories. Manufacturer: Bruher Analytische Messtechnik GmbH, West Germany. Intended use: See notice at 51 FR 17382.

Comments: None received. Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purpose as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time of foreign instrument was ordered (January 30, 1986). Reasons: The foreign instrument provides for extended range spectra taken with both high and low temperature cells. This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, §301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

In this case, the applicant received no response to a formal request for quotation sent to several domestic manufacturers of comparable instruments. It is therefore apparent that the domestic manufacturer was not both able and willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-15784 Filed 7-11-86; 8:45am]

BILLING CODE 3510-DS-M

The Research Foundation of Suny; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 86-182. Applicant: The Research Foundation of SUNY, Albany, NY 12222. Instrument: Spectrometer System for Atmospheric Measurements, Model TAMS 150. Manufacturer: Unisearch Associates, Inc., Canada. Intended use: See notice at 51 FR 16729.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument is capable of measurements of five compounds (SO_2, H_2O_2, NO, NO_2, and HNO_3) at concentrations of 0.2 ppb. The capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-15783 Filed 7-11-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Utah; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 86-095. Applicant: University of Utah, Salt Lake City, UT 84112. Instrument: Mass Spectrometer, Model 70SEQ/11-250J and Accessories. Manufacturer: VG Analytical Ltd. United Kingdom. Intended use: See notice at 51 FR 6157.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides (1) resolution to 40 000, (2) mass range to 2400 at full accelerating potential of 10 kilovolts, (3) tandem (MS/MS) operation and (4) FAB. The National Institutes of Health advises in its memorandum dated May 15, 1986 that (1) these capabilities are pertinent to the applicant's intended purpose (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument 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,

Director, Statutory Import Programs Staff.

[FR Doc. 86-15785 Filed 7-11-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Plan Team for the Bering Sea/Aleutian Islands Groundfish Fishery Management Plan will convene July 21-25, 1986, at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, Building 4, Seattle, WA, to complete the draft Environmental Assessment/Regulatory Impact Review for Amendment 10 and the draft resource assessment document. This is a working meeting and public testimony will be limited so that the Team can complete drafting assignments. For further information contact Jim Glock, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510; telephone: (907) 274-4563.

Dated: July 7, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-15771 Filed 7-11-86; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Bottomfish/Seamount Groundfish Plan Development Team will convene a public meeting, July 15, 1986 at 1 p.m., at the Council's office, 1164 Bishop Street, Room 1405, Honolulu, HI, to discuss the preliminary draft of the bottomfish annual report; review the draft proposal for Northwestern Hawaiian Islands bottomfish access management, as well as to discuss other Team business.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: July 7, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-15772 Filed 7-11-86; 8:45 am]

BILLING CODE 3510-22-M

Permits; Foreign Fishing

This document publishes for public reivew a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to:

Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West

Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274-4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368.

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202-673-5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register.** The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1986 have been received from the Governments shown below.

Carmen J. Blondin,

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

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic Billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands.	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel(s) in support of U.S. vessels, Joint Venture.

Nation, vessel name, and vessel type	Application No.	Fishery	Activity
Government of the Republic of Korea:			
No. 117 Dong Bang.	KS-86-0140	BSA,GOA	*1
Government of the Union of Soviet Socialist Republics:			
Victor Kingisepp	UR-86-0799	NWA	*2

Joint Venture

Korea

The Korean vessel listed in this notice, *No. 117 Dong Bang*, will participate in the joint venture operation previously published November 21, 1985, at 50 FR 48112.

USSR

The Soviet vessel listed in this notice, *Victor Kingisepp*, will replace the *Trudovaya Slava*, in the joint venture operation published June 24, 1986, at 51 FR 22961.

[FR Doc. 86-15773 Filed 7-11-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes to the Textile Category System

July 9, 1986.

The Correlation, Textile and apparel Categories with the Tariff Schedules of the United States, Annotated, provides for placement of Tariff Schedules of the United States Annotated (T.S.U.S.A.) numbers in the Textile Category System. On June 5, 1986, the 484e Committee approved the following amendments to the T.S.U.S.A., to facilitate implementation of the bilateral textile agreement between the Government of the United States and the Republic of the Philippines. These changes are cited in the list which follows this notice.

EFFECTIVE DATE: June 16, 1986.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Agreements and Monitoring Division, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC 20230 (202) 377-4212.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

JUNE 16, 1986 CHANGES TO THE CORRELATION

Category	New T.S.U.S.A. numbers effective June 16, 1986
339	Change 384.0222 to: 384.0220 other infants'; 384.0221 women's and girls'.

JUNE 16, 1986 CHANGES TO THE CORRELATION—Continued

Category	New T.S.U.S.A. numbers effective June 16, 1986
339	Change 384.0224 to: 384.0225 other infants'; 384.0227 women's and girls'.
339	Change 384.0226 to: 384.0229.
339	Change 384.0228 to: 384.0230 other infants'; 384.0231 women's and girls'.
339	Change 384.0234 to: 384.0233 other infants'; 384.0235 women's and girls'.
345	Change 384.0236 to: 384.0237 infants'; 384.0239 women's and girls'.
335	Change 384.0238 to: 384.0240.
335	Change 384.0242 to: 384.0241 other infants'; 384.0243 women's and girls'.
335	Change 384.0244 to: 384.0250 infants'; 384.0252 women's and girls'.
335	Change 384.0246 to: 384.0254.
335	Change 384.0248 to: 384.0255 other infants'; 384.0257 women's and girls'.
348	Change 384.0264 to: 384.0263 other infants'; 384.0265 women's and girls'.
348	Change 384.0268 to: 384.0267 other infants'; 384.0269 women's and girls'.
336	Change 384.0406 to: 384.0407 girls'; 384.0408 infants'.
351	Change 384.0430 to: 384.0410.
337	Change 384.0432 to: 384.0415 infants'; 384.0416 women's and girls'.
337	Change 384.0433 to: 384.0417 infants'; 384.0418 women's and girls'.
342	Change 384.0434 to: 384.0420 infants'; 384.0421 women's and girls'.
335	Change 384.0436 to: 384.0423 infants'; 384.0424 women's and girls'.
341	Change 384.0505 to: 384.0501.
341	Change 384.0506 to: 384.0502 girls'; 384.0503 infants'.
335	Change 384.0509 to: 384.0508 other infants'; 384.0510 women's and girls'.
335	Change 384.0644 to: 384.0645 infants'; 384.0646 women's and girls'.
359	Change 384.0652 to: 384.0650 other infants'; 384.0651 women's and girls'.
335	Change 384.0701 to: 384.0702 infants'; 384.0705 women's and girls'.
335	Change 384.0703 to: 384.0707 infants'; 384.0708 women's and girls'.
335	Change 384.0704 to: 384.0709 infants'; 384.0710 women's and girls'.
348	Change 384.0706 to: 384.0711 infants'; 384.0712 women's and girls'.
348	Change 384.0740 to: 384.0739 other infants'; 384.0741 women's and girls'.
342	Change 384.757 to: 384.758 infants'; 384.759 women's and girls'.
351	Change 384.0925 to: 384.0922.
335	Change 384.0926 to: 384.0924 infants'; 384.0927 women's and girls'.
342	Change 384.0944 to: 384.0943 girls'; 384.0945 infants'.
639	Change 384.1824 to: 384.1823 other infants'; 384.1825 women's and girls'.
635	Change 384.1904 to: 384.1903 other infants'; 384.1905 women's and girls'.
635	Change 384.1909 to: 384.1907 other infants'; 384.1908 women's and girls'.
635	Change 384.1913 to: 384.1912 other infants'; 384.1914 women's and girls'.
639	Change 384.1924 to: 384.1923 other infants'; 384.1925 women's and girls'.
648	Change 384.1928 to: 384.1927 other infants'; 384.1929 women's and girls'.
648	Change 384.2020 to: 384.2015 other infants'; 384.2017 women's and girls'.
635	Change 384.2207 to: 384.2206 infants'; 384.2208 women's and girls'.
637	Change 384.2232 to: 384.2231 infants'; 384.2233 women's and girls'.
639	Change 384.2234 to: 384.2235 infants'; 384.2236 women's and girls'.
642	Change 384.2240 to: 384.2241 infants'; 384.2243 women's and girls'.
659	Change 384.2263 to: 384.2250 infants'; 384.2251 women's and girls'.
648	Change 384.2343 to: 384.2342 other infants'; 384.2344 women's and girls'.
637	Change 384.2545 to: 384.2544 infants'; 384.2546 women's and girls'.
642	Change 384.2550 to: 384.2551 infants'; 384.2552 women's and girls'.
635	Change 384.2555 to: 384.2554 infants'; 384.2556 women's and girls'.

JUNE 16, 1986 CHANGES TO THE CORRELATION—Continued

Category	New T.S.U.S.A. numbers effective June 16, 1986
635	Change 384.2601 to: 384.2604 infants'; 384.2605 women's and girls'.
659	Change 384.2662 to: 384.2663 infants'; 384.2664 women's and girls'.
339	Change 384.2920 to: 384.2914 other infants'; 384.2915 women's and girls'.
339	Change 384.2940 to: 384.2934 other infants'; 384.2935 women's and girls'.
335	Change 384.3009 to: 384.3008 other infants'; 384.3010 women's and girls'.
335	Change 384.3012 to: 384.3011 infants'; 384.3013 women's and girls'.
348	Change 384.3028 to: 384.3027 other infants'; 384.3029 women's and girls'.
348	Change 384.3124 to: 384.3123 other infants'; 384.3125 women's and girls'.
336	Change 384.3220 to: 384.3215 girls'; 384.3217 infants'.
337	Change 384.3426 to: 384.3425 infants'; 384.3427 women's and girls'.
337	Change 384.3428 to: 384.3429 infants'; 384.3430 women's and girls'.
335	Change 384.3432 to: 384.3431 infants'; 384.3433 women's and girls'.
339	Change 384.3438 to: 384.3439 other infants'; 384.3441 women's and girls'.
342	Change 384.3440 to: 384.3442 infants'; 384.3444 women's and girls'.
359	Change 384.3443 to: 384.3449 infants'; 384.3450 women's and girls'.
359	Change 384.3445 to: 384.3451.
359	Change 384.3446 to: 384.3452.
359	Change 384.3447 to: 384.3453.
359	Change 384.3448 to: 384.3454.
335	New Number 384.3716 infants'.
335	Change 384.3720 to: 384.3721 girls'.
335	Change 384.3725 to: 384.3722.
335	Change 384.3730 to: 384.3724.
335	New Number 384.3732 infants'.
335	Change 384.3735 to: 384.3741 women's and girls'.
335	Change 384.3740 to: 384.3742 women's and girls'.
335	Change 384.3746 to: 384.3747 girls'.
335	New Number 384.3752 other infants'.
335	Change 384.3753 to: 384.3755 women's and girls'.
335	Change 384.3754 to: 384.3756 women's and girls'.
335	Change 384.3758 to: 384.3757 women's and girls'.
335	Change 384.3767 to: 384.3760 women's and girls'.
335	Change 384.4410 to: 384.4415 infants'; 384.4416 women's and girls'.
359	Change 384.4420 to: 384.4421 infants'; 384.4422 women's and girls'.
341	Change 384.4604 to: 384.4603 girls'; 384.4606 infants'.
341	Change 384.4605 to: 384.4608.
341	Change 384.4607 to: 384.4610 girls'; 384.4612 infants'.
341	Change 384.4609 to: 384.4614.
341	Change 384.4611 to: 384.4616 girls'; 384.4618 infants'.
348	Change 384.4650 to: 384.4651 other infants'; 384.4652 girls'.
335	Change 384.4705 to: 384.4706 infants'; 384.4707 women's and girls'.
335	Change 384.4710 to: 384.4711 infants'; 384.4712 women's and girls'.
335	Change 384.4715 to: 384.4714 infants'; 384.4716 women's and girls'.
348	Change 384.4725 to: 384.4723 other infants'; 384.4724 women's and girls'.
348	Change 384.4745 to: 384.4746 other infants'; 384.4747 girls'.
348	Change 384.4760 to: 384.4763 other infants'; 384.4764 girls'.
348	Change 384.4775 to: 384.4774 other infants'; 384.4776 girls'.
342	Change 384.4780 to: 384.4781 infants'; 384.4783 women's and girls'.
341	Change 384.4782 to: 384.4784 infants'; 384.4786 women's and girls'.
336	Change 384.4820 to: 384.4821 girls'; 384.4822 infants'.
336	Change 384.4916 to: 384.4917 girls'; 384.4918 infants'.
336	Change 384.4923 to: 384.4922 girls'; 384.4924 infants'.
342	Change 384.5115 to: 384.5114 girls'; 384.5116 infants'.
342	Change 384.5125 to: 384.5124 girls'; 384.5126 infants'.

JUNE 16, 1986 CHANGES TO THE CORRELATION—Continued

Category	New T.S.U.S.A. numbers effective June 16, 1986
342	Change 384.5140 to: 384.5141 girls'; 384.5142 infants'.
342	Change 384.5145 to: 384.5146 other girls'; 384.5174 other infants'.
335	Change 384.5210 to: 384.5201 infants'; 384.5202 women's and girls'.
351	Change 384.5226 to: 384.5221.
359	Change 384.5227 to: 384.5222.
337	Change 384.5228 to: 384.5223 girls'; 384.5224 infants'.
342	Change 384.5237 to: 384.5238 infants'; 384.5239 women's and girls'.
639	Change 384.8026 to: 384.8025 other infants'; 384.8027 women's and girls'.
639	Change 384.8130 to: 384.8129 other infants'; 384.8131 women's and girls'.
635	Change 384.8205 to: 384.8201 infants'; 384.8202 women's and girls'.
635	Change 384.8208 to: 384.8203 infants'; 384.8204 women's and girls'.
635	Change 384.8210 to: 384.8206 infants'; 384.8207 women's and girls'.
635	Change 384.8212 to: 384.8209 infants'; 384.8211 women's and girls'.
635	Change 384.8220 to: 384.8214 girls'; 384.8219 other infants'.
644	Change 384.8226 to: 384.8227 girls'; 384.8228 infants'.
639	Change 384.8239 to: 384.8238 other infants'; 384.8240 women's and girls'.
648	Change 384.8243 to: 384.8242 other infants'; 384.8244 women's and girls'.
648	Change 384.8264 to: 384.8263 other infants'; 384.8265 women's and girls'.
659	Change 384.8605 to: 384.8606 infants'; 384.8607 women's and girls'.
637	Change 384.8642 to: 384.8641 infants'; 384.8643 women's and girls'.
637	Change 384.8644 to: 384.8645 infants'; 384.8646 women's and girls'.
642	Change 384.8661 to: 384.8662 girls'; 384.8663 infants'.
635	Change 384.8672 to: 384.8670 infants'; 384.8671 women's and girls'.
635	Change 384.9137 to: 384.9136 girls'; 384.9138 infants'.
635	Change 384.9142 to: 384.9141 girls'; 384.9144 infants'.
635	Change 384.9143 to: 384.9145 infants'; 384.9146 women's and girls'.
635	Change 384.9155 to: 384.9153 grils'; 384.9154 infants.
648	Change 384.9169 to: 384.9170 other infants'; 384.9171 women's and girls'.
637	Change 384.9311 to: 384.9312 girls'; 384.9313 infants'.
635	Change 384.9403 to: 384.9401 infants'; 384.9402 women's and girls'.
637	Change 384.9415 to: 384.9414 infants'; 384.9416 women's and girls'.
636	Change 384.9430 to: 384.9431 girls'; 384.9432 infants'.
642	Change 384.9446 to: 384.9447 girls'; 384.9448 infants'.
635	Change 384.9466 to: 384.9464 infants'; 384.9465 women's and girls'.
659	Change 384.9471 to: 384.9472 infants'; 384.9473 women's and girls'.

[FR Doc. 86-15776 Filed 7-11-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD-University Forum; Open Meeting

AGENCY: Office of Research and Laboratory Management, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Working Group on Foreign Language and Area Studies of the DoD-University Forum will meet in open session on August 5, 1986, from 10:00 a.m. until 4:00 p.m., at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia.

The purpose of the meeting is to discuss the preliminary draft of a legislative initiative and accompanying documents. The legislative proposal is a result of research into the possible creation of a Foundation for Foreign Language and International Studies. That study is being performed by the American Association of Universities at the request of the DoD-University Forum.

Public attendance will be accommodated as space permits. Public attendees are requested to contact the DoD Office of Research and Laboratory Management before COB, August 1, 1986, to be advised of the meeting room and seating accommodations.

FOR FURTHER INFORMATION CONTACT: Mark Herbst on (202) 694-0205.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 9, 1986.

[FR Doc. 86-15805 Filed 7-11-86; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, August 5, 1986; Tuesday, August 12, 1986; Tuesday, August 19, 1986; and Tuesday, August 26, 1986; at 10:00 a.m. in Rom 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so

listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meeting have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee' attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 9, 1986.

[FR Doc. 86-15806 Filed 7-11-86; 8:45 am]

BILLING CODE 3810-01-M

Army Advisory Panel on ROTC Affairs; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92-463), announcement is made of the following panel meeting:

Name of Panel: Army Advisory Panel on ROTC Affairs
Date of Meeting: July 31 & August 1, 1986
Place: Fort Lewis, Washington
Time: 2 p.m.—5 p.m., July 31, 1986
8 a.m.—12 p.m., August 1, 1986

Proposed Agenda: The meeting will consist of briefings and discussions. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time, and in the manner, permitted by the Panel. It is projected that the following events will take place during the meeting. After opening remarks by Major General Robert E. Wagner and the chairman of the Panel, Dr. Harrison Wilson, any administrative matters requiring attention wil be resolved. The meeting will then proceed with a variety of recent ROTC Cadet Command initiatives. Major General Wagner will provide an overview of the significant changes which have transformed and expanded the responsibilities of ODCSROTC into the US Army ROTC Cadet Command. In addition, Major General Wagner will update panel members on changes to cadet subsistence allowance and Academic Discipline Mix, two topics requested during the November 1986 meeting at the Pentagon. Additional briefings on July 31 and August 1 will include: The Goldstrike Management System, the Junior ROTC Improvement Plan, revisioin of the Precommissioning Assessment System, the Historically Black Colleges Task Force, Cadet Command Advertising initiatives, the Cadet Command/USAREC Pilot Recruiting Programs and Fenced Funding Programs. On August 1, 1986, the Army Advisory Panel on ROTC Affairs will meet in general session to formulate recommendations, consider progress made on previous Panel recommendations and to select a date for the fall panel meeting.

Sally L. Groome,

Colonel, General Staff, Chief, Cadet Training Division.

[FR Doc. 86-15750 Filed 7-11-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Training Personnel for the Education of the Handicapped; Grants Availability and Closing Dates for Applications

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Dates for Transmittal of Fiscal Year 1987 New Grant Applications.

SUMMARY: Applications are invited for new projects under the Training Personnel for the Education of the Handicapped program. Grants for the Training Personnel for the Education of the Handicapped program are authorized by sections 631, 632, and 634 of Part D of the Education of the Handicapped Act. The purpose of the program is to increase the quantity and improve the quality of personnel available to educate handicapped children and youth. Applications may be submitted by State educational agencies, institutions of higher education, and other appropriate nonprofit agencies or organizations.

(20 U.S.C. 1431, 1432, 1434)

Organization of Notice

This notice contains two parts. Part I includes, in chronological order, the list of closing dates for new grant applications covered by this notice. Part II contains individual application announcements for each priority. These announcements are in the same order as the closing dates listed in Part I.

Instructions for Transmittal of Applications

Applicants should note specifically the instructions for the transmittal of applications noted below:

Transmittal of Applications: Applications for new awards must be mailed or hand-delivered or or before the closing date given in the individual program announcements included in this document.

Applications Delivered by Mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.029, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except

Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Available Funds: An applicant for a grant may propose a project period of up to 60 months. However, awards will generally be made for a period of 24 to 36 months. Since fiscal year 1987 appropriate levels have not yet been determined, accurate estimates of funding under each priority are not available. These estimates of funding levels do not bind the Department to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulation.

Priorities for Funding: The regulations for this program provide that the Secretary, in any fiscal year, may select one or more of the ten published priorities, or any combination of priorities, for competition. In fiscal year 1987, competitions will be held in nine of the ten priority areas included under § 318.11 of the regulations. Applications which do not address these priorities will not be considered.

PART I—LIST OF CLOSING DATES FOR THE TRANSMITTAL OF NEW GRANT APPLICATIONS PUBLISHED IN THIS NOTICE

CFDA	Priority announcement	Closing date
84.029D	Preparation of leadership personnel	09-12-86
84.029K	Special projects	Do.
84.029F	Preparation of related services personnel.	10-03-86
84.029Q	Preparation of personnel to provide special education and related services to newborn and infant handicapped children.	Do.
84.029W	Preparation of personnel to work in rural areas.	Do.
84.029X	Preparation of personnel for minority handicapped children.	Do.
84.029H	State education agency, programs	Do.
84.029T	Transition projects	Do.
84.029B	Preparation of special educators	12-12-86

Part II—Application Notices

84.029D—Preparation of Leadership Personnel

Closing Date: September 12, 1986.

Programmatic and Fiscal Information: This priority supports doctoral and post-doctoral preservice preparation of professional personnel to conduct training of teacher trainers, researchers, administrators, and other specialists.

Within this priority, the Secretary especially invites applications for projects that reflect vigorous faculty commitment to scholarship and research activities, emphasize available institutional resources, and include a strong commitment to recruitment of minority students. Preparation programs at the post-doctoral level which provide specialized training in such areas as technology, research methodology, and innovative approaches to training special education personnel are included under this invitational priority. However, applications that meet this invitational priority will not receive a competitive preference over other applications that propose more general leadership training activities.

About $2,000,000 of the funds made available for new Training Personnel for Education of the Handicapped awards for fiscal year 1987 will be made available for this priority. The average grant is expected to be about $80,000.

84.029K—Special Projects

Closing Date: September 12, 1986.

Programmatic and Fiscal Information: This priority supports projects to develop and demonstrate new approaches for the preservice training purposes set forth in 34 CFR 318.10(a), for the preservice training of regular educators, and for the inservice training of special education personnel, including classroom aides, related services personnel, and regular education personnel who serve handicapped children and youth. Project activities assisted under this priority include development, evaluation, and distribution of imaginative or innovative approaches to personnel preparation, and development of materials to prepare personnel to educate handicapped children and youth.

Within this priority, the Secretary especially invites applications for development and evaluation of model curricula for training teachers of the severely handicapped, teachers of children with learning disabilities who are in integrated programs, and regular educators, including supervisors and administrators. Curricula for teachers of the severely handicapped should include components in community referenced training, social integration skills, functional life skills, non-aversive behavior management, transition to employment and community living, opportunities for self determination, and family involvement. Curricula may include practicum opportunities with master teachers in the least restrictive environment. Curricula for training teachers of learning disabled children in integrated settings should include components in cooperative planning, teaching, and evaluation; social integration skills; teaching learning strategies; transition planning; and family involvement. Curricula may include practicum opportunities with master teachers in integrated settings. Curricula for training regular educators may emphasize cooperative planning, team teaching, and other strategies designed to assure that regular teachers and administrators can participate fully in the education of handicapped children in regular classrooms. Applications for projects of nationally significant scope may include data collection, technical assistance, and dissemination as well as activities that focus on developing, planning, and/or implementing new strategies for training personnel to serve handicapped children and youth. However, applications that meet these invitational priorities will not receive a competitive preference over other applications for special projects.

About $2,000,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1987 will be made available for this priority. The average grant is expected to be about $90,000.

84.029F—Preparation of Related Services Personnel

Closing Date: October 3, 1986.

Programmatic and Fiscal Information: This priority supports the preservice preparation of individuals who provide developmental, corrective, and other supportive services as may be required to assist a handicapped child or youth to benefit from special education. The priority supports the preparation of paraprofessional personnel, career educators, recreation specialists, health services personnel, school psychologists, social service providers, counselors, physical therapists, occupational therapists, volunteers, and other personnel providing special services.

Within this priority, the Secretary especially invites applications for projects which demonstrate strong elements of program design, data collection, technical assistance, evaluation, and dissemination, as well as projects that focus specifically on program development in addition to personnel production. However, applications that meet this invitational priority will not receive a competitive preference over more general applications for training of related services personnel.

About $2,000,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1987 will be made available for this priority. The average grant is expected to be about $70,000.

84.029Q—Preparation of Personnel To Provide Special Education and Related Services to Newborn and Infant, Handicapped Children

Closing Date: October 31, 1986.

Programmatic and Fiscal Information: This priority supports the preservice preparation of personnel who will serve newborn and infant handicapped children, or newborn and infant children who are determined to be a high risk of being handicapped, or both. Personnel may be prepared to provide short-term special education and related services as necessary in an intensive care nursery, or long-term special education and related services which extend into a preschool program. Projects supported under this priority prepare personnel for employment in programs characterized by strong interaction of the medical, educational, and related services communities, and by involvement of parents or guardians who are the primary care givers for their children.

Within this priority, the Secretary especially invites applications for projects that propose training programs for generic infant specialists; that provide for integrated programming across disciplines; and that focus on data collection, technical assistance, and dissemination of tested curricula and materials. However, applications that meet this invitational priority will not receive a competitive preference over other applications that propose more general training of personnel to serve handicapped infants.

About $1,000,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1987 will be made available for this priority. The average grant is expected to be about $75,000.

84.029W—Preparation of Personnel To Work in Rural Areas

Closing Date: October 31, 1986.

Programmatic and Fiscal Information: This priority supports preservice training of personnel for rural areas. Particular attention must be given to preservice training related to the unique aspects of providing services to special populations in rural areas. Projects supported under this priority must prepare special education personnel to fill a variety of rural specific roles with handicapped students, parents, peers, and administrators. Training curricula must be designed to—

(i) Teach students about local community systems and encourage understanding of interdisciplinary models of service delivery which are consistent with local community values; and

(ii) Train students in alternate ways of adapting teaching techniques for specific rural community characteristics.

Within this priority, the Secretary especially invites applications that are concerned with innovative approaches to personnel preparation that are developmental in nature, directed to increasing numbers of qualified personnel trained, address issues of recruitment and retention of teachers in rural areas, and focus on training teachers to deliver services in the least restrictive appropriate environment. However, applications that meet this invitational priority will not receive a competitive preference over more general rural-oriented projects.

About $1,000,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1987 will be made available for this priority. The average grant is expected to be about $70,000.

84.029X—Preparation of Personnel for Minority Handicapped Children

Closing Date: October 31, 1986.

Programmatic and Fiscal Information: This priority supports the preservice preparation of special education and related service personnel to educate minority or underserved populations, and provides training for members of groups which have been traditionally underrepresented in these fields.

Within this priority, the Secretary especially invites applications for projects that incorporate into present training programs all aspects of sociocultural and linguistic differences of minority populations, including course content, practicum opportunties, and curriculum materials. The Secretary is especially interested in projects that include training in non-biased assessment, culture-fair identification procedures, and instructional intervention strategies and methodologies specifically designed for minority populations. However, applications that meet these invitational priorities will not receive a competitive preference over more general minority-oriented applications.

About $1,000,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1987 will be made available for this priority. The average grant is expected to be about $80,000

84.029H—State Education Agency Programs

Closing Date: October 31, 1986.

Programmatic and Fiscal Information: This priority supports State educational agencies in establishing and maintaining, directly or through grants to institutions of higher education, programs for the preservice and inservice training of teachers of handicapped children and youth, or supervisors of such teachers. Projects may deal with unique Statewide training in all or several of the areas of need identified by the State comprehensive system of personnel development under 34 CFR 300.380–387, and may include training in management and organizational design which enhances the ability of the States to provide special education and related services to handicapped children and youth. Only State education agencies are eligible to submit applications under this priority.

Within this priority, the Secretary especially invites applications for projects which emphasize the preservice needs of the State, training of administrator and supervisors, and training that will encourage teachers of the handicapped to work effectively with handicapped students in regular education programs. Applications may demonstrate potential for long-term as well as direct impact. Applications may show why they could not be supported with other funds. However, applications that meet these invitational priorities will not receive a competitive preference over other SEA applications.

About $1,000,000 of the funds made available for new Training Personnel for Education of the Handicapped awards for fiscal year 1987 will be made available for this priority. The average grant is expected to be about $70,000.

84.029T—Preparation of Personnel for the Transition of Handicapped Youth to Adult and Working Life

Closing Date: October 31, 1986.

Programmatic and Fiscal Information: This priority supports the preservice preparation of special education and related, service personnel, including secondary school teachers, who will prepare handicapped youth to meet adult roles. Personnel may be prepared to provide either short-term transitional services, or to aid in the placement of handicapped youth in long-term employment, or both. Projects supported under this priority should prepare personnel for employment in programs designed to prepare handicapped youth for community placement and adjustment to the community setting.

Within this priority, the Secretary especially invites applications for projects that are interdisciplinary in nature, community based, focused on team teaching, and which will prepare teachers to work in the least restrictive

environment. However, applications that meet this invitational priority will not recive a competitive preference over more general transition applications.

About $1,000,000 of the funds made available for new Training Personnel in the Education of the Handicapped awards for fiscal year 1987 will be made available for this priority. The average grant is expected to be about $90,000.

84.029B—Preparation of Special Educators

Closing Date: December 12, 1986.

Programmatic and Fiscal Information: This priority supports projects designed to provide preservice training of personnel for careers in special education of handicapped children and youth. The priority includes the preparation of special educators of the handicapped, including personnel trained in speech, language, and hearing impairments, and adaptive physical educators.

Within this priority, the Secretary especially invites applications for projects that focus on training personnel to deliver educational services in the least restrictive environment (including team teaching and consulting teacher models), emphasize community based training, and address the most critical personnel shortages in the areas served by the applicant. However, applications that meet this invitational priority will not receive a competitive preference over more general projects for training special education teachers.

About $6,000,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1987 will be made available for this priority. The average grant is expected to be about $70,000.

Application Forms: Application forms and program information packets for all of these priorities are scheduled to be available for mailing on July 23, 1986. These materials can be obtained by writing to the Division of Program Analysis and Planning, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, S.W. (Switzer Building, Room 3511—M/S 2313), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any additional paperwork on the application content, reporting, or performance requirements beyond those imposed under the statute and regulations. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants submit only the information that is requested. (Approved by the Office of Management and Budget under Control Number 1820-0028)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Training Personnel for the Education of the Handicapped (34 CFR Part 318).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: Dr. Max Mueller, Director, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, S.W. (Switzer Building, Room 4628), Washington, D.C. 20202. Telephone: (202) 732-1068. (20 U.S.C. 1431, 1432, 1434).

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: July 9, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-15759 Filed 7-14-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Study of Energy Conservation in Housing Multifamily Building Retrofit Research

AGENCY: Department of Energy (DOE).

ACTION: Notice of restricted eligibility for a grant award.

SUMMARY: DOE announces that it is conducting negotiations pursuant to 10 CFR 600.7(b) with Princeton University Center for Energy and Environmental Studies for a study of Energy Conservation in Multifamily housing. These negotiations are expected to result in the award of a grant in which DOE will provide $150,000 to conduct the study.

Procurement Request Number: 01-86CE23838.000.

Authorities

DOE Organization Act, Pub. L. 95-91, 42 U.S.C. 7101; Federal Non-Nuclear Energy Research and Development Act of 1974, Pub. L. 93-577, 42 U.S.C. 5901 et seq; DOE Financial Assistance Rules, 10 CFR Part 600, 600.7(b), (47 FR 44086, October 5, 1982)

Scope of Work

The Grant will be to perform research directed towards (a) advancing the scientific understanding of energy-related phenomena in multifamily structures, (b) improving diagnostic and energy analysis tools for multifamily buildings, (c) developing and evaluating air infiltration/air leakage measurement systems in multizone applications, and (d) transferring energy data to DOE for use in updating and modeling performance predictions and for use in determining cost-effective methods and procedures for retrofitted structures.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Harry S. Kessler, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2449.

Issued in Washington, DC, on July 8, 1986.

Edward T. Lovett,

Contract Operations Director, Division "B" Office of Procurement Operations.

[FR Doc. 86-15807 Filed 7-11-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-30-NG]

ANR-TransCanada Energy Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to import natural gas from Canada to ANR-TransCanada Energy Co. (ANR-TransCanada). The order issued in ERA Docket No. 86-30-NG authorizes ANR-TransCanada to import up to 100 Bcf over a two-year period for sale in the domestic spot market.

A copy of this order is available in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on July 3, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-15808 Filed 7-11-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-38-NG]

Spot Market Corp.; Application to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 24, 1986, of an application filed by Spot Market Corporation (SMC), for blanket authorization to import up to 50 Bcf of natural gas annually for a two-year period beginning on the date of first delivery. The gas would be supplied by producers in the Canadian provinces of Alberta and Saskatchewan and sold on a short-term or spot basis to U.S. purchasers, including gas distributors, pipelines, electric utilities and industrial or agricultural users. SMC would act as a broker and/or agent on behalf of U.S. purchasers and Canadian suppliers. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. SMC proposes to make quarterly reports to the ERA.

The specific border points where the gas would enter the U.S. have not yet been determined. SMC intends to supplement its application when the points of importation and the pipeline facilities to be used are decided upon.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests motions to intervene, notices of intervention and written comments are invited.

DATE: Protests motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on August 13, 1986.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-4819.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW. 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision this application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party of the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9478. They must be filed no later than 4:30 p.m. e.s.t., August 13, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto.

Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevent and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in acccordance with 10 CFR § 590.316.

A copy of Spot Market Corporation's application is avilable for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 3, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-15809 Filed 7-11-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-37-NG]

Application of Vermont Gas Systems, Inc., To Increase Volumes of Natural Gas Imported from Canada

AGENCY: Economic Regulatory Administration, DOE

ACTION: Notice of application to increase the volumes of natural gas imported from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 12, 1986, of an application from Vermont Gas Systems, Inc. (Vermont Gas) to amend its existing authorization to increase imports of Canadian natural gas from TransCanada Pipelines Limited (TransCanada). Vermont Gas requests authority to increase imports from a base volume of 25,600 Mcf to 28,000 Mcf per day during the contract year ending October 31, 1987, and to 30,000 Mcf per day during the contract year ending October 31, 1988 and to 32,000 Mcf per day during the contract year ending October 31, 1989. Vermont Gas requests

that the authorization be granted by October 31, 1986.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motion to intervene or notices of intervention, as applicable, and written comments are to be filed no later than August 13, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9622.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room GE-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: Vermont Gas purchases its entire supply of natural gas from the general system supply of TransCanada, a Canadian corporation. The delivery point is at the international boundary near Highgate Springs, Vermont. Vermont Gas sells and distributes this gas supply entirely within the state of Vermont.

For the three contract years ending October 31, 1989, for which Vermont Gas seeks authorization to increase its imports, and for the next two contract years ending October 31, 1991, it is currently authorized to import up to 25,600 Mcf per day of Canadian natural gas pursuant to DOE/ERA Opinion and Order No. 39 (1 ERA ¶70,544). During the contract year ending October 31, 1987, Vermont Gas is also authorized to import 100,000 Mcf of Canadian natural gas on a best-efforts, interruptible basis pursuant to DOE/ERA Opinion and Order No. 91 (1 ERA ¶70,608).

The increased gas supplies will be imported through existing facilities at a price in accordance with the provisions in a November 28, 1985, contract with TransCanada. The contract has no take-or-pay provision and has a two-tier pricing formula which provides for a lower rate for purchases in excess of a base volume of 3.25 Bcf per contract year. The average price is based upon charges of $4.40 (U.S.) per MMBtu for the base volumes and $3.40 (U.S. per MMBtu for volumes in excess of the base volumes. The price is subject to monthly adjustment to ensure that it is competitive with major alternative energy sources in the market served by Vermont Gas.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures:

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and writen comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.d.t., August 13, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why a oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR §590.316.

A copy of Vermont Gas' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, July 3, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-15810 Filed 7-11-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA86-14-20-000 and 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 9, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on July 3, 1986, tendered for filing Thirteenth Revised Sheet No. 203 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that such tariff sheet is being filed to reflect in Algonquin Gas' Rate Schedule F-2, changes in the underlying rates of Consolidated Gas Transmission Corporation ("Consolidated"), as reflected in Consolidated's June 23, 1986 filing, proposed to be effective July 1, 1986.

Algonquin Gas requests that the Commission accept Thirteenth Revised Sheet No. 203 to be effective July 1, 1986 to coincide with the proposed effective date of Consolidated's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before 7-16-86. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15740 Filed 7-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-137-000]

Florida Gas Transmission Co.; Proposed Changes in Rates and Charges

July 8, 1986.

Take notice that on July 1, 1986, Florida Gas Transmission Company (FGT) tendered for filing proposed changes in its FERC Gas Tariff, Volume Nos. 1, 2 and 3 pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717(c) and the Commission's regulations promulgated thereunder to reflect a major rate increase as defined in 18 CFR 154.63.

In connection with the proposed major rate increase, FGT tendered for filing a primary set of revised tariff sheets and related supporting schedules which would increase revenues from jurisdictional sales and services by $9,918,123 and an alternate set of revised tariff sheets, which would increase jurisdictional revenues by $7,304,363.

The proposed rates and charges developed under both the primary and alternate case are based on the overall cost of service for the test period consisting of actual experience for the twelve months ended March 31, 1986, as adjusted for known and measureable changes through January 1, 1987. FGT requests a one-day waiver pursuant to § 154.63(e)(2)(i) of the Commission's Regulations. This section provides, *inter alia,* that for good cause shown, the Commission may allow deviation from the prescribed twelve month base period, as adjusted for known changes which will become effective within the subsequent nine month period. Such waiver may be necessary in order to permit FGT to include in the rates filed herein, and reflected on the tendered revised tariff sheets, the effect of annual salary and wage increases which will be incurred by FGT on January 1, 1987, only one (1) day beyond the end of the test period selected for the instant filing. This request is identical to those requested by FGT in Commission Docket Nos. RP81-84-000 and RP83-104-000, which were granted by Commission orders dated July 31, 1981 and July 29, 1983, respectively.

The overall cost of service underlying the primary revised tariff sheets includes the annual effect of increases in operating and maintenance expenses, taxes other than income taxes, and return of and on new plant facilities for which necessary certificates have been issued as of the date of this filing and which have occurred during the twelve months of actual experience or which will become effective during the test period. In addition, the overall cost of service includes a return on equity of 18%. The proposed rates are based on total annual deliveries to FGT's Florida market of 718,400 MMBtu per day which equates to an annual average day load factor of approximately 97% and a cost of service, excluding purchase gas cost, of $127,761,660. The proposed rates being filed continue FGT's historical rate design methodology of straight commodity rates.

The alternate tariff sheets are being filed to reflect the effect on the cost-of-service and the jurisdiction rates of the proposed expansion contemplated by the application filed on April 9, 1986 with the Commission in Docket No. CP74-192-009 pursuant to section 7(c) of the Natural Gas Act (NGA). Said application was filed for an amended certificate of public convenience and necessity which would authorize FGT to operate approximately fifty-one (51) miles of pipeline and related compressor station modifications necessary to complete or "stitch" FGT's 30-inch and 26-inch pipeline facilities between Baton Rouge, Louisiana and Miami, Florida, increasing its system capacity by approximately 100,000 MCF per day. The cost of the proposed facilities was estimated by FGT to be approximately $28.4 million.

FGT is hopeful that appropriate regulatory approval will be received in sufficient time to allow the proposed facilities to be constructed and placed in-service prior to the end of the test period being utilized for the instant filing. However, pursuant to § 154.63(e)(2)(ii) adjustments to the twelve month base period shall not include "any amounts for facilities in respect to which a certificates of public convenience and necessity must be obtained but which has not been issued at the date of filing". In the event that Commission approval is received and such facilities are placed in service prior to the end of the test period, FGT requests that the Commission waive such parts of its Regulations that it deems appropriate to allow FGT to place into effect the alternate tariff sheets in lieu of the primary tariff sheets.

Except for the costs related to the described facilities the alternate revised tariff sheets are based upon the same cost factors underlying the primary tariff sheets. As shown in the supporting alternate schedules included in the filing, FGT's rates and charges for jurisdictional sales and transportation set forth in the alternate tariff sheets would decrease from the levels set forth in the primary tariff sheets. Such rates are based upon a cost-of-service excluding purchase gas costs of $136,139,341 and annual average day deliveries to the Florida market of 774,160 MMBtu per day which equates to an average load factor of approximately 91%.

The proposed effective date of the revised tariff sheets is August 1, 1986.

In various other pipeline rate proceedings recently filed, the subject of transportation has become an issue, particularly with respect to Commission Order No. 436. Although, FGT does not propose in the instant filing any new rate schedules or tariff provisions relating to transportation service, in the event that issues are raised by FGT's customers or other interested parties, take notice that such issues may be discussed and resolved in the settlement proceedings or conferences which may take place with respect to this proceeding.

Copies of the rate filing were served on all of the Company's jurisdictional customers and the interested State Commissions. Also, FGT states that Statement P will be filed within fifteen days from the date of its rate filing.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before 7-16-86. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15741 Filed 7-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-109-001 and RP86-52-004]

Notice of Compliance Filing; Kentucky West Virginia Gas Co.

July 9, 1986.

Take notice that on July 2, 1986, Kentucky West Virginia Gas Company (Kentucky West) tendered for filing the following tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1:

Substitute First Revised Sheet No. 10A
Substitute Original Sheet No. 10G
Substitute Twentieth Revised Sheet No. 27A
Substitute Original Sheet No. 27B
Substitute Original Sheet No. 34
Substitute Original Sheet No. 35
Substitute Original Sheet No. 36
Substitute First Revised Sheet No. 44A
Substitute First Revised Sheet No. 44B
Substitute First Revised Sheet No. 44C
Substitute First Revised Sheet No. 44D
Substitute Original Sheet No. 44E

Kentucky West states this filing is in compliance with the Commission's order issued June 27, 1986, in Docket Nos. RP86-109-000, RP86-52-000 and RP86-52-001.

Kentucky West has served copies of this filing upon all its jurisdictional customers and affected state regulatory commissions. Kentucky West requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective July 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before July 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15738 Filed 7-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-88-001]

Overthrust Pipeline Co; Tariff Filing

July 9, 1986.

Take notice that on July 2, 1986, Overthrust Pipeline Company (Overthrust) filed, pursuant to 18 CFR, Part 154 and in compliance with the Commission's June 27, 1986, Order in Docket No. RP86-88-000, Substitute Fourth Sheet No. 6, Statement of Rates, to its FERC Gas Tariff, Original Volume No. 1.

Overthrust states that the tendered tariff sheet reflects the elimination of fixed costs from its minimum transportation rate under Rate Schedule T-1 as directed in ordering paragraph A of the Commission's June 27 Order.

Overthrust requests waiver of any Commission rules and regulations necessary to permit the tendered tariff sheet to become effective July 1, 1986, and states that copies of the filing have been served upon all of its transportation customers.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before July 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15735 Filed 7-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-5-17-000, 001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 8, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 1, 1986 tendered for filing as a part of its FERC Gas Tariff, six copies each of the following tariff sheets:

Fourth Revised Volume No. 1

Eightieth Revised Sheet No. 14
Eightieth Revised Sheet No. 14A
Eightieth Revised Sheet No. 14B
Eightieth Revised Sheet No. 14C
Eightieth Revised Sheet No. 14D
Fourtheenth Revised Sheet No. 14E

Original Volume No. 2

Twenty-third Revised Sheet No. 235
Fifteenth Revised Sheet No. 241
Twenty-fourth Revised Sheet No. 322

The above tariff sheets are being issued pursuant to Section 23, Purchased Gas Cost Adjustment, and section 27, Electric Power Cost (EPC) Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. These sheets are also being issued pursuant to Article XI, Staten Island LNG Facility, contained in the Stipulation and Agreement in Docket No. RP78-87 approved by Commission order issued April 4, 1980.

The changes proposed consist of:

(1) A PGA increase of $.029/dth in the Demand-1 component of Texas Eastern's rates and decreases of $.0003/dth in the Demand-2 component and $.0283/dth in the commodity component pursuant to section 23 of Texas Eastern's tariff based upon an overall decrease in the projected cost of gas purchased from producers and pipeline suppliers and a negative balance in Account 191 as of April 30, 1986.

(2) Projected Incremental Pricing Surcharges are zero for the period August, 1986 through January, 1987, pursuant to section 23 of Texas Eastern's tariff and the Commission's regulations;

(3) A change in rates for sales and transportation service pursuant to section 27 of the Texas Eastern's tariff to reflect the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning August 1, 1986 and to reflect the EPC surcharge which is designed to clear the latest balance in the Deferred EPC account as of April 30, 1986; and

(4) An increase in rates under Rate Schedule SS based upon the increase in actual costs incurred in operating and maintaining the Staten Island LNG facility for the twelve month period ended February 28, 1986, pursuant to the provisions of Article XI of the RP78-87 Stipulation and Agreement.

Under the new pricing structure of the ProGas Limited contract dated May 17, 1979 Texas Eastern's payments to ProGas Limited involve a fixed monthly demand charge as well as a commodity charge based upon the quantity of gas

purchased. Consistent with the treatment accorded charges from its pipeline suppliers Texas Eastern has reflected in this PGA adjustment the cost of gas purchased from ProGas Limited on an "as billed" basis. In the instant filing Texas Eastern's total annual demand payments to ProGas Limited equal $13,689,000.

The Commission's order issued January 31, 1984 in Texas Eastern's Docket No. TA84-1-17-001 required Texas Eastern to eliminate estimated balances for the month of November, 1983 from the Deferred Gas Cost Account Balance (Account 191) for the purpose of the surcharge calculation and further required Texas Eastern to continue this methodology in all future PGA filings. In light of this order and discussions between Texas Eastern and the Commission Staff. Texas Eastern in this instant filing is using the six months ending April 30, 1986 Account 191 balance, exclusive of April, 1986 estimates, for the surcharge calculation.

In addition Texas Eastern has excluded from the April 30, 1986 Account 191 balance amounts related to retroactive payments paid to producers for production related costs based on the Commission Order No. 94A. These costs are the subject of a separate Direct Billing Procedure approved by Commission order dated September 30, 1985 in Docket No. RP85-170-000.

The above tariff sheets reflect the Contract Adjustment Demand rates filed in Docket No. RP86-61-000 in compliance with the Commission's directive in its Order Accepting Tariff Sheets Subject to Conditions, issued May 7, 1986 in Docket RP86-61-000.

The proposed effective date of the above tariff sheets is August 1, 1986.

Texas Eastern respectifully requests waiver of any Regulations that the Commission may deem necessary to accept the above tariff sheets to be effective on August 1, 1986.

Copies of filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 86-15742 Filed 7-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-56-002]

Notice of Compliance Filing; Valero Interstate Transmission Co.

July 9, 1986.

Take notice that on July 3, 1986, Valero Interstate Transmission Company (Vitco) tendered for filing the following tariff sheets to be a part of its FERC Gas Tariff:

Original Volume No. 1

1st Revised Sheet No. 21.8
1st Revised Sheet No. 21.9
1st Revised Sheet No. 15
1st Revised Sheet No. 21.10
1st Revised Sheet No. 21.11
1st Revised Sheet No. 21.12

Original Volume No. 2

1st Revised Sheet No. 10
1st Revised Sheet No. 11
1st Revised Sheet No. 8
1st Revised Sheet No. 9
1st Revised Sheet No. 12

Vitco states this filing is in compliance with the Commission's order issued May 30, 1986 in Docket No. TA86-2-56-000. Vitco requests that it be granted a waiver of the requirement to file responses to Ordering Paragraphs (B), (D), and (E) within 15 or 30 days of the issuance of the Commission's May 30, 1986 order. Vitco states it did not receive a copy of the order until June 17, 1986, nor was Vitco aware that the order had been issued.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before July 17, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15739 Filed 7-11-86; 8:45am]

BILLING CODE 6717-01-M

[Docket No. CI86-535-000]

Zapata Exploration Co.; Application

July 9, 1986.

Take notice that on June 26, 1986, Zapata Exploration Company (Zapata), of 3100 Zapata Tower, Houston, Texas 77002, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), 15 U.S.C. 717c and 717f (1982), Parts 157 and 284 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Parts 157 and 284 (1986) and § 2.77 of the Commission's regulations, 18 CFR 2.77 (1986),[1] requesting blanket authorization (1) to abandon temporarily sales for resale of gas subject to the Natural Gas Act (NGA)[2] with an applicable ceiling price higher than the maximum lawful price (MLP) under section 109 of the Natural Gas Policy Act of 1978 (NGPA)[3] to the extent that pipelines release such gas, and (2) to make sales for resale in interstate commerce of NGA gas for which the MLP is higher than the NGPA section 109 price, with pre-granted abandonment authorization for such sales. This authority is requested to be effective no later than July 1, 1986, for a term ending no earlier than March 31, 1987.

Any person desiring to be heard or to make any protest with reference to said application should, on or before July 23, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15737 Filed 7-11-86; 8:45 am]

BILLING CODE 6717-01-M

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[1] Zapata requests expedited consideration of this Application in compliance with 18 CFR 2.77(b)(4).

[2] 15 U.S.C. 717-717w (1982).

[3] 15 U.S.C. 3319 (1982).

Office of Hearings and Appeals

Cases Filed; Week of May 30 Through June 6, 1986

During the Week of May 30 through June 6, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC. 20585.

Dated: July 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 30 through June 6, 1986]

Date	Name and location of applicant	Case No.	Type of submission
May 30, 1986	H. Michael Clyde, Phoenix, AZ	KFA-0038	Appeal of an information request denial. If granted: H. Michael Clyde would receive access to certain DOE information concerning compliance with equal employment opportunity obligations at Los Alamos National Laboratory.
Do	Hardy Oil Company, Inc., Irvine, KY	KEE-0051	Exception to the reporting requirements. If granted: Hardy Oil Company, Inc. would not be required to file Form EIA-782B "Resellers/Retailers Monthly Petroleum Product Sales Report."
June 3, 1986	Lee Garrett Chevron, Washington, DC	KEF-0040	Implementation of special refund procedure. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V in connection with the June 15, 1983 Remedial Order issued to Lee Garrett Chevron.
June 6, 1986	Coline/Maryland, National Helium/Maryland, Perry Gas/Maryland, Baltimore, MD.	RM2-29, RM3-30, RM183-31	Request for modification/rescission in the refund proceeding. If granted: The January 23, 1986 Decision and Order (Case Nos. RQ2-230, RQ3-328 & RQ182-229) would be modified regarding the State of Maryland's application for refund submitted in the Coline, National Helium & Perry Gas second stage refund proceedings.

REFUND APPLICATIONS RECEIVED

[Week of May 30 to June 6, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
6/4/86	Northwest/Vanguard Petroleum Corp.	RF116-7
6/4/86	LARCO/Siegel Oil Company	RF112-192
6/2/86	Wellen/Defense Logistics Agency.	RF247-1
6/6/86	E.B. Lynn/Frank Koerbler	RF246-5
6/6/86	Beacon/Marro Bag Fuel Dock, Inc.	RF238-61
6/6/86	E.B. Lynn/John S. Kelbon	RF246-4
6/6/86	Saber/Vanguard Petroleum Corporation.	RF192-18
6/9/86	Sid Richardson/Drews Oil Co., Inc.	RF26-38
6/2/86	Howell Quintana/Defense Logistics Agency.	RF245-4
6/2/86	Conoco/Pride Oil Company	RF220-377
5/19/86	Conoco/Russell Petroleum Company.	RF220-378
6/2/86	Union Texas/Chilton Metal Products.	RF140-42
6/2/86	MAPCO/Center Oil Company	RF108-13
6/3/86	Tenneco Oil Company/Grist Oil Co.	RF7-134
6/2/86	Tenneco Oil Company	RF7-135
5/19/86	Palo Pinto/Wyoming	RQ5-298
6/4/86	Gulf/Missouri	RF40-3171
6/4/86	Amoco/Missouri	RF21-12615
6/4/86	OKC Corporation/Missouri	RF13-43
6/2/86 thru 6/5/86	Mobil Refund Applications	RF225-8510 thru RF225-8533

[FR Doc. 86-15811 Filed 7-11-86; 8:45 am]

BILLING CODE 8450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the proposed procedures for disbursement of $450,000.00 (plus accrued interest) obtained as the result of a consent order between the DOE and UPG, Inc. (formerly known as P&O Falco, Inc.). The funds will be distributed to refund applicants who purchased products other than crude oil from Falco during the settlement period (August 1, 1973 through January 27, 1981).

DATE AND ADDRESS: Comments must be filed by [30 days from date of publication in the Federal Register] and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should be filed in duplicate and should display a conspicuous reference to Case Number KEF-0026.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585 (202) 252-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute monies obtained from UPG, Inc. (UPG) formerly known as P&O Falco, Inc. (Falco). UPG entered into a Consent Order to settle disputes regarding Falco's compliance with the federal petroleum price and allocation regulations during the period August 1, 1973 through January 27, 1981. Under the terms of the Consent Order, UPG has remitted $450,000.00 which is being held in an interest-bearing escrow account pending determination of its proper distribution.

We propose that the UPG/Falco settlement fund be distributed through a two stage refund proceeding. The first stage will attempt to refund monies to customers who purchased Falco products during the settlement period. The specific requirements which an applicant must meet in order to receive a refund will vary depending on a number of factors (e.g. the size of the refund amount which the applicant is claiming and the applicant's position in the supply chain). These specific requirements are set out in Section II of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons which they purchased from Falco. After meritorious claims are paid in the first stage, second-stage refund procedures may become necessary to distribute any remaining funds.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to

submit two copies of their comments. Comments should be submitted within 30 days from the date of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Date: July 3, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

July 3, 1986.

Name of Case: UPG, Inc. (formerly known as P&O Falco, Inc.).

Date of Filing: April 3, 1986.

Case Number: KEF-0026.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations. On April 3, 1986 the ERA requested that the OHA formulate and implement procedures to distribute $450,000 which it received pursuant to a consent order with UPG, Inc. (UPG), formerly known as P&O Falco, Inc. (Falco).

This Proposed Decision contains the OHA's tentative plan for distributing the UPG/Falco settlement fund. Of special interest to potential refund applicants is Section II which explains the proposed requirements for refund eligibility. Since the specific requirements which an applicant must meet will vary depending on a number of factors (e.g. the size of the refund amount which the applicant is claiming and the applicant's position in the supply chain), we have set out the specific requirements applicable to each type of applicant in section II(A). A claimant should take note to those requirements applicable to its particular circumstances. These specific requirements are followed in section II(B) by a discussion of general requirements which we propose for all UPG refund applicants.

I. Background

UPG, a Delaware corporation, is the corporate successor of Falco, a company whose operations were centered in Louisiana. During the period covered by the Consent Order (August 1, 1973 through January 27, 1981), Falco refined crude oil and resold crude oil and covered products. Therefore, Falco was subject to the federal petroleum price and allocation regulations.

The ERA and UPG entered into a Consent Order on December 21, 1985, resolving all pending and potential disputes concerning Falco's compliance with the applicable DOE regulations. Pursuant to the Consent Order UPG has paid $450,000 to the DOE. These monies have been deposited in an interest-bearing escrow account pending ultimate disposition by the DOE.

II. Proposed Refund Procedures

On its face, the UPG Consent Order settles disputes regarding Falco's sales of both crude oil and refined products. However, the DOE audit files support a finding that the entire Consent Order amount is attributable to Falco's sales of refined products only.[1] Therefore, we propose to treat the entire settlement amount as monies obtained to settle non-crude oil overcharges.

We propose to implement a two-stage refund proceeding to distribute the UPG/Falco settlement fund. During the first stage, purchasers of Falco petroleum products will be afforded the opportunity to submit refund applications. The Appendix to this Proposed Decision lists customers who purchased diesel fuel, fuel oil, motor gasoline and kerosene from Falco during the settlement period. It is possible that there are additional potential refund applicants. From our experience with Subpart V proceedings, we believe that potential claimants will fall into the following categories: (1) End-users, e.g. trucking companies that purchased diesel fuel for their own use; (2) regulated non-petroleum entities which used Falco products in their business (e.g. public utilities) or cooperatives which sold Falco products to their members; and (3) refiners, resellers or retailers who resold Falco products.

In this refund proceeding, we plan to adopt certain presumptions which will permit claimants to participate in the refund process without incurring inordinate expense and will enable the OHA to consider the refund applications in the most efficient manner possible. First, we plan to adopt a presumption that the alleged overcharges were dispersed equally in all of Falco's sales of refined products during the consent order period and that refunds should therefore be made on a pro-rata or volumetric basis. In the absence of better information, such a volumetric refund assumption is sound becuase the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. *American Pacific International,* 14 DOE ¶ 85,158 at 88,293 (1986).

Under the volumetric refund approach we are adopting, a claimant will be eligible to receive a refund equal to the number of gallons purchased times the per gallon refund amount, plus accrued interest. In the present case, we have set the per gallon refund amount at $0.00274 per gallon. We derived this figure by dividing the settlement amount ($450,000) by an estimate of the number of gallons of refined products which Falco sold during the settlement period (164,290,822.77). However, we also recognize that the impact on an individual purchaser might have been greater, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon and Gasoline Co.,* 12 DOE ¶ 85,054 at 88,164 (1984).

We also propose to adopt a number of presumptions concerning injury. These presumptions will excuse certain categories of refund applicants from proving that they were injured by Falco's pricing practices, thus enabling certain applicants to simplify their refund applications. We will discuss these presumptions and the showing which each type of applicant must make in section II(A) below.

(A) Specific Application Requirements for Each Category of Refund Applicants

(1) Refund Applications of End-Users

We propose to adopt a finding that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry were injured by

[1] The DOE audit file indicates that the $450,000 refund amount obtained from the UPG settlement negotiations resulted from Falco's alleged overcharges for refined products and not from Falco's crude oil activities. Telephone conversation between Irene Bleiweiss, Staff Attorney, Office of Hearings and Appeals and Terry Pate, ERA Houston (June 19, 1986). Memorandum to Settlement File from Sandra K. Webb, Director, ERA Houston (December 20, 1985).

When consent orders cover both crude oil and refined products we generally divide the settlement amount into separate crude oil and non-crude oil refund pools. *E.g.* True Oil Co., 13 DOE ¶ 85,178 (1985). However, in light of the facts above we believe it is appropriate to allocate the entire settlement amount to a single non-crude oil refund pool.

Falco's pricing practices. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We propose, therefore, that end-users of Falco products need only document that they were ultimate consumers of a specific amount of Falco products to make a sufficient showing that they were injured by the alleged overcharges.

(2) Refund Applications of Cooperatives and Regulated Firms

We also will not require firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement to demonstrate injury in this case. Although such firms, *e.g.*, public utilities and agricultural cooperatives, generally would pass overcharges through to their customers, they generally would pass through any refunds as well. Therefore, we will require such applicants to certify that they will pass any refund received through to their customers, to provide us with a full explanation of how they plan to accomplish this restitution, and to explain how they will notify the appropriate regulatory body or membership group of their receipt of the refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We note, however, that a cooperative's sales of Falco products to non-members will be treated in the same manner as sales by other resellers.

(3) Refund Applications of Resellers, Retailers and Refiners

a. Refiners, Resellers and Retailers Seeking Refunds of $5,000 or Less. We propose to adopt a presumption, as we have in many previous cases, that purchasers seeking small refunds were injured by Falco's pricing practices. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,224–25 (1982). With small claims, the cost to the firm of gathering evidence of injury to support a refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking a refund of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of Falco products it purchased during the settlement period. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984).

b. Refiners, Resellers and Retailers Seeking Refunds Greater Than $5,000. Unlike small-claims applicants, a firm which claims a refund in excess of $5,000 will be required to provide a detailed demonstration of its injury in addition to providing purchase volume information. It will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, a claimant must show that market conditions would not permit it to pass through those increased costs. *See Panhandle Eastern Pipeline Co./I.V. Cole Petroleum Co.*, 10 DOE ¶ 85,051 at 88,265 (1983). For periods in which the DOE regulations did not require retailers to compute cost banks, a retailer will only be required to show that market conditions prevented it from recovering increased costs. Such a showing might be made through a demonstration of lowered profit margins, decreased market share, or depressed sales volume during the period of purchases from Falco.

(B) General Refund Application Requirements

In addition to the specific requirements outlined above, all applicants must meet a number of general requirements in order to receive a refund. Every applicant must file a written application for refund, signed by the applicant. The application must make reference to the UPG/Falco Special Refund Proceeding (Case No. KEF–0026). Each applicant must submit a monthly purchase schedule for each product purchased from Dorchester during the settlement period (August 1, 1973 through January 27, 1981).

Firms which made indirect purchases of Falco products may also apply for refunds. If an applicant did not purchase directly from Falco but believes that products it purchased from another firm originated with Falco, the applicant must establish its basis for that belief and identify the reseller from whom the products were purchased. Indirect pruchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of Falco products passed through Falco's alleged overcharges to its own customers.

We will establish a rebuttable presumption that claimants who made only spot purchases from Falco were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases and generally would not have made spot market purchases from Falco at increased prices unless they were able to pass through the full amount of the selling price to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Therefore, a firm which made only spot purchases from Falco will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured as a result of its spot purchases from Falco.

Each refund applicant should furnish us with the name, position or title, and telephone number of a person whom we may contact for additional information. If the applicant is affiliated or associated with Falco or UPG in any manner, it must so indicate and provide information explaining the nature of its relationship with the firm. If the applicant has been involved in enforcement proceedings brought by the DOE, it must provide a summary of the present status of the proceeding, or if the matter is no longer pending, it must indicate how the proceeding was resolved. If the applicant is a firm which did not actually purchase from Falco, but is a successor to a Falco customer, the applicant must provide evidence establishing that it, rather than Falco's former customer, is entitled to a refund.

Applications for Refund should not be filed at this time. Detailed procedures for filing applications for refunds will be provided in a final Decision and Order. Before distributing any portion of the settlement fund, we intend to publicize the distribution process, to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. Comments regarding the tentative distribution process set forth in this Proposed Decision should be filed with the Office of Hearings and Appeals within 30 days of publication of this Proposed Order in the **Federal Register.**

(C) Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, the remaining funds could be distributed in a number of ways. For example, the OHA previously has approved the distribution of funds to state governments on behalf of consumers within the states who were likely to have been injured by a firm's alleged overcharges. *E.g., Northeast Petroleum Industries*, 11 DOE ¶ 85,199 (1983). We encourage the submission of comments containing proposals for alternative distribution schemes. However, since the distribution methods

which we will ultimately select will depend upon the amount of money remaining in the settlement fund, we will not be in a position to determine second stage refund procedures until the first stage refund procedures are completed.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by UPG, Inc. (formerly known as P&O Falco, Inc.) pursuant to the Consent Order executed on December 21, 1985 will be distributed in accordance with the foregoing Decision.

Identified Customers of P&O FALCO

Diesel & Gasoline Customers

A.L. Moore
A.L. Moore. Jr.
Abney Oil Co.
Arkla Chemical
Bailey's Parade Service Station
Berwick Bay Transportation Co.
Bird & Son, Inc.
C.C. Pate
C.J. Thibodeaux
Cager Distributors, Inc.
Central Oil & Supply Co.
Champlin Petroleum Co.
City of Minden
Continental Dredging Co.
Crowson Farms
Curtis Allen
Curtis D. Allen Exxon Dist.
E.H. Gleason
E.Z. Mart Stores
Eager Distributors
Eager Oil Co.
Emerson Oil Co., Inc.
Engineered Property Management
George Bailey
Gleason Oil Co.
H&H Oil Co.
Haynes Exxon Dist.
Herbert Gleason
Hicks Post Co.
Hubert Gleason
J.L. Guice
James A. Crowson
Kellogg/Moore Oil Co.
Kelly's Truck Stop
Kelly's Truck Terminal
Kwik Serv
LeBeouf Bros. Towing Co.
Lone Star Steel Co.
M.P.M. Oil, Inc.
Maller Oil Co.
Matthews Oil Co.
Mccartney Oil Co., Inc.
Melton Truck Lines
Monroe Phillips 66 Oil Co.
Moore Farms
Moran Fuels Corp.
N.E. La. Wholesale Oil & Gas
Oil Well Service Co.
Pate Oil Co.
Pellets, Inc.
Pierremont, Inc.
Pineville Kraft Corp.
Randall Breaux Tire Co.
Richard Ayers
Rose Oil
Sledge Oil Co.
So. La. Production Co., Inc.
Southern Marketing
Southwestern Electric Power Co.
St. Joe Oil Co.
Sunco, Inc.
Swepco
Systems Fuels, Inc.
Tensas Oil Co.
Thibodeaux Co.
Triangle Refineries, Inc.
Trident Petroleum Co.
Universal Oil Products
Waterproof Products, Inc.
Waymon Hornbeck
Webster Transportation
West Port Truckstop
Wurster Oil Co., Inc.

Fuel Oil/Kersosene Customers

Arkansas Power & Light
Arkla Chemical Corp.
Atlas Processing Co.
Champlin Pet. Co.
Exxon Co. U.S.A.
International Paper
J&W Refining
Lone Star Steel
Nikoosa Edwards Paper Co.
Triangle

[FR Doc. 86-15812 Filed 7-11-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-3047-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Letter of Verification of Test Parameters and Parts Lists—Light Duty Vehicles and Light Duty Trucks (EPA ICR #0167). (This is a renewal of a currently approved ICR; no changes are proposed.)

Abstract: There is a need to verify with vehicle manufacturers the test parameters and parts lists to be used in vehicle testing for the emissions recall program. Such verification allows manufacturers to review EPA's planned test procedures so they can be assured that testing of their vehicles will be done properly.

Respondents: Motor vehicle manufacturers, on a voluntary basis.

Office of Pesticides and Toxic Substances

Title: Section 8(c) Adverse Reaction Records (EPA ICR #1031). (This is a renewal of a currently approved ICR; no changes are proposed.)

Abstract: Section 8(c) of the Toxic Substances Control Act (TSCA) requires manufacturers and processors to keep records of significant adverse reactions to human health or the environment alleged to have been caused by a chemical substance or mixture. EPA may also require reporting for specific chemicals in order to identify previously unrecognized patterns of adverse effects and to corroborate adverse reaction information being investigated.

Respondents: Manufacturers and processors of chemical substances or mixtures.

* * * * *

Title: Silvex 2/4/5-T Products: Claim for Indemnification, Request for Federal Disposal (EPA ICR #1241). (This is a reinstatement of a previously approved ICR; no changes are proposed.)

Abstract: EPA is required by section 15 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to indemnify owners of 2,4,5-T/Silvex products and to provide for proper disposal of the remaining stocks when so requested. In order to accomplish this, claim forms must be submitted by the product holders.

Respondents: Holders of 2,4,5-T/Silvex products.

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0941, Form for Requesting Quality Control Samples of Toxic Hazardous Materials, was approved 6/25/86 (OMB #2080-0016; expires 4/30/89).

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Wayne Leiss (#0167), or Carlos Tellez (#1031 and #1241), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

Dated: July 7, 1986.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 86-15678 Filed 7-11-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3048-7]

Intent to Form an Advisory Committee To Negotiate Hazardous Waste Injection Restrictions Mandated by the Hazardous and Solid Waste Amendments of 1984

ACTION: Notice.

SUMMARY: EPA is considering establishing a new Advisory Committee under the Federal Advisory Committee Act (FACA). The Committee's purpose would be to negotiate issues leading to a notice of proposed rulemaking for regulations implementing the restrictions on injection of hazardous waste mandated by section 3004(f) and (g) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984. The Committee would consist of representatives of parties with a definable stake in the outcome of the proposed rule.

DATE: EPA must receive comments and suggestions by August 4, 1986.

ADDRESS: Comments should be submitted (in duplicate if possible) to: Francoise Brasier, Director, Hazardous Waste Injection Restrictions Task Force, U.S. Environmental Protection Agency, (WH-550), 401 M Street SW., Washington, DC 20460.

Docket No. HW1R-01, containing materials relevant to this rulemaking, is located in Room E1015B, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. 20460. The docket may be inspected between 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Kirtz, Director, Regulatory Negotiation Project, U.S. Environmental Protection Agency, (PM-223), 401 M Street, SW., Washington, DC 20460 (202) 382-7565. Contact Chris Kirtz for information on this item or on the Regulatory Negotiation Project generally.

SUPPLEMENTARY INFORMATION:

Outine of Notice

I. **Project Background**
- A. The Concept of Regulatory Negotiation
- B. Negotiations to Date

II. **Item Under Consideration**
- A. Hazardous Waste Injection Restrictions as a Negotiation Item
  - 1. Need for Regulations
  - 2. Selection as a Negotiation Item
- B. Key Issues for Negotiation

III. **Formation of a Negotiating Committee**
- A. Procedure for Establishing an Advisory Committee
- B. Participants
- C. Requests for Representation
- D. Final Notice
- E. Tentative Schedule
- F. Potential Interests and Participants

IV. **Procedures for Conducting Negotiations**
- A. Facilitator
- B. Good Faith Negotiation
- C. Administrative Support and Meetings
- D. Defining Consensus
- E. Record of Meetings
- F. Committee Procedures
- G. Failure of Advisory Committee to Reach Consensus

Notice

I. Project Background

A. The Concept of Regulatory Negotiation

On February 22, 1983, EPA announced in the **Federal Register**, 48 FR 7494-7495, that it was beginning a project to explore the extent to which negotiations among interested parties could serve as an alternative to its current rulemaking process—an alternative that could better conserve time and resources and minimize costly litigation.

The project brings together a balanced mix of parties and interests to negotiate at the pre-proposal stage. The goal of each negotiation is to reach a consensus on which to base a Notice of Proposed Rulemaking (NPRM). The agency intends to use any consensus that is justified and within its statutory authority as the basis of the proposal. Negotiations are conducted through Advisory Committees chartered under the Federal Advisory Committee Act (FACA). All procedural requirements of the Administrative Procedure Act and other applicable statutes continue to apply.

A senior official selected by the EPA office responsible for developing the rule acts as chief negotiator for EPA. Individuals representing definable interests in the regulated community, enforcement officials, and other affected stakeholders negotiate on behalf of their constituencies. A neutral facilitator chairs the negotiations, keeps the process moving smoothly, and assists in resolving disputes.

EPA's experience suggests that this process can produce better regulations, use all parties' time and resources more wisely, and reduce litigation and uncertainty.

B. Negotiations to Date

EPA has already successfully conducted three such regulatory negotiations and has a fourth well underway. The fist involved Nonconformance Penalties under Section 206(g) of the Clean Air Act, as amended. The group achieved timely consensus on the core issues for the proposed rulemaking. Public comments were few, all supporting the consensus, and many supporting regulatory negotiation generally. The final rule, issued on August 30, 1985, has not been challenged legally.

The second involved Emergency Pesticide Exemptions under section 18 the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This group also reached full and timely consensus on exact wording for the proposal and preamble. Public comments were few, some supportint the proposal and others raising relatively minor concerns. The final rule, issued on January 15, 1986, has not been challenged legally.

The third negotiation involved Farmworker Protection Standards for Agricultural Pesticides, 40 CFR Part 170, under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA). During the course of negotiations, one of the major interest groups exercised its right to leave before a final package was developed. EPA did what it could to encourage the group to return, and kept all Committee members fully informed of all developments. The remainder of the group continued to meet, with some in the interest group continuing to participate informally. The draft rule produced, while not a consensus, attempts to balance the concerns of all parties. It will be proposed for public comment by January 1987.

Another negotiation effort now underway involves New Source Performance Standards for Woodburning stoves, under Section 111 of the Clean Air Act, as amended. The meetings began on March 20, 1986, and are scheduled to end on August 21, 1986.

II. Item Under Consideration

A. Hazardous Waste Injection Restrictions as a Negotiation Item

1. Need for Regulations

On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984 (HSWA). The HSWA contains provisions affecting nearly every facet of hazardous waste management. Particularly challenging for the Agency is the prohibition of continued land disposal of hazardous wastes beyond specified dates pursuant to sections 3004 (d), (e), (f), and (g), unless disposal is found to be protective of human health and the environment. Further, the legislative scheme, as applied to deep well injection of hazardous wastes, is quite complex. As a result, the HSWA poses a number of legal and policy questions regarding injections wells.

The Amendments address land ban determinations for injection wells in two separate subsections. The differences in language between subsections (f) and (g) have raised several issues, such as whether the interested party of the Agency has the burden of proof and whether the subsections set different standards. With regard to the latter, subsection (f), which pertains only to injection wells, requires banning of "California list" wastes, certain solvents, and dioxins by August, 1988, "if it may be reasonably determined that . . . disposal may not be protective of human health and the environment for as long as the waste remains hazardous." Subsection (g), which governs all other wastes, presumes that disposal is banned unless it has been demonstrated to a reasonable degree of certainty that there would be ". . . no migration of hazardous waste constituents for as long as the wastes remain hazardous."

The Agency's current interpretation of subsection (g) was outlined in a proposed rule entitled "the Hazardous Waste Management System; Land Disposal Restrictions," published in the **Federal Register** on January 14, 1986 (51 FR 1602 *et seq.*). Based on comments received, the Agency is reexamining this approach.

The Office of Drinking Water has developed a framework for implementing the land ban which resolves such issues as the ones described above. EPA presented this framework to the public on February 21, 1986, and received a generally positive response. We anticipate that the framework will serve as a departure point for the negotiations and that discussions will focus on technical issues and on the administrative procedures and processes required to implement the decisions.

The Agency's actions on this matter will affect 90 facilities which operate 195 wells. The majority of these are located in Texas and Louisiana, although injection wells are located in 13 other states. All but 16 are on-site operations, and the organic chemical and petroleum industries comprise nealy 90% of the users (by volume). Although the affected universe is small, the volumes of wastes handled are large; EPA estimates that 60% of the hazardous wastes disposed in or on the land are injected.

2. Selection as a Negotiable Item

The Agency believes that proposed regulations for implementing the hazardous waste injection restrictions may be appropriate for development by the regulatory negotiation process. The Agency has made a preliminary inquiry among potential parties and representatives of identified interests to determine if EPA's candidate selection criteria are satisfied. To qualify under EPA's selection criteria, an item must:

- be at pre-proposal stage of development;
- have a relatively small number of identifiable parties, in an appropriate balance and mix, who have a good faith interest in negotiating a consensus;
- present a limited number of related issues for which sufficient information is available for resolution; and
- have a time factor that lends some urgency to issuing the regulation.

On the basis of this preliminary inquiry, EPA believes that this item meets its selection criteria and that negotiation can be successful. This item is at pre-proposal phase of development, affected interests are limited in number, and groups representing these interests are identifiable and in an appropriate balance and mix. EPA has contacted them and believes they are interested in negotiating this item in good faith. The Office of Drinking Water has identified a number of basic issues for which sufficient information is in hand (or will be developed during the negotiations) for resolution, and the Agency is committed by statute to proposing the regulations expeditiously.

B. Key Issues for Negotiation

As stated above, EPA anticipates that negotiations will revolve around technical and administrative issues involved in implementing the framework outlined by the Agency at the February 21, 1986 public meeting. These issues may be modified, if necessary, to reflect any change in the Agency's policy on interpretation of section 3004(g) or other relevant statutory provisions. At this time, we have identified the following items for negotiation:

- Appropriate additional technical requirements for well siting, design, construction, operation, and monitoring, if any;
- Siting criteria which can be used to define sites which are "protective" within the meaning of the amendments, including the technical means for evaluating sites;
- Criteria for evaluating facilities which are not sited in such a way that they meet all the hydrogeologic characteristics of a "protective" site, but which may otherwise meet the standards specified in the amendments;
- The administrative framework for handling petitions and/or certifications; and
- Defining the degree of assurance required by the standard, i.e., establishing a base for "reasonable degree of certainty."

III. Formation of a Negotiating Committee

The following guidelines will apply to the formation of a negotiating committee, if established, unless they are modified as a result of comments received on this Notice.

EPA requests public comment on whether the Agency:

- Should establish a Federal Advisory Committee;
- Has adequately identified interests that are affected by the key issues listed above;
- Has identified appropriate participants who will adequately represent the interests affected by the negotiations; and
- Whether it is appropriate to use regulatory negotiation for this rulemaking, and whether the issues and procedures are adequate and appropriate.

A. Procedures for Establishing an Advisory Committee

Generally, a Federal agency must comply with the requirements of FACA when it establishes or uses a group which includes non-federal members as a source of advice. Under FACA, an Advisory Committee is established only after both consultation with and receipt of a charter from GSA. EPA has prepared a charter and has initiated the requisite consultation process. Only upon the successful completion of this process and the receipt of the approved charter will EPA form the Committee and commence negotiations.

B. Participants

The negotiating groups should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this Notice is to help determine whether the standards that EPA is developing would substantially affect interests not adequately represented by the proposed participants (listed later in this Notice). We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, we firmly believe that each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in reponse to this Notice, an additional individual or representative of an interest requests membership or representation in the negotiating group, the Agency, in consultation with the facilitator, will determine whether that individual or representative should be added to the group. EPA will make that decision based on whether the individual or interest:

- Would be substantially affected by the rule;
- Is already adequately represented in the negotiating group.

D. Final Notice

After evaluating the results of the organizational meeting, and reviewing any comments on this Notice and requests for representation, EPA will issue a final notice. That notice will announce the establishment of a Federal Advisory Committee unless EPA decides, based on comments and other relevant considerations, that such action is inappropriate, or in the event EPA's charter request is disapproved. The negotiation process begins once the Committee is appropriately chartered and notice is published in the **Federal Register.**

E. Tentative Schedule

EPA will hold an organizational meeting on July 30, 1986, from 9:00 a.m. until completion, at the National Institute for Dispute Resolution, 1901 L Street, NW., Suite 600, Washington, DC. This meeting is open, and potential participants are encouraged to attend.

The purpose of this meeting is to: (1) Discuss whether negotiations should proceed, and if so, how the negotiations and Committee should function; (2) consider what should and should not be covered; (3) answer questions; and (4) address any other procedural issues which may arise.

If the final determination is that the Committee should be formed and negotiations should proceed, EPA plans to hold the first meeting of the Advisory Committee in late August or early September, at the National Institute for Dispute Resolution. EPA would announce the exact date in the Federal Register. At this first meeting, participants would complete action on any procedural matters outstanding from the organizational meeting, determine how best to address the principal issues, and begin to address them.

To ensure timely issuance of the proposal, we intend to terminate the activities of the Committee if it does not reach consensus within six months of the first meeting.

F. Potential Interests and Participants

EPA has tentatively identified the following list of possible interests and parties:

Public Interest Groups

Natural Resource Defense Council
National Wildlife Federation
Legal Environmental Assistance Foundation
Environmental Task Force
Oklahoma League of Women Voters
Kern County Valley Action Network

Trade Associations and Industry

Chemical Manufacturers Association
DuPont
Arco-Alaska
American Iron and Steel Institute
National Solid Waste Managers Association
Chemical Waste Management Inc.
Monsanto
Hazardous Waste Treatment Council

State Officials

Texas Water Commission
Michigan Department of Natural Resources
Louisiana Department of Natural Resources

Federal Government

U.S. Environmental Protection Agency.

Comments and suggestions on this tentative list of representatives are invited. Anyone wishing to be included should explain the interest they represent and why that interest is not already represented. The listing of a potential group does not necessarily mean that the group has to participate.

IV. Procedures for Conducting Negotiations

A. Facilitator

EPA will use a facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiation

Since participants must be willing to negotiate in good faith and be authorized to do so, each organization must designate a senior official to represent its interests. This applies to EPA as well, and the Agency will designate a senior official of the office of Drinking Water as its representative.

C. Administrative Support and Meetings

EPA's Regulation Management Branch will supply logistical, administrative and management support. Meetings will be held in the Washington area. To support the negotiations, EPA has pledged funds to a resource pool which the National Institute for Dispute Resolution will administer. EPA expects that funds from private foundations will also be available. These funds may be used by the parties for such activities as training, technical support, computer simulations, and other assistance which the parties deem useful. To give committee members maximum freedom, subject to any applicable legal constraints, they will determine the procedures under which requests for funds will be made and approved.

D. Defining Consensus

The goal of the negotiating process is consensus. In the negotiations completed to date, consensus has meant that each interest concurs in the result. We expect the participants to fashion their own working definition of this term.

E. Record of Meetings

In accordance with FACA's requirements, EPA will keep a record of all Advisory Committee meetings. This record will be placed in the public docket for this rulemaking. EPA will announce Committee meetings in the **Federal Register.** Such meetings will generally be open to the public.

F. Committee Procedures

Under the general guidance and direction of the facilitator, and subject

to any applicable legal requirements, the members will establish the detailed procedures for Committee meeting which they consider most appropriate.

G. Failure of Advisory Committee to Reach Consensus

In the event the Committee is unable to reach consensus, EPA will proceed to develop its own proposal.

Dated: July 3, 1986.

Lee M. Thomas,

Deputy Administrator.

[FR Doc. 86-15768 Filed 7-11-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51629; FRL-3039-9]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 86-14547, beginning on page 23464, in the issue of Friday, June 27, 1986, make the following corrections:

On page 23465, third column, under "P86-1188," seventh line, "LC ^{50}/hr" should read "LC ^{50} 96 hr," and on the eighth line "23 mgl" should read "23 mg/1."

BILLING CODE 1501-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-010970.

Title: Sea-Barge Agreement.

Parties: Zapata Gulf Marine Corporation, Luis A. Ayala Colon Sucesores, Inc., S.E.L. Maduro (Florida), Inc.

Synopsis: The proposed agreement would establish a common carrier operation in the trade between U.S. Atlantic, Gulf, Puerto Rican and Virgin Islands ports and points served via such ports, and ports and points in Mexico, the Caribbean Sea, Central America and South America. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: July 9, 1986.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 86-15790 Filed 7-11-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License of William G. Young & Co., Inc., et al; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 653
Name: William G. Young & Co., Inc.
Address: 61 Broadway, New York, NY 10006
Date Revoked: April 30, 1986
Reason: Requested revocation voluntarily

License Number: 2844
Name: McGovern International, Inc.
Address: P.O. Box 60165, Houston, TX 77205
Date Revoked: May 30, 1986
Reason: Surrendered license voluntarily

License Number: 1144-R
Name: Mangili Freight Forwarding Corp.
Address: 29 Broadway, New York, NY 10006
Date Revoked: June 25, 1986
Reason: Voluntary surrender resulting from merger into Sea Lanes Freight Forwarding Corp.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 86-15748 Filed 7-11-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cervical Cancer Prevention and Control Program Announcement and Notice of Availability of Funds for Fiscal Year 1986; Correction

A notice announcing competitive applications are being accepted to support a Cervical Cancer Prevention and Control Demonstration Project, was published in the **Federal Register** on Tuesday, June 17, 1986 (51 FR 21980). The notice is corrected as follows:

1. On page 21980, second column, "*Eligible Applicants*," is corrected to read: "The eligible applicants for this project are the State and local official health agencies, including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States."

2. The due date for submission of applications is extended to August 1, 1986. Therefore, on page 21980, third column, "*Applications*," "*A. Copies—Place of Submission*," first paragraph, line three, change "July 21, 1986" to "August 1, 1986."

All other information and requirements in the notice remain the same.

Dated: July 8, 1986.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 86-15746 Filed 7-11-86; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 86F-0263]

Permethyl Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Permethyl Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of isobutylene-butene copolymers in the manufacture of foam-polystyrene articles and in release coatings or linings for pressure sensitive adhesive labels..

FOR FURTHER INFORMATION CONTACT: Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1788 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3925) has been filed by Permethyl Corp., Frazer, PA 19355, proposing that § 177.1430 *Isobutylene-butene copolymers* (21 CFR 177.1430) be amended to provide for the safe use of isobutylene-butene copolymers in the manufacture of foam-polystyrene articles and in release coatings or linings for pressure sensitive adhesive labels.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: July 7, 1986

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-15728 Filed 7-11-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a system of records, "HCFA Employee Building Pass Files," HHS/HCFA/OMB No. 09-70-3002. We have provided background information about the system in the "Supplementary Information" section below. HCFA invites public comments by August 13, 1986, with respect to routine uses of the system.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Executive Office of Management and Budget (EOMB), on July 9, 1986. The system of records, including routines uses, will become effective September 8, 1986, unless HCFA receives comments which would convince us to make a contrary determination.

ADDRESS: The public should address comments to Mr. Richard A. DeMeo, Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-A-1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Mrs. Diane S. Chavez, Division of General Services, Health Care Financing Administration, Room 1-P-4, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone: 301-594-9246.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate the system of records collecting data under the authority of 41 CFR Chapter 101-20.302, Conduct on Federal Property, and OMB Circular A-123, Internal Control Systems.

These regulations and directives establish that Federal workers and other authorized personnel may be issued United States Government Identification Cards.

The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. The proposed routine uses in the system meet the compatibility criteria since the information is collected for administering the security of HCFA buildings and secure areas for which we are responsible. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: July 3, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-3002

SYSTEMS NAME:

Health Care Financing Administration (HCFA) Employee Building Pass Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, 1-P-4 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All HCFA employees and non-HCFA employees who require continuous access to buildings, e.g., the Health and Human Services Building in Washington, D.C., the Social Security Administration complex.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the employees' name, social security number, identification card number, work location, phone number, position title and grade, supervisor's name and telephone number.

Note: records will not be retrieved by the social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 486(c) of Title 40, U.S.C.

41 CFR Chapter 101-20.302 (46 FR 3524, January 15, 1981)

PURPOSE OF THE SYSTEM:

To ensure that Federal employees and other authorized personnel receive United States Government Identification.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To the Federal Protective Service if investigating a crime.

2. To management officials inquiring about an individual's authorization to enter Federal occupied buildings.

3. To contractors and other Federal agencies, as necessary, for the purpose of assisting HCFA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which HCFA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

4. To a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

5. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained on paper forms.

RETRIEVABILITY:

Records are retrieved by the employees' name and identification number.

SAFEGUARDS:

The records are stored in locked files. Access to the records is limited to those employees who have a need for them in the performance of their duties.

RETENTION AND DISPOSAL:

Records are retained for 90 days following resignation or expiration of contract (contracts) and then are shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of General Services, Office of Administrative Services, Office of Management and Budget, Health Care Financing Administration, 578 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the system manager at the address indicated above and specify name and/or identification number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your records, if any.

CONTESTING RECORD PROCEDURES:

Contact the system manager named above and reasonably identify the record and specify the information to be contested, and state the corrective action sought and your reasons for requesting the correction, along with information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

HCFA obtains information in this system from the individuals who are covered by the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86-15725 Filed 7-13-86; 8:45 am]

BILLING CODE 4120-01-M

Public Health Service

National Commitee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Uniform Minimum Health Data Sets established pursuant to 42 USC 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Thursday, July 31, 1986 from 1:00 p.m. to 5:00 p.m. and on Friday, August 1, 1986 from 9:00 a.m. to 12:00 noon in Room 403A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will continue to examine the merits of recommending including or excluding individual items in the proposed long term care minimum health data set.

Further information regarding the Subcommittee may be obtained by contacting Henry S. Mount, National Center for Health Statistics, Room 2-28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7122.

Date: June 30, 1986.

Manning Feinleib,

M.D., Dr.P.H. Director, National Center for Health Statistics.

[FR Doc. 86-15786 Filed 7-11-86; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Intent To Terminate a Repayment Contract With Hillcrest and Boise-Mora Irrigation Districts, and Substitute Repayment Contracts With Certain Other Irrigation Districts

SUMMARY: The Bureau of Reclamation proposes to terminate the existing repayment contract with the Boise-Mora and the Hillcrest Irrigation Districts, dated September 16, 1921, originally intended to secure repayment for the construction of certain irrigation water distribution facilities and the cost of a certain portion of the storage capacity in Arrowrock Reservoir. The distribution facilities have not been built, the reserved space of 22,800 acre-feet has not been used for its intended purpose, and the Hillcrest and Boise-Mora Irrigation Districts have ceased to operate.

Following termination of the existing contract, the Bureau of Reclamation proposes to open negotiations, pursuant to the Reclamation Act of 1902 (32 Stat. 388), as amended and supplemented, particlarly by the Reclamation Project Act of 1939 (53 Stat. 1187), with five irrigation districts for substituted repayment contracts. The proposed substitute repayment contracts will secure recovery of the Federal investment in the 22,800 acre-feet of Arrowrock Reservoir storage space now secured by an unenforceable contract. The five districts, Big Bend, Boise-Kuna, Nampa and Meridian, New York, and Wilder, operate through the Boise Project Board of Control. The terms and conditions of the proposed contracts are dependent upon approval of contract form by the Secretary of the Interior or his designated respresentative.

Public Comment Procedures

Opportunity for public comment on the proposed contract termination and/or on the proposed contracts may be accommodated by observing the following procedures.

(1) Only persons authorized to act on behalf of the contracting entities may neogtiate the terms and conditions of the proposed contracts.

(2) Advance notice of scheduled public meeting and/or hearing will be furnished to those parties that have made timely written requests for such notice of Regional Director, Bureau of Reclamation, Attention: Code 440, 550 West Fort Street, Box 043, Boise, Idaho 83724.

(3) Written correspondence regarding the proposed contracts is available to the public pursuant to the Freedom of Information Act (80 Stat. 383) as amended.

(4) Written comments on the proposed contract termination or the new contractural actions proposed must be submitted to the Regional director within 30 calendar days of the date of this notice.

(5) All written comments received, and testimony presented if a public meeting or hearing is held, will be reviewed and summarized for use by the Regional Director as the contract approving authority. A public meeting or hearing will be scheduled if significant public interest is expressed in the proposed contractual actions.

(6) Copies of the proposed contracts may be obtained by writing the Regional Director. Telephone inquiries may be directed to Larry Parsons (208) 334-9504.

(7) In the event modifications are made in the proposed contract form, the Regional Director will determine whether republication of the notice and extension of the comment period is necessary. The Regional Director will furnish revised contracts to all parties who have requested the contracts.

Dated: July 3, 1986.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc. 86-15634 Filed 7-11-86; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Applications for Endangered and Threatened Wildlife Species Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-708708

Applicant: Dr. John Faaborg, Columbia, MO

The applicant requests a permit to import up to 100 muscle and blood samples of Galapagos hawks (*Buteo galapagoensis*) from the Galapagos Islands, Ecuador, for scientific research.

PRT-707102

Applicant: Dale Priour, Ingram, TX

The applicant requests a permit to cull excess male barasingha deer (*Cervus duvaucali*) from his captive herd at Priour Brothers Ranch, Ingram, Texas, for the purpose of continued maintenance of this herd and thereby enhancement of the survival of the species.

PRT-706067

Applicant: Timothy Wald, Houston, TX

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by V. Pringle, Bedford, Cape Province, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and therefore enhance the likelihood of the survival of the species.

PRT-708895

Applicant: International Animal Exchange, Ferndale, MI

The applicant requests a permit to purchase in foreign commerce and import from Metro Toronto Zoo in Canada, then export to the Taipei Municipal Zoo in Taiwan, five surplus ringtail lemurs (*Lemur catta*) for the purpose of enhancement of the survival of the species through conservation education.

PRT-674784

Applicant: Texas Parks and Wildlife Department Austin, TX

The applicant requests an amendment of their current permit to include the take (harassment) of least terns (*Sterna antillarum*) and northern Aplomado falcons (*Falco femoralis*) for the purpose of research.

PRT-702631

Applicant: U.S. Fish & Wildlife Service, Regional Director, Region One Portland, OR

The applicant requests an amendment to their current permit to take additional species of wildlife and plants for scientific purposes and the enhancement of propagation or survival in accordance with recovery plans, listing, or other Service work for those species.

PRT-709238

Applicant: Frank Murtland, Farmington Hills, MI

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maitained by Mr. M.J. D'Alton, Cape Province, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import the trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT-709240

Applicant: Audrey Murtland, Farmington Hills, MI

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by Mr. J. D'Alton, Cape Province, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT-705976

Applicant: New York Zoological Society, Bronx, New York

The applicant requests a permit to import 15 hatchling Orinoco Crocodiles (*Crocodylus intermedius*) from Thomas Blohm, Crocodile Breeding Center, Caracus, Venezuela, to grow the hatchlings to a larger size in cooperation with a "Headstart" program, and reexport them to the Center for return to the wild for the purpose of enhancement of the propagation and survival of the species.

PRT-709322

Applicant: Ken McConnell, Red Bluff, CA

The applicant requests a permit to import 27 captive-born golden conures (*Aratinga guarouba*) from Carterton Breeding Aviaries, Oxford, England, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or a data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: July 8, 1986.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-15754 Filed 7-11-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Royalty Management Advisory Committee, Production Accounting and Auditing System Onshore Conversion Working Panel; Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Meeting.

SUMMARY: The Minerals Management Service (MMS), Royalty Management Program, hereby gives notice that the Production Accounting and Auditing System (PAAS) Onshore Conversion Working Panel, established by the Royalty Management Advisory Committee, will meet in Lakewood, Colorado, at the location and on the dates indicated below.

The PAAS Onshore Conversion Working Panel will submit recommendations to the Advisory Committee regarding the feasibility and practicality of converting onshore Federal and/or Indian leases to PAAS as well as recommendations regarding the report and finding of the Mineral Lease Information Study. (See Supplementary Information Section below.) The Panel will also advise if there are other alternatives that should be considered. The Panel held their last meeting on March 26-28, 1986, which was announced in the **Federal Register** on March 20, 1986.

DATES: The PAAS Onshore Conversion Working Panel will meet at the Sheraton Inn Hotel, 360 Union Boulevard, Lakewood, Colorado, July 31, and August 1, 1986.

The Panel will meet from 8 a.m. to 5 p.m. daily. If the meeting is completed in

less than the two days scheduled, the panel will adjourn upon such completion.

The public is invited to attend these meetings and make oral or written comments. A time will be set aside by the Panel chairperson during which the public will be invited to make oral comments. Written comments should be submitted by August 15, 1986, to the address listed below.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, telephone number (303) 231-3360, (FTS) 326-3360.

SUPPLEMENTARY INFORMATION: MMS implemented PAAS for all reporters of offshore lease production and for a select number of reporters of onshore lease production who were included in the pilot phase of the PAAS implementation. Although most of the royalties are generated by Federal oil and gas production from offshore leases, there are relatively few offshore Federal leases and wells compared to onshore Federal leases and wells. A Department of the Interior (DOI) project, the Mineral Lease Information Study, was begun in the fall of 1985 to evaluate the cost effectiveness of PAAS and to recommend whether additional onshore Federal and Indian leases should be converted to PAAS.

The PAAS Onshore Conversion Working Panel is one of six working panels established by the Royalty Management Advisory Committee. The panels are composed of both Advisory Committee members and non-Committee members, and were established to provide the Advisory Committee with analyses of specific issues and proposed recommendations. Panel recommendations will be reviewed by the Advisory Committee, which will then decide what advice and recommendations to give to the DOI and the MMS. Although the panels may meet with DOI or MMS staff members to obtain information they require in conducting their analyses, advice and recommendations of the panel willl be made to the Advisory Committee and not to the DOI or the MMS.

Dated: July 8, 1986.

John B. Rigg,

Acting Director, Minerals Management Service.

[FR Doc. 86-15803 Filed 7-11-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Martin Luther King, Jr., National Historic Site and Preservation District Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:00 a.m. on Wednesday, July 23, 1986, at the Martin Luther King, Jr., Center for Non-Violent Social Change, Inc., Freedom Hall, Room 261, 449 Auburn Avenue, NE., Atlanta, Georgia 30312.

The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult with the Secretary of the Interior on matters of planning, developing and administration of the Martin Luther King, Jr., National Historic Site. The purpose of this meeting will be to update the Commission on park activities and operations.

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, NE., Atlanta, Georgia 30312; Telephone 404-331-5190. Minutes will be available approximately 4 weeks after the meeting.

Dated: July 3, 1986.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 86-15724 Filed 7-11-86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-287 (Final)]

In-Shell Pistachio Nuts From Iran

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)), that an industry in the United States is threatened with material injury by reason of imports from Iran of pistachio nuts, not shelled, provided for in item 145.26 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that the threat of material injury would not have resulted in actual material injury but for the suspension of liquidation.[2] In addition, since the Commission finds that there is only a threat of material injury, the question of critical circumstances is not addressed.[3]

Background

The Commission instituted this investigation effective March 11, 1986, following a preliminary determination by the Department of Commerce that imports of certain in-shell pistachio nuts from Iran were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 2, 1986 (51 FR 11359). The hearing was held in Washington, DC, on May 21, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 8, 1986. The views of the Commission are contained in USITC Publication 1875 (July 1986), entitled "In-Shell Pistachio Nuts from Iran: Determination of the Commission in Investigation No. 731-

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] This determination is based on section 735(b)(4)(B) of the Tariff Act of 1930 which states:

If the final determination of the Commission is that there is no material injury but there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of the imports of the merchandise with respect to which the (Department of Commerce) has made an affirmative determination under subsection (a) of this section would have been found but for any suspension of liquidation of entries of the merchandise.

19 U.S.C. 1673d(b)(4)(B).

[3] Since the Department of Commerce affirmatively found critical circumstances, section 735(b)(4)(A) of the Tariff Act of 1930 requires that: the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in subsection (a)(3) to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 731 retroactively on those imports.

19 U.S.C. 1673d(b)(4)(A). Since we do not find that there is "material injury" but only threat of material injury, the statute does not allow us to reach the question of imposing retroactive antidumping duties.

TA-287 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

The Commission transmitted its determination in this investigation to the Deputy Assistant Secretary for Import Administration of the Department of Commerce on July 8, 1986. The views of the Commission are contained in USITC Publication 1875 (July 1986), entitled "In-Shell Pistachio Nuts from Iran: Determination of the Commission in Investigation No. 731-TA-287 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: July 9, 1986.

By order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 86-15775 Filed 7-11-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30389 (Sub-No. 2) et al.] [1]

Seaboard System Railroad Inc. and Southern Railway Co.,Trackage Rights; Notice of Exemption

On June 24, 1986, Norfolk and Western Railway Company (NW), Seaboard System Railroad, Inc. (Seaboard) and Southern Railway Company (Southern) filed a notice of exemption under 49 CFR 1180.2(d)(7) and 1180.4(g)(1), as amended, for an extension of temporary trackage rights operations previously exempted from Commission regulation in Finance Docket Nos. 30389, 30390, and 30391[2] and further extended for six months from January 1, 1986, to July 1, 1986, in Finance Docket Nos. 30389 (Sub-No. 1), 30390 (Sub-No. 1), and 30391 (Sub-No. 1).[3]

This transaction extends for 90 days beginning July 1, 1986, to October 1, 1986, unless subsequently extended, and exempts from regulation (1) NW and Southern's temporary trackage rights over Seaboard between St. Paul, VA (milepost 42.2) and Frisco, TN (milepost 89.24), a distance of approximately 47 miles; (2) Seaboard's temporary trackaged rights over Southern between Appalachia, VA (milepost 0.74) and Frisco, TN (milepost 49.48T), a distance of approximately 46 miles; and (3) temporary overhead trackage rights for the joint operation by NW, Southern and Interstate Railroad Company, a subsidiary of Southern, of interroad trains between Norton (milepost N-465.8) and Carbo (milepost N-434.5) VA and Bulls Gap, TN (milepost 87.OTC).[4]

Since the transaction involves trackage rights and the renewal of trackage rights based upon a written agreement, and are not filed or sought as a responsive application in a rail consolidation proceeding, they fall within the class of transactions described in 49 CFR 1180.2(d)(7), which the Commission has found to be exempt under 49 U.S.C. 10505. See Ex Parte No. 282 (Sub-No. 9), *Railroad Consolidation Procedures—Trackage Rights Exemption*, 1 I.C.C. 2d 270, served April 19, 1985.

As a condition to the use of this exemption, any employees affected by the trackage rights agreement shall be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: July 8, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-15743 Filed 7-11-86; 8:45 am]

BILLING CODE 7035-01-M

[1] Embraces also Finance Docket No. 30390 (Sub-No. 2), *Norfolk and Western Railway Company and Southern Railway Company—Trackage Rights—Seaboard System Railroad, Inc., and Finance Docket No. 30391 (Sub-No. 2), Norfolk and Western Railway Company, Southern Railway Company, and Interstate Railroad Company—Joint Use.*

[2] Decision served January 25, 1984 (not printed).

[3] Notice of Exemption served January 9, 1986 (not printed).

[4] By notice of exemption served February 25, 1985, in Finance Docket No. 30582 (Sub-No. 1), NW's operation of the properties of Interstate was exempted from regulation. The transaction was consummated in part on November 1, 1985.

[Docket No. AB-55 (Sub-No. 178X)]

Seaboard System Railroad, Inc., Abandonment in Monroe County, AL; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903 *et. seq.*, the abandonment by Seaboard System Railroad, Inc., of 1.46 miles of rail line, known as the M&R Branch, Mobile Division, from approximately Valuation Station 90 + 81 to Valuation Station 167 + 67, in Monroe County, AL subject to standard employee protective conditions.

DATES: This exemption is effective on August 13, 1986. Petitions to stay must be filed by July 24, 1986, and petitions for reconsideration must be filed by August 4, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-1 (Sub-No. 178X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7693.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: July 2, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-15745 Filed 7-11-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture; 1986 Adverse Effect Wage Rates

AGENCY: Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of Adverse Effect Wage Rates for 1986.

SUMMARY: The Director, U.S. Employment Service, announces 1986 adverse effect wage rates (AEWRs), that is, the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of temporary alien agricultural workers. AEWRs are established and set to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

EFFECTIVE DATE: August 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Telephone: 202-376-6228.

SUPPLEMENTARY INFORMATION:

Requirement of Notice

The Department of Labor (DOL) has published regulations at 20 CFR Part 655, Subpart C, for the certification of non-immigrant aliens for temporary employment in the United States in agriculture and logging. These regulations require the Director, United States Employment Service (USES), to cause a notice to be published in the **Federal Register** each calendar year, announcing the adverse effect wage rates (AEWRs) for agricultural workers (except sheepherders) in fourteen States and for sugar cane workers in Florida. 20 CFR 655.207(b).

Agricultural Adverse Effect Wage Rates: 1986

Based upon U.S. Department of Agriculture (USDA) Quarterly Wage Survey data and the methodology set forth at 20 CFR 655.207(b)(1), DOL has computed the 1986 AEWRs. The AEWRs set forth in the table below have been computed using the methodology adopted by DOL by rulemaking on July 2, 1986. 51 FR 24138. The AEWR for each State has been changed from last year's AEWR by the same percentage change as the percentage change between 1980 and 1985 in the USDA annual average hourly wage rates for field and livestock workers (combined) based on the USDA quarterly survey.

The 1986 AEWRs, along with the 1985 AEWRs and the percentage changes in the various rates over the year, are published in the table below.

Agricultural Adverse Effect Wage Rates: 1986

State	1985 AEWR (dollars)	1986 AEWR (dollars)	1985 to 1986 percent change
Arizona	4.20	5.30	+26.2
Colorado	4.91	4.87	−0.8
Connecticut	4.16	4.39	+5.5
Florida (Sugarcane Only)	6.06	5.30	−12.5
Florida (Except Sugarcane)	4.91	4.29	−12.6
Maine	4.26	4.51	+5.9
Maryland	4.63	4.60	−0.8
Massachusetts	4.16	4.39	+5.5
New Hampshire	4.47	4.70	+5.1
New York	4.32	4.56	+5.8
Rhode Island	4.16	4.39	+5.5
Texas	4.20	5.04	+20.0
Vermont	4.40	4.64	+5.5
Virginia	4.64	4.72	+1.7
West Virginia	4.49	4.49	0

Signed at Washington, DC, this 3rd of July, 1986.

Richard C. Gilliland,

Director, U.S. Employment Service.

[FR Doc. 86-15722 Filed 7-11-86; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Amerada Hess Corp., et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 24, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 24, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 30th day of June 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner Union Workers of Former Workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Amerada Hess Corp. (workers)	Williston, ND	6/16/86	6/9/86	TA-W-17,584	Oil and gas well service.
Boston Gear (USWA)	Quincy, MA	6/16/86	6/6/86	TA-W-17,585	Speed reducers and sprockets.
D'Gala, Inc. (workers)	Miami, FL	6/16/86	6/13/86	TA-W-17,586	Men's sportswear, trouser, shirts.
E.W. Moran Drillings Co., Inc. (workers)	Wichita Falls, TX	6/16/86	6/9/86	TA-W-17,587	Drilling services oil and gas.
Felmont Oil Corp. (workers)	Midland, TX	6/16/86	6/9/86	TA-W-17,588	Oil and gas products and production.
Gilson Brothers Co. (workers)	Lexington, KY	6/16/86	6/3/86	TA-W-17,589	Outdoor power equipment.
Good Luck Glove Co. (ACTWU)	Georgianna, AL	6/16/86	6/12/86	TA-W-17,590	Cotton work gloves.
Hydro Static Tubing Testors (workers)	Williston, ND	6/9/86	5/27/86	TA-W-17,591	Oil well rigs service.
Punxsutawney Sportswear (workers)	Punxsutawney, PA	6/16/86	6/11/86	TA-W-17,592	Women's blouses.
S.W. Jack (workers)	Buckhannon, WV	6/16/86	6/13/86	TA-W-17,593	Drilling oil and gas.
Snyder Logging, Inc. (workers)	Grayville, IL	6/5/86	6/2/86	TA-W-17,594	Crude oil.
Snyder Completion, Inc. (workers)	.....do	6/5/86	6/2/86	TA-W-17,595	Do.
Western Co. of North America (The) (workers)	Sidney, MT	6/16/86	6/13/86	TA-W-17,596	Oil well services.
Beloit Corp., (IAM)	Beloit, WI	6/5/86	6/3/86	TA-W-17,597	Papermaking machinery.
Beverly Rose Sportswear, Inc. (ILGWU)	Boston, MA	5/27/86	5/19/86	TA-W-17,598	Ladies' sportswear.
Carol Ann Fashions, Inc. (workers)	Hasting, PA	6/10/86	5/15/86	TA-W-17,599	Women's dress and sportswear.
Dresser-Guiberson (workers)	Thermopolis, WY	6/12/86	5/22/86	TA-W-17,600	Oil well services.
DeSoto Penaljo Shoe Co. (UFCW)	St. Louis, MO	6/6/86	6/3/86	TA-W-17,601	Ladies' dress shoes.
Eagle Enterprises (workers)	Williston, ND	6/5/86	5/20/86	TA-W-17,602	Oil well services.
Excalibur Automobiles (workers)	West Allis, WI	6/10/86	6/6/86	TA-W-17,603	Excalibur cars.
General Housewares Corp. (ABGWU)	Kewaunee, WI	6/10/86	6/3/86	TA-W-17,604	Aluminum cookware.
International Playtex, Inc. (workers)	Manchester, GA	6/5/86	6/3/86	TA-W-17,605	Women's undergarments.
River Weaving Corp. (workers)	Esmond, RI	6/16/86	6/5/86	TA-W-17,606	Greige goods, broad woven synthetic fabrics, woven linings for domestic apparel.
Roane Alloys Div., Samancor Metals & Minerals (workers)	Rockwood, TN	6/12/86	6/10/86	TA-W-17,607	Ferro manganese alloys.
SKF McQuay-Norris Manufacturing Div. (UAW)	St. Louis, MO	6/12/86	4/23/86	TA-W-17,608	Small engine piston rings, transmission sealing, rings.
Westinghouse Electric Corp., Medium AC Motor Div. (IUE)	Cheektowaga, NY	6/10/86	6/2/86	TA-W-17,609	Medium AC motors and components.
Wilson Drilling Co. (workers)	Seminole, TX	6/3/86	5/29/86	TA-W-17,610	Oil and gas drilling.

[FR Doc. 86-15723 Filed 7-11-86; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50-530]

Arizona Public Service Company, et al.; Receipt of Antitrust Information

Arizona Public Service Company, acting on behalf of itself and the Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority, has submitted antitrust information in conjunction with the application for an operating license for a pressurized water reactor, known as Palo Verde Nuclear Generating Station, Unit 3, located in Maricopa County, Arizona, approximately 50 miles west of Phoenix. The data submitted contain antitrust information for review, pursuant to NRC Regulatory Guide 9.3, necessary to determine whether there have been any significant changes since the construction permit review.

On completion of the staff antitrust review, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the **Federal Register** notice. The results of any reevaluation that are requested will also be published in the **Federal Register** and copies sent to the Washington, DC and local public document rooms.

A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. 20555, and in the local public document room at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Any person who desires additional information regarding the matter covered by this notice, or who wishes to have views considered with respect to significant changes related to antitrust matters which have occurred since the antitrust settlement, should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, the 2nd day of July, 1986.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86-15802 Filed 7-11-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341; License No. NPF-43; EA 86-61]

Detroit Edison Co. (Fermi-2); Order Modifying License (Effective Immediately)

I

Detroit Edison Company (DECo or Licensee) is the holder of Facility Operating License No. NPF-43 which authorizes the licensee to operate the Fermi-2 facility in Newport, Michigan.

II

On July 1, 1985, a reactor operator, about an hour into his shift, while withdrawing control rods to achieve criticality on his first attempt ever to bring a commercial power reactor critical, pulled 11 rods in Group 3 to the full out position, rather than position 04 required by the rod pull sheet. This resulted in the reactor prematurely reaching criticality although this was not fully recognized until July 5, 1985.

While pulling the 11th control rod in Group 3, the Short Period Alarm annunciated five times and the pen for the Channel A Source Range Monitor failed to ink for about three minutes. When the pen began inking again the count rate was increasing. At about the same time, the rod pull error was recognized and the reactor operator began reinserting the 11 rods. Mr. Aniol, the Nuclear Shift Supervisor, was called and he came out of his office to consult with the reactor operator. The Nuclear Shift Supervisor who was also responsible for directing his first start up of a commercial power reactor, reviewed the event with the reactor operator and Shift Technical Advisor in Training and determined that the reactor had not gone critical. He then authorized recommencing of rod pulls. In making this decision he did not consult with the Shift Reactor Engineer, the Shift Operations Advisor or the Shift Technical Advisor. However, after the recommencement of rod pulling he did contact the Operations Supervisor at his home and briefly discussed the event with him.

During the event both the Nuclear Shift Supervisor and the Nuclear Assistant Shift Supervisor were in the Shift Supervisor's office. While the rod pull error was documented in a number of records, it was not recorded in the control room log or the Shift Supervisor's log. The Nuclear Supervising Operator in charge of the control room with responsibility for the control room log did not learn of the event until after the shift was over. Neither the Shift Operations Advisor nor the Shift Technical Advisor was observing the rod pulling nor was aware of the incident at the time it happened. The violations identified during this event are described in the Notice of Violation and Proposed Imposition of Civil Penalties which accompanies this Order.

III

In view of the above, the NRC has concluded there was insufficient supervision of licensed activities in the control room on July 1-2, 1986, during startup. There was no special attention given to the inexperienced reactor operator on his first criticality experience with power reactors. There was no special attention given by the inexperienced Nuclear Shift Supervisor on his first criticality experience at a power reactor. The Nuclear Shift Supervisor, who is responsible for oversight of plant operations, did not demonstrate adequate appreciation for the need to assure that operators strictly followed procedures, for the need to use the senior operators and advisors as a team, and for the need for good communication, logs and general awareness of activities by control room personnel. In addition, the Nuclear Shift Supervisor demonstrated a lack of appreciation of the potential significance of the event by failing to require an adequate evaluation of the situation before authorizing recommencement of rod pulling. I have concluded that further oversight in the control room is necessary to provide reasonable assurance that operation of the facility will be in compliance with Commission requirements. I have also concluded that further training and examination of the Nuclear Shift Supervisor is necessary to assure that he understands the responsibilities of a supervisor of licensed activities and

duties of a reactor operator. Therefore, I have determined the public health and safety requires that the actions in this Order be effective immediately. In addition, since the purpose of this Order is to assure that the facility will operate in compliance with existing Commission requirements, I have determined that this Order is not a backfit within the meaning of 10 CFR 50.109 of the Commission's Regulations.

IV

In view of the foregoing, pursuant to sections 103, 107, 161i and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50 and 55, It Is Hereby Ordered, Effective Immediately, That The Licensee:

(A) Submit a control room audit program to the Regional Administrator, Region III within two weeks of the date of this Order and shall implement it following approval by the Regional Administrator. The program shall include at least the following:

(1) Unannounced audits, at least one each shift each week to be conducted at varying times on the shift (beginning, middle, end, etc.) and to cover each shift team.

(2) Each audit to be conducted by at least one corporate manager assisted by an employee or consultant not reporting to plant management who either (a) has been qualified as a SRO at a licensed facility, and has had satisfactory experience supervising licensed operations at a nuclear power reactor for which he has held a license, and is or becomes familiar with operations and procedures at Fermi before commencing this audit or (b) has similiar qualifications, such as being a certified instructor. The persons appointed to conduct the audit must be approved by the Regional Administrator.

(3) The audits shall include examination of: procedural compliance; awareness of plant status and fulfillment of the duties and responsibilities of control room personnel including, operators, supervisors, and shift advisors; post-trip and post-event evaluations; personnel errors; log keeping; and control room decorum, discipline, and attitude for the purpose of monitoring safe operations in compliance with Commission requirements.

(4) Sufficient documentation of each audit shall be kept to permit a corporate and NRC review of findings and development of recommendations as appropriate to assure continued safe operation in compliance with Commission requirements. The program shall also provide for a final report to be submitted to the Regional Administrator describing the findings and recommendations and actions taken or to be taken as a result of the recommendations or, if no action is to be taken on a recomendation, an explanation of the basis for no action.

(B) Shall not assign Mr. D. Aniol, Nuclear Shift Supervisor, to duties associated with operation of Fermi-2 which require a Senior Reactor Operator License or a Reactor Operator License without at least 30 days prior to the Regional Administrator at which time the licensee shall demonstrate that Mr. Aniol has been adequately trained and examined, including simulator exercises, to assure that he will properly perform and supervise licensed operations.

V

The Regional Administrator, Region III, may relax or terminate any of the above conditions for good cause.

VI

The Licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. Any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the date of the Order. A copy of the request shall also be sent to the General Counsel at the same address and to the Regional Administrator, Region III, 799 Roosevelt Road, Glenn Ellyn, Illinois 60137. If a person other than the Licensee or the Nuclear Shift Supervisor requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this Order or a Request for Hearing shall not stay the immediate effectiveness of Section IV of this Order.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

Dated at Bethesda, Maryland this 3rd day of July 1986.

For the Nuclear Regulatory Commission.

James Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86-15801 Filed 7-11-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Correction to Coordinated Framework for Regulation of Biotechnology

AGENCY: Executive Office of the President, Office of Science and Technology Policy.

ACTION: Correction of June 26, 1986 announcement of policy.

SUMMARY: On June 26, 1986, the Office of Science and Technology Policy published in the **Federal Register** (51 FR 23302) a "Coordinated Framework for Regulation of Biotechnology", that included Statements of Policy from several agencies. Inadvertantly omitted were the signature blocks at the end of the Statements of Policy for the Food and Drug Administration, the Environmental Protection Agency, the U.S. Department of Agriculture, the Occupational Safety and Health Administration, and the National Institutes of Health.

Corrections: This notice corrects this omission by amending the June 26, 1986 notice. The following signature blocks should be appended to these statements respectively, at the designated points:

1. At the end of the Department of Health and Human Services, Food and Drug Administration, Statement of Policy for Regulating Biotechnology Products (51 FR 23313) after the concluding section, International Aspects, and sentence, "FDA is committed to the policy described in the section entitled 'International Aspects' in the Office of Science and Technology Policy General Preamble, published in today's **Federal Register**", insert:

Frank E. Young, M.D., Ph.D.,

Commissioner of Food and Drugs.

April 25, 1986.

2. At the end of the Enviromental Protection Agency, Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act (51 FR 23336) after the concluding phrase ". . . assigned OMB control numbers 2070-0012 and 2070-0069", insert:

Dated: May 27, 1986.

Lee M. Thomas,

Administrator.

At the end of the Department of Agriculture Final Policy Statement for Research and Regulation of Biotechnology Processes and Products (51 FR 23347) after the concluding phrase ". . . the Forest Research Assistance Act (16 U.S.C. 582a-582a-582a-7)", insert:

Dated: May 2, 1986.

Karen Darling,

Acting Assistant Secretary Marketing and Inspection Services.

Dated: May 2, 1986.

Orville G. Bentley,

Assistant Secretary Science and Education.

At the end of the Department of Labor, Occupational Safety and Health Administration, Agency Guidelines on Biotechnology, (51 FR 23349), after the concluding phrase, ". . . accidentially created hazards", insert:

Signed at Washington, DC, this 25th day of April 1986.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

At the end of the Department of Health & Human Services, National Institutes of Health, Statement of Policy, (51 FR 23350), after the concluding phrase, ". . . from the other Federal Agency", insert:

Dated: May 5, 1986.

James B. Wyngaarden,

Director, National Institutes of Health.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

July 2, 1986.

[FR Doc. 86-15933 Filed 7-11-86; 8:45 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 15196; 812-6389]

Federated Funds; Application for an Order To Permit the Purchase of Insurance From an Affiliate and Settlement of Claims Therefrom

July 8, 1986

Notice is hereby given that A.T. Ohio Tax-Free Money Fund; American Leaders Fund, Inc.; Automated Cash Management Trust; Automated Government Money Trust; EGT Money Market Trust; Federated Bond Fund; Federated Corporate Cash Trust; Federated Exchange Fund, Ltd.; Federated Floating Rate Trust; Federated GNMA Trust; Federated Growth Trust; Federated High Income Securities, Inc.; Federated High Quality Stock Fund; Federated High Yield Trust; Federated Income Trust; Federated Intermediate Government Trust; Federated Intermediate Nunicipal Trust; Federated Master Trust; Federated Short-Intermediate Government Trust; Federated Short-Intermediate Municipal Trust; Federated Stock Trust; Federated Stock and Bond Fund, Inc.; Federated Tax-Free Income Fund, Inc.; Federated Tax-Free Trust; Federated U.S. Government Fund; Fort Washington Money Market Fund; FT International Trust; Fund for U.S. Government Securities, Inc.; Government Income Securities, Inc.; High Yield Cash Trust; Edward D. Jones & Co. Daily Passport Cash Trust; Legg Mason Cash Reserve Trust; Liberty U.S. Government Money Maker Trust; Liquid Cash Trust; Lutheran Brotherhood Fund, Inc.; Lutheran Brotherhood Income Fund, Inc.; Lutheran Brotherhood Money Market Fund; Lutheran Brotherhood Municipal Bond Fund, Inc.; Money Market Management; Money Market Trust; Morgan Keegan Daily Cash Trust; New York Tax-Free Trust; Tax-Free Instruments Trust; Trust for Cash Reserves; Trust for Short-Term U.S. Government Securities; Trust for U.S. Treasury Obligations; and all future investment companies for which subsidiaries or affiliates of Federated Investors, Inc. ("Federated") serve as investment adviser and/or principal underwriter (collectively, the "Funds"; Federated and the Funds together sometimes referred to as "Applicants") 421 Seventh Avenue, Pittsburgh, PA. 15219, filed an application on May 21, 1986, and an amendment thereto on July 7, 1986, pursuant to Section 17(b) of the Investment Company Act of 1940 ("Act"), for a Commission order granting an exemption from the provisions of Section 17(a) of the Act to the extent necessary to allow (i) an affiliate of Applicants to provide the Funds with all or a portion of the fidelity insurance required pursuant to Section 17(g) of the Act and Rule 17g-1 thereunder, and (ii) the Funds to accept any settlement which might arise from a claim made pursuant to that insurance. All interested persons are referred to the applicationi on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions

According to the application, since March 1, 1980, the Funds have been joint insureds under a fidelity bond ("Bond") issued by Aetna Casualty and Surety Company ("Aetna Casualty"), a subsidiary of Aetna Life and Casualty Company ("Aetna"). Even though Aetna Casualty became an affiliated person (or an affiliated person of an affiliated person) of the Funds on November 1, 1982, as a result of Aetna acquiring 87 percent of the stock of Federated, the Bond was continued to the end of its term in July 1985 pursuant to a no-action letter granted by the Division of Invesment Management (Ref. No. 83-128-CC, Pub. Avail. Oct. 21, 1983). The Bond was continued for the policy year ending June 30, 1986, pursuant to an exemptive order of the Commission dated August 8, 1985 (Investment Company Act Release No. 14665) ("Prior Order").

The Fund's management believes that the interests of the Funds would be best served by allowing Aetna Casualty to continue to provide fidelity bond coverage required by Section 17(g) of the Act and Rule 17g-1 thereunder and allowing for extra-judicial settlements of claims (without further exemptive orders), subject to the conditions set forth below. Accordingly, Applicants are now seeking an exemptive order pursuant to Section 17(b) of the Act so that the Funds can purchase all or part of their fidelity bond coverage from Aetna Casualty for the policy term beginning on July 1, 1986, and all subsequent periods.

Applicants undertake, as a condition to the exemptive relief requested, that the Funds would purchase all or part of their fidelity bond coverage from Aetna Casualty if, and only if, the Boards of Directors, Trustees, or General Partner of the Funds determine that:

(1) No carrier (or combination of carriers) other than Aetna Casualty (or a combination of carriers which would include Aetna Casualty) can provide the Funds with the fidelity bond coverage required by Rule 17g-1 under the Act (i.e., the presence of Aetna Casualty by itself or in conjunction with other carriers is required for the Funds to obtain the necessary coverage);

(2) Aetna Casualty would not charge the Funds a higher premium for whatever coverage it would provide than it would charge for similar fidelity bond coverage for unaffiliated funds which are similarly situated to the Funds; and

(3) Whether Aetna Casualty is the sole carrier of the fidelity bond or whether other carriers in combination with Aetna provide fidelity bond coverage to the Funds, the ultimate fidelity bond coverage selected will provide the best available protection for the shareholders of the Funds, and the Funds will incur the lowest cost available consistent with such coverage.

Applicants represent that the Boards must make these findings on each occasion in the future before all or part of the Funds' fidelity bond coverage may be purchased from Aetna Casualty.

With respect to the extra-judicial settlement of claims on the Bond, the Funds propose that, in order to insure fairness and eliminate the possibility of any overreaching, the officers of each Fund would continue to be required to report all losses covered under the Bond

to the Boards. In the event of a loss, the Board of the Fund in question, including those directors who are not "interested persons" as that term is defined under the Act ("Disinterested Directors"), would determine the amount of such loss, and if a majority of the Board and a majority of the Disinterested Directors agree to the amount thereof, the Fund will submit a claim for that amount to Aetna Casualty. In the event Aetna Casualty made a settlement offer for less than the amount submitted, the adequacy of the settlement offer would be evaluated by the Board of the Fund in question, including the Disinterested Directors. Such a settlement would be accepted without the need for an exemptive order or any other action only if a majority of the Disinterested Directors of the Board (upon the advice of their independent counsel) and a majority of the Board find that the elements of Section 17(b) of the Act had been met. The reasons for such Board's action will be recorded in the minutes of the Board, and made available for inspection by the staff of the Commission. The Board in question must make these findings on each occasion in the future before the Fund settles any fidelity bond claim with Aetna Casualty.

Applicants represent that these are the same terms and conditions of the Prior Order. On the basis of the foregoing, Applicants submit that the requested exemption is fair and reasonable, does not involve overreaching, and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 30, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-15798 Filed 7-11-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23402; File No. SR-MSRB-86-9]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board ("MSRB"), Suite 800, 1818 N Street NW., Washington, DC 20036-2491, submitted on May 19, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB rules G-12(C) and G-15(C) on inter-dealer and customer confirmations, respectively, to require a specific designation if the securities identified by the issuer or sold by the underwriter are subject to federal taxation.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 23285 (51 FR 20569, June 5, 1986). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 7, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-15800 Filed 7-11-86; 8:45 am]

BILLING CODE 8010-1-M

[Rel. No. 34-23399; File No. SR-OCC-86-12]

Self-Regulatory Organizations; Notice of Proposed Rule Change by Options Clearing Corporation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 28, 1986, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission a proposed rule change that provides that money payments between OCC and its Clearing Members shall be made in immediately available funds. The Commission is publishing this notice to solicit comment on the proposed rule change.

I. Description

OCC's proposal would convert all OCC money settlements to same-day funds. Athough OCC currently settles some transactions in same-day funds (*e.g.*, Treasury option exercises and assignments, and foreign currency DVPs), most OCC money settlements are effected in next-day of clearinghouse funds (e.g., premiums, margins, and index option exercises).

The proposal also would make certain changes in OCC's cash management procedures. Most notably, OCC investment decisions regarding the margin and other balances in OCC's bank accounts would have to be made by approximately 10:30 a.m. on the day the funds are collected, rather than on the following day, as is currently the case. The proposed rule change would amend the time-frames for margin withdrawal requests in OCC Rule 608 and would authorize OCC to draft a clearing member's bank account for OCC's loss of overnight investment income where the clearing member failed to complete the withdrawal and OCC was unable to invest those funds.

II. OCC's Rationale

OCC states in its filing that the proposed conversion to same-day funds settlements has compelling advantages to OCC and its Clearing Members. Most importantly, OCC believes that the shift to same-day funds settlements will significantly reduce OCC's transfer risk from the failure of one of its clearing banks. Because many of OCC's daily money settlements currently take place in next-day funds, those payments cannot be effected by federal wire transfers, which are irrevocable. Instead, transfers are made by exchanges of "depository transfer checks," which may be subject to charge-back in the event of the failure of the transferor bank before "final settlement" is made by the transferee bank with OCC. As a result, at any given time one or more days' worth of transfers, which can amount to tens of millions of dollars, are subject to reversal in the event of the failure of a transferor bank.

OCC believes that same-day funds settlements will minimize this risk by making it possible to effect interbank funds transfers irrevocably via the Federal Reserve wire transfer system.

OCC believes that although transfer risk is not unique to OCC, OCC's key role as issuer and guarantor of options traded on U.S. securities exchanges and its statutory obligations as a registered clearing agency necessitate this step to minimize interbank funds transfer risk.

OCC states in its filing that the proposed rule change is consistent with the requirements of Section 17A of the Act in that it will promote the prompt and accurate settlement of securities transactions and the public interest by reducing significantly OCC's daily settlement risks and moving the industry toward a single standard for all money settlements.

III. Request for Comments

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons can submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at OCC's principal office. All comments should refer to the file number in the caption above and should be submitted by August 4, 1986.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 7, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-15799 Filed 7-11-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Exemption or Waiver; West Virginia Northern Railroad et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that seven railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the twelve hour limitation.

West Virginia Northern Railroad (WVN)

FRA Waiver Petition Docket No. HS-86-7

The WVN seeks a continuation of a previously issued exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The WVN states that it is not their intention to employ a train crew over 12 hours per day under normal operating conditions, but that this exemption, if granted, would help their operation if they encountered unusual operating conditions or circumstances.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Maryland and Pennsylvania Railroad (M&P)

FRA Waiver Petition Docket No. HS-86-8

The M&P seeks this exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The M&P provides service over 26 miles of track located in York County, Pennsylvania.

The M&P states that it is not their intention to employ a train crew over 12 hours per day under normal operating conditions, but that this exemption, if granted, would help their operation if they encountered unusual operating conditions or circumstances.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Sierra Railroad Company (SERA)

FRA Waiver Petition Docket No. HS-86-9

The SERA seeks a continuation of a previously issued exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The SERA states that it is not their intention to employ a train crew over 12 hours per day under normal operating conditions, but that this exemption, if granted, would help their operation if they encountered unusual operating conditions or circumstances.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Port of Palm Beach Railroad (PPB)

FRA Waiver Petition Docket No. HS-86-10

The PPB seeks this exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PPB provides switching service over 4.3 miles of track located in the Port of Palm Beach, Florida.

The PPB states that it is not their intention to employ a train crew over 12 hours per day under normal operating conditions, but that this exemption, if granted, would help their operation if they encountered unusual operating condition or circumstances.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

St. Maries River Railroad Company (SMR)

FRA Waiver Petition Docket No. HS-86-11

The SMR seeks a continuation of a previously issued exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The SMR states that it is not their intention to employ a train crew over 12 hours per day under normal operating conditions, but that this exemption, if granted, would help

their operation if they encountered unusual operating conditions or circumstances.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

North Carolina Ports Railway (NCPR)

FRA Waiver Petition Docket No. HS-86-12

The NCPR seeks this exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The NCPR provides service over five miles of track located at Wilmington and Morehead City, North Carolina.

The NCPR states that it is not their intention to employ a train crew over 12 hours per day under normal operating conditions, but that this exemption, if granted, would help their operation if they encountered unusual operating conditions or circumstances.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Genesee and Wyoming Industries, Inc., (G&W)

FRA Waiver Petition Docket No. HS-86-13

G&W seeks this exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The G&W plans to provide service over 102 miles of track located in western New York State.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled a hearing or other opportunity for oral comment since the facts do not appear to warrant it. Communications concerning the proceedings should identify the docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before August 29, 1986 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours (9 a.m.—5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on July 1, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-15791 Filed 7-11-86; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 8, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0172

Form Number: IRS Form 4562

Type of Review: Revision

Title: Depreciation and Amortization

Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 4308, New Executive Office Building, Washington, DC 20503.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-15788 Filed 7-11-86; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 134
Monday, July 14, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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FEDERAL ENERGY REGULATORY COMMISSION

Consent Power Agenda 839th meeting

July 9, 1986.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: July 17, 1986, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on 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.

Consent Power Agenda, 839th Meeting—July 16, 1986, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 7806-007, Richard and Georgenia Wilkinson
CAP-2.
Project No. 9572-004, Skookumchuck Creek Associates
CAP-3.
Project No. 9610-002, Puget Sound Power and Light Company
CAP-4.
Project No. 9662-001, Henrys Fork Conservationists I
Project No. 9665-001, Henrys Fork Conservationists II
Project No. 9853-001, Arktech, Inc.
CAP-5.
Omitted
CAP-6.
Omitted
CAP-7.
Project No. 7611-005, Iron Mountain Mines, Inc.
CAP-8.
Project No. 2142-002, Central Maine Power Company
CAP-9.
Project No. 1962-007, Pacific Gas & Electric Company
Project No. 3223-003, Sacramento Municipal Utility District, Northern California Power Agency, and the cities of Anaheim, Azusa, Banning, Colton and Riverside, California
CAP-10.
Project No. 8121-001, Warren B. Nelson
CAP-11.
Project Nos. 9573-001 and 002, Upper Slate Creek Associates
CAP-12.
Project No. 5915-002, White Chuck Water Company
CAP-13.
Project No. 7706-000, Red Rock Hydro Partners
Project No. 7882-000, City of Des Moines, Iowa
Project No. 8511-000, Seward Development-Red Rock Associates
CAP-14.
Project No. 7390-000, Harder Farms, Inc. and Scott Ranch
CAP-15.
Project No. 8546-000, Howard and Mildred Carter
CAP-16.
Docket No. ER86-504-000, Pennsylvania Power & Light Company
CAP-17.
Docket No. ER86-379-001, Monongahela Power Company
CAP-18.
Docket No. ER86-506-000, Southwestern Electric Power Company
CAP-19.
Docket Nos. ER86-368-002 and 003, El Paso Electric Company
CAP-20.
Docket No. EL85-37-001, Marjorie Linder Cooley v. Clifton Power Corporation
CAP-21.
Docket No. EL86-22-000, Airco, Inc. and SKW Alloys, Inc. v. Niagara Mohawk Power Corporation
CAP-22.
Docket No. EC86-18-000, El Paso Electric Comany
CAP-23.
Docket No. EL86-20-000, Manti City, Utah and the Utah Municipal Power Agency v. Utah Power & Light Company
CAP-24.
Docket No. ER86-138-001, Niagara Mohawk Power Corporation
CAP-25.
Docket No. ER86-101-001, Northern States Power Company (Minnesota)
CAP-26.
Docket No. ER86-72-001, El Paso Electric Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. FA85-63-000, Long Island Lighting Company
CAM-2.
Docket No. RM85-19-000, generic determination of rate of return on common equity for public utilities
CAM-3.
Omitted
CAM-4.
Docket No. RM85-1-000, regulation of natural gas pipelines after partial wellhead decontrol (riverside pipeline company)
CAM-5.
Docket No. RM85-1-000, regulation of natural gas pipelines after partial wellhead decontrol (transcontinental Gas Pipe Line Corporation and Natural Gas Pipeline Company of America)
CAM-6.
Docket No. RM85-1-000, regulation of natural gas pipelines after partial wellhead decontrol (Northwest Pipeline Corporation)
Docket Nos. CP84-79-001, CP84-80-001, CP84-498-001 and CP85-706-001, Northwest Pipelines Corporation
CAM-7.
Docket No. RM85-1-000, regulation of natural gas pipelines after partial wellhead decontrol (Howell Petroleum Corporation)
CAM-8.
Docket No. RM85-1-154, regulation of natural gas pipelines after partial wellhead decontrol (Midwestern Gas Transmission Company)
CAM-9.
Docket No. RM85-1-000, regulation of natural gas pipelines after partial wellhead decontrol (Clarco Gas Company, Inc., Texas Gas Exploration Corporation, Quintana Petroleum Corporation, Petro-Energy Exploration, Inc. and Santo Resources, Inc.)
CAM-10.
Omitted
CAM-11.
Omitted
CAM-12.
Docket No. RM79-76-250 (Texas-9 Addition II), high-cost gas produced from tight formations
CAM-13.
Omitted
CAM-14.
Docket No. GP86-20-000, State of Ohio, Department of Natural Resources, Section 107 NGPA determinations, Atlas Energy Group, Inc., Callahan Unit No. 1 well, FERC No. JD 81-28565, Metropolitan Homes Investment Corporation, No. 1 well, FERC No. JD 81-28548

CAM-15.
Docket Nos. RO86-15-000 and RO83-13-000, J.R. Cone
CAM-16.
Docket No. RO85-10-000, Utex Oil Company
CAM-17.
Docket No. RA82-15-002, Thriftway Company

Consent Gas Agenda

CAG-1.
Omitted
CAG-2.
Docket No. RP86-130-000, Northern Natural Gas Company, Division of Internorth, Inc.
CAG-3.
Omitted
CAG-4.
Docket No. RP86-57-002, Northwest Pipeline Corporation
CAG-5.
Docket No. RP85-84-003, Texas Gas Transmission Corporation
CAG-6.
Omitted
CAG-7.
Omitted
CAG-8.
Docket No. RP85-178-012, Tennessee Gas Pipeline Company, a Divsion of Tenneco Inc.
CAG-9.
Docket No. TA86-2-55-002, Mountain Fuel Resources, Inc.
CAG-10.
Docket No. RP86-68-002, Northwest Central Pipeline Corporation
CAG-11.
Docket No. RP86-57-001, Northwest Pipeline Corporation
CAG-12.
Omitted
CAG-13.
Docket No. RP86-7-002, Mountain Fuel Resources, Inc.
CAG-14.
Omitted
CAG-15.
Docket No. RP85-11-018, K N Energy, Inc.
CAG-16.
Docket No. RP86-69-001, Mid Louisiana Gas Company
CAG-17.
Omitted
CAG-18.
Docket No. RP86-9-000, Southwest Gas Corporation
CAG-19.
Docket No. ST86-1014-000, Cranberry Pipeline Corporation
CAG-20.
Docket Nos. RI74-188-083 and RI75-21-078, Independent Oil & Gas Association of West Virginia
CAG-21.
Docket No. CI64-26-014, Gulf Oil Corporation
CAG-22.
Docket No. CI86-281-000, Transcontinental Gas Pipeline and Transco Gas Supply Company
Docket No. CP85-710-000, Northern Natural Gas Company, Division of Internorth, Inc.
CAG-23.
Docket No. RP74-50-021, Florida Gas Transmission Company (Gardinier, Inc.)
CAG-24.
Docket Nos. CP85-437-001 and 002, Mojave Pipeline Company, et al.
CAG-25.
Omitted
CAG-26.
Omitted
CAG-27.
Docket No. CP86-316-000, Interstate Power Company
CAG-28.
Docket No. CP86-271-000, United Gas Pipeline Company
CAG-29.
Docket No. CP86-295-000, Northwest Central Pipeline Corporation
CAG-30.
Docket No. CP86-305-000, Northwest Central Pipeline Corporation
CAG-31.
Docket No. CP81-209-001, Columbia Gulf Transmission Company and Transcontinental Gas Pipeline Corporation
CAG-32.
Omitted

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1.
Docket No. EF86-3011-000, U.S. Department of Energy—Southeastern Power Administration
ER-2.
Docket No. EF86-4011-000, U.S. Secretary of Energy—Southwestern Power Administration

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Docket No. RM79-76-115 (New Mexico-14), high-cost gas produced from tight formations
M-5.
Docket No. GP83-11-000, Sun Exploration and Production Company
Docket No. RI83-9-000, Northern Natural Gas Company, division of Internorth, Inc.
M-6.
Docket No. RM86-7-000, compression allowances and protest procedures under NGPA Section 110
M-7.
Docket No. RM86-3-002, ceiling prices; old gas pricing structure
M-8.
Docket Nos. RM83-8-001, through 010, ratemaking treatment of investment tax credits for natural gas pipeline companies

I. Pipeline Rate Matters

RP-1.
Docket Nos. TA82-2-9-000 and TA83-1-9-000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
RP-2.
Docket Nos. RP81-54-004, and RP82-12-002, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

II. Producer Matters

CI-1.
Docket No. CI80-151-001, Mitchell Energy Corporation
CI-2.
Docket Nos. CI85-427-000, CI85-428-000, CI85-429-000, CI85-430-000, CI85-431-000, CI85-432-000, CI85-433-000 and CI85-434-000, Diamond Shamrock Exploration Company

III. Pipeline Certificate Matters

CP-1.
Docket No. CP77-17-020, Northern Natural Gas Company, Division of Internorth, Inc.
CP-2.
Docket No. CP86-35-000, Northern Natural Gas Company, Division of Internorth, Inc.
CP-3.
Docket No. CP86-169-000, Colorado Interstate Gas Company
Docket No. CP86-282-000, MIGC, Inc.
CP-4.
Docket No. CP86-323-000, Texas Gas Transmission Corporation
Docket No. CI86-203-000, Union Exploration Partners, Ltd.
CP-5.
Docket No. CP86-395-000, Northern Border Pipeline Company
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Docket No. CP84-658-003, ANR Pipeline Company
CP-7.
Docket No. CP86-396-000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CP-8.
Docket Nos. CP84-386-001, 003 and 004, ANR Pipeline Company,
Docket Nos. CP84-388-000, CP84-386-002 and CP84-394-001, Techstaff Transmission Company

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-15844 Filed 7-10-86; 11:08 am]

BILLING CODE 6717-01-M

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INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, July 24, 1986.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED:

Finance Docket No. 30400—
Santa Fe Southern Pacific Corp.—Control—Southern Pacific Transportation Co.,

Merger—The Atchison, Topeka and Sante Fe Railway Co. and Southern Pacific Transportation Co.

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Legislative and Public Affairs, Telephone: (202) 275-7252.

Noreta R. McGee,

Secretary.

[FR Doc. 86-15852 Filed 7-10-86; 11:33 am]

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federal register

Monday
July 14, 1986

Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 264, 265, 270, and 271

Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems and Generators; Final Rule and Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 270, and 271

[SWH-FRL-3023-9]

Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On June 26, 1985, the U.S. Environmental Protection Agency (EPA) proposed regulations that would revise the existing regulations for the storage and treatment of hazardous waste in tank systems under the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The proposed rules represented the Agency's efforts to meet the mandates of HSWA and to modify certain existing tank regulations that have proved unworkable and/or ineffective. The over-all goal of this effort is to establish regulations that ensure the protection of human health and the environment from the risks posed by releases from hazardous waste tank systems.

EPA is today promulgating final regulations for new and existing interim status, accumulation, and permitted tank systems. The final rule substantially amends the sections of 40 CFR Parts 260, 261, 262, 264, 265, 270, and 271 that apply to tank systems managing hazardous wastes. These regulations address, among other things, the design and installation of the primary containment vessel, release detection and response, and closure/post-closure requirements.

EFFECTIVE DATE: The application of revised Parts 260, 261, 262, 264, 265, 270, and 271 will take effect January 12, 1987, except for § 261.4(a)(8) which will take effect on July 14, 1986. Small Quantity Generators who generate between 100 and 1000 kg/month of hazardous waste and accumulate in quantities exceeding 6000 kg or accumulate for more than 180 days (or for nore than 270 days if the waste is shipped more than 200 miles) will become subject to revised Parts 264, 265, and 270 on March 24, 1987.

ADDRESSES: The docket for this Rulemaking (Docket No. 6-86-RTSF-FFFFF, Revised Tank Systems Standards) is located at U.S. Environmental Protection Agency, EPA RCRA Docket (Sub-basement), 401 M Street SW., Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA/Superfund Hotline, at (800) 424-3946 (toll free) or (202) 382-3000 in Washington, DC. For information on the specific technical aspects of this rule, contact: William J. Kline, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382-7917. For specific information on the economic analysis and risk assessment for this rulemaking, contact: Betsy Tam, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382-2791.

SUPPLEMENTARY INFORMATION: The contents to today's preamble are listed below:

I. Authority
II. Background
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B. Hazardous and Solid Waste Amendments of 1984
C. June 26, 1985 Notice of Proposed Rulemaking
D. August 1, 1985 Proposed Rules and March 24, 1986 Final Rules Applicable to Small Quantity Generators
E. March 17, 1986, Notice of Availability
F. Court-imposed Deadline for Issuance of Regulations
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I. Authority

These regulations are issued under the authority of sections 1006, 2002, 3001–3007, 3010, 3014, 3017, 3018, 3019, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

II. Background

A. Existing Subtitle C Regulations for Hazardous Waste Storage and Treatment Tanks

On October 21, 1976, Congress enacted the Resource Conservation and Recovery Act (RCRA) to protect human health and the environment and to conserve material and energy resources. In Subtitle C of the Act, EPA is directed to promulgate regulations that identify hazardous waste and to regulate generators and transporters of hazardous waste and facilities that treat, store, or dispose of hazardous waste. Since enactment of the Act, EPA has promulgated interim status and permitting standards governing the design, operation, and maintenance of facilities used to treat, store, or dispose of hazardous wastes, including standards for tanks that are used to store or treat hazardous waste.

On May 19, 1980, EPA promulgated interim status standards for the storage or treatment of hazardous waste in tanks (Part 265, Subpart J 45 FR 33244–33245). These standards, which also were applicable to 90-day accumulation tanks, focused on operating measures designed to prevent releases of hazardous waste from tanks.

On January 12, 1981, the Agency promulgated the RCRA permitting standards for those hazardous waste storage and treatment tanks that can be entered for inspection (46 FR 2867–2868). The regulations were codified as 40 CFR Part 264, Subpart J. These standards, which emphasized the structural integrity of storage and treatment tanks to protect against leaks, ruptures, and collapse of the shell, require adequate design, maintenance of minimum shell thickness, and inspections. Concurrent with the promulgation of these permitting standards, EPA requested public comments on numerous issues of concern for future rulemaking, including secondary containment for all hazardous waste tanks and the possible banning of underground hazardous waste tanks.

EPA did not promulgate requirements for secondary containment at that time; however, the Agency explained that it would continue to consider three secondary containment options as possible future requirements for hazardous waste tanks. One of these options was complete secondary containment, which would consist of an impervious base underlying the tank(s). Its purpose would be to contain all spills and leaks completely until they could be removed.

B. Hazardous and Solid Waste Amendments of 1984

On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. Two of these amendments directly address the storage and treatment of hazardous waste in underground tank systems.

Section 3004(w) required EPA to promulgate, by March 1, 1985, final permitting standards for hazardous waste underground storage tanks that cannot be entered for inspection. Section 3004(o)(4) directs EPA to promulgate standards requiring any new underground tank system to utilize an "approved leak detection system," defined as a system or technology capable of detecting leaks of hazardous constituents at the earliest practicable time.

C. June 26, 1985 Notice of Proposed Rulemaking

EPA issued a Notice of Proposed Rulemaking (NPRM), which was published in the **Federal Register** on June 26, 1985 (50 FR 26444–26504), to solicit comments on the proposed revised standards for hazardous waste storage and treatment tank systems. These revised standards were intended to satisfy the requirements of sections 3004(w) and 3004(o)(4) of the Hazardous and Solid Waste Amendments of 1984, as well as to revise certain existing tank standards. The proposed rules would have required that owner/operators of existing hazardous waste storage and treatment tank systems install secondary containment or its equivalent and that new or replacement tank systems be fitted with secondary containment before being placed into service. The proposed rules also would have imposed requirements to ensure the proper installation of tank systems, appropriate corrosion protection, that owner/operators of tank systems followed procedures for responding to leaks, and that tank systems were properly closed, where feasible, without allowing contamination to remain in soils adjacent to the tank systems.

D. August 1, 1985 Proposed Rules and March 24, 1986 Final Rules Applicable to Small Quantity Generators

Simultaneously with this rulemaking for RCRA storage and treatment tank systems, the Agency has been developing regulations applicable to hazardous waste management by 100–1000 kg/mo generators ("small quantity generators"). The Agency proposed new waste management rules for small quantity generators on August 1, 1985 (50 FR 31278). This proposal would have required that small quantity generators who store wastes in tanks for greater than 180 days (or greater than 270 days if waste must be shipped over 200 miles) or who exceed the 6000 kg accumulation limit would be subject to Parts 264 and 265, as well as the requirement to obtain a RCRA permit. The Agency also proposed that the June 1985 proposed revisions to the hazardous waste tank standards, if promulgated, would apply to such facilities.

The Agency also proposed to apply the then-existing Subpart J requirements to small quantity generators who store up to 6000 kg of hazardous waste for 180 days or less (or 270 days or less if the

waste must be shipped more than 200 miles) under § 262.34. These accumulation tanks are exempt from permitting/interim status requirements. The Agency explained that it had not determined whether the proposed amendments to Subpart J requiring secondary containment for short term accumulation tanks should be applied to generators of 100–1000 kg/mo, particularly in light of their potential impacts. The Agency stated that it would make this decision upon completion of its assessment of the risks associated with hazardous waste storage tank systems and based on comments received.

The final rule for management of hazardous wastes for small quantity generators was published in the **Federal Register** on March 24, 1986, (51 FR 10166). The final rule requires small quantity generators who accumulate hazardous waste on site for greater than 180 (or 270) days or exceed the 6000 kg limit to comply with the full Parts 264 and 265 requirements. For those generators accumulating up to 6000 kg for up to 180 (or 270) days under § 262.34, the existing provisions of Subpart J, Part 265 would apply. In the preamble to the final rule, EPA indicated that, because it had not yet completed its evaluation of the proposed tank system amendments as applied to small quantity generator accumulation tank systems (50 FR 26444–26504, June 26, 1985), application of any modified tank system standards to small quantity generators' accumulation tank systems would be determined in the final hazardous waste tank system rule (i.e., today's rule). (See 51 FR 10166; March 24, 1986.)

E. March 17, 1986, Notice of Availability

On March 17, 1986, the Agency published a **Federal Register** Notice of Availability on the hazardous waste tank risk assessment methodology and preliminary results (51 FR 9072). The risk analysis involved the following model components:

- A Monte Carlo Simulation model that predicts failure events and estimates the associated release volumes for hazardous waste tanks;
- A subsurface transport and environmental fate model that simulates contaminant transport and degradation in the unsaturated andge a14jy0023 saturated zones; and
- An exposure and risk model that estimates human exposure to hazardous chemicals via contaminated drinking water and calculates health risks to an exposed individual.

In the March 17th Notice of Availability, the Agency solicited comments on the appropriateness of the methodology and on how the Agency should consider using the analysis in developing or implementing the final hazardous waste tank system regulations. In addition, the Agency requested comment on the possibility of making distinctions in the regulations based on differences in the risks estimated for different tank types.

F. Court-Imposed Deadline for Issuance of Regulations

As indicated above, section 3004(w) of the HSWA of 1984 required the Agency to promulgate permitting standards for underground tanks that cannot be entered for inspection by March 1, 1985. The Agency was unable to meet this deadline and subsequently was sued by the Environmental Defense Fund. In response to the Environmental Defense Fund's suit, the United States District Court for the District of Columbia ordered the Agency to promulgate the regulations required by section 3004(w) no later than June 30, 1986.

G. Summary of Today's Final Rule

Today's rule establishes new or revised tank system standards, including standards applicable to accumulation tank systems (except small quantity generator accumulation tank systems), interim status tank systems, and permitted tank systems. These standards include requirements for proper installation of new tanks, leak testing and detection, corrosion protection, structural integrity, secondary containment, responses to leaks to the environment, closure and post-closure care (if required).

This section provides a brief discussion of the major requirements of today's final rule. One major feature is the requirement for secondary containment with interstitial monitoring for most hazardous waste tank systems.

Secondary containment with interstitial monitoring must be provided for all new hazardous waste tank systems. For the purpose of today's regulation, the term "new tank system" means not only newly-manufactured tank systems that will be put into service for the first time but also those other tank systems that, even if in existence and in use prior to the promulgation date of today's regulations, are then reinstalled and used as replacement tank systems for existing hazardous waste tank systems. Likewise, an existing tank system that is not being used for the storage or treatment of hazardous waste, but is then put into service or converted to use as a hazardous waste storage or treatment tank system subsequent to the promulgation date of today's regulation is considered to be a new tank system.

For existing tank systems, secondary containment with interstitial monitoring will be phased in. The ground-water monitoring alternative, which was proposed as an option for most existing tank systems, will not be allowed. The reasons for this significant change from proposal are discussed in section III.B.5 of this preamble.

Tanks storing or treating listed dioxin-containing wastes must be provided with secondary containment within two years of the effective date of this regulation. Other existing tanks that are determined to be non-leaking on the basis of tank integrity assessments or other means must be provided with secondary containment by the time the tank is 15 years old. Periodic tank system integrity assessments are required for all tanks not fitted with secondary containment. In the event a leak is discovered (through the tank integrity assessment or otherwise) in any component of the tank system (i.e., tank vessel, ancillary equipment) that is underground, that component of the tank system must be provided with secondary containment before the tank system is returned to service. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an onground tank), the entire component must be provided with secondary containment prior to the tank system being returned to service.

The rule provides two variances from the secondary containment requirement. The owner/operator of the tank system can petition the Regional Administrator for a variance from the secondary containment requirement if he can demonstrate either (a) that alternative design or operating practices will detect leaks and prevent the migration of any hazardous waste beyond a zone of engineering control (i.e., an area under the control of the owner/operator that, upon detection of a release, can and will be readily cleaned up prior to the release of hazardous constituents to ground water or surface waters); or (b) that if a release does occur, there will be no substantial present or potential hazard to human health or the environment. The second variance will not be available for new underground tanks, because section 3004(o)(4) of RCRA requires that all new underground tanks have leak detection systems.

The reasons for the requirement that all tank systems that do not qualify for a variance must be provided with

secondary containment with interstitial monitoring are explained in section III.B of this preamble. Briefly, the Agency concluded that no other method of leak detection can be considered generally reliable for hazardous waste tank systems. Thus, secondary containment is the only generally-applicable mechanism that will allow detection and response to releases from hazardous waste tank systems before they reach ground water and/or surface water.

Some commenters suggested that unsaturated zone monitoring and subsequent corrective action provided an acceptable alternative to secondary containment. EPA has not adopted unsaturated zone monitoring in this final rule as an acceptable method of release detection because the state-of-the-art of unsaturated zone monitoring is not sufficiently advanced or proven to enable the Agency to allow it as a substitute for secondary containment with interstitial monitoring for hazardous waste tank systems. It is possible, however, in case-specific situations, that an owner/operator will be able to demonstrate that an unsaturated zone monitoring system will fully protect human health and the environment from releases from hazardous waste tank systems and will qualify for a variance from the secondary containment requirement. EPA is conducting studies of the reliability of unsaturated zone monitoring and will consider modifying these final rules in the future if these studies demonstrate that unsaturated zone monitoring is reliable for the detection of releases of hazardous wastes from tank systems so that appropriate response can be taken prior to their reaching ground water or surface water.

In addition to the requirement for secondary containment, this final rule establishes design and installation standards for new tank systems. It also establishes inspection, corrosion protection, and monitoring requirements as well as various operating controls and practices designed to prevent spills and overflows, including the immediate response to leaks. Finally, financial assurance, closure, and post-closure requirements are established.

Except as noted immediately below, today's rule completely replaces the pre-existing Subpart J of 40 CFR Parts 264 and 265.

Effective March 24, 1987, the interim status and permitting requirements, including the new Subpart J requirements of this final regulation, apply to small quantity generators who store wastes in tank systems for greater than 180 days (or 270 days if the accumulated waste is shipped over 200 miles) or who exceed the 6,000 kg limit of § 262.34(d). This regulation does not apply to new or existing accumulation tank systems owned or operated by 100–1,000 kg/mo generators who store up to 6,000 kg of wastes in tank systems for less than 180 (or 270) days. These tank systems must meet the requirements previously imposed by Subpart J in Part 265. These requirements appear in today's rule at § 265.201. However, EPA will propose, in the near future, in a separate notice, revised Subpart J requirements for all small quantity generator hazardous waste accumulation tank systems.

Today's final rule does not apply, however, to tank systems that are integrally tied to reclamation operations that are considered part of a closed-loop reclamation process and, hence, not storing solid and hazardous waste. These circumstances exist when hazardous secondary materials are returned, after being reclaimed, to the original process in which they were generated, where they are reused in the production process, provided that the hazardous materials are not accumulated over 12 months without being reclaimed and that the reclamation process does not involve controlled flame combustion. See section IV.A.2 of today's preamble for a more detailed discussion.

Today's final rule represents a recodification of the various sections that appeared in the proposed rule. This change resulted from an analysis of suggestions submitted by a number of commenters that there be more consistency in the regulation of all tank systems. Responding to this suggestion required the development of new sections and the reorganization of others. Table 1 shows the changes.

There are some differences in today's rule in the requirements for permitted, interim status, and 90-day accumulation tank systems. Table 2 summarizes the requirements of today's final rules for the various types of tank systems.

H. Related Actions

Elsewhere in today's **Federal Register**, the Agency is addressing an issue related to this rulemaking. In a separate notice, the Agency is soliciting comments with respect to whether the exemption from permitting requirements for 90-day accumulation tank systems should be modified or eliminated. If it were eliminated, 90-day accumulation tank systems would be subject to corrective action, financial assurance, and other requirements.

Also, in the near future, the Agency will propose standards applicable to accumulation tank systems owned or operated by generators of 100 to 1,000 kg/mo who store up to 6,000 kg of hazardous wastes in tanks for less than 180 days (or less than 270 days if the waste must be shipped over 200 miles).

TABLE 1.—CHANGES IN CODIFICATION OF PARTS 264 AND 265 STANDARDS

Subject	Proposed section	Final section
Part 264		
Applicability	264.190	264.190
Design of tank systems	264.191	[1] 264.192
Installation	264.192	[1] 264.192
Secondary containment	264.193	264.193
General operating requirements	264.194	264.194
Inspections	264.195	264.195
Response to and disposition of leaking or unfit-for-use tank systems	264.196	264.196
Closure and post-closure cave	264.197	264.197
Special requirements for ignitible or reactive wastes	264.198	264.198
Special requirements for incompatible wastes	264.199	264.199
Assessment of existing tank		[2] 264.191
Part 265		
Applicability	265.190	265.190
Assessment and certification	265.191	265.191
Response to and disposition of leaking or unfit-for-use tank system	265.192	265.196
Secondary containment	265.193	265.193
General operating requirements	265.194	265.194
Waste analysis and trail tests	265.195	265.200
Inspections	265.196	265.195
Closure and post-closure cave	265.197	265.197
Special requirements for ignitable or reactive wastes	265.198	265.198
Special requirements for incompatible wastes	265.199	265.199
Design and installation of tank systems		[3] 265.192

[1] The design and installation requirements of proposed § 264.191 have been combined as final § 264.192.
[2] Section 264.191 "Assessment of Existing Tank System's Integrity" in the final rule have been added to address existing tanks in a manner similar to the existing interim status tanks.
[3] A new § 265.192 "Design and installation of tank systems" has been added to address the proper design and installation of new and replacement tank systems subject to the Part 265 standards (e.g.

TABLE 2.—STANDARDS FOR TANK SYSTEMS

Standard	Interim status and permitted [1]		Accumulation [2]	
	New and replacement	Existing	New and replacement	Existing
Initial and periodic integrity assessments (§ 264.191, § 265.191)	NA	x	NA	x
Design and installation standards, including need for external corrosion protection (§ 264.192, § 165.192).	x	NA	x	NA

TABLE 2.—STANDARDS FOR TANK SYSTEMS—Continued

Standard	Interim status and permitted [1]		Accumulation [2]	
	New and replacement	Existing	New and replacement	Existing
Secondary containment with leak detection (§ 264.193, § 265.193)	x (when installed)	x [3,4] (when tank system reaches 15 years of age, unless leaking)	x (when installed)	x [3,4] (when tank system reaches 15 years of age, unless leaking)
General operating requirements (§ 264.194, § 265.194)	x	x	x	x
Inspections (§ 264.195, § 265.195)	x	x	x	x
Responses to releases (§ 264.196, § 265.196)	x	x	x	x
Closure and Post-closure care (§ 264.197, § 265.197)	x	x	x	x [5]
Special requirements for ignitable and reactive wastes (§ 264.198, § 265.198)	x	x	x	x
Special requirements for incompatible wastes (§ 264.199, § 265.199)	x	x	x	x
Waste analysis and trial tests (§ 265.200)	x [6]	x [6]	NA	NA

[1] A generator who generates greater than 100 kg but less than 1,000 kg of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is subject to the interim status and permitting requirements.

[2] Except as provided in 1, generators of 100 to 1,000 kg of hazardous waste in a calendar month are not covered by the interim status and permitting requirements of this rulemaking. Rather, these generators will need to continue to comply with the requirements as promulgated on 51 FR 10174-10178 on March 24, 1986. These requirements appear in § 265.201 of today's rulemaking.

[3] Tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027 must provide secondary containment within two years of the date of promulgation.

[4] For those existing tank systems for which the age cannot be determined and documented, secondary containment must be provided within eight years of date of promulgation unless the facility age is known to be greater than 7 years, in which case, secondary containment must be provided by the time the facility reaches fifteen years of age or within two years of the date of promulgation, whichever comes later.

[5] Existing accumulation tank systems are not subject to the § 265.197(c), (d), (e)—requirements for preparation of closure, post-closure, and contingency plans for such or financial responsibility for complying with such plans.

[6] The § 265.200 standards are applicable to interim hazardous waste tank systems. Permitted tank systems must comply with the General Waste Analysis requirements in § 264.13.

III. Overall Strategy for Regulation of Hazardous Waste Storage and Treatment Tank Systems

This portion of the preamble first reviews the significant conclusions upon which the proposed regulation was based. Then it explains how comments and further analysis by the Agency performed in response to comments have led to changes in the regulation. In brief, the Agency has confirmed that a substantial number of hazardous waste tank systems are likely to be leaking and may lead to substantial risks to human health and the environment. The Agency has confirmed its earlier conclusion that the best regulatory strategy for hazardous waste tank systems is one that focuses on sound primary containment and effective and rapid detection and response to leaks from the primary containment structure. The best means of ensuring these objectives for most tank systems is secondary containment with interstitial monitoring.

A. Proposed Hazardous Waste Tank System Regulations

1. Problems Associated With Tank Systems

In the June 26, 1985, hazardous waste tank system proposal, the Agency explained that many hazardous waste storage and treatment tank systems were continuing to release hazardous wastes to the environment through such factors as tank system failure and operator error and that these releases could present significant risks to human health and the environment.

The preamble to the June 26, 1985, proposed rule referenced three sources of information as the basis for the determination that many hazardous waste tank systems were releasing their contents to the environment and that these releases presented significant risks:

- Several EPA-sponsored studies completed in 1984;
- Information from the public, industry, and State and local governments, including survey results and studies; and
- Internal Agency information pertaining to damages, or threats of damage, caused by releases of hazardous wastes from tank systems.

These studies also allowed the Agency to identify what appeared to be the major causes of tank system releases. These were external corrosion, tank structural failure, piping and ancillary equipment failures, improper tank system installation, and operator errors.

EPA's 1980 and 1981 hazardous waste tank regulations did not address many of these problems. While external corrosion is a major cause of failure in underground storage tanks, corrosion was not adequately addressed in the pre-existing standards. Other significant deficiencies in the 1980/1981 rules were cited in the preamble to the proposed rule. Among other things, there were no permitting standards for underground hazardous waste storage and treatment tanks that cannot be entered for inspection. For a complete discussion of the limitations of the 1980/1981 RCRA tank standards, see the preamble to the proposed revised tank system regulations (50 FR 26447, June 26, 1985).

2. General Approach

The June 26, 1985, proposed regulation addressed hazardous waste tank systems (i.e., tanks and ancillary equipment) in contrast to the 1980/1981 regulations that simply addressed hazardous waste tanks. The proposed rules were based on the premise that the proper management of hazardous waste storage or treatment tank systems should rest on a combination of proper tank system design, secondary containment or an equivalent mechanism, and operational practices. A variety of technical approaches were examined and evaluated for their ability to prevent releases from entering the environment. Design and operating measures such as design and installation standards, leak detection, certification requirements, and the use of corrosion protection were incorporated into the proposed regulatory strategy to ensure the continued integrity of the primary tank system during its useful life.

The major components of the proposed regulations are summarized below:

a. Existing Hazardous Waste Tank Systems. Existing tank systems were identified as tank systems already in operation or for which installation commenced prior to the effective date of this final rule. Retrofit of existing tank systems with secondary containment was a key element of EPA's proposed strategy. Full secondary containment would have been required within one year after the effective date of this final rule. This requirement would apply to all tank types including aboveground, inground, and underground tanks.

An alternative to secondary containment was also proposed for interim status and permitted tank systems. In the case of aboveground and

inground tank systems, this alternative would require secondary containment for the aboveground portions of the tank system provided that a ground-water monitoring program was implemented. In the case of underground tank systems, other than those storing or treating dioxin-containing wastes (listed Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027), owner/operators could substitute a ground-water monitoring program combined with leak testing every six months in lieu of full secondary containment. The proposed regulation would have allowed interim status and permitted tanks to obtain waivers from the requirement to provide secondary containment or its equivalent if the owner/operator could demonstrate that no hazardous waste or hazardous waste constituents would migrate to ground water or surface water "at any future time."

The proposal also required that the structural integrity of existing interim status and permitted tank systems be assessed and certified by a qualified and registered professional engineer. The assessment would consider the potential for corrosion of underground metal tank systems and would require a leak test for underground tanks or an internal inspection for above or inground tanks. The integrity assessment would also consider whether the design was adequate to handle vehicular traffic, floods, and seismic phenomena.

Under the proposed regulations, an existing tank system found to be unfit-for-use or leaking would have to be taken out of service and closed, repaired, or replaced. A replaced tank system would have to be equipped with secondary containment before being brought into service. These requirements were applicable to interim status, permitted, and 90-day accumulation tank systems.

b. New Hazardous Waste Tank Systems. The proposed regulation would have required that all new permitted, interim status, and 90-day accumulation tank systems of any type (e.g., aboveground, inground, or underground) be equipped with secondary containment. New tank system requirements would have been applicable to all hazardous waste tank systems that were newly installed (e.g., new tank systems and tank systems that had been used previously).

The proposed standards for new tank systems generally incorporated the same design, installation, operation, and response requirements for leaks or releases as proposed for existing tank systems. Since a new installation involves installing a total tank system (primary tank and secondary containment) rather than just the secondary containment system, EPA proposed additional design and installation standards for new tank systems. These include structural integrity design standards for the primary tank vessel and installation standards and certification for both the primary and secondary containment systems.

c. Hazardous Waste Accumulation Tank Systems. The Agency proposed that 90-day accumulation tank systems be subject to many of the same standards as other new and existing tank systems. One major exception was that the ground-water monitoring alternative would not be allowed for owners and operators of 90-day accumulation tank systems that were not permitted. Other Part 265 standards were not proposed for accumulation tank systems, including: (a) an assessment and certification of tank system integrity, (b) provision for corrosion protection, (c) allowance of a request for a variance from the secondary containment requirements, and (d) preparation of closure plans, contingent closure, and post-closure plans, and financial responsibility. The basis for not proposing these standards was the lack of a mechanism, such as a permit, to act as a framework for the interaction between the owner/operator and EPA that the Agency believed would be needed to establish and implement the ground-water monitoring and other requirements.

d. Small Quantity Generators. The June 26, 1985, proposed hazardous waste tank system rules did not address the extent to which the new Subpart J standards should apply to small quantity generators (SQGs). A major element that was unresolved at proposal was the application of a secondary containment requirement for tank systems owned or operated by small quantity generators. In the proposed rule to establish a hazardous waste management system for generators of 100 to 1,000 kg of hazardous waste per month, EPA proposed that those generators who store wastes in tanks for greater than 180 days (270 days if the accumulated waste is shipped over 200 miles), or who store over 6,000 kg, would be subject to Parts 264 and 265, as well as the requirement to obtain a RCRA permit (see 50 FR 31287; August 1, 1985). In the preamble to the August 1985 proposed rule, EPA explained that it saw no basis for distinguishing between facilities owned or operated by these generators from other hazardous waste facilities and that the proposed secondary containment requirements for tank systems, if finalized, would apply to such facilities.

Neither the June 1985 proposed hazardous waste tank system regulations nor the August 1985 SQG regulation proposed a specific set of revised hazardous waste tank system standards applicable to generators of 100 to 1,000 kg of hazardous waste per month who store up to 6,000 kg of wastes in tank systems for less than 180 (or 270) days. For this reason, final standards for these tank systems are not included in this final rule. However, EPA will propose in the near future, in a separate notice, revised hazardous waste tank system standards applicable to these small quantity generators.

3. Development of Regulatory Approach at Proposal

Central to the June 1985 proposed revised hazardous waste tank system standards was the requirement that these tank systems be provided with secondary containment or its equivalent. Under the proposal, owners or operators of existing interim status or permitted tank systems would be required to equip those tank systems with complete secondary containment or specific combinations of partial secondary containment, tank system integrity testing or semi-annual leak testing, and ground-water monitoring. The purpose of these requirements was to protect against human health and environmental damage that would occur if the tank systems developed leaks because of corrosion or other circumstances.

The principal basis for the requirement of secondary containment or its equivalent was the conclusion, drawn from several sources, that many tank systems have leaked and that others were likely to leak in the future. The preamble to the proposed regulation cited EPA studies, information from other governmental sources, and materials in the rulemaking docket to support the conclusion that the other requirements of the proposed standards (such as proper design, installation, and operating practices) would not be sufficient to protect human health and the environment from the effects of hazardous waste that would leak from tank systems (50 FR 26448; June 26, 1985).

The preamble to the proposed regulation explained that protection of human health and the environment "may not require the containment of all releases by means of an impervious secondary containment structure . . . An approach may be to rely upon early release detection systems and a rapid

response program . . ." *Id.* The preamble discussed, and solicited comment upon, two method of detecting releases—inventory monitoring and tank testing. The preamble explained that both of these methods of release detection appeared to have shortcomings. Inventory monitoring appeared unlikely to detect smaller leaks, and tank testing, which was developed for underground gasoline storage tanks, was not clearly reliable in detecting leaks of 0.05 gallons per hour. The uncertainties associated with release detection methods led the Agency to believe that an alternative to full secondary containment could not be based solely on release detection; it would have to combine periodic release detection methods with ground-water monitoring.

The regulatory strategy for the proposed regulations was an outgrowth, in part, of the philosophy expressed in the preamble to the January 12, 1981, interim final regulations for hazardous waste tanks. That preamble explained that requirements for storage facilities, as distinguished from disposal facilities, should have as their goal the containment of materials during the storage period. See 46 FR 2807; January 12, 1981.

The preamble to the June 1985 proposed regulation solicited comments on other regulatory strategies; the Agency said that it would reconsider these strategies before promulgating revised hazardous waste tank system standards. The alternative regulatory strategies discussed in the preamble to the proposed regulation were: (1) the combination of secondary containment and ground-water monitoring; (2) national risk-based standards; (3) minimum national standards with a variance from the containment requirement based upon risk; (4) minimum performance standards; (5) forced retirement of underground tanks; and (6) a ban on underground tanks. (See 50 FR 26451–26453; June 26, 1985.)

B. Development of Regulatory Strategy and Requirements for the Final Regulation

The Agency received numerous comments on the proposed regulation. In addition, the Agency's Office of Solid Waste and Emergency Response and Office of Toxic Substances have generated additional data and technical information that relate to the regulation of hazardous waste tank systems. Since the June 1985 proposal, the Agency has re-examined the need for regulations, the strategy underlying the proposed regulations, and the technical options available to address the problems associated with hazardous waste tank systems. In the discussion that follows, the Agency explains these issues and the policy and technical conclusions upon which these final regulations are based.

1. Problems Associated With Hazardous Waste Tank Systems

The studies that the Agency relied upon at proposal and additional studies conducted subsequent to proposal demonstrate that there is a significant problem that these regulations will address. At this time, it is not possible to quantify the extent of the problem. These studies show, however, that a significant number of existing tank systems are likely to be leaking, now or in the future. Leaks are likely to contaminate ground water and pose human health risks. Approximately 16,000 existing hazardous waste tank systems are subject to the requirements of these regulations. Uncontrolled releases from these tank systems could pose substantial human health risks.

At proposal, the Agency concluded that a substantial number of tank systems were likely to be leaking. This conclusion was based principally on information derived from several studies which showed that a substantial number of tank systems were leaking or were likely to leak and that releases were suspected of impacting or threatening to impact community ground-water well systems and/or surface waters (50 FR 26448, 26459, and 26460; June 26, 1985). However, because of limitations in the type of information collected in studies of tank systems, it was impossible to estimate the actual number of leaking hazardous waste tank systems or to estimate the extent of the problem with any precision.

Some commenters questioned the conclusion that releases from hazardous waste tank systems pose serious health and environmental problems. However, no commenters submitted any data to assist the Agency in estimating how many hazardous waste tank systems may be leaking, and no systematic studies of hazardous waste tank systems have been performed. Thus, it is still not possible to quantify the number of leaking hazardous waste tank systems. The studies the Agency has conducted since proposal, however, have demonstrated that the number may be substantial. The Agency's Office of Solid Waste and Emergency Response (OSWER) performed a nationwide study of over 12,000 reports of releases from underground tank systems storing petroleum and chemical products. The Agency's Office of Toxic Substances tested over 400 motor fuel storage tank systems. The OSWER study shows that a substantial number of underground tank systems may be leaking. The OTS study appears to confirm that conclusion, in that: approximately 35 percent of the tank systems tested did not pass a tank system tightness test. These studies support the conclusion that a substantial number of hazardous waste tanks also may be leaking.

A number of commenters asserted that petroleum and gasoline tank system data could not be used to indicate potential problems with respect to releases from hazardous waste tank systems. They presented no data, however, to substantiate their claims that hazardous waste tank systems would leak at a different rate than product storage tank systems. As is explained below, the major causes of releases from tank systems are unrelated to the characteristics of the material stored in the tanks, assuming that the stored material is compatible with the material of construction of the tank system. The principal causes of reported tank failures are external corrosion, installation problems, structural failure, spills, and overfills due to operator errors, and ancillary equipment failure. There are no data from which to conclude, or reason to believe, that these problems would not occur in hazardous waste tank systems with approximately the same frequency as for the petroleum or chemical storage tank systems.

The OSWER study conducted since proposal included chemical and petroleum storage tank systems. Significantly, the results were similar for these two types of tank systems, confirming that the propensity for tank systems to leak does not vary significantly with the characteristics of the material stored.

2. Causes of Releases From Tank Systems

a. Corrosion. At proposal, the Agency identified external corrosion as a major cause of underground tank system failure. The basis for this conclusion was a study conducted by the American Petroleum Institute (API), which analyzed nearly 2,000 leaks from underground gasoline storage tank systems. The API study concluded that external corrosion of underground tank systems was the predominant cause of tank and piping failure; 75 to 80 percent of the tank and/or piping failures reported resulted from subsurface corrosion of steel tanks and/or piping.

Commenters criticized the use of this study, asserting that differences in the chemical and physical properties

between petroleum products and hazardous wastes made the study inapplicable. As is noted above, these criticisms contradict the results of the API study itself, since 75 to 80 percent of the tank system failures were reported to be caused by corrosion due to contact with soils, not the material in the tank.

The majority of tank systems in the API survey were of bare steel construction and had no corrosion protection. On the basis of the available data, EPA has concluded that this is also the case for hazardous waste storage and treatment tank systems. In 1982–1983, the Agency sponsored a national survey of hazardous waste facilities. A report prepared for EPA, "National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA in 1981," presents the survey's methodology and conclusions. EPA found that steel is the most common material of construction for underground (73 percent) and aboveground (84 percent) hazardous waste tank systems. Overall, about 75 percent of all hazardous waste tank systems are constructed of carbon steel. Few of these tank systems are believed to have corrosion protection.

Other studies the Agency relied upon at proposal showed that external corrosion is one of the principal causes of underground tank system failure. For example, a study of 800 underground tanks in Ohio conducted by a company specializing in cathodic protection indicated that at least one underground metal tank failure can be expected in 55 percent of the gasoline stations over a 15 year period and that failures can be expected at 70 percent of the stations over a period of 20 years.

The OSWER study conducted after proposal of the hazardous waste tank system regulation has confirmed that external corrosion is a principal cause of underground tank failure. It shows that, excluding those releases for which a cause was not specified and those releases caused by operator errors, about 22 percent of the reported release incidences were due to some type of corrosion (28 percent for underground chemical tanks and 21 percent for underground petroleum tanks). In addition, it is likely that many of the nonspecific causes reported, such as age and holes, were also due to corrosion. Of the corrosion incidences, only about 5 percent were attributed to internal corrosion (10 percent for underground chemical tanks and 5 percent for underground petroleum tanks).

The Spill Prevention Control and Countermeasure (SPCC) database and the Pollution Incident Reporting System (PIRS) database provided valuable information on the causes of failure and releases from aboveground storage tanks. Since aboveground tanks are not in contact with corrosion-inducing soils, external corrosion was not a major failure mode for these tanks. It does cause failure in aboveground tanks, however. Exclusive of failures caused by operator error and natural phenomena, failure by all forms of corrosion was 2.2 percent in the PIRS database and 6.2 percent in the SPCC database. Based on a review of available data on underground and aboveground tank systems, EPA expects that the aboveground portions of onground and inground tanks would experience external corrosion failures similar to that of aboveground tanks. On the other hand, the bottoms of onground tanks and below ground portions of inground tanks constructed of steel and other metals would likely have external corrosion failure rates similar to underground tanks.

b. Structural Failure. At proposal, the Agency identified structural failure as one of the causes of underground tank system failure. For example, the API study discussed above indicated that the primary cause of fiberglass tank failures was breakage or physical separation of the tank wall. The OSWER study confirms this conclusion, although, based on the study results, it is not possible to identify the specific causes of structural failure. Qualitatively, failures were reported as fabrication defects, design defects, mechanical failures, or structural failures. The study shows that, excluding those releases for which a cause was not specified and those releases caused by operator errors, structural failure accounted for about 45 percent of the release incidents reported (38 percent for underground chemical tanks and 45 percent for underground petroleum tanks). As is true of external corrosion, there is no reason to believe that structural failure would not also be a significant problem with hazardous waste underground tank systems. Because of the similarities in fabrication, handling, and installation between hazardous waste tank systems and petroleum and chemical storage tank systems, the Agency believes that structural failure is likely to occur regardless of whether hazardous waste, petroleum products, or chemicals are stored.

Based on the SPCC and PIRS databases, in the case of aboveground tanks, structural failure accounted for between 6 and 7 percent of the reported failures.

c. Ancillary Equipment Failure. At proposal, EPA identified failures of ancillary equipment, including piping systems, as a significant cause of releases from above ground tank systems, citing the analysis of over 2,000 incidents of spills of oil or hazardous substances reported under EPA's Spill Prevention Countermeasures (SPCC) plans and the Coast Guard's Pollution Incident Reporting System (PIRS). This analysis showed that, if failures due to operator error and natural phenomena are excluded, between 85 and 90 percent of these release incidences resulted from failures of piping systems (including failures of pumps, flanges, couplings, interconnecting hoses, and valves). EPA also cited studies on the occurrence of leaks in underground piping due to corrosion. One study showed that the accumulated number of leaks in underground piping increases exponentially with time, starting at about 5 years from the date of installation and increases by a factor of 10 every 6 years. The API survey discussed previously also indicates that corrosion of underground piping and ancillary equipment is a major cause of releases from underground tank systems.

The OSWER study confirms the conclusion that failures of ancillary equipment are major causes of releases from tank systems. The study shows that, excluding those releases for which a cause was not specified and those releases caused by operator errors, ancillary equipment failures accounted in 38 percent of the reported release incidents (35 percent for underground chemical tank systems and 38 percent for underground petroleum storage).

Several commenters expressed the opinion that data derived from petroleum storage tanks should not be used to predict the failure rates for piping and other ancillary equipment in hazardous waste tank systems because they believed that petroleum tank systems are more often pressurized than hazardous waste tanks (presumably a pressurized pipe, pump, valve, etc. would be more likely to leak than a non-pressurized component). They also asserted that there were differences in the length of piping. No data were provided to substantiate their claims, however.

There is no basis for concluding that hazardous waste tank systems are less likely to have pressurized piping or other ancillary equipment, especially in the underground situation where pumps must usually be used to remove fluids from the tank. In addition, the Agency is unaware of any information showing that piping length is substantially different for hazardous waste versus

petroleum tank systems. Some commenters asserted that piping lengths of about 200 feet are typical of gasoline service station tank systems compared to the 50 feet of piping assumed by EPA for a typical hazardous waste tank system. Other commenters stated that piping lengths for many hazardous waste tank systems are often greater than 50 feet, with one commenter citing a piping length of 8,000 feet. While EPA does not consider the latter figure to be typical of many hazardous waste tank systems, it is likely that piping systems used at gasoline service stations are well within the range of piping lengths characteristic of hazardous waste tank systems.

The corrosive properties and presence of suspended solids in many hazardous wastes might actually cause higher failure rates of valve stem seals, shaft seals in pumps, flanged and threaded connections, and other tank seals in hazardous waste tank systems than in petroleum storage tank systems. Suspended solids, sludges, and debris are found in many hazardous wastes, and their presence in hazardous waste tank systems might cause clogging and blockages, which can cause pressure buildup in pumps and pressurized segments of the piping system. The higher pressure combined with the abrasive properties of some hazardous wastes might lead to accelerated wear on rotating shaft and valve stem seals.

EPA concludes that the external corrosion rate and the incidence of leakage from piping and ancillary equipment for underground hazardous waste tank systems are likely to be at least as great as those of petroleum storage tank systems. Thus, re-examination of the potential for ancillary equipment to cause tank system failure confirms that the regulation of hazardous waste tank systems must include ancillary equipment.

d. Operator Errors. At proposal, EPA identified overfills, overflows, and other operational errors as a significant cause of releases of hazardous waste to the environment. For example, in the SPCC and PIRS data bases, operator error and overfills/overflows accounted for 32 and 47 percent of the release incidents reported. Recent studies confirm this conclusion. The OSWER study identified this as the leading cause of releases for both petroleum and chemical storage tank systems. Typical operator errors were: (1) overfill of tanks; (2) incomplete closure of valves; (3) opening of wrong valves; (4) improper mating of hose connections; (5) improper repair or maintenance; and (6) accidents (e.g., forklift damage to a tank or breaking of a valve stem through the use of a wrench to open a stubborn valve). There is no reason to believe that operators of hazardous waste tank systems will commit fewer errors than operators of other tank systems.

Aside from the immediate threat of migration to ground and surface waters, overfills can contribute to accelerated corrosion failure in underground, inground, and onground tank systems storing hazardous wastes. Many of the hazardous wastes contain acids, bases, and salts which if spilled into the soil surrounding the tank system can cause the soil to become corrosion-inducing. Also, microbial action on organics, halogenated organics, and sulfur-containing hazardous wastes that have leaked into the soil adjacent to the exterior tank wall can produce biodegradation products that are highly corrosive (i.e., organic acids, HCl, and sulfuric acid).

3. Risks Posed by Releases From Hazardous Waste Tank Systems

The report, "The National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA in 1981," indicates that about 16,000 hazardous waste storage and treatment tanks were used at about 3,800 facilities (exclusive of small quantity generators) in the United States in 1981. As is explained above, many of these tank systems probably are leaking or can be expected to leak in the future. Leaks of hazardous waste can be expected to pose a significant risk to human health and the environment in part because leaked materials may contaminate ground water and cause individuals to be exposed to the hazardous constituents in the wastes. In addition, risks to human health and the environment may be introduced by exposure to contaminated surface water and air.

The recent OSWER survey of documented release incidents from underground storage tank systems showed that over 75 percent of the incidents resulted in contamination of the soil and that the ground water was contaminated in more than 50 percent of these incidents. In addition, the same survey showed that, of the underground chemical release incidents, 74 percent resulted in contamination of the ground water. Leaks from hazardous waste tank systems may also cause ground water contamination.

Other available data confirm that leaking tanks present serious threats because they allow hazardous chemicals to contaminate soils and ground water. In a study entitled "Assessment of the Technical, Environmental and Safety Aspects of Storage of Hazardous Waste in Underground Tanks," dated February 1984, the Agency compiled studies conducted by the American Petroleum Institute and by various State and municipal agencies. The studies analyzed leaks from petroleum product and other tank systems. One of the studies was conducted by the California Water Quality Board—San Francisco Bay Region.

In 1982, the Regional Board initiated a survey of 1,950 facilities. Of the facilities surveyed, 480 reported current or prior use of underground tanks or sumps. Of these, the Board selected 87 judged as having a high potential for leaking hazardous substances. These tank systems were non-vaulted, solvent waste tanks and sumps, without corrosion protection, and at least seven years of age. These high priority facilities were required to conduct a contamination assessment. Of the first 80 facilities reporting, 64 had subsurface contamination although at least 5 of these were from sources other than the tank system. At many of these facilities, highly toxic materials, such as benzene and other solvents, contaminated soils and/or ground water. At 10 facilities, soil contamination levels exceeded 1,000 ppb for at least one chemical; 11 facilities reported ground water concentrations of over 1,000 ppb.

This study also included case histories of two facilities with leak problems reported prior to the initiation of the larger study of 1,950 facilities. These case studies of release incidents at these additional facilities reported the following: In one case, a solvent storage tank leaked for one and one-half years before it was detected, This leak resulted in the contamination of three aquifers with a cleanup cost of over $12 million. In the second case, two public and several private water supply wells were contaminated and cleanup costs by the end of the first year had reached approximately $10 million.

The conclusion that leaks from tank systems may present substantial risks is supported by EPA's "Hazardous Waste Tank Risk Analysis." This analysis modeled what EPA believes are current hazardous waste tank system management practices. The results of this analysis indicate that current practices lead to a substantial probability of release to the environment from tank failures due to corrosion, rupture, improper installation, gasket failures, and operator errors.

Current practices tend to allow releases to continue undetected until the release becomes obvious. In many cases, undetected releases can be expected to contaminate valuable resources and threaten human health and the environment.

The estimated release volumes vary depending upon the type of tank system and the quantity of waste handled. Underground and large volume tank systems tended to have the highest estimated releases. However, all tank systems, including aboveground and small volume tank systems, were associated with significant release volumes and, therefore, risk to human health and the environment. In general, all tank systems modeled under current management practices were associated with release volumes that were approximately 10 percent or less of the tank system throughput over the 20 year time horizon. Although small volume tank systems were estimated to have relatively small release volumes, even such small release volumes may pose a significant risk to human health and the environment as a result of the toxic effects associated with hazardous waste constituents. Chronic exposure to hazardous waste constituents may lead to such adverse health effects as cancer or damage to various organ systems (e.g., kidneys, liver, and reproductive systems).

The Hazardous and Solid Waste Amendments of 1984 placed additional bans and limitations on disposing of hazardous waste in landfills. EPA must make ban determinations on all RCRA waste by November 1990. The first such determination, regarding solvents and dioxins, was made in a proposed rule dated January 14, 1986. Others are currently under development and still others will follow at regular intervals. When effective, these regulations may substantially increase the amount of wastes in storage and treatment tank systems, thus increasing the aggregate risks posed by these systems if they are not managed properly.

4. Technical Options for Addressing Problems Associated With Leaking Tanks

The incidence of releases resulting from the major causes discussed in the preceding section tends to vary slightly from study to study depending on the particular population surveyed. In all cases, however, high among the most frequent causes are:

- Corrosion;
- Structural failure;
- Piping and ancillary equipment failure; and
- Operator error leading to spills or overfills.

Before determining how best to address the problems associated with leaking tank systems, the Agency evaluated the technical options available for addressing the principal causes of releases. As is explained immediately below, there were significant drawbacks to reliance upon any method other than secondary containment with interstitial monitoring for the effective identification of and response to releases from hazardous waste tank systems to the environment.

a. Corrosion. Corrosion of tank systems is usually caused by improper selection of construction materials and/or inadequate protection against external corrosion. The Agency explored the possibility of addressing this problem by ensuring that the design of the tank system was appropriate (i.e., that the materials of construction were compatible with the waste being stored) to prevent internal corrosion from occurring and that effective corrosion protection be applied to steel tank systems and metal components of non-steel systems to address external corrosion problems. Corrosion protection might consist of specifications of corrosion-resistant coatings or liners, or cathodic protection systems.

The corrosion process is very complex and is influenced by factors such as: oxidizing agents, electrolytic activity, acidity, moisture levels, soil resistivity, temperature, bacterial action, and other factors. Corrosion protection approaches include cathodic protection; paints, coatings, and linings; soluble corrosion inhibitors; electrical isolation; and the use of corrosion resistant materials.

EPA was concerned whether most owner/operators have the knowledge and technical specialization to evaluate and select the most appropriate corrosion protection measure. In order to assure the application of a proper level of expertise in this phase of waste management, EPA evaluated the benefits of requiring owner/operators to obtain certification of proper corrosion device selection and system design by qualified corrosion experts. Independent, qualified corrosion experts would be required. As a minimum, they would need to specify the appropriate design and installation requirements. In the case of a field-fabricated corrosion protection system, a corrosion expert would supervise the installation of the system.

Even if owner/operators had the necessary expertise or obtained the services of qualified experts, corrosion problems would remain. The Agency is aware of no data establishing the complete effectiveness of corrosion protection measures applied to single-walled steel tanks. The reliability of many protection methods depends upon effective maintenance and inspection practices which are subject to human error or negligence. Corrosion protection measures, such as cathodic protection systems, coatings, and moisture barriers, may be effective in significantly reducing rates of corrosion, but they do not necessarily stop corrosion completely Therefore, corrosion protection measures will reduce, but not eliminate, failures resulting from corrosion. In addition, corrosion protection does not address causes of releases other than corrosion. Thus, in addition to corrosion protection, some form of release detection is required to enable an appropriate response in the event of a release from a tank system protected against corrosion.

b. Structural Failure. Structural failure problems can be attributed to a large degree to improper design and installation. However, inadequate quality assurance and quality control during the manufacture of tank systems would also be a major concern. The solution, again, would involve applying proper levels of expertise at the design and installation stages and adequate quality assurance during manufacture. Certification by a qualified professional engineer that the design and installation is in accordance with sound engineering practices and applicable standards can be of considerable benefit. The major limitations of design and installation standards is that once a tank system is designed, built, and installed, improvements in the standards or even errors in applying the standards cannot be retrofitted in most instances. For example, it is usually impossible to retrofit existing tank systems with better materials of construction or with thicker walls.

In addition, improved tank design standards cannot assure the proper installation and maintenance of the tanks. That a substantial number of releases from tank systems have resulted from structural failure demonstrates that improved design standards have not obviated the need for regulations ensuring that tank systems are installed and operated appropriately. In addition, some form of release detection is required to enable an appropriate response in the event of a release from even a well-designed and installed tank system.

c. Ancillary Equipment Failure. Data cited in the preamble to the proposed

regulation and the recent OSWER survey attributed a significant number of leaks to ancillary equipment failure. Most of these releases appear to have resulted from mechanical and thermal stresses common to daily operation. These stresses, however, are most evident on the components of the systems that are most susceptible to wear, such as pipes with flanges or threaded connections, valves, and pumps. Pumps and valves, for example, are designed with moving parts and seals that periodically deteriorate with use. In addition to these stress-induced factors, underground piping is susceptible to the same corrosion influences discussed previously for tanks.

The principal leak prevention measure suggested for ancillary equipment is its proper design and installation. The design should match its intended function taking into consideration first the proper material of construction. The material of choice must be compatible with the array of substances that will pass through it. Specifically, the material of construction must match the thermal coefficients of expansion and corrosive properties of the substances transported through it. A quality audit of tank system installation, especially to prevent loose fittings, poor welding, and malaligned gaskets, will prevent many leaks.

The difficulties of addressing the problems of structural failure and corrosion of ancillary equipment are similar to those of the tanks themselves. Thus, in addition to proper design and installation of ancillary equipment, some form of release detection is required to enable an appropriate response in the event of a release from even a well-designed and installed piping system.

A basic type of construction that helps prevent releases is piping with welded connections. Devices are also available that enclose specific components of the ancillary equipment system such as jacketed (double-walled) piping and sealless (canned) pumps. These devices—forms of secondary containment—are capable of containing a release in the event of a failure of the primary containment system.

d. Operator Errors. Operator errors are among the most prevalent causes of tank system leaks and releases. Proper training and the establishment of standard operating procedures and safety practices can reduce the occurrence of human errors. Spill control and contingency plans, training plans, and operating procedures are important and are required to obtain permits for tank systems and other treatment, storage, and disposal facilities (TSDFs).

Some operator errors can be averted by installing engineered safeguards. Overflow protection devices can be installed on tank systems to provide warning to the operator and/or to shutdown transfer pumps when the tank reaches full capacity. Protective guards can be installed to prevent vehicular or forklift damage to tanks. Proper tagging or labeling of valves and piping can help alleviate human error in operating valves. Tank design standards, such as specification of a minimum freeboard requirement and a minimum volume requirement for secondary containment, can also help to reduce the consequences of human error. However, even the best training programs and operations practices will not completely eliminate human error.

e. Multiple Causes of Releases. In addition to the direct methods described above for controlling or reducing the likelihood of releases from tank systems, there are a number of monitoring methods and backup devices that are capable of addressing, to varying degrees, the problems associated with releases due to corrosion, poor design, fabrication, and/or installation, piping and other ancillary squipment, and operator error. These include tank system inspection, leak detection, and secondary containment.

i. *Inspections.* Physical inspections can be conducted in order to detect existing leaks and/or to identify problem areas that can lead to releases if not repaired. If the release is detected early and response measures are taken, inspections can reduce risks to human health and the environment. Inspections can commence at the time a tank system is installed and can be conducted on a periodic basis thereafter Tests conducted at the time the tank system is installed include various non-destructive methods such as tank tightness tests, soap tests, ultrasonic tests, spark tests, acoustic emissions tests and radiography tests

Periodic inspections can include visual inspections of tanks (foundations, connections, coatings, and tank walls), internal inspections for enterable tanks (roof, structural members, shell, and bottom), and visual inspection of pipes and ancillary equipment. Inspection equipment includes penetrant dyes, vacuum boxes (for seam testing), ultrasonic instruments, and radiographic equipment.

While regular visual inspections can reduce risks, they cannot be relied upon completely. There are many problems that visual inspections would not reveal (e.g., loose fittings, external corrosion if only the inside of the vessel can be inspected) and, because visual inspection is an episodic rather than a continuous process, detection of releases may occur after significant quantities of waste have migrated to the environment. This problem can be alleviated if a mechanism is available to contain the release until the release is discovered.

ii. *Leak Detection.* If a leak is detected early and response measures are taken, this approach can reduce risks to human health and the environment. The concept of early detection and subsequent corrective action as an appropriate method of addressing the risks presented by releases from hazardous waste tank systems was the basis for the ground-water monitoring alternative for existing tanks that was a major component of the proposed regulation. For underground tank systems, this alternative consisted of semi-annual tank tightness testing combined with ground-water monitoring. The Agency received many comments on this approach; most of them identified asserted problems and advantages that commenters believed were associated with various methods of leak detection. In response to these comments, the Agency has re-examined each of these methods and has concluded that they are not reliable enough to provide long-term control of leaks from hazardous waste tank systems.

There are a number of leak detection methods that can be applied to tank systems. There are various methods of tank testing, including pneumatic, valve manometer, liquid level bubble, fabricated float, laser beam, overfill/standpipe, buoyancy sensor, and capacitance probe tests. Other methods of leak detection are inventory monitoring, unsaturated zone monitoring, and ground-water monitoring.

(a) *Ground-water monitoring:* A number of commenters identified problems with ground-water monitoring. Commenters pointed out that ground-water monitoring alone only detects a leak after the hazardous waste has reached the ground water and that the leak would potentially be undetected until long after the leak occurred. Other general problems cited by commenters included issues of accuracy, especially for certain materials, hydrogeologic settings, and background contamination.

Commenters pointed out several problems with ground-water monitoring as it might be applied specifically to tank systems. They noted that the

design of the ground-water monitoring system could be complicated if there are many tanks located in close proximity to one another. The proper location, depth, and number of wells required were all mentioned as items of concern if the system was to be effective. In facilities where pipes are interconnected between multiple tanks, commenters stated that it is often impossible to pinpoint the source of ground-water contamination (e.g., determine which tank is leaking). Some commenters stated that monitoring wells could provide a pathway for hazardous waste to migrate and contaminate ground water. Commenters also stated that soil characteristics and the presence of installed foundations and underground piping or equipment in the vicinity of the tank can sometimes lead to channeling of underground contamination, effectively bypassing the ground-water monitoring points, making it improbable that meaningful ground-water monitoring can be implemented for hazardous waste tank systems with a single sampling point. They stated that multiple sample wells, properly placed, are required to detect contamination effectively. They also stated that the determination of the direction of flow in ground-water aquifers is difficult and makes the placement of sampling wells even more difficult.

The Agency agrees with some commenters that ground-water monitoring, while it can be useful for other types of treatment, storage, and disposal facilities, will not by itself allow detection and identification of the releases from hazardous waste tank systems within a timeframe that will permit rapid responses to the releases. Ground-water monitoring is not as effective as secondary containment with interstitial monitoring in protecting human health and environment from leaking hazardous waste tank systems because it detects leaks substantially later than monitoring the interstitial volume between the tank and the secondary containment system. Reducing the length of time required to detect a release is important in reducing risks of environmental damage. The Agency is also concerned that ground-water monitoring might have reduced effectiveness in detecting releases from long lengths of piping or individual tanks when multiple tanks are in close proximity to each other.

EPA, however, does not agree with the commenters who claimed that ground-water monitoring systems are unreliable in detecting leaks or inherently dangerous as conduits of contamination. While the design of an effective ground-water monitoring system requires careful consideration of facility structure and site hydrogeology. EPA believes that the design of a system which will reliably detect leaks is quite feasible. EPA agrees with the commenters who stated that multiple wells may be required to detect contamination effectively and that care should be taken to ensure that the direction of ground-water flow is properly determined. Also, while improperly-installed or improperly-maintained wells may provide a pathway for contamination, such improper installation or maintenance is not an appropriate reason to reject ground-water monitoring.

(b) *Tank testing:* Tank testing, or tank tightness testing, can be useful in detecting many leaks from tanks or ancillary equipment. It, too, however, is not sufficiently reliable to serve as a long-term method of controlling leaks from hazardous waste tank systems.

Many commenters addressed tank testing with various points of view. Some claimed that the method was unreliable; others claimed that leaks of 0.05 gallons per hour could reliably be detected—especially in smaller tanks. The Agency commenced its own study of leak testing, but the results of that study were not available for this rule.

The recent OTS survey of motor fuel storage tank systems concluded that commercial tank testing methods were not reliably detecting releases in the range of 0.05 gallons per hour. In many cases, fairly substantial leaks remained undetected. OTS concluded that commercial methods and field procedures could be modified to improve their reliability, however. OTS analysts adapted a commercial method to correct deficiencies in the methods and generated a tank testing methodology that they determined can detect releases under testing conditions of 0.1 gallons per hour with 95 percent confidence. OTS also concluded that it is imperative that information be made available on both the accuracy and precision of tank testing methodologies.

The Agency concludes that tank tightness testing can play a role in regulating hazardous waste tank systems. Properly performed tank system tightness tests appear to be able to detect leaks of approximately 0.1 gallons per hour. During the phase-in period, these tests may be used to conduct assessments of tank system integrity. This will enable the identification of most leaking tank systems. However, undetected leaks of below 0.1 gallons per hour could still be considerable over the period of a year. The Agency has concluded that permitting hazardous waste leaks of that size to be undetected and, therefore, uncorrected. would be unacceptable over the long term.

The re-examination of ground-water monitoring and leak testing led the Agency to reject the ground-water monitoring alternative contained in the proposed rule. Because both ground-water monitoring and hazardous waste tank system integrity assessments, including tank system tightness tests, are not completely reliable in detecting releases so that response actions can be taken before the releases reach ground water or surface water, EPA found that this alternative does not provide equal protection to human health and the environment as secondary containment with interstitial monitoring. This conclusion is further supported by the results of the Agency's risk analysis conducted as a part of this rulemaking.

(c) *Inventory monitoring:* In the preamble to the proposed regulation, the Agency expressed serious doubts about inventory monitoring as a method of detecting leaks from hazardous waste tanks. Re-examination of the issues has confirmed that the regulation should not rely on this method. Among other things, the OTS survey of underground motor fuel storage tank systems found that owner/operators were not able to perform inventory monitoring effectively. Only 41 percent of the attempted cases resulted in the development of usable data. The Agency believes that the use of inventory monitoring may be even more difficult and problematic for owners and operators of hazardous waste tank systems.

(d) *Unsaturated zone monitoring:* Unsaturated zone monitoring is a technique for monitoring conditions in the zone of aeration lying between the earth's surface and the water table. This is a zone where vapors can migrate relatively easily. A number of devices can be used to monitor conditions in this zone. They rely on the principles of thermal conductivity, electrical resistivity, solubility, and vapor pressure. Soil-gas detectors are a widely used form of vadose or unsaturated zone monitoring. They function best in pourous soils where vapors can migrate easily to a sensing device. These detectors are most effective when monitoring highly volatile gases in relatively dry soil.

Some commenters stated that unsaturated or vadose zone monitoring should be considered as a replacement for ground-water monitoring, because it would be capable of detecting leaks

prior to the release of hazardous constituents to ground water. EPA agrees that releases from hazardous waste tank systems should be detected before they reach ground water. However, in analyzing these comments and other available information on the capability and reliability of unsaturated zone monitoring, EPA has concluded that unsaturated zone monitoring is an unproven technology for reliably detecting releases from hazardous waste tank systems at this time.

EPA evaluated the use of unsaturated zone monitoring as a possible substitute for ground-water monitoring. The Agency used mathematical models to simulate the effectiveness of soil-gas monitoring in analyzing these comments and other available information on the capabilities and reliability of unsaturated zone monitoring using the best available information on the transportation of vapors through soil. In evaluating the reliability of unsaturated zone monitoring, EPA assumed that (1) monitoring would occur in the excavation zone; (2) the system monitored is a carbon steel underground tank containing the highly volatile waste dichloromethane; (3) the tank is located in a homogeneous backfill of known permeability; (4) the ground-water table is deep enough to allow detection of the leak prior to ground-water contamination; (5) the composition of the waste stored in the tank does not vary over the time that excavation zone monitoring is used; (6) the monitoring well is located two feet from the tank; and (7) the tank owner/operator can afford and would perform periodic cleanup and repair or replacement of the tank. Overall, these assumptions result in an evaluation of excavation zone monitoring under ideal installation and operating conditions.

The results of the simulation (see "Hazardous Waste Tanks Risk Analysis," June 1986) show that for volatile hazardous waste, vapor monitoring in a sand-backfilled excavation zone under ideal conditions and combined with immediate response action, might reduce the volume of releases to the environment nearly as well as secondary containment: vapor monitoring in the excavation zone, combined with immediate response action, reduced baseline releases by 96 percent, while secondary containment reduced them by 98 percent. These simulated results have not been validated with field studies, however, even under the ideal conditions described above.

EPA agrees that there are arguments that can be made regarding the theoretical superiority of unsaturated zone monitoring when compared to ground-water monitoring or other leak detection methods for identifying releases of volatile materials from hazardous waste tank systems. The Agency does not agree, however, that its current state of development is adequate for full reliance in lieu of secondary containment. Rather, EPA believes that unsaturated zone monitoring is an emerging technology with considerable promise. Once it has been sufficiently developed and its reliability is understood, it could provide a means of assuring that leaked wastes can be confined to an area in which remedial action is practical.

EPA has a number of specific reservations about adopting this approach for use as the principal regulatory strategy. Because unsaturated zone monitoring procedures, including soil-gas monitoring, are still relatively new, there has been little field validation of their effectiveness, especially for the wide range of hazardous wastes that will be covered by this rule. Many wastes are not volatile, and soil-gas monitoring in the unsaturated zone would not detect their release. In addition, sample representativeness, quality control, the effect of sampling methods on detection limits, and other issues must be resolved. The Agency recognizes that there is a special need to focus on these issues from the standpoint of the unique characteristics of hazardous waste storage in tank systems. The approach needs verification over the expected range of waste types, hydrogeologic settings, and waste mobility and persistence levels. Methods must be developed to distinguish tank system failure from background contamination from previous overfills, spills, and/or releases. Also, in the cases where relatively lower concentrations of constituents are present in hazardous wastes when compared to the levels characteristic of stored products or raw materials, leaks might lead to contaminant levels that are below the detection limits of current unsaturated zone monitoring techniques.

EPA's Office of Research and Development will be committing significant resources over the next 18 months in an effort to investigate system reliability, investigate the proper geometry for placing monitoring devices around tank systems, and to identify acceptable unsaturated zone monitoring systems. EPA will continue to evaluate unsaturated zone monitoring for its applicability in detecting hazardous waste releases. Although the techniques are not specifically included in this rule, they could potentially, with improvement, be employed on a case-by-case basis as part of a technology-based variance application presented to the Regional Administrator when seeking an exemption to the secondary containment regulations contained in this rule.

iii. *Secondary Containment with Interstitial Monitoring.* Secondary containment is a method of containing releases to enable detection of hazardous wastes leaking from hazardous waste tank systems. Secondary containment technologies include liners, vaults, and double-walled tanks. When combined with interstitial monitoring, the overwhelming advantage of secondary containment is that it allows for the detection of releases from the primary containment vessel while providing a secondary barrier that contains the released material before it escapes into the environment. The space between the primary and secondary vessels is easily and reliably monitored.

There are other benefits to secondary containment. Secondary containment can isolate the primary tank from high ground water and saturated soils, thereby protecting the tank from potential corrosion by the combination of water and corrosion-inducing soils. In some cases, the materials of construction offering the best corrosion protection against external and internal corrosion may not be one and the same or the choice of material for corrosion protection may not have adequate structural strength. In these cases, the secondary containment system and the tank system can be constructed of materials that provide the desired combination of properties (e.g., steel or fiberglass tanks in concrete vaults).

Another important benefit is that the secondary containment system can also be designed to provide for containment and detection of accidental spills and overfills. For example, in secondary containment system designs incorporating vaults and berms, spills and overfills can be easily detected by visual examination and also decontaminated readily. This compensates for human errors and reduces the reliance upon flawless operator performance. Secondary containment prevents spills and overfills whose volume does not exceed the capacity of the secondary containment system from being released to the environment.

Additionally, in the event that a tank system is used to store or treat a hazardous waste which was not

considered at the time the system was designed, secondary containment can provide protection against design deficiencies that might otherwise result in releases of hazardous waste constituents.

Secondary containment can afford security for other causes of tank failure. As a secondary barrier, it can eliminate releases to the environment caused by point anode corrosion (e.g., caused by a piece of cinder contacting the tank surface), collect leakage from loose fittings and worn seals on valves and pumps, and prevent releases due to structural failure of the tank system.

Table 3 summarizes the Agency's evaluation of the technical options now available for addressing releases from hazardous waste tank systems.

5. Regulatory Approach

a. Summary of Approach Taken in Final Rule. As explained previously, the Agency's overall strategy for accomplishing the statutory goal of protecting human health and the environment from the risks posed by hazardous waste storage and treatment facilities is to prevent the migration of hazardous waste constituents to ground and surface waters where such releases may present a risk to human health or the environment. A key element of the overall strategy is the need to detect releases in a timely manner so that an appropriate response can be made.

The Agency's overall risk management strategy has evolved from the following considerations. First, as is explained in this preamble, there is a need to address further regulation of hazardous waste tank systems because the current situation most likely presents significant risks. A number of studies have shown that tank systems are likely to be leaking or are likely to leak in the future. Releases from tank systems are likely to contaminate ground water and surface water, posing risks to human health and the environment.

Second, based on EPA's review of the technical options, as well as the rationale expressed in the preamble to the 1981 hazardous waste tank system regulations, the Agency has concluded that a regulatory approach that emphasizes secondary containment with interstitial monitoring both satisfies the statutory objective and is consistent with the function of tank systems as storage, rather than disposal units.

TABLE 3.—EVALUATION OF VARIOUS CONTROL TECHNOLOGIES

Problem	Technology	Function	Ability to contain release to ground and surface waters
External corrosion	Cathodic protection	Slow corrosion rate	No.
	Coatings	Slow corrosion rate	No.
	Secondary containment	Barrier against waste and corrosive soils	Yes.
Internal corrosion	Materials standards	Slow corrosion	No.
	Coatings	Slow corrosion	No.
	Liners	Protective barrier	Maybe.
Leaks (Tanks and ancillary equipment)	Leak detection	Early warning	No.
	Visual inspection	Early warning	No.
	Ground-water monitoring	Early warning	No.
	Vadose zone monitoring	Early warning	No.[1]
	Secondary containment	Early warning and containment	Yes.
Loss of structural integrity	Design standards	Proper design	No.
	Quality audit	Eliminate flaws	No.
	Installation standards	Proper installation	No.
	Secondary containment	Early warning and containment	Yes.
Overfill	Protective controls	Prevent overfill	No.
	Secondary containment	Early warning and containment	Yes.
Operator error	Operator procedures and training	Reduce errors	No.
	Secondary containment	Early warning and containment	Yes.

[1] Promising, emerging technology that may result in detection prior to release to ground waters. Currently the subject of intensive EPA research to define the capabilities of existing state-of-the art technology. Research is focusing primarily on volatile materials.

Secondary containment is not expected to impose economic burdens as explained later in this preamble in section VII. When the potential costs of corrective action are considered, secondary containment may result in substantial savings over the long term. For example, the annualized present value cost of replacing a 4,000 gallon underground steel tank system with a new tank system with full secondary containment and interstitial monitoring would be about $3,900. On the other hand, the typical annualized present value corrective action costs associated with cleanup of a release from a leaking 4,000 gallon single-walled tank system would range from about $2,500 (removal and replacement of tank, removal of contaminated soil, no ground-water contamination) to $6,300 (removal and replacement of tank, removal of contaminated soil, two years of ground-water treatment correcting one year of plume growth) or up to $68,000 (removal and replacement of tank, removal of contaminated soil, 33 years of ground-water treatment correcting 20 years of plume growth).

While the focus of today's regulation is on secondary containment, the Agency recognizes that secondary containment is not always necessary to achieve the statutory objectives. From an overall risk management perspective, secondary containment with interstitial monitoring was selected as a general rule, subject to the availability of variances. This selection was made because of the probability of risk in most cases and the uncertainties associated with leak detection and other technologies. While there are some tank systems that may not require secondary containment, the Agency has been unable to identify generically which tank systems fit into this category. Accordingly, the Agency has included in the regulations the opportunity for owner/operators to obtain variances from the secondary containment requirements of today's regulation.

As is explained further below, the principal reliance on secondary containment does not mean that all existing tank systems must be equipped with secondary containment immediately. The regulations provide for an orderly phase-in of secondary containment for existing tank systems, beginning with tank systems believed to pose the greatest risk (i.e., leaking tank systems).

The major features of the Agency's risk management strategy for new and existing permitted, interim status, and

90-day accumulation hazardous waste tank systems, as expressed in today's rule, are summarized below. For the purpose of today's regulation, the term "new tank system" means not only newly-manufactured tank systems that will be put into service for the first time but also those other tank systems that even if in existence and in use prior to the promulgation date of today's regulations are then reinstalled and used as replacement tank systems for existing hazardous waste tank systems. Likewise, an existing tank system that is not being used for the storage or treatment of hazardous waste, but is then put into service or converted to use as a hazardous waste storage or treatment tank system subsequent to the promulgation date of today's regulation is considered to be a new tank system.

The first feature of the regulation consists of requirements intended to maintain the integrity of the primary containment structure. For both new and existing tank systems, the final rule requires that the primary tank system be designed properly and that it be compatible with the wastes that are stored or treated. For existing tank systems not fitted with a secondary containment system, a tank integrity assessment (e.g., internal inspection, visual inspection, tank system tightness testing) must be conducted by the owner/operator within 18 months of the promulgation date (12 months of the effective date) of today's rule to identify leaks from the primary tank system. Where tank system tightness testing is used, the tests must be able to account for temperature fluctuations, tank end deflection vapor pockets, and effects of high water table. These factors were commonly cited by commenters to be of greatest concern in attaining testing accuracy and precision and were likewise found in the OTS survey to be crucial in order to conduct a tank tightness test reliably.

To ensure the integrity of metal tank systems, all new metal tank systems in which all or part of the system is or will be in contact with the soil or with water are required to be evaluated for corrosion potential by a corrosion expert. The Agency's review of available data indicates that external corrosion of metal tank systems is a major cause of tank failure and release to the environment. External corrosion protection can substantially reduce, but not eliminate, the potential for releases from metal tank systems. The assessment of the corrosion potential of local conditions by a corrosion expert will provide an evaluation of the degree of corrosion protection required in each situation. As a protective measure for cathodic corrosion protection devices, the rule requires regular inspection/testing of sacrificial anode potential and impressed current sources. Existing tank systems need not be retrofitted with corrosion protection because this would be redundant: the basis of the phase-in of secondary containment accounted for the fact that most hazardous waste tank systems currently in use do not have corrosion protection.

The second feature of the Agency's overall regulatory approach is proper installation of the tank systems. Today's rule requires an independent, qualified installation inspector or professional engineer to certify that the tank system is structurally sound before installation and that proper handling procedures are adhered to during installation. Tank systems must be tested for tightness prior to use. Tanks and piping must be supported properly, and corrosion protection must be installed if needed. The design and installation requirements are intended to prevent tank failure and releases due to improper design and installation practices, known to be major causes of tank system failures. These requirements can also lead to long-term prevention of releases due to structural failure and/or corrosion.

The third feature of the Agency's regulatory approach is secondary containment with interstitial monitoring to detect leaks from the primary containment vessel. Despite the provisions requiring proper design, installation, and operation of the primary containment system, available data show that leaks are still likely to occur. The function of the secondary containment and leak detection system is to ensure that leaks are detected before they migrate beyond the zone of engineering control (i.e., an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous constituents to ground water or surface waters). The secondary containment system collects and contains releases from the primary containment vessel so that releases can be detected before they migrate into the environment. The leak detection system allows prompt detection of any release from the primary system to the secondary containment system. The rule provides design standards for vaults, exterior liners, and double-walled tank secondary containment systems. The Agency's implementation of the secondary containment requirements are discussed in further detail later in this section.

The fourth feature of EPA's approach incorporates provisions for adequate responses to releases of hazardous wastes. This rule requires that all releases to the environment be reported to the Regional Administrator. One exception is if a reportable quantity of a hazardous waste constituent is released; in this case, the owner/operator must report the release to the National Response Center under CERCLA regulations (in which case, the Regional Administrator is informed of the release. If appropriate, the EPA Regional Administrator will issue an order or permit condition requiring corrective action. In addition, immediate action must be taken to identify and stop the release, including, if necessary, emptying that part of the tank system found to be leaking until the leak has been stopped. The final rule requires that a qualified, registered professional engineer certify that major repairs have been properly made before a leaking tank is returned to service. Today's rule also requires that secondary containment with leak detection be provided for replacement tank systems and for any component of a repaired tank system that is underground. Additionally if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection, the entire component, i.e., either the tank or the entire piping system, must be provided with secondary containment prior to being returned to service.

As the final feature of these regulations, EPA is requiring owners or operators of hazardous waste tank systems to provide adequate closure, and, if necessary, post-closure, care. All wastes and all contaminated components, soils, structures, and equipment must be decontaminated or removed from the site at closure. If all contaminated compounds, soils, structures, and equipment cannot be decontaminated or removed at closure, or if the ground water is found to be contaminated, the site must be provided with post-closure care similar to that required for landfills.

EPA believes that this regulation, by requiring design and installation standards for primary containment structures, corrosion protection for metal tanks, secondary containment and leak detection, and quick response in the case of a release from the primary containment structure or other spill, and proper closure and post-closure care, will protect tank systems against failure and minimize, by containment and detection, any releases of hazardous waste to the environment.

b. Secondary Containment.—i. Secondary Containment Approach. As explained previously, EPA has concluded that the only demonstrated method for ensuring against releases to ground water or surface water is secondary containment with interstitial monitoring. This method greatly reduces the risks associated with managing hazardous wastes in tank systems (see "Hazardous Waste Tank Risk Analysis." June 1986).

The Agency considered two secondary containment options that would define the framework of the final regulation. The first would require immediate secondary containment for both new and existing tank systems. The second would require secondary containment within two years for new tank systems, leaking tank systems, and tank systems containing dioxin wastes, but, for other existing tank systems, would require secondary containment on a mandatory phase-in schedule.

EPA selected the second option as the basis for the regulation because it will ultimately lead to the implementation of full secondary containment for all tank systems, while phasing-in secondary containment in a manner that ensures that existing tank systems appearing to present the greatest risks receive immediate attention. In addition, it will allow for technological advances in leak detection or tank system design that might increase the opportunity for tank systems to obtain variances from secondary containment or might lead to the Agency's amending this regulation in the future. The phase-in schedule applies to permitted, interim status, and 90-day accumulation tank systems.

The phase-in of secondary containment will occur as follows:

(a) Leaking underground components of tank systems (i.e., tank vessel or ancillary equipment), would require secondary containment with leak detection before being placed back into service after the leak is discovered. Additionally, if a leak is discovered in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground tank), the entire component must be provided with secondary containment with leak detection prior to being returned to service. These components of tank systems pose the most significant risk to human health and the environment because they are currently leaking hazardous wastes to the environment and because subsequent leaks may be imminent and would go undiscovered until the next tank integrity assessment was performed. If a leak is discovered in a tank system component or a portion of a tank system component that is readily accessible for visual inspection, the component may be repaired and brought back into service without being provided with secondary containment as long as an independent, qualified registered professional engineer certifies that the tank system is capable of handling hazardous waste without permitting its release into the environment for the projected useful life of the tank system. Such a repair is inherently less risky because (a) the system has been certified to be capable of handling hazardous waste for its remaining useful life and (b) the component will be inspected on a daily basis to ensure its integrity.

(b) Tank systems storing or treating dioxin-containing wastes (EPA Hazardous Waste Nos F020, F021, F022, F023, F026, and F027) that are not shown to be leaking by tank integrity assessments must be retrofitted with secondary containment within two years. These wastes are highly potent and extremely toxic and pose significant risks to human health and the environment if released. Additionally, in the event of a release, cleanup costs can be substantial; for example, the proposed land disposal restrictions would require that dioxins in contaminated soils would have to be reduced below detection levels prior to land disposal (see 51 FR 1062; January 14, 1986).

(c) The integrity of remaining existing tank systems must be tested periodically. If a leak is detected through the integrity assessment or in any other manner, for the reasons explained above, the following is required by today's regulation. Any component, i.e., tank or ancillary equipment, of a leaking tank system that is underground must be provided with secondary containment with leak detection before being brought back into service. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection, the entire component must be provided with secondary containment with leak detection prior to being returned to service. In all cases, secondary containment must be provided when the tank reaches 15 years of age except that, for non-leaking tanks, in no instance is secondary containment required sooner than two years from the date of promulgation of today's regulation. This schedule provides that aboveground tank systems and components of tank systems that are readily accessible for visual inspection are given the maximum period of time prior to phase-in the secondary containment requirements of today's final regulation.

To ensure that today's regulation is applied uniformly in those situations where an owner/operator is unable to document the age of his tank system, EPA will assume, based on its study of the age distribution of hazardous waste tank systems, that the tank system is seven years old, the median age of all hazardous waste tank systems, except that, if the age of the tank system is unknown, but the facility at which the tank system is located is known to be older than seven years of age, secondary containment would be required within two years, or by the time the facility reaches 15 years of age, whichever comes later.

The Agency considered several approaches to phasing-in secondary containment for existing tank systems that do not leak. The studies considering the incidents of releases from tank systems and the causes of these releases do not identify a single factor that correlates precisely with leaking. Neither the age of the tank system nor any other factor allows one to conclude that a particular tank system will leak at any particular time because there are so many variables in the placement of tank systems, their construction, their installation, and other factors. Assuming that all other influences were identical, however, there is little doubt that an older tank system will leak before a newer one. Accordingly, the Agency selected tank age as the best criterion for phasing-in secondary containment.

The Agency examined the available data to decide what age to select as the basis for the phase-in. The Agency selected fifteen years—approximate median time to failure for those underground steel tank systems that were the subject of studies discussed previously in this preamble. Underground steel tank systems are the only systems for which reliable data are available. Other available information, developed by EPA's Office of Toxic Substances, suggests that fiberglass tanks may be as susceptible to failure as steel tanks, although the database for fiberglass tanks is not nearly as extensive as for steel tanks.

On the basis that EPA has no data to the contrary, the phase-in for other tank systems will be the same as for underground steel tanks. The Agency has conducted extensive literature reviews and sought data on failure incidences for various types of tank systems (e.g., concrete, fiberglass) from trade associations and tank manufacturers and through an information request (51 FR 9072, March 17, 1986). Unfortunately, no definitive studies or data have been discovered or made available to the Agency. EPA will continue to seek information on tank system failure incidences and, if appropriate, will consider modifying the basis of the phase-in in the future.

ii. Variances from Secondary Containment. Today's rule provides for two types of variances: one may be obtained if the owner/operator can show that alternative design and operating practices, together with location characteristics, will prevent the migration of released materials to ground or surface water at least as effectively as secondary containment with interstitial monitoring; the second may be obtained if there would be no substantial present or potential hazard to human health or the environment associated with a release. The variances are available for permitted, interim

status, and 90-day accumulation tank systems, and are explained more fully below. Both new and existing tank systems may qualify for variances. These variances are consistent with the overall strategy of today's regulation. Secondary containment with interstitial monitoring is the only generally-reliable means to achieve control over releases before they pose risks to human health and the environment. Secondary containment is not necessarily an end in itself. If other methods can be shown on a case-by-case basis to achieve the regulation's goals, there is no reason to require secondary containment.

The variances included in today's regulation differ from the ones in the proposed regulation. Sections 264.193(i) and 265.193(f) in the proposed rule provided a variance from all or part of the secondary containment requirements if the owner or operator could demonstrate to the Regional Administrator that the location of the tank system and alternative design and operating practices would prevent hazardous waste from reaching ground or surface waters at any future time. Owners and operators storing or treating dioxin-containing hazardous wastes with EPA codes F020, F021, F022, F023, F026, and F027 could not obtain this variance and would be required to provide full secondary containment within one year of the effective date of the final regulation.

Many commenters to the proposed rule objected to the stringency of the variance as proposed, especially the language "at any future time." Some commenters stated that this language exceeded the requirement of § 3004(a) of RCRA, to promulgate regulations "as may be necessary to protect human health and the environment." Many commenters suggested the substitute language "during the active life of the unit and post-closure care period," as a possible alternative to "at any future time."

Several commenters suggested that a risk-based variance should be allowed and that the protocols for establishing this variance should be consistent with EPA's ground-water protection strategy. Commenters also suggested other factors that they believed would be important when considering the granting of a risk-based variance. Others proposed that the entire regulation be established on the basis of risk. Among the suggested risk factors were waste toxicity, site location, site hydrogeology, soil characteristics, ground-water quality, climate, tank size, waste storage time, and the migration potential and environmental persistence of the waste evaluated in a manner similar to that provided in EPA's proposed implementation of the land disposal restrictions (50 FR 23250; May 31, 1985).

The Agency has attempted to base today's regulation on risk to the extent that it is possible to do so. Accordingly, immediate secondary containment is required for leaking components of tank systems that cannot be visually inspected, and tank systems containing dioxin-containing wastes; and older tank systems that, based on tank integrity assessments, are considered non-leaking will be phased-in first. The lack of substantive data on numbers, sizes, locations of tank systems, the types of hazardous wastes stored in individual tank systems, and site-specific hydrogeologic conditions make it impossible to go beyond this level of risk-based rulemaking at this time. However, the Agency concludes, as did many commenters, that a risk-based variance from the secondary containment requirements should be available to owner/operators to take into account site-specific situations.

For this reason, the final rule, unlike the proposed rule, allows both a risk-based variance from secondary containment and a technology-based variance. The risk-based variance can be obtained if the owner/operator, including the owner/operator of a tank system managing dioxin-containing listed hazardous wastes, demonstrates that there will be no substantial present or potential hazard to human health or the environment in the event hazardous waste is released from the storage or treatment tank system. This variance does not exempt the tank system owner or operator from the requirements of this regulation other than secondary containment. Even where it is demonstrated that secondary containment is not needed, the Agency believes that it is important to maintain good day-to-day operating practices, as required in today's revised Subpart J standards. Relaxation of the requirement for secondary containment must not be construed to mean that the facility is licensed to be a hazardous waste disposal facility. Adherence to good operating practices will not pose an undue burden on the hazardous waste tank system owner/operators.

The risk-based variance is not available for new underground tank systems. Section 3004(o)(4) of RCRA requires that new underground tank systems be provided with leak detection methods that detect leaks at the "earliest practicable time." EPA has concluded that new underground tank systems may qualify for the technology-based variance if they demonstrate that a leak detection method detects leaks to the environment before they reach ground water or surface waters. However, the risk-based variance—through which the tank system would not need to be equipped with leak detection—would not satisfy the requirements of section 3004(o)(4).

The technology-based variance, similar in nature to the proposed variance, allows owner/operators a second variance mechanism if the owner/operator can demonstrate to the Regional Administrator that alternative design and operating practices, together with location characteristics will prevent the migration of any hazardous waste or hazardous waste constituents into the ground water or surface water at least as effectively as secondary containment with interstitial monitoring. This variance would be granted if the owner/operator demonstrates, for example, that a leak detection method not believed generally reliable will be reliable for his tank system because of its characteristics, location, and other factors such as the wastes stored or treated. Reliable detection of leaks or spills would be followed by response action to prevent contamination of ground water or surface water. Some owner/operators may be able to demonstrate that unsaturated zone monitoring will be effective for their tank systems. Variances will not be allowed for tanks for which ground-water monitoring is claimed to be effective, however. The overall strategy for regulating hazardous waste tank systems is based on the prevention of contamination of ground water by releases from tank systems.

There are two changes from proposal with respect to this variance. The variance is now technology-based and requires that an alternative system provide equivalent protection as secondary containment rather than a showing of no migration of hazardous waste or hazardous waste constituents at any future time. As explained above, this change is consistent with the Agency's overall strategy for regulating hazardous waste tank systems as expressed in this preamble.

The second change in this variance allows owners and operators storing or treating EPA Hazardous Wastes F020, F021, F022, F023, F026, and F027 to apply for this technology-based variance. EPA is allowing owner/operators storing or treating dioxin-containing listed wastes the opportunity to apply for the technology-based variance because it is possible that such owner/operators may develop a technology alternative to

secondary containment that ensures protection of human health and the environment.

The two variances are available to interim status and 90-day accumulation tank systems as well as to permitted tank systems. Procedures are established in Part 265 of today's regulation through which owner/operators of interim status and 90-day accumulation tank systems may apply for the variances.

EPA intends to issue guidance on these variance provisions prior to the effective date of this regulation. EPA will continue to investigate the combinations of factors (e.g., waste types, hydrogeologies, potential release volumes) that may enable the Agency to describe generically the situations in which tank systems would be eligible for variances from the secondary containment requirements. To the extent that the Agency is successful in this effort, it will be reflected in the guidance. Additionally, guidance relating to the risk-based variance will reflect the concept of differential protection based on the use, value, and vulnerability of the ground water as embodied in EPA's Ground Water Protection Strategy.

iii. *Small Quantity Generators.* Under today's final rule, the Part 264 and 265 requirements, including the secondary containment requirements, apply to those generators of 100 to 1000 kg of hazardous waste per month who are subject to interim status or permitting requirements because they store these wastes on-site for more than 180 (or 270) days or store more than 6,000 kg of waste. Under the conditions of long-term storage or treatment, the potential for release of hazardous waste to the environment becomes significant or the quantity of waste present, over time, becomes significant. The Agency sees no basis for distinguishing these generators from other hazardous waste facilities. (See 50 FR 31287; August 1, 1985.)

6. Regulatory Options Not Selected

The preamble to the proposed rule described several regulatory options considered by EPA. The Agency chose to propose secondary containment with a ground-water monitoring alternative, but invited comments on six alternate regulatory options:

- Combination of secondary containment and ground-water monitoring;
- National risk-based standards;
- Minimum national standards with a variance from containment requirements based on risk;
- Minimum performance standards;
- Ban of underground tanks; and
- Forced retirement of underground tanks.

a. Combination of Secondary Containment and Ground-Water Monitoring

This strategy would require both secondary containment and ground-water monitoring for all tank systems rather than permitting the use of only one of these approaches. This approach would be similar to the approach required for surface impoundments and landfills where, under section 3004(o) of RCRA, each new, replacement, or lateral expansion of existing landfills and surface impoundments is required to install two or more liners and a leachate collection system and a ground-water monitoring system.

The overwhelming majority of commenters on this issue stated that ground-water monitoring was an unnecessary additional requirement for tank systems equipped with secondary containment on the basis that the additional protection resulting from ground-water monitoring is negligible, particularly when compared to cost. Some commenters suggested that periodic ground-water monitoring be used to confirm the effectiveness of secondary containment systems.

Upon analysis of the issue, EPA concludes that secondary containment, combined with a requirement for an interstitial leak detection system, obviates the need for ground-water monitoring. An interstitial leak detection system (one located in the interstitial space between the primary tank system and the secondary containment system) will detect leaks before the wastes are released to surface or ground waters, thus fully protecting human health and the environment. Since this leak detection method detects releases before they enter the environment, it satisfies section 3004(o)(4)'s requirement that new underground tank systems be equipped with means for detecting releases to the environment at the earliest practicable time. While section 3004(o) of RCRA requires that certain new land disposal facilities be equipped with ground-water monitoring as well as double liners, the statute does not impose similar requirements for new underground tanks. Because interstitial monitoring in tanks with secondary containment is extremely reliable, the Agency is not imposing additional ground-water monitoring requirements as a matter of policy.

b. National Risk-based Standards. An alternative to generally-applicable design and operating standards is the concept of risk-based standards. Risk-based standards would vary based on the degree of risk presented by a combination of factors, such as site location, type of hazardous waste managed, proximity to ground water, and proximity to populated areas. Hypothetically, such factors could be arrayed in the form of a matrix, with different levels of control prescribed according to the relative risk posed by a particular combination of factors.

Most commenters were in favor of some type of risk-based standard, although no workable suggestions on how to implement national risk-based standards were included in the comments. The Agency has analyzed possible risk-based approaches for storage and treatment tank systems, accumulation tank systems, and small quantity generator tank systems. A hazardous waste tank failure model to examine risks associated with certain wastes, in a variety of settings, was developed. The estimated release volumes from specific release events were used to estimate human health risks through the use of a transport and exposure model.

The Agency concluded that national risk-based standards cannot be developed at this time because of insufficient information regarding: (1) Waste stream constituent concentrations; (2) hydrogeological data for the hazardous waste tank population; (3) distances between drinking water wells and hazardous waste tank systems, and (4) populations relying on drinking water wells. In the absence of such information, the Agency has decided that a risk-based variance would be more appropriate than national risk-based standards.

As explained previously, today's regulation does, however, take broad concepts of risk into consideration to the extent possible with existing data. The phase-in of secondary containment for existing hazardous waste tank systems requires that tank systems generally likely to pose the greatest risks (leaking tanks and tanks containing dioxin wastes) be provided with secondary containment before other tank systems.

c. Minimum National Standards with a Variance From Containment Requirements Based on Risk. As an alternative to risk-based standards, the proposed regulation requested comment on the concept of risk-based variances to minimum national standards. Numerous comments were submitted that encouraged the Agency to adopt this strategy. One commenter did express reservations about the cost and time that would be necessary to perform the demonstration.

In today's final rule, EPA has provided two separate mechanisms for obtaining a variance from secondary containment requirements. These mechanisms are discussed in section III.B.5.b.ii of this preamble.

EPA acknowledges that the cost of making the demonstration of no substantial present or potential hazard to human health and the environment will, in many cases, exceed the cost of providing secondary containment. However, the Agency believes it is appropriate to allow a variance for those facilities that can make the necessary demonstration, and for whom the cost of demonstration would not be excessive.

d. Minimum Performance Standards. Under this approach, EPA would establish minimum Federal performance standards for hazardous waste tank systems. The example used at proposal was—"all new tank systems must be located, designed, operated, maintained, and closed in a manner that will assure protection of human health and the environment." Under this option, states would have the option of expanding on the Federal performance standards by issuing more specific standards. In states choosing not to elaborate on the Federal performance standards, owner/operators of hazardous waste tank systems would have the responsibility of demonstrating that their tank systems do not endanger human health and the environment. This would require a case-by-case assessment of the protective measures needed to achieve the performance standard.

In the worst case situation that states did not expand upon the minimum performance standards, individual risk assessments would have to be performed for every tank system used to store or treat hazardous waste. This would be incredibly resource intensive for owner/operators because of the probable need to gather additional information on local hydrogeologies, distances to drinking water wells; and populations relying on these wells. It would also require considerable state and Agency resources to review and analyze the information developed by the owner/operators to show that their systems would be protective. The three commenters who supported this approach did not offer a means of overcoming the resource implications of this alternative approach. For the above reasons, the Agency has rejected broad performance standards as the basis for today's final rule. Today's rule does, of course, develop minimum standards that must be applied. States may impose more rigorous standards if they choose to.

e. Ban of Underground Tanks. In the preamble of the proposed rule, EPA discussed the banning of hazardous waste from underground tanks as yet another alternative regulatory strategy. This option had previously been raised for public comment in the preamble to the January 12, 1981, permitting standards and was opposed by most commenters at that time.

Numerous comments were again received. Nearly all of the commenters stated that a ban of underground tank systems that stored or treated hazardous waste was not necessary, because proper management of such tank systems can prevent releases from impacting the environment. One commenter suggested, however, that hazardous waste be banned from underground storage unless no other means of aboveground storage were feasible.

EPA believes that, with implementation of the regulatory approach being promulgated today, the use of hazardous waste underground storage tank systems will not endanger human health or the environment. The Agency is also aware that National Fire Codes and space limitations frequently give tank system owner/operators no alternative to underground storage. All underground tank systems that do not qualify for a variance will, over time, be equipped with secondary containment with interstitial monitoring. This will ensure that leaks are discovered prior to their release to ground water or surface waters, thus protecting human health and the environment.

f. Forced Retirement of Underground Tank Systems. In the preamble to the June 26, 1985, proposal, EPA also discussed the regulatory option of forced retirement of tank systems. i e., mandating replacement of tank systems upon reaching a predetermined age.

Numerous comments were submitted that stated that forced retirement is not a fair and reliable means of regulating underground tank systems. However, one commenter advocated a forced retirement of underground tank systems at the time the system reaches the age previously determined as being the end of the useful life of the system.

Today's final regulation mandates that secondary containment with interstitial monitoring be phased-in so that all existing hazardous waste tank systems would be provided with secondary containment by the time they reach 15 years of age, including those systems that do not appear to be leaking. This approach could be considered equivalent to the forced retirement of tank systems.

As explained previously in this preamble, EPA has determined that secondary containment with interstitial monitoring is the only reliable means of consistently detecting releases from hazardous waste tank systems. The Agency has selected a phase-in procedure that will ultimately lead to the implementation of full secondary containment with interstitial monitoring for all tank systems, while phasing-in secondary containment in a manner that ensures that existing tank systems appearing to present the greatest risks will receive immediate attention. EPA rejected basing the phase-in solely on the results of tank integrity assessments because the Agency is concerned that the reliability of such assessments is such that relatively small releases are likely to go undetected. Thus, in this final rule, EPA has selected an overall regulatory approach that could be construed as forced retirement in some instances.

IV. Changes to Final Rule From Proposal

A. Additions

Additions to the rule since proposal that were not discussed previously in this preamble are: (a) new definitions (onground tank systems and sumps); (b) exemption of closed-loop recycling tank systems; and (c) a clarification of the definition of ancillary equipment.

1. Definitions

a. Onground Tank System. Today's final rule adds to part 260 the definition of an onground tank. An "onground tank" is a device that meets the definition of "tank" in § 260.10 and is situated in such a way that the bottom of the tank is on the same level as the adjacent surface. In the proposed regulation, this type of tank was considered an aboveground tank. This new definition is added to clarify the revised requirements in § 264.196 and § 265.196, which now make clear that if a leak occurs on the bottom of an onground tank, secondary containment must be provided for the entire tank prior to the tanks being returned to service.

b. Sumps. A tank is defined in 40 CFR 260.10 as a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support. If a sump meets this definition of a tank and if it is used to manage hazardous waste, it would have been subject to all of the hazardous

waste tank system standards proposed on June 26, 1985.

Two commenters urged EPA to distinguish between a tank and a sump. One commenter explained that sumps are generally made of reinforced concrete, open on top, and used to contain liquids for very short periods of time. Also, the commenter pointed out that liquids enter a tank through attached piping, while liquids often enter a sump by flowing directly across a floor draining into the sump. Similarly, the second commenter described sumps as typically composed of impermeable material, possessing little or no attached piping, and presenting little hazard of release of hazardous waste into the environment. Because of these perceived differences, one commenter suggested that sumps should not be subject to the hazardous waste tank requirements. The other, while recognizing that sumps "may also represent a potential source of contamination," stated his belief that it was inappropriate to apply all of the requirements for tanks to sumps. A third commenter was concerned that the broad definition of a tank would result in process drains being defined as hazardous waste tanks.

Sumps meeting the definition of tank that manage hazardous wastes are covered by today's regulation, as explained below. In response to comments and to clarify the requirements of today's final regulation, EPA has added a definition of sump in today's rule. A "sump" is "any pit or reservoir that meets the definition of tank, and those troughs/trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal." Sumps can serve a variety of applications including collection of rain runoff from a treatment, storage, and disposal facility, collection of spills or releases as part of a secondary containment system, and collection of hazardous waste discharged from a manufacturing process.

In general, EPA believes that sumps may present the same potential for leaks and releases as hazardous waste storage and treatment tanks. For example, the San Francisco Regional Water Quality Board studied the releases of hazardous wastes into ground water and found leaking sumps to be a contributing factor along with leaking hazardous waste tanks. Thus, EPA concludes that sumps generally should be subject to the same standards as tanks. However, where a sump is a part of a secondary containment system used to collect or contain spills and releases of hazardous wastes, it would be redundant to require secondary containment as the sump is part of a system that is already serving as a secondary means of containment. Thus, EPA will not require secondary containment for sumps that serve as part of secondary containment systems, but the other standards for hazardous waste tank systems will apply.

A situation where a sump is used to collect potential spills or leaks of hazardous waste from process equipment, e.g., accidental releases from a distillation column, would be a situation where the sump serves as part of a secondary containment system. Therefore, secondary containment for the sump would not be required. However, it is EPA's intention that hazardous waste tank systems, including sumps used to transport hazardous wastes, are managed in a manner that would ensure protection of human health and the environment. Thus, if a sump is used to collect intentional discharges of hazardous wastes, e.g., the discharge of hazardous waste from a centrifuge directly on the floor and into a sump, the sump would have to meet the secondary containment and other requirements of today's regulation.

c. Ancillary Equipment. In the proposed rules, EPA defined ancillary equipment as any device used to distribute, meter, or control the flow of hazardous waste to or from the storage or treatment tank(s), including but not limited to such devices as piping, fittings, flanges, valves, and pumps. Several comments were received that requested EPA to clarify to what extent (i.e., how much of) the ancillary equipment was intended to be covered by the regulations.

EPA's intention was and still is to include *all* ancillary equipment that is used in the handling of the waste from its point of generation (i.e., that point at which the material is initially considered to be a hazardous waste) to the hazardous waste storage/treatment tank(s) and, if applicable, from the hazardous waste storage/treatment tank(s) to a point of disposal on-site or to a point of shipment for disposal off-site. It is the Agency's belief that, in most cases, the point at which the material will initially be considered to be a hazardous waste is the point at which the material leaves a process tank or area. Thus, the definition of ancillary equipment has been revised in today's final regulation to include this clarification.

2. Exclusion of Closed-Loop Recycling Tank Systems

EPA received a number of comments which argued that the Agency had substantially underestimated the number of tanks potentially affected by the proposed rule because it did not consider tanks that are part of the production process and thus integrally tied to reclamation operations. The commenters further argued that such tank systems were not handling solid or hazardous wastes; rather, they were accumulating materials to be used in the actual production process. In response to these comments, EPA published a notice in the **Federal Register** that requested information on the number of tanks potentially affected and comment on the question of when tank systems would be a part of a closed-loop reclamation process and thus not managing solid or hazardous wastes. The notice also outlined the Agency's tentative view of the conditions under which a tank system would be considered part of a closed-loop system. (See 50 FR 51264; December 16, 1985.)

EPA received approximately 40 comments on this notice; virtually all of them supported an exclusion along the lines indicated in the notice. These commenters endorsed the Agency's reasoning, stated that the numbers of tanks potentially involved were quite large (in the tens of thousands of tanks), and indicated that a number of commenters already were submitting variance applications for these tanks pursuant to 40 CFR 260.31(b). [40 CFR 260.31(b) allows any person to petition the Agency for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstocks within the original primary production process in which the materials were generated if the reclamation operation is an essential part of the production process.] In a few cases, variances have already been granted. Some of these commenters also urged the Agency to expand the scope of an exclusion beyond that outlined in the December notice to include tank systems where there is no hard connection between tanks, where drums or containers are used instead of tanks, or where reclaimed products are not returned to the original process that generated them.

A few commenters, however, urged the Agency to retain its present rules and to rely exclusively on the closed-loop variance provision in § 260.31(b) to exclude tank systems involved in closed-loop reclamation processes. In these commenters' opinion, utilizing the

existing variance is preferable because the Agency could evaluate on an individual basis how safely a facility is storing secondary materials before deciding whether an exclusion is warranted. A particular concern raised by these commenters was air emissions of volatile materials from uncovered tanks.

EPA has decided to adopt an exclusion substantially along the lines indicated in the notice and has placed this exclusion in § 261.4 of the regulations. EPA is taking this step because these types of operations are best viewed as part of the production process, not as a distinct waste management operation. The Agency, in essence, is determining generically that tank systems that meet the requirements specified below satisfy the criteria specified in § 260.31(b)(1) through (8) for granting a closed-loop variance. As commenters stressed, these types of closed-loop tank systems are very prevalent in a wide variety of industries (see § 260.31(b)(2)), for example, chemical manufacturing, pharmaceutical, dry cleaning. Commenters indicated that the total number of tanks that would be affected are in the tens of thousands. Substantial volumes of secondary material are involved (estimated in the billions of pounds annually), and significant economic savings are associated with the reclamation activity (§ 260.31(b)(1)). Several commenters also indicated that their production processes would not be economically viable without the recovery step and subsequent reuse of the recovered product.

The activities discussed here likewise satisfy the remaining variance factors. The time period to complete a closed-loop process (§ 260.31(b)(4)) would be relatively short, never to exceed one year (to accommodate certain types of normal batch manufacturing operations). (See 50 FR 51265; December 16, 1985.) Reclaimed materials usually would be returned to the original process in their original form for their original purpose (§ 260.31(b)(6)), and would then be reused by the generator (§ 260.31(b)(7)).

Tank systems would be considered as part of a closed-loop reclamation process and not, therefore, as storing solid and hazardous wastes under the following circumstances:

- Secondary materials are returned, after being reclaimed, to the original process in which they were generated where they are reused in the production process.
- Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance.
- Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators).
- The hazardous secondary materials are never accumulated in such tanks for over twelve months without being reclaimed.
- The reclaimed material is not used to produce a fuel or to produce a material that is used in a manner constituting disposal.

With respect to the first condition, an issue exists regarding the types of reuse to which reclaimed materials can be put in order for the process to be considered a closed-loop. As EPA noted previously (50 FR at 51265 and n.1), the material that is returned after having been reclaimed can be reused as a feedstock, as a purifying agent to remove contaminants from feedstock, and can also be reused for other purposes, including as a reaction medium to dissolve or suspend chemicals, or as a reactant to facilitate chemical reactions. To be considered as being "returned to the original process," the reclaimed material need not be returned to the same unit operation from which it was generated, but only to the same *part* of the process. (See 50 FR 640; January 4, 1985.) In addition, if the same material is reused in a number of production operations at an integrated plant, and the secondary material is reclaimed in a common reclamation operation, the reclaimed material can be returned to any process which originally used the material. (The regulatory language has been modified to clarify this last point.)

A requirement of the exclusion is that the reclaimed materials be returned for reuse in the production process. By production process, the Agency intends to include those activities that tie directly into the manufacturing operation or those activities that are the primary operation at an establishment; it does not include ancillary or secondary activities that are carried out as part of the total activities at the facility.

Commenters argued that, based on the above definition, solvents used as cleaning agents in dry cleaning operations would not qualify, nor would materials that are used to clean equipment (i. e., in degreasing operations) In response to these comments, EPA believes that solvents returned for use as cleaning agents in dry cleaning operations will be considered to be reused in the production process (as described earlier) since they are used as the basic raw material in the process (in this case, cleaning). On the other hand, materials used to clean equipment (for example, solvents returned and reused as degreasers) are not normally considered to be reused in a production process. The solvents do not contribute directly to the production process, but rather perform an ancillary function of cleaning. The essence of the closed-loop reclamation process (as described here) is that the act of reclamation must be directly related to the act of production. In the Agency's view, this is most evidently the case when the material reclaimed is put back to use in the production process. Nevertheless, the Agency is considering modifying the closed-loop exclusion and may, in the future, expand the provision to apply to any situation, including where the activity is part of an ancillary function of the production process, where the tank and reclamation process are part of a closed system.

Note.—Excluded closed-loop reclamation processes, as described in this regulation, are not "flow-through process tanks" for purposes of RCRA Subtitle I, since these tanks are not utilized in the act of manufacturing (see memorandum from J. Winston Porter, Assistant Administrator, Office of Solid Waste and Emergency Response, to the EPA Regional Administrators, dated April 7, 1986, concerning the Definition of "Underground Storage Tank.")

With respect to the second condition, several commenters questioned whether pipes were the sole eligible means of conveyance. The exclusion specifically contemplates "other comparable enclosed means of conveyance." Any system used to transfer the material from the process to the tank and to the reclamation process, however, must be "closed." Unless there are no gaps in the process, the Agency does not believe it possible to determine generically (i.e., *a priori*) that these operations constitute one single production process. Situations where a reclamation operation is not literally closed can still be evaluated on a case-by-case basis under § 260.31(b).

With respect to the third condition, most commenters agreed that this exclusion should not involve controlled flame combustion. The Agency reiterates that such processes involve either incineration or burning for energy recovery, operations explicitly within the Agency's authority (RCRA section 3004(c)).

With respect to the condition regarding duration, the 12 month time limit is adopted from the definition of speculative accumulation at 40 CFR 261.1(c)(8). Under this condition, persons

would not need physically to empty the tank once a year, but rather would need to show that 100 percent of the tank's content was turned over within the 12 month period. Examples of tank systems that may meet this condition are flow-through tank systems that are involved in continuous manufacturing operations (see 50 FR 640; January 4, 1985). In addition, tanks involved in batch production could show that secondary materials are stored for less than one year through recordkeeping similar to that which documents that secondary materials are not being accumulated speculatively. See 50 FR 636; January 4, 1985.

Finally, we have added a clarifying paragraph indicating that the exclusion does not apply when reclaimed materials are used to produce fuels or used to produce products that are applied to the land. This principle was established finally in the definition of solid waste rulemaking (see §§ 261.2(c)(1) and (2) and 261.3(c)(2) and 50 FR 628, 630, and 634; January 4, 1985), and is restated here to avoid confusion.

Those commenters who opposed promulgation of a generic exclusion felt that the individual variance proceedings provided a preferable means of evaluation, particularly with respect to evaluating how carefully secondary materials are stored before reclamation. (See § 260.31(b)(3), listing this as one of the factors to consider in evaluating variance petitions.) This factor is relevant in determining if a secondary material is a waste, because it is assumed that materials of value utilized in production processes will be handled in a manner designed to conserve them (50 FR 654; January 4, 1985). Many commenters from industry, in fact, indicated that they take extra handling precautions for these types of tanks. Secondary containment is provided for many of the tanks (since many of these tanks are located indoors), and closed top tanks are used to store volatiles. Commenters indicated that few of these tanks were located underground.

More particularly, the extent to which materials are handled to minimize loss is just one of the factors EPA may consider in determining if these processes are deemed to be managing solid wastes. (See 50 FR 617; January 4, 1985.) The decisive factors here, in the Agency's view, are the closed nature of the process (hard connections from point of generation to point of return to the original process), integral relationship of these reclamation steps to production processes, and widespread use and economic value of the activity.

EPA is concerned, however, with the issue of air emissions of volatile hazardous secondary materials. For practical purposes, if such materials were stored in open top tanks, they would be uncontained EPA does not believe that product-like secondary materials would be stored in a completely uncontained manner. (*Cf.* 50 FR 652, n.44 (surface impoundments, another type of uncontained management, are not considered an integral part of a hazardous waste recycling process).) Thus, the Agency considered requiring that volatiles be stored in closed top tanks to be within the scope of the exclusion. EPA has decided not to include this requirement in the final rules, however. The Agency believes that there are other factors and circumstances that would prevent most materials from being stored in open top tanks, especially volatile materials. In particular, to prevent undue contamination from rain or dust or to prevent explosive conditions from occurring, most, if not all, of these tank systems would be closed. Commenters, in fact, indicated that these secondary materials are stored in closed top tanks. Nevertheless, the Agency is still considering whether this exclusion should be modified to state that volatiles must be stored in closed top tanks. If such a provision is to be added, the Agency would propose and request comment before modifying this exclusion. It should be noted that if the Agency finds a situation where highly volatile materials are being stored in open top tanks and large volumes of material are being lost prior to the reclamation step, the Agency may consider today's exclusion to be inapplicable because secondary materials are not being reclaimed and returned to the process. They are being allowed to evaporate. Thus, such open tanks could be deemed to remain subject to the Subtitle C regulations.

It should be noted that, under today's rule, although secondary materials stored in closed-loop reclamation processes that fit within the exclusion of § 261.4(a)(8) are not solid wastes, wastes from their management are solid wastes. Thus, still bottoms from solvent reclamation in a closed-loop reclamation process remain solid wastes assuming no exclusion applies for another reason, and can be hazardous wastes if they are identified or listed. In this regard, the Agency notes that many still bottoms from solvent reclamation are listed wastes, as are the residual spent solvents themselves (Hazardous Wastes F001-005).

Finally, EPA has decided that the exclusion provisions of § 261.4(a)(8) should become effective immediately pursuant to section 3010(b)(1) of RCRA: the rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes (i.e., since persons do not need six months to comply and in light of the unnecessary hardship and expense which would be imposed on the regulated community, we believe these rules should be effective immediately).

More detailed responses to comments on the proposal to establish this exclusion are contained in a separate background document entitled "Response to Comment to Closed-Loop Exclusion."

B. Revisions Made Subsequent to Proposal

In this section, the requirements of the proposed and final rules are reviewed and any revisions to the final rules since proposal (other than those discussed elsewhere in this preamble) are discussed.

Subpart J of Parts 264 and 265 provide the tank system standards for permitted and interim status facilities, respectively. Many comments were received urging the Agency to eliminate any discrepancies between Parts 264 and 265 and to make the two parts as consistent as possible and appropriate. In examining this issue, the Agency concludes that consistency between the two parts is appropriate from the standpoint of protecting human health and the environment and would simplify the permitting process of interim status facilities for both EPA and the affected parties. Consequently, the Agency has made several changes and additions to Part 265 so that it is consistent with Part 264. Proposed Part 265 has also been recodified to make the numbering systems of both Part 264 and 265 comparable. Therefore, the numbering system for Part 265 of the final rule differs from that of Part 265 of the proposed rule. Table 1 in section II.G may be used to cross reference Part 265 in the final and proposed rules.

In developing the proposed rule, EPA assumed that the interim status standards would apply to existing tank systems almost exclusively. Thus, the proposed standards in Part 264 which applied to new tank systems were not included in Part 265. However, as was pointed out in the public comments, owners/operators of new accumulation tank systems as well as replacement tank systems installed at interim status facilities will require standards for new tank systems. Since EPA is promulgating

a phase-in schedule for existing tank systems and is eliminating the ground-water monitoring alternative of the proposal rule, EPA expects a significant number of existing tank systems to be replaced with new tank systems. Therefore, standards applicable to these new tank system installations are required and EPA is including new tank system standards in Part 265 that are consistent with those found in Part 264.

These revisions as well as other specific changes that have been made to the proposed standards are discussed below.

1. Accumulation Tank Systems (§ 262.34)

The proposed rule would have required that owners/operators of 90-day accumulation tank systems comply with many of the provisions of Part 265, Subpart J, including the installation of full secondary containment. Other requirements of the proposal for 90-day accumulation tank systems were:

- Response requirements for leaking tank systems, which would include: removal of the tank system from service, removal of waste from the tank system, containment of the leaked waste, and notification of the Regional Administrator;
- General operating requirements which would include: assurance of compatibility of the tank contents with the tank or its inner liner, provision of 2 feet of freeboard for uncovered tanks, and provision of a waste feed cutoff or bypass system where waste is continuously fed to the tank;
- Closure and post-closure requirements which would include: removal of all contamination at closure or performance of post-closure care as specified for permitted and interim-status tank systems; and
- Inspection requirements and special requirements for ignitable, reactive, or incompatible wastes as would be required for interim-status tank systems.

A number of commenters asked for a special exemption for 90-day accumulation tank systems from the requirements of Subpart J, especially the secondary containment requirements. Another commenter was concerned that since no tank system assessment was proposed, the result would be no requirement to address tank systems that are leaking at the time of promulgation of the rule. Yet another commenter suggested that corrosion protection was just as important for accumulation tank systems as for any other hazardous waste storage tank systems.

As previously stated, EPA continues to believe that there is no significant difference with respect to the risks posed by 90-day accumulation tanks and the general hazardous waste tank population. The Agency did not propose to apply the entire Part 265 standards to accumulation tanks because of its concerns that significant interaction between the owner/operator and EPA would be needed to implement the standards properly. However, numerous commenters stated that the issue of interaction was not indeed a problem in properly implementing many of the technical standards. EPA, in reconsidering its proposed standards for accumulation tank systems, agrees with the commenters that several of the standards not proposed for accumulation tank systems (e.g., integrity tests, installation requirements, corrosion protection) can be implemented without the need for substantial interaction with the permitting authority. Furthermore, EPA believes that 90-day accumulation tank systems should be able to qualify for variances from secondary containment. Thus, the final rule requires that owners/operators of 90-day accumulation tank systems comply with many requirements of the final Part 265, Subpart J, including:

- A one-time assessment of the tank system, as discussed above, including the results of an integrity test;
- Installation standards;
- Design standards including an assessment of corrosion potential;
- Secondary containment phase-in provisions;
- Periodic leak testing if the tank system does not have secondary containment; and
- Additional response requirements to a leak, including a report to the Regional Administrator of the extent of the release and requirements for repair or replacement of leaking tanks.

Variance provisions that had been provided in the proposal only for permitted and interim status tank systems are available to 90-day tank systems

The final rule does not require that owner/operators of 90-day accumulation tank systems comply with the final Part 265, Subpart J requirements for preparation of closure and post-closure plans, contingent closure and post-closure plans, financial responsibility requirements, and waste analysis and trial tests Unlike off-site commercial hazardous waste storage and treatment facilities where a wide variety of hazardous wastes are managed, generators generally produce and would thus store or treat wastes that are relatively consistent in terms of their physical/chemical properties. Thus, EPA does not believe that waste analysis and trial tests must be conducted by generators of hazardous waste because of their familiarity with the wastes that they generate. As explained previously in section II.H of this preamble, EPA is conducting a review of the requirements that are imposed on owner/operators of accumulation tank systems and will address the issues of closure and post-closure, contingent closure and post-closure, and financial assurance requirements for accumulation tank systems as part of this review.

This final regulation imposes no additional requirements for 180 (270) day accumulation tanks owned or operated by generators of between 100 and 1000 kg of hazardous waste per month. Concurrently, in today's **Federal Register**, EPA is proposing revised tank system standards that would apply to these generators.

2. Applicability (§§ 264.190 and 265.190)

Under the proposed rule, the requirements of Subpart J of Parts 264 and 265 would have applied to owners and operators of tank systems that store and/or treat hazardous waste, with the exception of those tank systems qualifying for the exemptions provided in § 264.1. Commenters to the proposed rule suggested that EPA reconsider applying the Subpart J standards to many different categories of tank systems. Among these were tank systems storing solid hazardous wastes and temporary tank systems.

a. Storage of Hazardous Waste Containing No Free Liquids. Many commenters recommended that tank systems containing solid hazardous wastes, residues, dried sludges, and other nonliquid wastes be exempt from the Part 264 standards, especially the requirement for secondary containment, because solid hazardous wastes are relatively immobile compared to liquids and generally do not present a threat to ground water.

There is no question that the mobility of nonliquid solid wastes is lower than the mobility of liquids and gases. For example, liquids and gases can be moved through conduits with relative ease while solids can be moved only with difficulty, requiring the use of either mechanical or pneumatic conveyor systems.

Mobility, however, is only one consideration with respect to the applicability of the hazardous waste tank system standards to these wastes. Physical and chemical properties of the solid are also critical considerations. The solubility and hydrophilic (affinity for absorbing water) properties will

determine whether the waste can readily change physical state from a solid to a liquid. Thus, rainwater or high water tables could leach and dissolve some solid wastes from poorly-constructed tank systems rendering the wastes as mobile as liquid wastes. Chemical properties are also important. Some solids, after absorbing small quantities of moisture, can become highly corrosive to tank system materials (e.g., inorganic salts). Additionally, a change in oxidation state of some solid wastes can significantly affect solubility (e.g., a change in the valence state of chromium in chromates and chrome oxides from trivalent to hexavalent can transform the substance from insoluble to soluble).

Although EPA concludes that there is merit to exempting some solid wastes (i.e., those that contain no free liquids) from the secondary containment requirements of today's regulation, with the exception discussed below, this exemption would have to be made on a case-by-case basis. Given the expected small number of tank systems in this category, EPA concludes that the appropriate relief can be given the owner or operator by the variance provisions built into this rule.

Tank systems storing hazardous waste that contains no free liquids are afforded a large degree of protection when located within buildings with impermeable floors: the contents cannot flow out of the tank system, and the tank system is protected from precipitation or other water flowing into it. Furthermore, if no free liquids are present in the waste, the potential for migration of hazardous constituents is substantially reduced. Based on the above factors, EPA concludes that an exemption from the secondary containment requirements of § 264.193 and § 265.193 are appropriate for this limited class of tank systems. To determine the absence or presence of free liquids, as suggested by commenters, EPA method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication No. SW-846), must be used.

In light of the comments regarding tank systems containing solid and other nonliquid hazardous wastes, EPA reviewed its approach to regulation of hazardous waste tank systems managing gaseous wastes. EPA has no reason to believe, nor were data submitted that would lead the Agency to conclude, that releases from tank systems managing gaseous hazardous wastes will not present risks to human health and the environment. Thus, EPA has not revised the proposed regulation regarding this subset of hazardous wastes, and tank systems storing or treating gaseous hazardous wastes are subject to today's final regulation. The variance provisions discussed previously are available to owner/operators of tank systems managing gaseous hazardous wastes.

b. Temporary Tank Systems. Standards for temporary tanks were not proposed. Many commenters requested exemption from the requirements of Subpart J for temporary tanks used for storage of waste in response to a leak or spill, and other temporary, unplanned occurrences where the facility owner or operator would need tank storage but would not have sufficient previous warning to provide such measures as integrity assessments, corrosion protection, or obtain a RCRA permit for the tank system.

EPA has reviewed the comments and has determined that no modifications are required to the proposed rule. Section 264.1(g)(8) provides that the requirements of Part 264 do not apply during immediate response to discharges or threats of discharges of hazardous waste. Section 265.1(c)(11) provides a similar exemption for interim status facilities. Additionally, the Regional Administrator has the authority under § 270.61 to issue an emergency permit in the event he "finds an imminent and substantial endangerment to human health or the environment." The emergency permit can be issued to a non-permitted facility for any hazardous waste or to a permitted facility to allow treatment, storage, or disposal of hazardous waste not covered by an effective permit. The emergency permit issued pursuant to § 270.61 must include, to the extent possible, all applicable requirements of Parts 264, 266, and 270. The emergency permit will be valid for 90 days which should allow sufficient time for the owner/operator to arrange for adequate storage, treatment, or disposal of the hazardous waste.

3. Assessment of Existing Tank System Integrity (§ 264.191 and § 265.191)

As illustrated in Table 1, § 264.191 of the proposed rule addressed the design of hazardous waste tank systems, and also required that the results of tank systems' integrity assessments be submitted to the Regional Administrator. Section 265.191 of the proposed rule addressed the assessment and certification of existing hazardous waste tank systems integrity at interim status facilities for tank systems that would not meet the secondary containment requirements of proposed § 265.193(b)-(d).

Section 264.191 of the proposed rule would require owners and operators of existing and newly-installed hazardous waste storage and treatment tank systems to submit a written assessment to the Regional Administrator of their tank systems' structural integrity and acceptability for the storage and treatment of hazardous waste. These assessments would be used by the Regional Administrator to make a judgment on the acceptability of the tank system design. Under proposed § 264.191, information that would be addressed for all tank systems in the assessments would include (1) standards for the design and construction of the tank and ancillary equipment and (2) hazard characteristics of the waste(s) to be handled in the system. In addition, for existing, used, and reused tank systems, the following information would also be required: (1) description of the tank (for example, size, age, and material of construction); (2) estimated remaining life of the tank; (3) results of a tank integrity test; (4) factors affecting potential corrosion and type and degree of corrosion protection provided; and (5) design measures to protect the tank from vehicular traffic, floods, and seismic phenomena.

In a reorganization of the final regulation, §§ 264.191 and 265.191 now address assessment of the integrity of existing hazardous waste tank systems. Design of new hazardous waste tank systems is now addressed in §§ 264.192 and 265.192 along with installation requirements. Additionally, in response to comments that the Agency should reassess the consistency of the proposed regulations for permitted, interim status, and accumulation tank systems, §§ 264.191 and 265.191 have been modified to require similar information to be included in tank system integrity assessments for interim status, accumulation, and permitted hazardous waste tank systems. Also, a performance standard has been added to § 265.191 to ensure that the purpose of the integrity assessment is carried out. This objective is satisfied in the Part 264 requirements by the Regional Administrator's independent review of the integrity assessment conducted on behalf of the owner/operator.

Comments were received on a variety of the proposed design and assessment requirements. Those related to the hazardous waste tank integrity assessment requirements are addressed in this section of today's preamble.

Several commenters questioned the need for certifications and presented different views with respect to whether experts conducting the assessments should be independent of the owner/operator. EPA analyzed the issue of whether the assessment required in § 264.191 should be conducted by a qualified registered professional engineer and whether the registered professional engineer could be employed by the owner or operator. The Agency believes that the one-time assessment should be made by a person who does not have a conflict or the appearance of a conflict of interest. Accordingly, the word independent has been added to the final rule to clarify that employees of the owner/operator cannot make the assessment. The Agency's position in this regard is consistent with other types of certification programs which require assessments and certifications to be made by independent parties. For example, the Subpart G—Closure and Post-Closure regulations in § 264.115 require that both the owner/operator and an independent registered professional engineer certify that the facility has been closed in accordance with the specifications in the approved closure plan Additionally, the Securities and Exchange Commission requires that all publicly-traded companies provide independent audits of financial information. Similarly, grants issued under the Clean Water Act must be accompanied by independent audits.

Several commenters also objected to the 0.05 gallon per hour leak test standard as being unmeasurable or arbitrary. Others supported this proposed leak testing standard. As discussed previously, the state-of-the-art of leak testing procedures is such that it is not possible to measure reliably for leaks to this degree of accuracy, Therefore, the final rule for both §§ 264.191 and 265.191 removes the leak test standard of 0.05 gallons per hour. EPA will continue to study the entire issue of leak detection and plans to publish guidance in the future regarding leak detection methods and procedures. In the meantime, EPA has included general performance standards in the final regulation that require that a leak test be capable of accounting for temperature fluctuations, tank end deflection, vapor pocket effects, and water table effects. The factors were added based on comments on the June 26, 1985 proposed hazardous waste tank system regulations. EPA's prior knowledge of potential problems associated with tank tightness testing, and on the OTS survey, which found that failure to take account of these effects rendered many commercial tank tests extremely unreliable. In addition, § 264.193 and § 265.193 require that a qualified registered professional engineer review and certify that the selected annual leak testing method(s) is in accordance with sound and acceptable engineering practices for the tank system being evaluated. For additional discussion of this issue, refer to section IV.B.5.c of this preamble.

EPA proposed that tank integrity assessments be conducted within 6 months of the effective date of the rules. Several concerns were voiced by commenters regarding the number of qualified leak testers, the availability of funds to perform the assessment, the interruption of facility schedules (yearly shutdowns for maintenance are often necessary), and the amount of time necessary for compliance for large facilities. Some commenters were concerned with the inadequacy of tank integrity testing methods, and asked for an extension or elimination of the first-time inspection requirement for interim status tank systems based on this factor alone.

EPA has further evaluated the six-month deadline imposed for the one-time assessment. The Agency concludes that there are potential problems associated with this requirement. Based on the results of the OTS study of available tank system tightness testing methods, it is likely that available commercial methods will need to be modified to meet the general performance standards contained in the final regulation. Additionally, it will be necessary to test the accuracy of the new methods and to train personnel in the use of the new methods. For these reasons, the final rule establishes a deadline of twelve months for the one-time assessment. EPA believes that this extension will afford sufficient time to ensure that qualified methods and personnel are available to conduct integrity assessments of hazardous waste tank systems.

The proposed rule in § 264.191 would have required that, as part of the assessment of the adequacy of the design of an existing system, an estimate of the remaining useful life of the tank system be made. Commenters expressed the concern that an estimation of this kind would be subjective and thus of questionable value. While disagreeing with the commenters that estimates of this nature are of little value, the Agency is now adopting a phase-in approach for secondary containment and that periodic tank system integrity assessments be made prior to the phase-in. Thus, EPA concludes that the requirement to estimate the tank system's remaining useful life is no longer necessary. Instead, §§ 264.191 and 265.191 require that the age of the tank system be documented for use in determining when secondary containment will be required because of the phase-in requirements of this final regulation.

4. Design and Installation of New Tank Systems (§ 264.192 and § 265.192)

As illustrated in Table 1, § 264.191 of the proposed rule would have addressed design and § 264.192 would have addressed installation of new hazardous waste tank systems at permitted facilities. The proposed Part 264 standards were formulated to ensure that a tank system is acceptable for storing or treating hazardous wastes and also addressed the handling and installation of new tank systems, including backfill requirements, tightness testing requirements before placement into service, corrosion protection requirements, and installation supervision requirements.

In today's regulation, both design and installation of new permitted hazardous waste tank systems are addressed in § 264.192. As pointed out by commenters, the proposed rule was deficient in that it did not specify requirements for the design and installation of new tank systems at interim status facilities. As previously discussed, new hazardous waste tank systems may be installed by owner/operators of interim status facilities and by generators. Thus, this final rule now addresses design and installation of new hazardous waste interim status and accumulation tank systems in § 265.192. As suggested by commenters, § 265.192 is consistent with § 264.192 in its treatment of new hazardous waste tank systems.

For the purpose of today's regulation, the term "new tank system" means not only newly-manufactured tank systems that will be put into service for the first time but also those other tank systems that even if in existence and in use prior to the promulgation date of today's regulations are then reinstalled and used as replacement tank systems for existing hazardous waste tank systems. Likewise, an existing tank system that is not being used for the storage or treatment of hazardous waste, but is then put into service or converted to use as a hazardous waste storage or treatment tank system subsequent to the promulgation date of today's regulation is considered to be a new tank system.

One commenter noted the potential effect of frost heave on tank systems in northern States and suggested a change in the design requirements to cover this contingency. EPA agrees that frost heave, where applicable, is an important factor that needs to be taken into account in the design of a tank system and is thus adding the consideration of such to the items that need to be addressed in the design standards in § 264.191 and § 265.191.

Sections 264.191 and 264.192 of the proposed rule would have required that the type and degree of corrosion protection needed to ensure the integrity of new hazardous waste tank systems be determined by a corrosion expert and that the installation of any cathodic protection system be supervised by a corrosion expert. Additionally, § 264.192 of the proposed rule would have required an assessment of the need for corrosion protection measures for existing tank systems.

Regarding the corrosion protection issue, one commenter suggested that more flexibility was needed in responding to corrosion threats. Other comments expressed reservations about the feasibility and necessity of retrofitting existing tanks with corrosion protection devices. Another commenter suggested that double-walled tanks be exempted from the corrosion protection requirements.

As discussed previously, EPA is requiring that all existing tank systems be provided with secondary containment if they are found to be leaking or by the time the tank system reaches 15 years of age. The 15 year timeframe represents the approximate median time to failure for those underground steel tank systems that were the subject of studies discussed previously in this preamble. EPA has selected this approach on the basis that underground steel tank systems are the only tank systems for which reliable data are available. For this reason, the Agency believes that a requirement to provide existing tanks with corrosion protection before phase-in of the secondary containment requirements of today's final rule is redundant because the basis of the phase-in of secondary containment accounts for the fact that most hazardous waste tank systems currently in use do not have corrosion protection. Therefore, EPA has modified the final rule and no longer requires that existing primary tank systems be retrofitted with corrosion protection prior to the mandatory phase-in of secondary containment.

EPA also believes that the corrosion protection measures proposed represent the spectrum of the technology that is currently available, and are consistent with NACE recommended practices. Therefore, EPA believes that the corrosion protection requirements as proposed are sufficiently flexible and capable of meeting the corrosion protection needs of hazardous waste tanks. The Agency also believes that double-walled tanks that are constructed of metal, or that have metal components, should not be exempt from the requirements to provide adequate corrosion protection measures. EPA believes that it is important to ensure the integrity of the secondary containment structure so that it will be able to provide the function that it is intended to perform (i.e., containment so that the interstitial monitoring device is capable of detecting releases).

A primary function of the secondary containment system is to provide a means for accumulating leaks from the storage or treatment tank system so that a leak can be detected by leak detection methods before its release to ground water or surface water. Therefore, it is important that the integrity of the secondary containment system be maintained because a breach in the secondary containment system can lead to unreliable leak detection and result in subsurface releases from underground, inground, or onground tank systems. Also, failure of the secondary containment system can lead to intrusion of ground water into the interstitial space between the tank and secondary containment systems with consequent potential for corrosion of the entire system. For these reasons, EPA believes that corrosion protection systems should be installed for secondary containment systems constructed of steel or other materials subject to corrosion.

For the same reasons discussed previously, EPA has revised Parts 264 and 265 so that all interim status and permitted, as well as existing and new tank systems, are more consistently managed. EPA believes that interim status and permitted tank systems should be subject to the same requirements since there is no information that would suggest that the threats to human health and the environment differ for these two types of tank systems. On the contrary, the risks posed by interim status and permitted tank systems would be similar under similar conditions (e.g., tank size, material stored or treated, hydrogeology, proximity to a drinking water source). Performance standards have been added to § 265.192 to ensure that the purposes of the design and installation requirements are achieved. This objective is satisfied in the Part 264 requirements by the Regional Administrator's independent evaluation of the design of new hazardous waste tank systems.

5. Containment and Detection of Releases (§§ 264.193 and 265.193)

Secondary containment is the key element in EPA's strategy to ensure the proper management of hazardous wastes stored and treated in tank systems. Based on EPA's studies, it is likely that over time tank systems will experience failure. As discussed previously, secondary containment with interstitial monitoring ensures that a failure of the tank system will be detected before there is a release to the environment.

Several commenters urged that more time be allowed for installing secondary containment systems than the one year that would have been allowed in the proposed regulations, especially for facilities with multiple tanks or those located in areas where the availability of construction equipment or qualified personnel is limited. As discussed previously, in a substantive change from the proposed rule, EPA has decided, in the final rule, to allow a phase-in schedule for installing secondary containment systems that is based, in part, on the age of the tank systems. Therefore, except for those tank systems that would require secondary containment in the relatively near term due to advanced age (i.e., tank systems that are approaching 15 years of age), considerable time is available for owner/operators to provide secondary containment for their existing tank systems. For those tank systems that must be provided with secondary containment in the near term, for the reasons discussed below, in no instance will secondary containment be required to be installed for tank systems shown to be non-leaking by tank system integrity assessments or by other means sooner than two years from the promulgation date of this regulation. However, leaking tank systems must be taken out of service promptly upon detection of the leak and equipped with secondary containment prior to being returned to service. EPA expects that owner/operators will use back-up tank systems or some form of temporary storage while servicing a leaking tank system.

In evaluating comments on this subject, EPA relied, in part, on a study prepared for the proposed Land Disposal Restrictions Rules for Solvents and Dioxins (51 FR 1602; January 14, 1986). The purpose of this study ("Time Requirements for the Siting, Permitting

and Construction of New Hazardous Waste Treatment Facilities", December 1985) was to determine the time required to plan, design, permit, construct, and start up twenty-three different waste treatment technologies.

This study identified five major critical path activities (planning, design, bid solicitation/evaluation, construction, and start up) in addition to the EPA permit approval activity. Several of these twenty-three treatment technologies, such as neutralization or precipitation, involve equipment that is identical to or similar to the equipment used in the tank systems covered by today's regulation. The study reveals that the minimum time required to plan, design, solicit and evaluate bids, construct, and start up a small chemical treatment system would be from 12 to 17 months, excluding the time for permit application approval. For a large chemical treatment system, about 25 to 29 months would be required.

These schedules included estimates of the time required for site selection, environmental assessment, and Part B permit application preparation. EPA believes, therefore, that the amount of time required to provide secondary containment for existing hazardous waste tank systems will be less than the 29 month period identified for large systems, but is likely to take more than the one year period specified in the proposed rule. Thus, the final rule allows owner/operators a minimum of two years to provide secondary containment for existing hazardous waste tank systems shown to be non-leaking by tank integrity assessments. This will allow ample time to install secondary containment systems.

a. General and Specific Requirements for Tank Systems. Sections 264.193 (b) and (c) and 265.193 (b) and (c) of the proposed rule would define the general performance standards that must be achieved by secondary containment systems. They were as follows: (1) the design of the tank system must take into account normal climatic, hydrological, and operating conditions; (2) materials of construction of the secondary containment system must be compatible with the wastes being handled in the tank system; (3) the secondary containment system must be supported on a properly designed and installed foundation or base; (4) the system must be provided with a leak detection system designed to detect the presence of hazardous wastes in the secondary containment system within 24 hours of entry of liquid into the system; (5) the design must provide for drainage, collection, and removal of the wastes; (6) the system must be designed and operated to contain 110 percent of the design capacity of the largest tank within its boundary; and (7) the system must be designed and operated to prevent run-on or infiltration of outside water sources or precipitation unless the liquids removal system is designed to handle and dispose of such sources properly.

Numerous technical comments were directed at these standards, especially to point out cases and situations where the standards were believed to conflict with specific designs or current practices. The corresponding standards of the final rule, found in §§ 264.193 (c) through (e) and 265.193 (c) through (e), remain substantially as proposed, with the exceptions discussed below.

The proposed rule would require that, in conjunction with secondary containment, a leak detection system be designed and operated to detect the presence of any release of hazardous waste or accumulated liquid within 24 hours of entry into the secondary containment system. Many commenters expressed concern over the requirement that the detection system be able to detect a leak within 24 hours. Based on further evaluation, EPA agrees that, depending on type of detector, waste characteristics, and migration time through backfill materials, the 24-hour detection criterion may not be achievable in some situations. On this basis, the final rule has been amended to allow a leak detection system that will detect a release "within 24 hours or at the earliest practicable time" if it can be demonstrated that existing technologies or site conditions will not allow detection of the release within 24 hours. In no instance would the Agency consider a leak detection system to be adequate if it would allow the release to escape from the secondary containment system before being detected.

EPA had originally proposed a 110-percent capacity requirement for the secondary containment system, intending that this requirement would apply to vault and liner systems. Commenters pointed out that the interstitial volume of a double-walled tank, an acceptable form of secondary containment, would not be capable of meeting the 110-percent capacity requirement. It was not the Agency's intent at proposal to apply this capacity standard to double-walled tanks. Thus, the organization of § 264.193 (b) through (d) (and the corresponding sections of Part 265) has been changed so that capacity of the secondary containment system is specified only for vault and liner systems.

Many commenters stated that the proposed standards that would require 110-percent design capacity were excessive. Many existing industry standards and regulations, such as those published by the National Fire Protection Association, specify that aboveground secondary containment systems be capable of containing 100 percent of the storage tank volumes. Several commenters also explained that they have installed secondary containment in accordance with State regulations that specify 100 percent of the tank design capacity. The Agency agrees that 100 percent secondary containment capacity is sufficient to contain even catastrophic releases from tank systems. Therefore, the final rule is amended to require that vault and liner systems contain 100 percent of the actual volume of the largest tank within their boundaries.

Section 264.193(c) of the proposed rule specified that secondary containment must include one or more of the three most common types of secondary containment available: external liners, vaults, and double-walled systems. Equivalent devices would be allowable if approved by the Regional Administrator. This requirement was not intended to endorse any particular type of containment system over another. If properly designed, installed, and operated, each of the methods is expected to provide adequate protection of human health and the environment. The requirements of this section of the final rule. therefore, remain the same as in the proposed rule.

EPA solicited comments on the feasibility of allowing the use of a synthetic membrane liner with interstitial monitoring installed inside the primary containment device as an alternative means of achieving secondary containment. The comments that were submitted on this subject presented opposing opinions on the acceptability of this alternative as an equivalent form of secondary containment. The Agency has very little data regarding the current use of and reliability of internally fitted membrane liners. Additionally, EPA has concerns about the ability to maintain an interstitial space between the membrane liner and the tank and the consequent impact on the ability to reliably detect releases from the membrane liner. Since no additional data were offered by public commenters, at this time, EPA is unable to evaluate this alternative approach to secondary containment. Therefore, the final regulation does not specifically allow the use of a membrane liner as an acceptable

method of secondary containment. It is possible, however, that an owner/operator's specific design will be approved by a Regional Administrator as a system equivalent to secondary containment with interstitial monitoring.

Section 264.193(d)(1) of the proposed rule would provide design standards for external liners used for secondary containment. It specified that liners are to be free of cracks or gaps and installed to cover all surrounding earth likely to come into contact with the waste if a release occurred. It explained that external liners may be used to contain releases from aboveground, inground, and underground tanks and that owners and operators who use an external liner to provide secondary containment must ensure that the liner provides a complete envelope that will prevent both lateral and vertical migration of wastes from the containment system. It required that a leak-proof connection between the tank and piping containment systems must be provided and that compatibility between the liner and the wastes to be handled must be ensured so that the integrity of the liner would be maintained.

Some commenters suggested that certain specific liner performance criteria be incorporated into the standards. In order to provide sufficient flexibility in selecting an appropriate liner material and given the ever-improving technology for liner materials, the Agency has chosen not to establish specific liner performance criteria at this time. EPA believes that such criteria are best discussed in a guidance document. Due to the important role of liners for use in landfill, surface impoundment, and waste pile design and operation, substantial information has been gathered by EPA on the subject of liner performance. The Agency will publish available information on specific liner performance in a guidance document to be issued prior to the effective date of this regulation.

No other substantive comments were received on these proposed requirements and they remain in the final rule under § 264.193(d)(1). Identical requirements have been added to the final rule under § 265.193(d)(1) in order to help maintain a consistent approach between interim status and permitted standards.

The standards in § 264.193(d)(2) of the proposed rule would have required that a vault system be constructed so that it is liquid-tight; that is, it must provide a continuous structure with leak-proof joints. Water stops or seals on all joints must be chemically compatible with the waste being stored or treated. The proposed rule would require that concrete vaults, one of the most common types of vault systems now in use, be lined with a nonporous, impermeable interior coating that is compatible with the waste being stored, on the basis that concrete is porous and susceptible to cracking. The proposed rule would also require that the external surface of vault containment structures be provided with a moisture barrier to prevent water from being absorbed by the concrete and entering the interior of the secondary containment area.

Several commenters recommended that the requirement for interior coating be amended to require interior coating only where it is necessary to prevent the migration of waste through the concrete; others recommended that it be eliminated entirely. Further review of this issue by EPA concludes that concrete, as a generic term, can vary widely in specific composition and characteristics, making it extremely difficult to establish a specification for concrete that would ensure resistance to the wide range of hazardous materials that may come in contact with a vault system. Thus, some type of protective internal coating or liner is needed to maintain the integrity of concrete vaults. The Agency has, however, expressed this requirement in terms of a broad performance standard so as not to preclude operating flexibility, and thus is not recommending any specific type of liner coating or liner as at proposal.

Comments concerning the requirement for an exterior moisture barrier for vaults stated that the moisture barrier should not be required, except where vaults that are in contact with the soil or in locations where potential for ground-water infiltration exists. Other commenters raised the concern that retrofitting an exterior moisture barrier could be costly relative to the benefits achieved. EPA reevaluated the proposed requirements and concludes that the use of moisture barriers to prevent infiltration of ground water into an underground or inground vault should be required only when the vault is subject to hydraulic pressure. This is a condition that is most likely to exist when a vault is completely or partially submerged below the water table at some time. EPA has also determined that other methods are currently available that could reduce or eliminate water infiltration (such as well-point installation, subsurface drain tiles, or slurry walls). Thus, EPA has modified the final rule to require that all vault systems, both new and existing, be provided with an external moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the system is subject to hydraulic pressure.

A significant concern addressed in the proposed rule was the risk of fire or explosion in vaults. Section 264.193(d)(2)(iii) of the proposed rule would require vaults containing tanks storing or treating ignitable wastes to be backfilled to minimize the possibility of fires or explosions. Several commenters objected to the backfilling requirement because: (1) fire protection codes and practices may not allow backfilling in the case of ignitable substances; (2) backfilling prevents visual inspection of the vault interior and tank exterior surfaces; and (3) the cost of remedial action is increased in the event of a release. Upon further consideration of this issue, EPA concludes that the explosion hazard associated with vaults is small and that there are relatively inexpensive and reliable equipment and instrumentation systems to reduce the risks of explosion. These systems include preventative measures such as equipment grounding and the use of electrical equipment meeting explosion-proof service. In addition, suppression systems can also be installed which use an explosive vapor detector, and provide an inert flooding agent such as a fluorochlorohydrocarbon to flood the vault automatically if explosive conditions exist. The final rule thus eliminates the backfilling requirement for vault systems as the only means to protect against fire hazards and substitutes the requirement that secondary containment vaults for tanks storing or treating ignitable wastes must be provided with a means to protect against the formation and ignition of explosive vapors within the vault system. Backfilling would be an acceptable method. Also, because some reactive wastes can lead to the formation of ignitable or explosive vapors, today's regulation requires that secondary containment vaults for storing or treating reactive wastes that may lead to the formation of ignitable or explosive vapors must also be provided with a means to protect against the formation and ignition of explosive vapors within the vault system.

The standards in § 264.193(d)(3) of the proposed rule would require that double-walled tank systems be designed as integral structures that are completely self contained, with interstitial leak detection monitoring. It would allow the use of liquid, vacuum, or pressure-type detection systems. It would require that corrosion protection be provided for metal double-walled tanks if it is determined to be necessary. As previously discussed in section

IV.B.4 of this preamble, EPA believes that corrosion protection of double-walled tanks is necessary, contrary to the opinion of one of the commenters. The final rule does not change the standards for double-walled tanks, except, as discussed previously, to modify the proposed provision requiring 110 percent secondary containment volume.

In § 264.193(e) and § 265.193(d) of the proposed rule, EPA would require secondary containment for all new ancillary equipment as well as for the ancillary equipment of all existing hazardous waste storage and treatment tank systems that did not choose to implement a ground-water monitoring program. This requirement would have applied to both aboveground and underground piping systems.

Many commenters supported the application of secondary containment to the ancillary equipment or most ancillary components. Commenters noted, however, that the overwhelming majority of leaks from the ancillary equipment occur in certain components of piping systems, and not in the more extensive sections of straight-run piping with welded connections. EPA's reevaluation of the available data on releases from tank systems shows that leaks and ruptures from aboveground piping systems are primarily associated with certain components such as flanges, valves, and piping connections, not straight runs of piping with welded connections, probably because they often employ pipe thread or gasket-type seals and are more susceptible to stresses than straight-run welded piping. Technologies that are both cost-effective and reliable are available to provide containment for many ancillary equipment components. For example, local jacketing provides effective secondary containment for components such as flanges, valves, and fittings, and can be provided with leak detection equipment.

The Agency concludes that the potential for leakage from straight runs of aboveground welded piping, sealless pumps, and pressurized aboveground piping equipped with automatic shut-off devices is substantially lower than for other components of the ancillary equipment systems. Thus, the requirements of proposed § 264.193(e) and proposed § 265.193(d) have been modified in today's final rule to exclude the requirement of secondary containment for aboveground piping (exclusive of flanges, joints, and valves unless they are sealless and welded to the piping), sealless or magnetic pumps, and pressurized aboveground piping systems with automatic shut-off devices that can be visually inspected for leaks on a daily basis. The final regulation (in § 264.195 and § 265.195) requires that these ancillary equipment systems be visually inspected on a daily basis to ensure that leaks are not occurring.

The final rule requires secondary containment for underground piping systems, including straight runs of underground pipe, because of the potential for failure caused by corrosion and/or the inability to detect releases from the underground piping systems.

b. Deletion of Ground-Water Monitoring Alternative. As discussed in section III.B.6.a of this preamble, the Agency has removed the provisions of proposed § 264.193(f) and § 265.193(e) that gave owners/operators the option of instituting a ground-water monitoring program in lieu of secondary containment. Instead, owner/operators of all hazardous waste tank systems must either provide full secondary containment or obtain a variance to the secondary containment requirements. However, as explained previously, the technology-based variance is not available on the basis of ground-water monitoring technology because the overall strategy for regulating hazardous waste tank systems is based on the prevention of contamination of ground water by releases from tank systems.

c. Leak Testing and Tank System Integrity Assessment Requirements. In § 264.193(h) and § 265.194(d) of the proposed rule, EPA would require all underground tank systems that do not have secondary containment to be leak tested semiannually. The leak testing or tank system tightness testing method selected was required to detect leaks equal to or greater than 0.05 gallons per hour. Many commenters expressed a concern that the accuracy requirement may not be achievable by commercially-available tank system tightness testing techniques. Some commenters felt that the accuracy standard should be based on tank size, while others stated that there is not enough good field data to establish a standard at all. In response to comments, EPA has reconsidered the reliability of tank system tightness test methods. While some techniques may be capable of achieving the 0.05 gallon per hour accuracy threshold in specific instances, EPA concludes that variations in tank system characteristics, operating procedures, calibration and maintenance of leak detection devices, and the level of experience and proficiency of test personnel may not allow achievement of this accuracy on a consistent basis.

Many factors can affect tank system tightness testing accuracy, including temperature, barometric and hydrostatic pressure variations, tank size and design, physical characteristics of the waste (e.g., viscosity, volumetric coefficient of expansion, and uniformity of the liquid waste), variations in structural support provided by soil or fill characteristics, and leak detector characteristics. An example illustrates the volumetric sensitivity of tank system tightness tests to temperature for a tank storing a waste hydrocarbon solvent. A temperature rise of only 0.02°F in one hour would mask a leak of 0.084 gallons per hour in a 6.000-gallon tank storing the waste solvent. On the other hand, a leak of 0.05 gallons per hour in a 4-inch diameter pipe experiencing the same temperature change can be detected in a pipe up to 9,000 ft long. Because smaller volumes are associated with piping, integrity tests are much more accurate for piping.

EPA believes that the level of accuracy attainable by leak testing methods must be reviewed periodically as the technology improves. In this final rulemaking, EPA has decided not to specify a minimum acceptable accuracy requirement for hazardous waste tank system tightness testing. Rather, EPA has chosen to include in Parts 264 and 265 general performance standards to ensure that the leak testing method is capable of properly compensating for water table effects and temperature effects and to address the problems posed by tank end deflections and vapor pockets. EPA is currently conducting research on the effectiveness of tank system tightness testing technologies at the EPA Research Facility in Edison, New Jersey. The Agency hopes to be able to use the information gained from this research to recommend the use of specific methods of tank system integrity testing. However, it is unlikely that these methods will ever be as reliable as leak detection methods employing secondary containment and interstitial monitoring, in part because it is unlikely that tank tightness testing can be conducted on a routine basis (e.g., daily) because of the high costs of so doing.

In a modification to the proposed rule, EPA will allow owner/operators of underground tanks that can be entered for inspection to conduct internal inspections or other tank integrity assessments, including tank tightness testing, rather than to specify that tank tightness test methods must be employed. The Agency is making this change, which was strongly supported by commenters, to ensure that owner/

operators are able to use the most reliable methods available to assess the integrity of their hazardous waste tank systems. In certain instances, it is probable that internal inspection or some other form of integrity assessment may be shown to be preferable to tank tightness testing.

Commenters also addressed the issue of leak testing frequency. Most felt that the semi-annual leak testing requirement was excessive. Specific points raised were that (1) a sufficient number of qualified leak-testing personnel do not exist, (2) tank testing should be scheduled to coincide with annual shutdowns for maintenance and repair, and (3) leak testing every six months represents a significant increase in operating costs.

In this final rule, leak testing will be used during the period of phase-in of secondary containment to identify leaking tank systems. As discussed previously, those systems found to be leaking will be taken out of service immediately. Underground components of tank systems, or components for which a leak occurred in an area that cannot be visually inspected will be provided with secondary containment prior to being placed back into service. The final rule requires that such tests be conducted on an annual basis. Leak testing methods that meet the performance standards included in today's final rule will be able to detect releases in the range of 0.1 gallons per hour that develop during the period of the phase-in of secondary containment. Once secondary containment is phased-in, risks associated with leaks that are undetectable by present leak testing methods will be eliminated.

Proposed §§ 264.193(g)(9)(ii) and 265.193(e) addressed tank integrity testing requirements for owner/operators of inground and aboveground (including onground) hazardous waste tank systems not equipped with secondary containment with interstitial monitoring (i.e., those owner/operators electing to comply with the requirements of the proposed ground-water monitoring alternative). These proposed standards would have required owner/operators to assess the integrity of the tank system in the event that there was, at any monitoring well, a statistically-significant increase in the parameters or constituents measured as part of the ground-water monitoring alternative. Additionally, as explained previously, proposed §§ 264.191 and 265.191 would have required an initial assessment of tank system integrity, including inground and aboveground tank systems.

As the secondary containment requirements of today's regulation are being phased-in over a period of time, EPA believes that it is important to assess the integrity of hazardous waste tank systems during the phase-in period. Therefore, today's regulation requires in § § 264.193 and 265.193 that periodic integrity assessments be conducted for completely aboveground, onground, and inground hazardous waste tank systems, as well as for the underground tank systems discussed above. Integrity assessments of ancillary equipment must be conducted annually. Available methods include the various pipe system tightness tests and, to a limited extent, visual inspections.

For permitted tanks other than non-enterable underground tanks, a schedule and procedure must be developed during the permitting process for assessing the overall condition of the tanks. In the absence of a permitting process applicable to interim status and accumulation tank systems, EPA has determined that an internal inspection or other tank integrity examination that addresses cracks, leaks, corrosion, and erosion must be performed at least annually for tanks other than non-enterable underground tanks. As explained previously, for non-enterable underground hazardous waste tank systems, leak testing procedures are required that meet the general performance standards established in today's regulation.

d. Variances from Secondary Containment. Sections 264.193(i) and 265.193(f) in the proposed rule provided a variance from all or part of the secondary containment requirements if the owner or operator could demonstrate to the Regional Administrator that the location of the tank system and alternative design and operating practices would prevent hazardous waste from reaching ground or surface waters at any future time. As explained previously in section III.B.5.b.ii, the final rule, in § 264.193(g) and § 265.193(g), allows hazardous waste tank system owner/operators to seek both technology-based and risk-based variances from secondary containment requirements based on either (1) a demonstration of no migration of hazardous waste constituents beyond the zone of engineering control or (2) a demonstration of no substantial present or potential hazard to human health and the environment.

As with all variances, the burden of demonstrating that a variance is appropriate remains with the applicant. If the Agency is not persuaded that the information provided makes the necessary demonstration with great certainty, the variance will be denied.

(i) *Technology-based variance.* The criteria that the applicant must use when preparing requests for a technology-based variance from the secondary containment requirements of this regulation are specified in § 264.193(g)(1) and § 265.193(g)(1). Essentially, the applicant must be able to demonstrate that his alternative design and operating practices together with location characteristics will prevent the migration of hazardous waste or hazardous waste constituents into the ground water or surface water at least as effectively as secondary containment with leak detection. The key element of this variance mechanism is the ability of the owner/operator to contain releases from his tank system within an area under his control that, upon detection of a release, can be readily cleaned up prior to the release of hazardous waste constituents to ground water or surface water.

The Agency will require that the application for variance include a complete and thorough demonstration that the alternative system will provide equal prevention of migration as that provided by secondary containment with interstitial monitoring. The application will undergo rigorous review by the Regional Administrator to ensure that the applicant makes the demonstration with great certainty. Owner/operators are cautioned that EPA has evaluated available release detection systems as a part of this rulemaking and has determined that inventory monitoring, tank tightness testing, and unsaturated zone monitoring are not as reliable at present as secondary containment with interstitial monitoring. However, EPA is aware that technology could improve or that site-specific conditions may exist at some locations that might enable performance equivalent to secondary containment with interstitial monitoring. Therefore, the Agency has provided a mechanism that allows owner/operators of hazardous waste tank systems to seek a technology-based variance from the secondary containment requirements of this regulation.

This variance mechanism is designed to allow an owner/operator the opportunity to demonstrate that an innovative tank system design or leak detection method will be capable of preventing contamination of ground water or surface water or that a leak detection method not believed to be generally reliable (e.g., unsaturated zone monitoring) will be reliable for his

hazardous waste tank system. The applicant must take into consideration the nature and quantity of the hazardous waste, the proposed alternative design and operating conditions, the hydrogeologic setting, and all other factors (e.g., depth of soil underlying the tank system, soil properties including porosity and likely degree of saturation during operation of the tank system, and fluid or constituent viscosity) that influence the mobility of the hazardous waste constituents and the potential for their migration. The applicant must also demonstrate the reliability and capability of his alternative system design (and release detection method) and operating practices in detecting releases and in preventing the migration of hazardous waste constituents to ground water and surface water.

If a technology-based variance is granted, the Regional Administrator will substitute a set of requirements in place of secondary containment that will ensure that the system for which the variance has been granted is maintained and operated in a manner than will prevent the migration of hazardous waste to ground water or surface water. If hazardous waste does reach ground water or surface water, the variance will be revoked.

The Agency discourages the submission of technology-based variance applications in those situations where secondary containment is obviously provided. For example, for tank systems located inside buildings, the building floor, if appropriate berms are constructed, would serve as part of the secondary containment system. The Agency also may deny the variance if the application is incomplete. Additionally, the Agency discourages the submission of unpersuasive applications. For example, earthen berms are generally not capable of preventing the migration of hazardous waste or hazardous waste constituents and would not qualify for a variance.

If a release of hazardous waste occurs at a tank system operating under the technology-based variance, the owner or operator must comply with response measures required by §§ 264.193 and 265.193. The response measures that will be applicable to releases from hazardous waste tank systems granted a technology-based variance will vary depending on whether migration has occurred outside the zone of engineering control established in the variance process.

If the release is contained within the zone of engineering control, the responses that are required in §§ 264.196 and 265.196 for releases to a secondary containment system would be applicable. The owner or operator must stop the flow of hazardous waste into the tank system and promptly, within 24 hours if possible, empty that portion of the leaking tank system at which the leak or spill has or is occurring in order to prevent any additional release of hazardous waste and to allow inspection and repair to be performed. The owner/operator must also prevent the migration of hazardous waste or hazardous waste constituents beyond the zone of engineering control to ground water or surface water.

In addition, the owner or operator must decontaminate or remove the contaminated soil so that releases from the hazardous waste tank system can be detected and responded to in a manner consistent with the detection and response conditions of the technology-based variance. If this can be done, the tank system must be repaired prior to its being returned to service. If such repair is major, a certification by an independent, registered professional engineer must be obtained and submitted to the Regional Administrator within seven days of returning the tank system back into service. If contaminated soil cannot be removed or decontaminated so that the tank system, upon return to service, will be equipped with release detection capability at least as effective as was in place prior to the release and upon which the technology-based variance was granted, the owner/operator must close the system and provide post-closure care in accordance with §§ 264.197 and 265.197, as appropriate. In this situation, if the owner/operator elects to replace or reinstall the existing hazardous waste tank system, he must provide secondary containment consistent with the requirements of §§ 264.193 or 265.193 and comply with the requirements of §§ 264.192 or 265.192, or reapply for a variance from the secondary containment requirement of today's regulation.

If the release migrates beyond the zone of engineering control, the Agency will consider the technology for which the technology-based variance was granted to have failed. In this case, the owner/operator must follow all procedures in §§ 264.196 and 265.196 applicable to a release from a secondary containment system or a single-walled tank system to the environment. Furthermore, the owner or operator must prevent the migration of hazardous waste or hazardous waste constituents to ground water or surface water, if possible. In addition, the owner or operator must decontaminate or remove the contaminated soil. If he cannot decontaminate or remove the contaminated soil or if ground water has been contaminated, he must close the system and provide post-closure care in accordance with §§ 264.197 and 265.197, as appropriate. In all cases, including those where contaminated soil can be removed or decontaminated and ground water has not been contaminated, if the owner/operator elects to repair, replace, or reinstall the existing hazardous waste tank system, he must provide secondary containment consistent with the requirements of §§ 264.193 or 265.193 and comply with the requirements of §§ 264.192 or 265.192, or reapply for a variance from the secondary containment requirements of today's regulation.

(ii) *Risk-based variance.* The criteria that the applicant must use when preparing requests for a risk-based variance from the secondary containment requirements of this regulation are specified in §§ 264.193(g)(2) and 265.193(g)(2). Essentially, the applicant must be able to demonstrate that as long as the concentration(s) of the hazardous constituent(s) present in the hazardous waste stored, treated, or accumulated in the hazardous waste tank system remain(s) below the requested concentration limit(s), no substantial current or potential hazard to human health or the environment will result. As explained previously, this variance provision is not available to owner/operators of new underground hazardous waste tank systems.

This demonstration is essentially a risk assessment and risk management process in which a determination is made that, in the event of a release from a hazardous waste tank system, the level of contamination of ground water that results will not pose a substantial present or potential hazard to human health or the environment. In making this demonstration, the owner/operator must make a reasonable estimate of the likely release incident that might occur for his hazardous waste tank system. For example, a strong case could be made that the likely release event from a completely aboveground hazardous waste tank system would be a catastrophic release incident (i.e., the entire contents of the tank system would be released). For underground, onground, and inground tank systems, the most likely event might be a continuous release between the time interval of tank integrity assessments. Thus, the owner/operator would, based on the precision and reliability of the method used to conduct the periodic tank system integrity assessments required by today's regulation, assume a

constant release rate that would occur over the time interval between periodic assessments (generally one year). In the event that a release rate cannot be reasonably estimated, the owner/operator would assume that the release incident would be a catastrophic release incident.

Site specific information, such as local hydrogeological characteristics, the facility s waste constituents, and local environmental factors, is needed to assess the potential impact of each hazardous waste constituent on human health or the environment if it were to be released to ground water or surface water. There are two approaches that an applicant can take in this demonstration:

1. There will be no pathway to exposure to the hazardous waste constituents, or

2. The exposure to the ground-water or surface water contaminants will be at concentration levels that do not pose a substantial current or potential hazard to human health and the environment.

In the second approach, the demonstration depends upon determining concentration levels of the ground-water contaminants that do not pose a substantial current or potential hazard to human health and the environment at a potential point of exposure. The allowable hazardous waste constituent concentration limits are derived from these acceptable concentrations.

Agency published acceptable exposure levels for the protection of human health and the environment can be used as allowable hazardous waste constituent concentration limits without going through elaborate exposure pathway analyses or fate and transport modeling. For example, a health-based acceptable ground-water exposure concentration for a constituent that might migrate to the ground water can be used as the allowable hazardous waste constituent concentration limit. However, the allowable concentration limit may need to be modified to include an assessment of any cumulative effects associated with exposure to the hazardous waste constituent. In addition, exposure levels that the Agency established pursuant to a statutory authority that requires risk-benefit balancing or technology-based standards may not always be acceptable for purposes of this variance. It is anticipated that the Agency will periodically publish and update a list of acceptable dose levels that can be used by permit applicants in preparing risk based variance demonstrations. In this regard, EPA intends to issue guidance on the variance provisions prior to the effective date of today's regulation and will update this guidance as necessary.

The type and amount of information needed for a risk-based variance demonstration depends on site-specific characteristics and which approach (either no exposure or no substantial risk) is chosen. Both approaches require information on the physical and chemical characteristics of the waste, flow direction and quantity of the ground water, and hydrogeological characteristics of the site. A demonstration based on the second approach requires additional information. Depending on the basis for the demonstration, one or more of the following must be addressed in greater detail:

1. Current and future uses of ground water and surface water (if applicable),

2. The proximity of the user of the water resources,

3. The existing ground-water and surface water quality,

4. The potential human health risks and environmental damage from exposure to the contaminants, and

5. The permanence of the potential adverse effects resulting from exposure to the contaminants.

For any of the above factors that are not submitted as part of the variance demonstration, justification is required to explain why they do not need to be addressed. Depending on the site characteristics, either approach may require information on the engineered characteristics of the hazardous waste management facility, the rainfall patterns in the area, the existing quality of ground-water and surface water (if applicable), soil type and characteristics (adsorptivity and permeability) determined by soil boring tests, and any current or future institutional ground-water use restrictions. The demonstration for each hazardous waste constituent must be independent.

Sections 264.193(h) and 265.193(h) have been added to the final rule and specify the schedules to be used in requesting variances.

6. General Operatinq Requirements (§ 264.194 and § 265.194)

In the proposed rule, the general operating requirements of § 265.194 included provisions for periodic leak testing and a corrosion assessment. In the final rule, these requirements have been relocated to other sections in Part 265 as part of EPA's reorganization of the rule. The only revision that has not been discussed is the modification to the proposed rule that requires 2 feet of freeboard for uncovered tanks. The comments pointed out that the 2 foot freeboard requirement did not take into account tank volume, thus creating a disparity relative to tank capacity. In order to eliminate this result, EPA has adopted the same language found in § 264.194 which requires that uncovered tanks have sufficient freeboard to prevent overtopping by wave or wind action or by precipitation.

7. Inspection (§ 264.195 and § 265.195)

The requirements of proposed § 264.195 would have included development and implementation of a schedule and procedure for inspection of overfill controls, daily inspection of the aboveground portion of tank systems and data gathered from monitoring equipment, weekly inspection of the construction materials of, and the area immediately surrounding, the externally accessible portion of the tank system, and inspection of cathodic protection systems. The requirements for inspections in § 265.196 would have been identical except that daily inspection of overfill controls would have been required.

Several commenters stated that the proposed schedule of inspections of cathodic protection systems was more stringent than other inspection frequencies specified for cathodic protection systems by other Federal standards and engineering societies (e.g., National Association of Corrosion Engineers (NACE)). After further study of this issue, the final rule has been modified to include the NACE-recommended inspection standards. NACE RP–02–85 (Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems), which EPA has adopted for establishing minimum inspection requirements, was prepared by a task force composed of corrosion consultants, corrosion specialists for oil and gas transmission companies, gas distribution firms, power companies, and communications companies; representatives of tank manufacturers and coating manufacturers/applicators; the National Bureau of Standards; the American Water Works Association; the Department of Transportation; and other corrosion experts.

The NACE document represents the consensus of a wide range of corrosion experts representing manufacturers, government, trade associations, consultants, and firms with experience in corrosion protection of submerged or buried equipment constructed of metal. Since EPA has not undertaken independent research, this consensus offers the most reasoned approach to setting the inspection standards contained in today's final rule. Thus,

consistent with the NACE findings, § 264.195 and § 265.195, now require inspection of a cathodic protection system within six months of installation and annually thereafter to ensure that it is properly functioning. In addition, the rule requires that all sources of impressed current be inspected bimonthly (i.e., every other month).

A few commenters stated that the recordkeeping requirements in the proposed rule would create an unnecessary burden. The Agency strongly disagrees with these commenters; EPA believes that it is important for owner/operators of facilities subject to this regulation to keep a permanent record of their inspections to document their compliance with the rule. Thus, in an addition to the proposed rule, the final regulation at § 265.195 requires that owner/operators of interim status facilities and accumulation tank systems maintain records of required inspections as was proposed for permitted hazardous waste tank systems in § 264.195.

The other requirements of proposed § 264.195 and § 265.195 remain the same as proposed, except that inspection of the construction materials of and the area surrounding the externally accessible portions of the tank and secondary containment systems must be inspected daily. EPA has added this requirement because it will enable the detection of releases or potential releases at the earliest possible time. Additionally, this inspection requirement can easily be incorporated into the daily inspection schedule required for the aboveground portions of tank systems (including all piping and other ancillary equipment). Pursuant to 40 CFR 264.15 and 265.15, any discrepancies found during inspections must be remedied.

8. Response to Leaks or Spills and Disposition of Leaking or Unfit-for-Use Tank Systems (§§ 264.196 and 265.196)

This section of the preamble describes procedures the owner/operator must follow if his tank system has developed a leak or if he determines that a tank system is unfit for use. Paragraph (a) describes what actions must be taken in response to a leak or spill from a tank system which has not been granted a variance from secondary containment. Paragraph (b) describes procedures for disposing of tanks that have leaked or are unfit for use. Procedures for responses to leaks or spills from tank systems with variances are included in §§ 264.193 and 265.193 of the regulations and are in section IV.B.5.d.i of this preamble

a. General Responses to Leaks or Spills. Sections 264.196 and 265.196 specify procedures the owner/operator generally must follow if there is a release (leak or spill) from a hazardous waste tank system. For permitted tank systems, the framework for responding to releases is established, in part, through a contingency plan prepared under Subpart D of Part 264. Section 264.196 of today's regulation expands the requirements beyond those currently required by this plan and imposes other requirements. For interim status and 90-day accumulation tank systems, procedures for responding to leaks and spills are specified at § 265.196 of today's regulation.

The response procedures must be followed if a release is detected through tank testing, visual inspection, interstitial monitoring, or in any other manner.

There are three types of releases that are addressed in §§ 264.196 and 265.196:

(1) Releases from a single-walled tank system to the environment;

(2) Releases from secondary containment systems to the environment (if any); and

(3) Releases from primary containment devices (tank, piping, other ancillary equipment) into secondary containment systems.

Generally, regardless of the type of release, several response measures must be followed. For example, in all cases, the owner or operator must stop the inflow of hazardous waste to that portion of the tank system that is releasing the hazardous waste and must remove hazardous waste from the tank system so that no further release will occur. Other requirements of §§ 264.196 and 265.196 vary with the type of release as described below. A more detailed discussion of each of the response procedures follows.

i. *Stopping of Flow or Addition of Wastes.* The final rule requires that if a leak or spill has occurred, the owner or operator must immediately stop the flow or addition of hazardous waste into the tank system. This requirement applies to all types of releases: leaks or spills to the environment or from the primary containment device to the secondary containment system. The purpose of this requirement is to limit, to the extent possible the quantity of hazardous waste that might potentially be released from the tank system. This requirement is identical to that contained in the proposal. No comments were received relative to this provision.

ii. *Removal of Waste from Leaking Tank Systems.* Today's rule requires that the owner or operator promptly remove hazardous waste from that portion of the primary tank system at which a leak or spill has or is occurring. It also requires that, in the event of a release to a secondary containment system, hazardous waste must be entirely removed from the secondary containment system. The proposed rule would have required the immediate removal of all waste from the tank and containment system when it was found to be leaking. Many commenters objected to that requirement. They suggested: (1) that immediate removal of the waste was only necessary above the leaking portion of the tank; (2) that, for leaks in the ancillary equipment or piping, it is only necessary to isolate the leaking equipment or pipe section for repair or replacement, and (3) that many repairs can be made without complete removal of hazardous waste from the tank system.

EPA agrees with the commenters that removal of all waste from a single-walled leaking tank system may not be necessary under all circumstances. A major concern during a repair operation is the risk of potential exposure or direct contact of maintenance personnel with the hazardous waste. Therefore, the final rule is revised to require measures for isolation of that portion of a single-walled tank system where a release has occurred or is occurring and prompt removal of remaining wastes from the leaking portion of the tank and containment system. The decision to remove all remaining waste should be based upon consideration of health risks to repair personnel and the potential risk for further release to the environment.

For a tank system with secondary containment, all the leaked waste must be removed from the entire secondary containment system. If this were not done, the interstitial monitoring system would not function effectively.

The proposed rule would have required removal of the hazardous waste no later than 24 hours after a leak is detected. Several commenters argued that the 24-hour response time for removal of waste was unreasonable and even impossible for tanks with extensive interconnecting systems, large tanks, and facilities without adequate storage capacity. The requirement in the proposed rule for removal of tank contents within 24 hours has been modified in the final rule to require removal of the remaining waste to commence within 24 hours of detection of the leak and to be completed as quickly as possible so that no further releases occur. In today's final regulation, EPA has modified this

requirement based on its consideration of the range of likely conditions that might be encountered in such situations. Several major problem areas were identified in this analysis. The principal concern was that any such transfer operation be accomplished in such a manner that human health not be threatened. In the event of a leak, time is required to plan the transfer operation so that further spills or accidents are prevented. This cannot always be accomplished within a 24-hour period.

Other logistics problems could prevent removal within 24 hours. If there were not sufficient tank capacity available that was compatible with the wastes being transferred, time would be required to obtain such capacity. This would be a special problem with large, interconnected tank systems. Finally, for extremely large tanks, more time may be required to obtain alternative capacity and to transfer the waste physically.

Removal of wastes from a secondary containment system might encounter similar difficulties. Accordingly, the 24-hour time limit has been modified for these situations as well.

iii. *Containment of Visible Releases to the Environment.* The final rule requires the owner or operator to contain any visible contamination resulting from a release from the tank system to the environment. Only releases from an aboveground portion of a tank system are likely to result in visible contamination. This requirement is unchanged from the proposal. The purpose of this provision is to require that measures be taken to minimize the impact of a release by promptly containing it. An example of this type of response would be the placement of barricades or other barriers to prevent further lateral overland migration of the leak or spill.

In addition, the owner/operators must conduct a visual inspection and promptly remove, and dispose of, any soil that appears to be contaminated. Likewise, if a release has reached surface water and is visible (e.g., an oil sheen), the owner/operator must take immediate action to contain and remove the released material. These actions will result in minimizing the amount of soil or surface water that becomes contaminated and may also avoid more costly future corrective actions.

iv. *Notification of Release to the Environment.* The final rule requires that the owner or operator notify the Regional Administrator within 24 hours after a release to the environment has been detected. If the leak or spill is confined by the secondary containment system, notification is not required. The purpose of this notification is to provide EPA the opportunity, in appropriate cases, to order that correction action be taken. Corrective action may be required pursuant to sections 3008(h), 3004(w), or 7003 of RCRA.

Many of the commenters stated that the proposed notification provisions overlapped with current CERCLA requirements. Under the Reportable Quantity rule (40 CFR, Part 302), a release of a hazardous substance in quantities equal to or greater than its assigned Reportable Quantity (RQ) must be reported immediately to the National Response Center. To avoid duplicative notification, the final rule clarifies that an owner's or operator's report complying with 40 CFR Part 302 will satisfy the notification requirements of this regulation. Commenters on the proposed regulation stated that small leaks and spills should not be reported to the Regional Administrator because of their insignificance. EPA agrees that to report small, insignificant spills should not be required. Accordingly, the final regulation has been modified to require that spills of less than or equal to one pound need not be reported if they can be immediately contained and cleaned up. This is equal to the lowest "reportable quantity" established in the CERCLA reporting regulations. EPA is confident that owner/operators can perform the necessary cleanup of releases of this size without Regional Administrator involvement.

v. *Assessment of Risk Posed by Leaks or Spills to the Environment.* The owner or operator of a permitted, interim status, or 90-day accumulation tank system must, within 30 days of detection of a release, submit a report to the Regional Administrator that estimates the extent of the release. The purpose of this requirement is to provide the Regional Administrator with sufficient data (e.g., size of release, receptors, estimated corrective action, etc.) to make a decision with respect to what type and degree of corrective action, if any, may be appropriate.

For permitted tank systems, the final rule expands the requirements relating to contingency plans prepared pursuant to Subpart D of Part 264. These plans must now include procedures for assessing the risk to human health and the environment caused by a release from a tank system and the remedial actions necessary to mitigate the release. Section 264.196 requires that these procedures be followed if there has been a release to the environment. For interim status and 90-day accumulation tank systems, the final rule expands upon the reporting requirements of 40 CFR 265.56(j).

Pursuant to 40 CFR 265.56(j), owner/operators of interim status or 90-day accumulation tank systems must provide, in a report to the Regional Administrator by 15 days after the incident, certain details of any incident that requires implementing the contingency plan. This report must include:

(a) Name, address, and telephone number of the owner or operator;

(b) Name, address, and telephone number of the facility;

(c) Date, time, and type of incident (e.g., fire, explosion);

(d) Name and quantity of material(s) involved;

(e) The extent of injuries, if any;

(f) An assessment of actual or potential hazard to human health or the environment, where this is applicable; and

(g) Estimated quantity and disposition of recovered material that resulted from the incident.

Today's rulemaking requires that additional items be included in a report to the Regional Administrator within 30 days of detection of a release. These additional items to be addressed are:

(a) Likely route of migration by the release;

(b) Characteristics of the surrounding environment (soil composition, geology, hydrogeology, climate);

(c) Results of monitoring/sampling (if available);

(d) Proximity to downgradient drinking water, surface water, and population areas; and

(e) Remedial actions taken or to be taken.

In response to comments, the Agency has made these requirements more specific than they were in the proposal.

b. Disposition of Leaking or Unfit-for-Use Tank Systems— i. *Tank Systems Without Secondary Containment.* When a tank system without secondary containment is found to be leaking or unfit for use, the owner/operator can close the tank system in accordance with §§ 264.197 or 265.197, or resume use of it if he complies with the following:

(a) *Provide secondary containment:* Sections 264.196(b) and 265.196(b) require that if a leak has occurred in any component of the tank system (i.e., tank, piping), that is underground, that component of the tank system must be provided with secondary containment prior to being returned to service. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an onground tank), the entire component must be provided with secondary

containment before the tank system is returned to service (e.g., in the event that a leak is found on the bottom of an inground tank, the entire tank must be provided with secondary containment prior to the tank system being returned to service). If a leak is detected in an underground piping system, the entire underground piping system must be equipped with secondary containment. This requirement is consistent with EPA's strategy to require secondary containment for those hazardous waste tank systems presenting a substantial risk of release of hazardous waste to surface or ground water. EPA concludes that it would not be prudent to allow that portion of a tank system that has experienced a leak or failure in an inaccessible area to continue to operate without the added protection of secondary containment. This is because leaks in other inaccessible areas of the tank system may be imminent, and it is not possible to anticipate and prevent their occurrence. Any replacement tank system component is considered a new tank system component and must, in addition to complying with the secondary containment requirements of today's regulation, comply with the requirements for new tank systems (certification of design, proper installation practices, etc.). If the tank system is replaced during interim status, a certification by an independent, qualified registered professional engineer must be submitted to the Regional Administrator at least seven days prior to bringing the replacement tank system into use, that attests that the tank system will be capable of storing or treating hazardous waste for the intended life of the system under the anticipated operating condition without permitting a release of hazardous waste to the environment.

(b) *Repair:* In some circumstances, a leaking or unfit-for-use component of a single-walled tank system may be repaired and returned to use without being equipped with secondary containment. If the portion of the leaking or unfit-for-use component is aboveground and can be inspected visually, repair without secondary containment is allowed. This includes such items as flanges, pipe fittings, pumps, and valves that are part of aboveground piping systems.

If major repairs have been performed, the owner/operator must submit a certification to the Regional Administrator seven days after returning the tank system to use. The EPA proposed to require owners or operators to submit a certification by a qualified registered professional engineer that the system, when repaired, was capable of handling hazardous wastes without release for the intended life of the tank system. EPA proposed that this certification be submitted to the Regional Administrator, whenever any repair was performed, at least seven days prior to the return of the tank system to service. The purpose of this requirement was to give the Regional Administrator ample prior notice so that, if desired, an inspection of the repaired tank system could be performed, prior to its being put back into service. Commenters asserted that this requirement was unreasonable. A point they raised was that tank systems are often components of a continuously-operating system, and the requirement for seven day notification would unnecessarily restrict or shut down operations. Another reservation was that the requirement was unreasonable for minor leaks, which are usually quickly repaired.

The Agency has reevaluated this proposed requirement and has determined that it is overly burdensome in some situations. EPA has modified the final rule in §§ 264.196(b) and 265.196(b) to require that the certification of major repairs be submitted within seven days of the tank system being returned to service. This certification would be necessary, for example: for repaired aboveground portions of tanks; for extensive repairs that have been performed subsequent to a rupture or other major loss of structural integrity (e.g., when there is loss of structural integrity as a result of an accident such as puncture by a forklift, a catastrophic event such as fire, explosion, flood, or seismic event, a process malfunction such as overheating or overpressurization, or other event that results from improper design or installation, such as seam-weld breaks, foundation failure, or extensive localized corrosion). Certification is not required for such day-to-day routine maintenance or service practices as replacement or repair of worn portions of tank system components (e.g., valves, bearings, seals), adjustment or repairs to instruments, etc.

ii. *Tank Systems With Secondary Containment.* When a hazardous waste tank system with secondary containment is found to be leaking or unfit-for-use, the owner/operator can close the tank system in accordance with §§ 264.197 or 265.197, or resume its use if he complies with the following:

(a) *Repair:* In the case of repairs to the primary containment system, the same procedures described above for repair of single-walled hazardous waste tank systems would apply. For all repairs to the secondary containment system, the owner/operator must submit a certification to the Regional Administrator seven days after returning the tank system to use. This certification would be necessary, for example: for repairs of tears in liners, cracks in concrete vaults, or rupture of the outer wall of a double-walled tank. Additionally, the owner/operator must comply with the certification requirements of §§ 264.196(f) and 265.196(f).

(b) *Replace:* In the event that the owner/operator decides to replace, rather than repair, the primary containment system of a hazardous waste tank system equipped with secondary containment or to replace the secondary containment system, the owner/operator must comply with §§ 264.192 and 264.193 or §§ 265.192 and 265.193, as appropriate.

9. Closure and Post-Closure Care (§§ 264.197 and 265.197)

Under the previous Subpart J regulations, the closure requirements for tanks (§§ 264.197 and 265.197) were brief:

> At closure, all hazardous waste and hazardous waste residues must be removed from tanks, discharge control equipment, and discharge confinement structures.

The proposed rules made several changes to these existing closure requirements. Identical changes were proposed for both permitted and interim status facilities under Parts 264 and 265. The changes generally parallel the current closure regulations in § 264.258 for permitted waste pile facilities. The proposal extended the closure requirement provisions to include soils and the entire tank system, not just the tank. The proposal also required that tank systems meet the closure and post-closure requirements for landfills if not all contaminated soils could be removed. Tank systems without secondary containment (and thus most likely to have extensive soil contamination and most likely to need post-closure care) were required to prepare contingent closure and post-closure plans, to plan for the possibility of closing as a landfill. Finally, the proposal made conforming changes to the applicability sections of Subparts G and H so that post-closure care requirements would apply to certain tank systems.

The final rules are being promulgated substantially as proposed; however, clarifications were added explicitly listing the closure post-closure, and

financial responsibility requirements which apply to tank systems which intend to close as landfills or to tank systems that must prepare contingent closure and post-closure plans.

The final rule makes five major changes to the previous Subpart J regulations. Each of these changes will be discussed in more detail, along with the rationale for each change and a discussion of any comments received.

First, the closure requirements in § 264.197(a) and § 265.197(a) have been expanded to include the entire tank system, not just the tank. This is consistent with the new definition of "tank system" in § 260.10, and consistent with the Agency's intent that all contaminated hazardous waste management apparatus be removed or decontaminated at closure. Thus, at closure, the owner or operator of a tank system is now required to remove or decontaminate the tank, its ancillary equipment, and its secondary containment system, if used.

Second, the closure requirements in § 264.197(a) and § 265.197(a) have been expanded to include contaminated soils. These new requirements are consistent with previous Agency intent, and with the general closure performance standard in Subpart G to "protect human health and the environment." It is also consistent with the recently promulgated revisions to Subpart G, (51 FR 16422; May 2, 1986), which require explicitly in § 264.114 and § 265.114 the decontamination of soils. It should be noted that decontamination of saturated soils (i.e., ground water) would be necessary for a closure that would not require post-closure care.

Commenters expressed concern over the requirement to decontaminate soil, and the extent and degree to which the soil must be decontaminated EPA has noted these comments but still concludes that the closure and post-closure requirements are both proper and reasonable. The final rule requires the removal or decontamination of all contamination at closure of the tank system. If this is not practicable, the regulation provides for post-closure care of the unit. This regulation does not define the level of decontamination. EPA is currently developing policy on the broad issue of defining acceptable levels of contamination (i.e., how clean is clean) outside the scope of this rulemaking. The new tank regulations are intended to prevent releases from tank systems and to eliminate contamination to the surrounding soil so that neither human health nor the environment is endangered subsequent to closure of the system. Furthermore, the final rule includes a significant change from the proposed rule by establishing a secondary containment requirement for all new and existing tank systems. This should considerably reduce the amount of contaminated soil generated during the lifetime of a tank system, thus substantially reducing the amount of soil requiring decontamination and post-closure care.

The third major change was the requirement in § 264.197(b) and § 265.197(b) that a tank system owner or operator must meet the post-closure landfill requirements of final capping and ground-water monitoring set forth in § 264.310 or § 265.310 in the event that it is not practicable to remove or decontaminate all contaminated soils at closure. This post-closure care requirement was included because there is the potential that a release from any tank system, especially one without secondary containment, could be left unmanaged after closure. The Agency believes that an impermeable cap over the contaminated area will reduce the possibility of the waste in the soil migrating into the ground water. In addition, implementation of a ground-water monitoring program would ensure that human health and the environment are not adversely impacted during the post-closure care period if the contamination moves offsite.

The Agency does not expect nor intend that many tank systems will be closed as landfills. However, this option is being provided to address the possible cases where extensive soil contamination has occurred. Also, the owner or operator cannot decide unilaterally to close his tank system as a landfill. New closure and post-closure plans would have to be prepared and submitted to the Regional Administrator, and these modified plans must still comply with the general closure performance standard to protect human health and the environment.

The fourth major change in the rules (§ 264.197(c) and § 265.197(c)) requires the owner or operator of tank systems without secondary containment to prepare contingent closure and post-closure plans to ensure that they have adequately planned for the possibility of closing the tank system as a landfill. These plans would be used only if all contaminated residues and soils could not be practicably removed at closure. EPA believes that contingent closure and post-closure plans should be required for facilities with tank systems without secondary containment because, if such a tank system has had undetected leaks or spills in the past, it is possible that the material cannot be practicably removed from the soil and that the tank system might have to be closed as a landfill. Implementation of the contingent closure and post-closure plans would ensure that future threats to public health and the environment from these past releases at closed facilities are minimized, monitored, and controlled as necessary.

In this final rule, an owner or operator of a tank system that receives a variance under § 264.193(g) or § 265.193(g) from the secondary containment requirements need not prepare contingent closure and post-closure plans for the possibility of closing as a landfill. Although no public comments were received regarding this point, EPA believes that such plans would not be necessary for such a tank system because the Agency would have previously examined the tank system's design, operation, and location characteristics in determining the likelihood of hazardous waste constituents migrating into ground water or surface water during the post-closure period. Tank systems with secondary containment systems are not required to prepare contingent closure and post-closure plans, because these systems are expected to prevent releases into the environment. However, under § 264.197(b) or § 265.197(b), if it is determined that *any* tank system has released hazardous waste which cannot be removed or be decontaminated at closure, then that tank system must also meet the post-closure requirements of § 264.197(b) or § 265.197(b). Similarly, if there is evidence of leakage from a tank system before the installation of secondary containment, the leak would have been addressed pursuant to § 264.196 or § 265.196. (See section V.E of this preamble.)

In the final rule, additional language was added to clarify the Agency's intent that the cost estimates and corresponding financial responsibility must reflect the costs of complying with the contingent closure and post-closure plans, if those costs are greater than the costs of complying with the expected closure plan.

The fifth change from the previous Subpart J requirements makes conforming changes to the applicability sections of Subparts G and H, (§§ 264.110, 264.140, 265.110, and 265.140) to implement fully the changes to the closure requirements for tank systems in § 264.197 and § 265.197. These conforming changes make it explicit that a tank system which closes as a landfill and performs post-closure care as a landfill is subject to the general post-closure care and corresponding post-closure financial responsibility requirements for disposal units in

§§ 264.116 through 264.120, and §§ 264.144 through 264.146 (and the parallel sections in Part 265). Previously, a tank system was subject only to the general closure requirements and the corresponding closure financial responsibility requirements. Additional minor changes were made in the applicability sections in the final regulations to make the regulation clearer and consistent with the recently promulgated revisions to Subparts G and H, (51 FR 16422; May 2, 1986).

10. Special Requirements for Ignitable or Reactive Wastes (§ 264.198 and § 265.198)

The proposed requirements in § 264.198 and § 265.198 were the same as the existing special requirements for ignitable or reactive wastes except that the applicability of these requirements was expanded to the entire tank system rather than just the tank. The Agency made this proposed change because the risks posed by ignitable and reactive wastes would seemingly be the same for piping as for the tank itself. One commenter stated that it is inappropriate to require a buffer zone between tanks storing ignitable wastes and public properties since loading facilities are not often located near public ways. The proposed buffer zone requirement was intended to be in accordance with the National Fire Protection Association's (NFPA's) "Flammable and Combustible Liquids Code." EPA has evaluated the comment and agrees that the NFPA 30 Code really only does address buffer zone requirements for tanks storing flammable and combustible liquids. No reference is made in the code regarding applying a buffer zone to piping or other ancillary equipment. No buffer zone is established for piping and other ancillary equipment because the greatest fire/explosion hazard is posed at the tank, where a large volume of ignitable material is present, rather than at piping/ancillary equipment where relatively little ignitable material is present. Furthermore, it would be extremely difficult to define a specific distance (buffer zone) from public ways for this equipment that commonly consists of a complicated and extensive network of piping. Thus, today's final rule modifies the proposal by deleting the term "tank system" from § 264.198(b). The other requirements in § 264.198 of today's final rules remain as proposed.

11. Special Requirements for Incompatible Wastes (§§ 264.199 and 265.199)

The proposed standards in § 264.199 and § 265.199 were the same as the pre-existing standards with only one minor change: the owner or operator would be required to ensure that the required precautions for tanks are taken throughout the entire tank system (i.e., tank and ancillary equipment). No comments were received on this proposed change to the existing standards applicable to incompatible wastes, and the final standards are identical to those proposed.

12. Waste Analysis and Trial Tests (§ 265.200)

This section of today's final rulemaking remains unchanged from that of the existing rule. As explained in the proposed rule (see 50 FR 26487; June 26, 1985), EPA did not repropose this section and as such stated that it was not requesting or accepting public comment on this section.

The one comment that was submitted regarding the requirements of this section suggested that the waste analysis and storage trial test are not necessary if the tank was first properly flushed to remove the residue of the waste from previous storage The Agency cannot accept this suggestion, because merely flushing the tank does not assure the tank design and materials of construction can accommodate the waste under question.

As explained previously, the final rule does not require the owner/operators of 90-day accumulation tank systems to conduct waste analyses and trial tests. Unlike off-site commercial hazardous waste storage and treatment facilities where a wide variety of hazardous wastes are managed, generators generally produce and would thus store or treat wastes that are relatively consistent in terms of their physical/chemical properties. Thus, EPA does not believe that waste analysis and trial tests must be conducted by generators of hazardous waste because of their familiarity with the wastes they generate.

13. Special Requirements for Generators of Between 100 and 1,000 kg/mo that Accumulate Hazardous Waste in Tanks (§ 265.201)

Today's final regulation does not apply to new or existing accumulation tank systems owned or operated by 100–1000 kg/mo generators who store up to 6000 kg of wastes in a tank system for less than 180 (or 270) days. As explained previously, these tank systems must meet the requirements previously imposed by Subpart J in Part 265. These requirements appear in today's rule at § 265.201.

14. *Specific Part B Information Requirements for Tanks (§ 270.16)*

In order to receive a RCRA permit for hazardous waste treatment, storage, or disposal facilities, an owner or operator must submit sufficient information in Parts A and B of a two-part permit application to demonstrate that a facility's methods of compliance are technically appropriate in relation to the Part 264 standards. The proposed rule would not change the requirements for the contents of the Part A application, which are in § 270.13 The contents of Part B of the application are specified in §§ 270.14 through 270.21. The proposed rule would revise the specific Part B information for tanks in § 270.16, but would not change the general information requirements in § 270.14.

A commenter suggested that EPA clarify the information required of an applicant for the ground-water monitoring alternative that was proposed. Today's final rule does not allow the substitution of ground water monitoring for secondary containment. Thus, no change has been made. Thus, this portion of the final rule is essentially unchanged from the proposal. The specific Part B information requirements that apply to tanks are revised under § 270.16 by tailoring the requirements to the technical standards for tanks in Part 264, Subpart J, of the final rule.

V. Analysis of Other Significant Comments

Following publication of the EPA proposal on June 26, 1985, (50 FR 26444–26504) to revise the existing hazardous waste storage and treatment tank standards, a total of 89 public comments, including 9 comments made at three public hearings conducted in August, 1985, were received. In addition to these comments. EPA also received and considered the 15 comment submittals filed on the Notice of Availability of Data and Information that was published on March 17, 1986 (51 FR 90720) regarding the hazard waste tank risk analysis. The comments were received from individuals, corporations, Federal and State agencies, industry, trade associations, consultants, and public interest groups. EPA has evaluated all the comments received and has modified the rule where appropriate.

This section of the preamble addresses significant comments received by the Agency that relate to

this final rulemaking that are not addressed elsewhere in this preamble. EPA has carefully reviewed all comments relating to the final hazardous waste tank standards and has responded to these comments in a document entitled "Response to Comments on the Revised RCRA Hazardous Waste Storage and Treatment Tank Standards," USEPA, June 1986. This document is available by contacting the RCRA Hotline and can also be found in the docket for today's rulemaking.

A. Corrective Action for Accumulation Tank Systems

Comment: One commenter cited a variety of perceived shortcomings in the proposed regulation regarding corrective action for 90-day accumulation tank systems. The commenter noted that although EPA proposed to subject 90-day accumulation tank systems to the proposed interim status tank closure performance standards, there is no mechanism for a regulatory authority to review or approve the closure. In addition, the commenter pointed out that the proposed rule would require owner/operators of 90-day accumulation tank systems to install secondary containment, but did not address the issue of corrective action for prior releases.

Response: The commenter has raised some important issues with respect to corrective action measures for accumulation tanks. This is part of a bigger issue relating to the exclusion of certain accumulation tank systems from the necessity to seek a RCRA permit. An Advanced Notice of Proposed Rulemaking (ANPR) published in today's **Federal Register** explains that EPA is considering modifying the exemption from permitting for accumulation tank systems, which would make some or all of these tank systems subject to the same corrective action and other requirements as interim status or permitted tank systems. At present the Agency can require corrective action for accumulation tank systems in certain instances. Section 265.196 of today's final regulation requires accumulation tank owner/operators to notify the Regional Administrator within 24 hours of any release to the environment (or the National Response Center immediately if the quantity of waste released exceeds the CERCLA reportable quantity). Thus, a regulatory authority will be notified when a release to the environment occurs. The regulatory authority will then have the opportunity to monitor the progress of the corrective action measures taken, including any cleanup of prior releases. Additionally, under the provisions of section 7003 of the HSWA of 1984, EPA has the authority to bring suit against an owner/operator on behalf of the United States upon receipt of evidence that the past or present handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to human health or the environment.

B. Acutely Hazardous Waste

1. Variance Provision

Comment: A commenter objected to the provisions in the proposed rule which would prohibit the owner/operator of tanks that store dioxin-contaminated F-listed wastes from applying for a variance from the secondary containment requirements, and installing a ground-water monitoring system in lieu of secondary containment. The commenter stated that these wastes may pose no greater environmental hazard than other hazardous wastes and that the proposed prohibitions seem arbitrary and capricious.

Response: On January 14, 1985 (50 FR 2003), final amendments to Part 264 were promulgated, specifying management standards for the storage and treatment of F020, F021, F022, F023, F026, and F027 dioxin-containing listed wastes in aboveground, inground, and underground tanks that were enterable for inspection. The January 1985 rule required secondary containment and leak detection devices for permitted tanks containing these wastes. The rule also required the development of procedures for responding to a leak or spill. The placement of these wastes in landfills, surface impoundments, waste piles, or land treatment units was restricted and destruction and removal efficiency standards for incinerating these wastes were specified.

Today's final rule extends the secondary containment requirement to all tank systems treating or storing the listed dioxin-containing wastes because EPA can find no basis for differentiating between permitted, interim status, or accumulation tank systems storing or treating these highly toxic wastes.

As explained in the preamble to the proposed hazardous tank regulations (50 FR 26489; June 26, 1985), the proposed hazardous waste tank rules would not allow owner/operators of new or existing tank systems storing or treating dioxin-containing wastes the option of using the ground-water monitoring alternative or of seeking a no-migration waiver because (a) it is well documented that these extremely toxic wastes present a substantial hazard to human health and the environment and (b) it is EPA's experience that these wastes are particularly difficult and expensive to clean up.

After reconsidering this issue, EPA concludes that it is acceptable to allow owner/operators of hazardous waste tank systems the opportunity to petition for variances to the secondary containment requirements specified in today's final rule.

As explained previously in today's preamble, EPA has rejected the ground-water monitoring alternative as a basis for the final regulations applicable to all hazardous waste tank systems, including tank systems storing or treating dioxin-containing wastes.

In the process of reviewing this issue, EPA revaluated the possibility of mandating immediate secondary containment for a wider universe of highly toxic wastes then those relatively few represented by listed Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027

The Agency believes that it may be appropriate to apply the requirement to other materials that have been defined as acutely hazardous wastes. Two separate lists of acutely hazardous materials are currently being reviewed by EPA. These are (1) those materials listed as acutely hazardous wastes in § 261.33(e) and (2) those materials being defined as acutely hazardous under TSCA (see Notice of Availability of Chemical Emergency Preparedness Program Interim Guidance (50 FR 51451; December 17, 1985)). In the future, EPA may propose to require immediate secondary containment for acutely hazardous wastes other than the listed dioxin-containing wastes. One implementation problem that EPA has identified is the fact that both the TSCA and RCRA lists noted above are individual chemical lists. Thus, one issue that may need to be addressed prior to proposing an additional requirement for acutely hazardous wastes is the concentration or amount of these materials that must be present in a hazardous waste such that immediate secondary containment should be required.

2. Requirements for Dioxin-Containing Listed Hazardous Wastes

Comment: One commenter objected to more stringent requirements for tank systems containing dioxin-containing listed wastes The commenter does not believe EPA has supported that any greater risk exists for these wastes,

especially if concentrations of TCDD are less than 10 ppm.

Response: In a prior rulemaking (50 FR 2003; January 14, 1985), EPA justified the need for more stringent requirements for management of the dioxin-containing listed wastes based on three considerations: (1) the demonstrated toxicity of the waste; (2) the tendency toward long storage before treatment or disposal; and (3) the difficulty and expense of spill cleanup. The justification is more fully discussed in the proposed rule dated April 4, 1983 (48 FR 14514). See also 51 FR 1730 to 1733 (January 14, 1986) noting the extreme toxicity of TCDD and other types of dioxins as well as their migratory potential and resistence. The proposed screening level for TCDDs was in fact 8 to 10 *orders of magnitude* lower than the 10 ppm level cited by the commenter. The preamble to the proposed rule discussed the proven and suspected carcinogenic, teratogenic, fetotoxic, and embryotoxic characteristics of the dioxin-containing listed wastes, even at low concentrations. For these same reasons, the Agency believes that immediate secondary containment is required to ensure protection of human health and the environment, unless a case-by-case variance is justified on the basis of site-specific factors.

C. Small Quantity Generators

Comment: In response to the August 1, 1985 proposed regulations (50 FR 31278), several State agencies supported applying to hazardous waste tank systems owned or operated by generators of between 100 snd 1,000 kg of hazardous waste per month that are used to store hazardous wastes in excess of 180 days (270 days) or 6,000 kg the full provisions of the proposed hazardous waste tank standards including secondary containment.

Response: As explained previously in this preamble, today's rule applies in its entirety to generators of between 100 and 1,000 kg of hazardous waste per month who accumulate hazardous wastes in tanks for more than 180 (270) days or in excess of 6,000 kg. However, today's final rule does not apply to accumulation tank systems used by generators of between 100 and 1,000 kg of hazardous waste per month who store hazardous wastes for less than 180 (270) days and less than 6,000 kg. In the near future, the Agency will propose hazardous waste tank system standards that would apply to this class of accumulation tank system.

D. Hazardous Waste Tank Risk Analysis

Commenters generally did not support the use of the hazardous waste tank risk analysis in developing or implementing the final hazardous waste tank system regulations. They provided two principal reasons for their lack of support: (1) the risk analysis is not currently able to reflect site-specific conditions, and (2) the models are based more on assumptions than on data.

1. Site-Specific Conditions

Comment: The Hazardous Waste Tank Risk Analysis Model is not capable of assessing site-specific situations. Some hazardous waste tank facility conditions may be amenable to alternatives to secondary containment; therefore, the results of the hazardous waste tank risk analysis should not be used to justify requiring secondary containment for all hazardous waste tanks.

Response: The Agency developed the hazardous waste tank risk analysis methodology in order to estimate the relative risk reduction that would be achieved under different regulatory options, in order to represent national variation in tank types, waste types, and hydrogeologic conditions, EPA developed numerous model tank systems, model waste streams, and model hydrogeologic settings. These model conditions represented the most common conditions associated with hazardous waste tank systems.

The Agency realizes that actual existing tank systems, waste streams, and hydrogeologic conditions may vary from those represented in the analysis. However, to try to model all possible combinations of tank technologies, waste streams, and hydrogeologies that may occur across the nation is unreasonable and unrealistic, given the diversity of conditions that exist.

In order to develop national site-specific hazardous waste tank regulations, the Agency would need to undertake an extensive data collection exercise that would involve identifying the location of hazardous waste tank systems in specific hydrogeologies, waste stream characteristics, and distances to potential exposure points. Such information is not currently available for the existing universe of hazardous waste tank systems.

Because of this lack of data, the Agency focused the risk analysis on identifying the range of potential conditions that would most likely be encountered at tank systems and the range of risk estimates associated with the national population of hazardous waste tank systems. The results of the risk analysis (i.e., the frequency distributions of risk estimates) are based on currently available information and reflect the range of estimates that would be obtained from detailed site-specific analyses. Consequently, although the Agency did not conduct a detailed analysis of actual tank systems, the Agency believes that the risk analysis reflects the range of estimates that would likely be obtained from such a detailed site-specific analysis.

Therefore, despite the lack of site specific-data, the Agency believes that the analysis was consistent in its assumptions and provides a reasonable method for comparing regulatory alternatives for reducing the risks presented by hazardous waste tank systems The analysis, along with evidence gathered from case studies, indicates that contamination of ground water from leaking hazardous waste tank systems poses risk to human health, and suggests that secondary containment is currently the most effective method for reducing the risk associated with different tank system technology options, hazardous wastes, and hydrogeologic conditions.

Although the Agency is requiring the eventual implementation of secondary containment for most hazardous waste tank systems, the Agency does recognize that certain site conditions may be amenable to alternative protective measures. Accordingly, two variances from secondary containment are provided in the regulations. (See section 111.B.5.b.ii of this preamble.) These variance provisions allow for the consideration of site-specific factors, such as particular tank characteristics, waste streams managed, and hydrogeologic setting, but will also encourage technological advances in the area of release detection methods.

In summary, the Agency agrees that the model, as currently structured, is not suitable for developing site-specific national standards, nor, at this time, for implementing risk based variances. However, the Agency does believe that the risk analysis results support the final regulatory strategy for hazardous waste tank systems.

2. Modeling Assumptions

Comment: A number of commenters questioned many of the basic modeling assumptions that were used in the risk assessment They explained that, in many cases, due to data limitations, the assumptions did not have a strong foundation. Among the assumptions criticized were the following:

• The effectiveness of leak testing and ground-water monitoring is questioned by many experts; thus, any conclusions drawn from the risk analysis on these methods are invalid;

• The model does not include corrective action;

• The PACE data is not an acceptable sample on which to base tank failures;

• The assumption that fiberglass tanks have twice the probability of rupture as steel tanks is incorrect;

Response: The purpose of providing the methodology and results for public comment was to supplement the data that the Agency used to develop the risk analysis model and to improve modeling assumptions where possible. For the most part, commenters did not provide data from which the risk analysis model could be modified or that would allow EPA to verify or refute the model results. As a result, given the assumptions that the Agency has made, the results of the analysis and the conclusions drawn from them as presented in the March 17th Notice of Availability have not changed and appear to be reasonable.

Some of the most significant comments on the notice are addressed below. All comments received by the Agency on the March 17th, 1986 Notice of Availability are addressed in the docket report, "Hazardous Waste Tanks Risk Analysis Public Comments and Responses."

(a) Leak Detection and Monitoring Methods. In order to conduct the Hazardous Waste Tanks Risk Analysis, EPA modified the previously-developed Underground Storage Tank (UST) failure model to represent hazardous waste tank systems. The Agency assumed that the same leak testing and monitoring technologies that are employed for petroleum tank systems can be used for hazardous waste tank systems. The Agency received comments concerning the reliability of various leak testing and monitoring technologies and the lack of historical performance data. The Agency agrees that it had a limited data base from which to model such tank testing and monitoring technologies. However, enough data for petroleum tank system leak testing and monitoring was available to model such technologies for a relative comparison of the effectiveness of regulatory alternatives.

As a result of recent research by the Office of Underground Storage Tanks (OUST), EPA has since modified the UST failure model such that assumptions about the reliability of various leak testing and monitoring methods have been modified. The UST failure model now assumes that leak testing is effective in detecting 95 percent of the releases that are greater than 0.1 gallons per hour, whereas the Hazardous Waste Tank (HWT) failure model assumes that leak testing is effective in detecting 100 percent of the releases that are greater than 0.1 gallons per hour. The UST model also assumes that vapor wells are effective in detecting 80 percent of the releases that reach the concentration limit, while, for the supplementary analysis, the HWT failure model assumed that vapor wells are 90 percent effective in detecting releases that reach the concentration limit.

In addition, EPA's Motor Fuel Storage Tank survey results indicate that leak testing technologies do not currently work as well as the vendors claim, even for petroleum tanks. (See "Underground Motor Fuel Storage Tanks: A National Survey," EPA 560/5-86-013, June 1986.) The Agency has no reason to expect such methods to perform better for hazardous waste tank systems, even if we were to assume the tank must be cleaned and the test performed using water. Therefore, from the more current modeling effort and an EPA field study of leak detection methods, it is clear that EPA overestimated the performance of the various leak testing and monitoring alternatives in the Hazardous Waste Tanks Risk Analysis.

(b) Corrective Action. In the Hazardous Waste Tanks Risk Analysis, EPA did not include extensive corrective action for hazardous waste tank systems that were discovered to be leaking. EPA assumed only that tank systems that were determined to be leaking would be removed and replaced. EPA did not account for corrective action, such as contaminated soil excavation and ground water pumping and treatment. Many commenters were concerned that the assumption of no corrective action biased the analysis toward strategies that prevented leaks (e.g., secondary containment) rather than strategies that allowed for detection and clean-up (e.g., leak testing, ground water or unsaturated zone monitoring, etc.)

The Agency did not model corrective action because there were too many variables and too little data from which estimates could be made, given the schedule for promulgating this rule. EPA conducted the Hazardous Waste Tanks Risk Analysis by adapting existing failure and risk models to represent hazardous waste tank systems. The Agency is currently developing a model to estimate the effectiveness of corrective action for land disposal units; however, this component was not available for the Hazardous Waste Tanks Risk Analysis. The timeframe available for the Hazardous Waste Tanks Risk Analysis was insufficient for developing a corrective action component given the complexity of the many necessary assumptions.

EPA does not agree that excluding corrective action from the risk analysis biased the results to the extent that they are inaccurate. Consideration of corrective action in the model—if it had been possible—would have shown that other technical options would have increased in cost and still would have been inferior in protection of human health and the environment in comparison to secondary containment because, as previously discussed, the Agency does not know of any leak testing or monitoring methods which, when used with single-walled tanks, are reliable enough to assure early detection and expeditious corrective action. For the reasons discussed elsewhere in this preamble, EPA has determined that secondary containment with interstitial monitoring is the most effective and reliable method for preventing releases from contaminating ground water or surface water and, therefore, reducing risks posed by hazardous waste tank system releases. The results of the risk analysis were only one of many reasons for the Agency's selection of secondary containment as the Agency's general approach to regulating hazardous waste tank systems.

(c) *PACE Data.* EPA used the Petroleum Association for Conservation of the Canadian Environment (PACE) data in the model to estimate the timing and frequency of steel tank corrosion. The PACE data contain information on 300 underground petroleum tanks and were collected by PACE to develop a methodology for siting future installations of underground storage tanks. Consequently, the survey focused on identifying the effect of soil properties on tank corrosion failures. Soil samples were then taken at sites with leaking tanks. In addition, all tanks at a site were tested for leaks. The survey identified the soil properties associated with 108 leaking tanks and 192 non-leaking tanks.

The Agency received comments expressing concern that the use of these data will overestimate the frequency of tank corrosion failures because the data may be biased towards leaking tanks. EPA agrees that, because the PACE data do not represent a statistical sample of the overall tank population, the PACE data should not be used to determine the percentage of tanks expected to be leaking at any given point in time. However, EPA used these data to provide a rough estimate of the probability of a steel tank corroding

given the soil type and length of time the tank was in that soil. The PACE data are the only available data that examine the effect of soil variations on tank corrosion and include information on non-leaking tanks located in the same soil environments as leaking tanks. Thus, its use in the model was appropriate.

(d) *Fiberglass Tanks.* The only area where the commenters supplied the Agency with new information was with respect to the fiberglass reinforced plastic (FRP) tank rupture rate. The Agency assumed that FRP tanks have twice the probability of rupture as steel tanks. This assumption was based on a comparison of the annual failure probabilities that were derived for steel and FRP tank ruptures. The Agency received conflicting comments on this assumption. Some commenters considered the 2:1 ratio as severely overestimating FRP tank ruptures, while others considered the ratio a severe underestimate of the FRP tank rupture probability. All commenters on this issue indicated that FRP tank ruptures are more likely to occur in the first five years after installation.

However, even with this new information, EPA cannot revise the Hazardous Waste Tank failure model with respect to the FRP tank rupture probability. The information provided by commenters on this issue is complicated by additional areas of uncertainty. For example, EPA received data indicating that the ratio of the *reported* number of failed FRP tanks to the number of FRP tanks sold in a given year is 0.25:1. This information does not provide EPA with appropriate data to estimate the probability of a FRP tank rupturing or the percent of FRP tanks that rupture over time. Therefore, it is not clear from such new information that EPA s modeling assumption for the FRP rupture probability is wrong.

In one respect, the HWT failure model underestimated FRP tank failures. The model assumed that tank ruptures are the only structural form of failure for FRP tanks. Results from EPA s motor fuel tank survey indicate that FRP tanks also have the potential to develop slow leaks as a result of faulty construction. Thus, while the Agency agrees that the FRP rupture probability assumed in the model may not be completely accurate, in the absence of definitive data and for the purpose for which the model was used, the assumptions were reasonable.

E. Contingent Post-Closure Plans

Comment: One commenter stated that EPA should require contingent post-closure plans for facilities that install secondary containment after there is evidence of leakage from the tank system. The commenter believes that it may be as difficult for these facilities to remove all contaminated material at closure as it would be for facilities that do not have secondary containment.

Response: EPA has addressed this issue in its requirements for corrective action for prior releases in order to obtain a permit. The HSWA require that prior releases at facilities seeking a permit to manage hazardous waste be identified and that corrective action be taken during interim status and, if appropriate, that the requirement for corrective action be made a condition of a permit. Prior leakage also can be addressed, if appropriate, under authority granted under sections 3008(h), 3004(u), and 7003 of RCRA. As explained previously in section II.H, EPA is separately considering the broader issue of corrective action for currently non-permitted accumulation tanks systems at facilities not otherwise requiring a permit.

F. Integrity Assessments

Comment: One commenter asked that EPA alter the final regulation to require all tank system owners or operators to submit periodic tank integrity assessments to an EPA or state office rather than promulgate the proposed requirement that the assessments be kept on file at the facility. The commenter believes the proposed approach would limit private citizen access to these materials.

Response: EPA believes that a requirement to submit assessments would be unduly burdensome on owner/operators of tank systems, state agencies, and EPA. Under section 3007 of RCRA, EPA maintains the right to inspect these assessments at any time and can request and make available any assessment of interest to the public that is not entitled to confidential treatment. For this reason, the final rule requires only that periodic tank system integrity assessments be kept on file rather than submitted to the appropriate regulatory authority.

G. Leak Detection Standard

Comment: One commenter supported a leak testing standard of 0.05 gallons per hour based on his experience in using a specific test at his facility. The commenter also pointed out that his experience shows that EPA underestimated the cost of leak testing methods.

Response: A review of all available information on the reliability of tank system tightness tests indicates problems in routinely detecting leaks of 0.05 gallons per hour using test methods similar to that used by the commenter. Thus, EPA is conducting further research on tank system tightness test methods, including a method similar to the one used by the commenter.

After re-evaluating the costs of performing tank system tightness tests on hazardous waste tank systems, EPA found that the costs of these tests had been underestimated at proposal; therefore, EPA has modified its estimate of these costs to reflect the experience of this and other commenters.

H. Wastewater Piping and Treatment Tanks

Comment: One commenter requested that EPA exempt wastewater piping and return lines used at surface impoundments. The commenter justified this request based on his judgment that this piping typically contains less than 0.1 percent hazardous constituents by volume. The same commenter asked that this regulation not be applied to wastewater treatment tank systems that currently are exempt from RCRA regulation because of the cost and similar relative percentages of waste constituent volumes.

Response: This regulation does not alter the permit status of wastewater treatment tank systems. Therefore, those units if now exempted from the hazardous waste management standards will not be required to comply with the hazardous waste tank system management standards established in this regulation. Available data show that piping systems can be a significant source of releases of hazardous wastes to the environment. For this reason, piping systems ancillary to hazardous waste tank systems are regulated by this final rule in those cases where an owner/operator can demonstrate that circumstances that exist at his facility are such that his system does not pose a substantial present or potential hazard to human health or the environment. EPA has provided a variance procedure to allow consideration of that information. (See section III.B.5.b.ii of this preamble.)

I. Risks of Double-Walled Pipes

Comment: Commenters asked that EPA consider the possibility of increased risks associated with double-walled pipes. The commenters suggested that double-walled pipes typically are manufactured in shorter lengths than single-walled pipes, requiring more fittings and flanges for similar length pipelines. The commenters pointed out that these connections are the most likely points of leakage.

Response: EPA acknowledges that an increase in the number of pipe connections may be necessary, but in many cases the connections can be of all welded design. Thus, the increased number of fittings would not necessarily present added risks. Additionally, interstitial monitoring of the double-walled piping system allows detection of leaks of hazardous wastes from the primary piping system before release to the environment. Therefore, secondary containment of piping systems and interstitial monitoring will reduce significantly the risks associated with piping.

J. Closure and Post-Closure Requirements

Comment: One commenter suggested that it is inappropriate for EPA to require removal or decontamination of contaminated soils unless the Agency defines a level of contamination that is acceptable.

Response: The final rule requires the removal or decontamination of all contamination at closure of the tank system, If this is not practicable, the regulation provides for post closure care of the unit. As explained in section IV.B.9 of this preamble, EPA is currently developing a policy on the broad issue of defining acceptable levels of contamination (i.e., how clean is clean) outside the scope of this rulemaking.

K. Incentive to Store in Drums

Comment: One commenter suggested that standards for 90-day accumulation tanks will lead to a switch to accumulation in drums. The commenter sees additional environmental risks as a result of the switch.

Response: EPA has placed permitting requirements on facilities storing wastes in containers in Subpart I of Part 264. To the extent that EPA determines that there is a significant shift to storage in containers and an increase in risk as a result, the Agency may consider further regulation of container storage.

Additionally, in a notice accompanying today's rulemaking, EPA is seeking public comment on the appropriateness of regulating accumulation facilities consistent with the management of hazardous waste in tank systems and containers at permitted facilities.

L. SPCC Regulations

Comment: One commenter suggests that existing Spill Prevention and Control Countermeasures (SPCC) regulations under the Clean Water Act provide sufficient protection from tank leakage.

Response: SPCC guidelines are designed to protect surface waters. Therefore, EPA believes that additional measures may be necessary to protect ground water. In the cases where facilities have provided adequate secondary containment that protects ground water, this secondary containment system may be appropriate for complying with this regulation.

M. 24-Hour Detection Requirement

Comment: One commenter suggested that immediate sensing of leaks should be required rather than the proposed requirement that the detection device be able to detect leaks within a 24-hour period.

Response: While it is certainly desirable to detect leaks as early as possible, it may not always be necessary to achieve "immediate sensing" of leaks to protect human health and the environment. It is the goal of today's final rule to ensure that hazardous waste tank systems are managed in a manner that prevents the migration of hazardous waste beyond a zone of engineering control (i.e., an area under the control of the owner/operator that, upon detection of a release, can be readily cleaned up prior to the release of hazardous constituents to ground water or surface waters) so that protection is afforded to human health and the environment. Furthermore, in many cases, site specific conditions (e.g., backfill characteristics, leak size, waste type) may not allow the immediate detection of a release. Thus, the Agency does not require immediate sensing of releases in this final regulation.

N. Future Designated Hazardous Wastes

Comment: Several commenters stated that the proposed rule had not taken into account those tank systems that are brought into RCRA at some future time due to additional solid wastes being designated as hazardous wastes.

Response: The Agency believes that the regulation should take into consideration the applicability of the requirements to such hazardous waste tank systems. As a result, four sections of today's regulations (i.e., §§ 264.192, 264.193, 265.192, 265.193) contain specific provisions for tank systems managing future designated hazardous wastes. In each of these sections, where compliance with a requirement must be made within a defined time interval beyond a certain date, the Agency has included a provision that allows the same time interval for compliance for owners and operators of tank systems managing any future-designated hazardous wastes as is allowed in today's regulation for tank systems currently managing hazardous wastes.

VI. Relationship to Current RCRA Hazardous Waste Programs

A. State Authority

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits or those portions of permits affected by the requirements and prohibitions established by the HSWA, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applied in authorized States in the interim.

2. Effect on State Authorization

Certain portions of today's rule are promulgated pursuant to pre-HSWA authority, while other portions of today's rule are promulgated pursuant to provisions added by HSWA. Section 3001(d) of the HSWA mandates promulgation of standards applicable to small quantity generators; section 3004(o)(4) of the HSWA mandates promulgation of standards requiring

utilization of approved leak detection systems for new underground tanks; and section 3004(w) of the HSWA mandates promulgation of final permitting standards for underground tanks that cannot be entered for inspection. Therefore, sections of this regulation promulgated pursuant to HSWA authorities are the following: (a) interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators (section 3001(d)); (b) leak detection requirements for all new underground tank systems (section 3004(o)(4)); and (c) permitting standards for underground tanks that cannot be entered for inspection (section 3004(w)).

The following specifically identifies which sections of today's rules are promulgated pursuant to HSWA for those categories outlined above.

(a) 3001(d) Requirements

Parts 264 and 265 requirements applicable to tank systems owned or operated by small quantity generators are promulgated as HSWA authorities.

(b) 3004(o)(4) Requirements

Secondary containment with interstitial monitoring provides new underground tanks with leak detection systems capable of detecting leaks to the environment at the earliest practicable time. Measures which are necessary to ensure that the secondary containment system is maintained and, therefore, that the leak detection system will work properly are included as HSWA authorities. The following sections of the regulations are HSWA authorities when they are applied to new underground tanks:

260.10
262.34(a)(i)—incorporates all HSWA authorities under § 265, Subpart J, which are promulgated pursuant to 3004(o)(4) and are listed under this paragraph (b)
264.190
264.192 (a)(1)(i), (a)(3), (a)(4), (a)(5), and (b)–(g)
264.193 (a)–(f), (g)(1), and (h)
264.195
265.190
265.192 (a)(1)(i), (a)(3), (a)(4), (a)(5), and (b)–(g)
265.193(a)–(f), (g)(1), and (h)
265.195
270.14(b)
270.16
270.72(e)

(c) 3004(w) Requirements

The following sections of the regulations are HSWA authorities when they are applied as permitting standards for underground tanks that cannot be entered for inspection:

260.10
264.110
264.140
2645.190–264.199
270.14(b)
270.16

The regulation listed under paragraphs (a), (b), and (c) above are promulgated pursuant to HSWA and will be effective in both authorized and unauthorized States. Tanks in these categories must comply with the Federal regulations promulgated today and with applicable State requirements. Underground tanks that cannot be entered for inspection will be required to obtain a RCRA permit from EPA, as well as any applicable State permits. New underground tanks will be required to obtain permits from both EPA and a State or a joint RCRA permit issued by both EPA and a State.

All sections of these regulations when applied to inground tank systems, aboveground tank systems, onground tank systems, and underground tank systems that can be entered for inspection are RCRA authorities. Requirements for new underground tank systems that are not section 3004(o)(4) requirements (see above) are RCRA requirements. Tank systems in these categories, which are located in unauthorized States, must meet all Federal requirements. Tanks in these categories in authorized States are not required to comply with today's rule until such time as the authorized State amends its rules in accordance with 40 CFR 271.(e)(2). However, these requirements are effective in unauthorized states by January 12, 1987.

a. HSWA Provisions. Those portions of today's rule which are being promulgated pursuant to sections 3001(d), 3004(o)(4) and 3004(w) of HSWA, are being added to Table 1 in § 271.1(j) which identifies the Federal program requirements implementing HSWA. These provisions take effect immediately in all states, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1.

EPA will implement the HSWA portions of today's rule in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. For these portions of the rule, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications are described in 40 CFR Part 271.21 and discussed below.

b. Non-HSWA Provisions. Those portions of today's rule which are not being promulgated pursuant to the HSWA will be applicable upon the Federal effective date only in those States that do not have authorization. EPA will implement these requirements in unauthorized states. States will not be able to obtain interim authorization for the non-HSWA requirements because the statutory deadline has expired. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law. The procedures and schedules for State program modifications are described in 40 CFR 271.21 and discussed below.

c. Program Modification Deadlines. Currently, § 271.21(e)(2) requires that States with final authorization must modify their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. On January 6, 1986, the Agency proposed to modify the § 271.21 deadlines for State program modifications (see 50 FR 489–504). Under the proposal, States would have a longer time to modify their programs to implement non-HSWA rules. The program modification deadline varied depending upon the date of promulgation of the non-HSWA rule. Also, the proposal included a one-time special deadline for the HSWA provisions that occur before June 30, 1987. Since this regulation contains both HSWA and non-HSWA provisions, under the proposal, modification deadlines would vary depending on whether the requirements in today's rule are HSWA-related. The Agency expects to publish this authorization rule in final form by late summer. When promulgated, this rule will establish new deadlines for States to modify their programs for today's tank system rule.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulation being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of effort. In some cases, EPA may be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority. In those States authorized for portions of the tank permitting program, EPA will

coordinate permitting efforts with the State pursuant to the Memorandum of Agreement or other EPA/State joint permitting agreement.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time periods discussed above.

B. Regulation of Underground Product Storage Tanks (The UST Program)

There were a number of comments touching on two issues related to the UST program. One group of commenters questioned the validity of using data from studies on petroleum storage systems as a basis for the proposed rule. EPA addressed this comment earlier in the preamble. Another group of commenters were concerned that today's final rules would become a precedent for the UST rules when they are promulgated.

In the preamble to the proposed rule, EPA cautioned against concluding that the proposed rules of June 26, 1985, would establish precedents for the Agency's effort to regulate, under Subtitle I of RCRA, underground storage tanks containing "regulated substances." EPA explained that, in fact, "the requirements proposed today, as they apply to underground hazardous storage tanks, may be significantly different in many ways from the standards that will be developed in the future for underground tanks storing regulated substances," (See 50 FR 26490; June 26, 1985.) Regulations governing underground storage tanks are being developed separately from the hazardous waste tank regulations.

Differences in statutory language, the number of tanks to be regulated, the regulatory scheme, and developing information about technical options and their reliability may cause regulations for underground storage tanks to differ from those for hazardous waste tank systems. For example, whereas the development of regulations for Subtitle C tank systems is based solely on the criterion of protection of human health and the environment, Subtitle I indicates that EPA may distinguish between different types of tanks and may consider other factors such as current industry practices, national consensus codes, and small business considerations. The underground storage tank regulations will apply to over 1,000,000 tank systems, a vastly greater universe than the hazardous waste tank systems universe. In addition, Subtitle I does not require implementation of a permit system, a difference which may lead to a different regulatory approach. Currently, the Agency is actively studying methods of detecting leaks from tank systems. Results from these studies may indicate that leak detection methods whose reliability is unestablished today (e.g., soil gas monitoring in the unsaturated or excavation zone) may be found to be reliable before the underground storage tank regulations are issued. Finally, the Agency may take a different approach to regulating product storage if EPA determines that particular products, because of their value, are managed more reliably than hazardous wastes.

C. Relationship of Regulation to Section 3014(c) of RCRA

The Congress, in passing the Used Oil Recycling Act of 1980 (Pub. L. 96–463), and the Hazardous and Solid Waste Amendments of 1984, supplemented the basic requirements for regulation of hazardous waste with certain special requirements for recycled oil. These requirements are found in section 3014 of the Act. Section 3014(a) retains the language of section 7(b) of the Used Oil Recycling Act:

> . . . The Administrator shall promulgate regulations . . . as may be necessary to protect the public health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil.

Section 242 of the 1984 Amendments also added the following phrase to the above paragraph, "consistent with the protection of human health and the environment" to make it clear that protection is of prime concern under section 3014, and that certain recycling practices may indeed be discouraged by regulation if necessary to ensure an adequate level of protection. (See H.R. Conf. Rep. No. 1133, 98th Cong. 2d Sess. 114 (1984)).

Section 3014(b) requires the Administrator to propose whether to list or identify used crankcase oil and other used oil as a hazardous waste under section 3001 of RCRA. EPA has proposed to list all used oil as a hazardous waste (50 FR 49258–49270; November 29, 1985) and has also proposed management standards for used oil generators, transporters, and recycling facilities (50 FR 49250–49258; November 29, 1985).

In listing used oil as a hazardous waste, and in devising management standards associated with the recycling of hazardous waste, EPA has attempted to take into account the effects such listing and standards will have on the ultimate disposition of used oil. The objective of the proposed regulations was to establish standards for the recycling of used oil that are most protective of the environment while not creating significant disincentives or barriers to the practice.

In keeping with the stated objective of section 3014 of RCRA in not discouraging recycling, while ensuring protection of human health and the environment, EPA proposed a special, reduced set of storage standards for recycled oil generators to minimize adverse small business and recycling impacts. EPA also proposed different and less stringent standards for small quantity recycled oil generators who may generate up to 1,000 kg/month of used oil, and do not accumulate used oil in quantities exceeding 1,000 kg. (This is not to be confused with Small Quantity Generators who generate greater than 100 but less than 1,000 kg/month of hazardous wastes; a large quantity generator of hazardous waste can still qualify as a small quantity recycled oil generator.) In the preamble to the proposed used oil management standards, EPA explained that such reduced standards for small quantity recycled oil generators would offer the following benefits: (1) reduce economic impacts on small businesses; (2) facilitate recycling; and (3) encourage small quantity recycled oil generators to recycle used oil rather than dispose it in a manner that may threaten human health and the environment.

Although the proposed regulation would generally reduce standards for storage of recycled oil, if promulgated as proposed, it would require that full secondary containment apply to tank systems at non-generating facilities storing such used oil. At this time, however, the rules are still in proposed form and EPA is in the process of evaluating comments submitted during the public notice period. The comments received were extensive, and have caused EPA to consider alternatives to the proposed regulation. In particular, EPA issued an extension to the public comment period in the March 10, 1986 **Federal Register** (51 FR 8206). In that notice, EPA solicited additional comment on a regulatory approach suggested by several commenters: list used oil as a hazardous waste only if it is disposed rather than recycled. EPA is in the process of evaluating the

additional comments received from this notice. EPA is particularly concerned about the impact on used oil recycling that would occur as a result of the proposed management standards and the proposed listing of used oil as a hazardous waste. EPA is also concerned about the impact of a used oil listing on insurance costs, as it would affect used oil recycling, as well as the effect of the proposed management standards and listing on the overall risks to human health and the environment posed by used oil recycling and/or disposal practices.

Today's rule does not address storage or treatment of used oil; rather, used oil management standards will be included in the used oil regulations scheduled to be issued in November 1986. That regulatory package will fully address all applicable tank standards for the storage of recycled used oil.

Today's regulatory package will establish standards, however, for used oil that is mixed with listed hazardous waste or that is mixed with characteristic hazardous waste and continues to exhibit a characteristic. This is because used oil, whether it is recycled or not, that is mixed with any such hazardous wastes continues to be regulated as a hazardous waste under the "mixture rule" (40 CFR 261.3(a)(2)(iii) and (iv)).

VII. Economic Analysis

The Agency undertook an analysis of the final hazardous waste tank regulatory amendments to determine the extent of associated cost and economic impacts on the regulated community. The regulated community that we analyzed includes existing or new interim status, permitted, and accumulation tanks, except new or existing small quantity generator (SQG) accumulation tanks. These analyses also provided the Agency with the necessary information for determining whether the revisions will constitute a major rule under Executive Order 12291 or have significant impacts on a substantial number of small businesses, which the Agency is required to consider under the Regulatory Flexibility Act.

The following discussion summarizes the methodology and results of the analyses supporting these findings. Further details on the cost and economic analyses for the final tank regulations can be found in the docket reports, *Cost Analysis of RCRA Regulations for Hazardous Waste Tank Facilities* and *Economic Impact Analysis of RCRA Regulations for Hazardous Waste Tank Facilities.*

A. Cost and Economic Impact Methodology

The analysis in these reports is based on the cost estimates for facilities sampled in the Office of Solid Waste Regulatory Impact Analysis (OSW RIA) and Small Quantity Generator (OSW SQG) surveys. The data from the RIA *Tank* and *Generator* survey indicate that the final tank regulations could affect facilities in a variety of two digit SIC's. The most prominent SIC's are chemicals and allied products; petroleum and coal products; fabricated metals; and electronic and electric equipment. For small quantity generator tank facilities, the most prominent two digit SIC's include Printing and Publishing, Primary Metal Industries, Automotive Dealers and Service Stations, and Auto Repair, Services, and Garages.

EPA estimated incremental compliance costs for Parts 262, 264, and 265 for each sample facility in the RIA surveys. The focus of the final rule for existing hazardous waste tank systems is the requirement for secondary containment. EPA projected these facility costs by summing the incremental compliance costs for all tanks at each facility in the data base. We estimated the incremental compliance costs from cost functions developed for tanks based on material of construction, size of the tank, and type of tank.

For existing regulated tanks, EPA estimated the cost of retrofitting full secondary containment at the time of the appropriate phase-in age (§ 265.193(a)) for each tank in the survey sample. During the interim period prior to phase-in of full secondary containment, we applied the annual cost of a periodic tank integrity assessment. For example, if an underground tank was reported to be 10 years old, we applied the cost of an annual integrity assessment for 5 years prior to retrofitting with full secondary containment at age 15. In addition, we estimated the cost of providing corrosion protection for all replacement steel tanks in contact with the soil. Depending on the tank system, other compliance cost estimates included recordkeeping and reporting of integrity assessments, contingency plans, and post-closure plans.

The generator and SQG surveys do not provide tank age data. Because this is a crucial factor in estimating compliance costs, the Agency assumed that the tank age distribution for storage tanks reported in the RIA Tank survey data, are representative of the accumulation tanks in the generator surveys. This age distribution varies by type of tank (above, in, or underground). Thus, a median age of 6 years for a cradled storage tank is the median age EPA assumed for cradled accumulation tanks.

According to the SQG survey data, the Agency does not expect many SQG tank facilities to require compliance with the full interim status or permitting requirements of this final rule. The Agency has come to this conclusion based on the data from the SQG survey which indicate that most SQG tanks store waste for less than 180 days. In addition, the Agency believes that SQG tank facilities that currently store for longer than 180 (270) days and, therefore, would be subject to the interim status and permitting requirements in this final rule, may reduce their storage periods to less than 180 (270) days to avoid expensive permitting requirements such as the closure, contingent closure, and contingent post-closure plans.

Because the Agency expects so few SQG tank facilities to be subject to the interim status and permitting requirements in this final rule, we have not estimated a national cost for the regulated SQG tank population. Instead, Table 4 provides typical compliance costs for three SQG tank facility types.

Tables 5 and 6 display the incremental costs new tank facilities will face under the final tank permitting standards. The two smallest tanks in each of the tables are representative of the types of tanks that small quantity generators are likely to install. These costs represent installing new tanks that comply with the full secondary containment requirement. In addition, new steel double-walled tanks in contact with the soil must have corrosion protection.

TABLE 4.—ESTIMATED COMPLIANCE COSTS FOR TYPICAL SQG TANK FACILITIES SUBJECT TO INTERIM STATUS AND PERMITTING TANK REQUIREMENTS

Facility type	Initial	Compliance cost estimates		
		O&M	Annualized	
			Pre-tax	After-tax
Two underground tanks.	$10,058	$1,600 (yr 1-7), 640 (yr 8-20).	$2,501	$2,173
Two aboveground tanks.	4,795	966 (yr 1-8), 1,200 (yr 9-20).	1,661	1,434
One aboveground and one underground.	8,112	2,083 (yr 1-7), 803 (yr 8), 920 (yr 9-20).	2,646	2,288

Source: Cost Analysis for Hazardous Waste Tank Rule; June 1986.

TABLE 5.—INSTALLED BEFORE-TAX COSTS FOR NEW CARBON STEEL UNDERGROUND TANKS WITH FULL SECONDARY CONTAINMENT ($1,000)

Number of tanks	Size of tanks (gallons)	Cost of tank systems w/o secondary containment			Cost of tank system w/secondary containment			Incremental cost of secondary containment		
		Initial	O&M	Annualized	Initial	O&M	annualized	Initial	O&M	Annualized
1	285	$1.66	0	$0.24	$07.31	$0.25	$1.28	$5.65	$.25	$1.05
1	550	2.17	0	0.31	9.14	.25	1.54	6.97	.25	1.24
1	3,000	10.00	0	1.40	23.00	.25	3.50	13.00	.25	2:10
1	10,000	19.00	0	2.70	39.00	.25	5.80	20.00	.25	3.10
1	20,000	30.00	0	4.20	57.00	.25	8.10	27.00	.25	4.10
3	10,000	48.00	0	6.80	103.00	.25	14.80	55.00	.25	8.00

Source: Cost Analysis for Hazardous Waste Tank Rule; June 1986.
NOTE.—Full secondary containment costs included a double-walled tank, double-walled piping, and a leak detection system. The 285 and 550 gallon tanks have 15 feet of piping per tank, the remaining tanks have 50 feet of piping per tank.

TABLE 6.—INSTALLED BEFORE-TAX COSTS FOR NEW CARBON STEEL ABOVEGROUND TANKS WITH FULL SECONDARY CONTAINMENT ($1,000)

Number of Tanks	Size of tanks (gallons)	Cost of tank systems w/o secondary containment			Cost of tank system w/secondary containment			Incremental cost of secondary containment		
		Initial	O&M	Annualized	Initial	O&M	Annualized	Initial	O&M	Annualized
1	275	$0.69	$0	$0.10	$01.26	$0.25	$0.43	$0.57	$0.25	$0.33
1	550	1.48	0	0.21	2.16	.25	0.56	0.67	.25	0.35
1	3,000	7.00	0	1.00	10.00	.25	1.60	3.00	.25	0.60
1	10,000	14.00	0	1.40	20.00	.25	3.10	7.00	.25	1.20
1	125,000	114.00	0	16.20	151.00	.25	21.60	37.00	.25	5.40
4	10,000	51.00	0	7.20	74.00	.25	10.70	23.00	.25	3.50

Source: Cost Analysis for Hazardous Waste Tank Rule; June 1986.
NOTE:—Full secondary containment costs include a lined concrete pad and curbing beneath the tank. The 275 and 550 gallon tanks have 15 feet of piping per tank, the remaining tanks have 50 feet per tank.

Because we assume that underground tanks are retrofitted with full secondary containment by replacement with a double-walled tank, we have included the cost of corrosion protection. We assume that aboveground tanks are retrofitted with secondary containment by installing a lined concrete pad and berm; therefore, the tank is not in contact with the soil and does not require corrosion protection. As the tables indicate, there is a wide variation in the incremental cost of the new tank secondary containment requirement, depending upon the type, size, and number of tanks.

To estimate the economic impacts associated with the final regulatory costs, the Agency collected financial data for each facility in the RIA survey data base. By analyzing publicly-available financial information, the Agency assessed the ability of affected facilities, firms, and industries to bear the increased costs of the final regulations. The Agency first estimated net income of each firm in the OSW RIA data base. To determine if the compliance costs for a facility are significant, EPA investigated whether the ratio of annualized compliance costs to firm net income is greater than 20 percent. If so, a firm is identified as potentially having financial difficulties in complying with the regulations.

For firms identified as such, EPA examined each firm's financial profile to determine whether the firm has financial difficulty exclusive of the compliance costs, or has assets that could be redirected to finance compliance with the final requirements. For this analysis, EPA determined the extent of impacts on facilities for the Nation.

To determine whether a substantial number of small businesses would be significantly affected by the final regulations, EPA compared average compliance costs for small businesses to net income levels of model small businesses for each affected industry. This analysis allowed the Agency to determine at what level compliance costs would be greater than 20 percent of the model small business net income. Based on a distribution of small business net incomes for each industry, the Agency estimated whether a substantial number of small businesses that must comply with the regulations may incur financial hardship as a result. If less than 20 percent of the small businesses are predicted to incur significant impacts, then EPA does not consider the regulations to result in significant small business impacts.

Similarly, to examine the impacts on the small quantity generator population, the Agency compared the range of potential compliance costs to model plant financial characteristics. The Agency used model plants for SQG facilities because actual facility financial data for the SQG survey sample were generally unavailable. These model plants differ in terms of the types and quantities of wastes generated, and in their financial characteristics. Two size categories of model plants were used to represent 42 industries: establishments with 1–9 employees and those with 10–49 employees.

B. Cost and Economic Impacts

EPA estimated total National compliance costs in four categories. The first category of compliance costs are initial costs. Initial costs are those which are incurred in the first year, but are not depreciable capital costs. An example of an initial cost is the cost of developing closure and post-closure contingency plans. The second category of compliance costs are the capital costs. Tank facilities may incur these costs in the first year or they may occur periodically over the life of the tank. Capital costs are depreciable costs. An example of a capital cost is the cost of a secondary containment system.

Third, EPA estimated operating and maintenance (O&M) compliance costs. O&M costs are incurred by tank facilities periodically during the year. These compliance costs include periodic inspections of monitoring equipment. Finally, EPA estimated annualized costs. Annualized costs represent the initial and capital costs on a yearly basis over the assumed 20-year life of the tank plus the O&M costs. All costs are calculated on a net present value and pre-tax basis. Net present value allows a standard comparison for varying compliance costs over time. Pre-tax costs represent the full compliance costs faced by the regulated community prior to receiving tax savings from capital depreciation.

The Agency estimated the total initial compliance costs of Parts 264 and 265 for existing permitted and interim status

hazardous waste tanks to be approximately $5.0 million, total capital costs to be about $120.0 million, and the total O&M costs to be about $6.0 million. EPA estimates the total capital compliance costs of Part 262 for accumulation tanks subject to this regulation to be about $31.6 million and the O&M costs to be about $2.8 million. Because owner/operators of accumulation tanks are not required to develop closure and post-closure contingency plans, no initial compliance costs will be incurred by this portion of the regulated community.

To estimate the impacts of these final rule revisions, the Agency annualized before-tax facility compliance costs by the appropriate industry real cost of capital. National before-tax costs are the sum of the weighted facility annualized costs. The Agency estimated the annualized cost of Parts 264 and 265 amendments to be about $23.7 million for approximately 1,700 storage and treatment tank facilities in the U.S. For the 2,100 accumulation tank facilities subject to this regulation, EPA estimated the annualized cost of the Part 262 amendments to be about $7.3 million. Thus, the national total annualized cost of this final rule is about $31.0 million.

In order to assess the potential national cost impact for leaking tanks that are less than 15 years old, EPA estimated the cost assuming all hazardous waste tank systems must be provided with full secondary containment immediately. This assumption results in a total annualized cost for the nation of $39.0 million, an annualized increase of about $8.0 million. More realistically, if we assume that 25 percent of the tank systems less than 15 years old are leaking, the total national annualized cost increases by about $2.0 million to $33.0 million. Thus, even under worst case situations, the national costs would not approach $100 million. The annualized costs do not have a large increase because immediate provision of full secondary containment greatly reduces the O&M costs of integrity assessments.

The total estimated compliance costs for the final rule differ from those of the proposal for a number of reasons. Among the more prominent reasons are the following: first, the regulations have changed from requiring full secondary containment or the ground-water monitoring approach implemented within a year, to phasing-in full secondary containment based on tank age. Second, above ground piping is not required to have full secondary containment for straight lengths of piping that are visually inspected on a daily basis, instead of for the entire piping system. Third, in response to public comment, we have increased our piping length assumptions for tank facilities with five or more tanks from 50 feet of piping per tank to 200 feet of piping per tank. Fourth, we estimate costs for accumulation tanks assuming that their characteristics are distributed like storage tanks, unlike at proposal where we showed a range of costs based on the assumption that all accumulation tanks are either aboveground or underground. Finally, for tank systems that are not required to retrofit full secondary containment immediately, we estimate the cost of an annual integrity assessment until the tank reaches the phase-in age.

The results of the financial analysis for storage and treatment tank facilities are based on a sample of 167 storage or treatment tank facilities with financial information available (out of 254 storage or treatment tank facilities in the OSW data base). We do not expect any of the facilities in the sample to be affected significantly or to close as a result of the regulations. We base this conclusion on our screening analysis of all 167 firms and a more thorough review of the compliance costs and financial conditions of 18 facilities not passing our initial screening analysis. This review focused on such things as the relationship of each firm's estimated compliance costs to total cash-flow (net income plus non-cash expenses such as depreciation, amortization, and depletion) and to assets.

For 82 percent of the 167 facilities in the sample, the annualized after-tax compliance costs represent only one percent or less of their firm's net income. Extrapolating these results to the nation shows similar results—81 percent of all potentially-affected facilities nationally are likely to incur annualized compliance costs that are one percent or less of their firm's net income. These costs do not represent substantial economic impacts on the affected firms.

For accumulation tank facilities, we based our conclusions on a sample of 234 facilities with financial information available (out of a total of 349 accumulation tank facilities in the OSW data base). As for the storage or treatment tank facilities, we do not expect any of the accumulation tank facilities to be affected significantly or to close as a result of the regulations. This conclusion is based on our screening analysis of all 234 firms and a more thorough review of the compliance costs and financial conditions of 37 facilities not passing our initial screening analysis. For 76 percent of the accumulation tank facilities, annualized after-tax compliance costs represent one percent or less of their firm's net income.

Extrapolating from the results for accumulation tank facilities in the sample to the nation shows results similar to those found for the storage or treatment tank facilities. The OSW data base does not provide tank characteristic data for accumulation tanks by their type (e.g., above, in, or underground). Therefore, we assume that the population of accumulation tanks has basically the same characteristics as storage tanks. Using this assumption, we find that 81 percent of all potentially-affected facilities nationally are likely to incur annualized compliance costs that are one percent or less of their firm's net income. Again, these costs are not substantial.

The model estimated potential impacts on small quantity generator hazardous waste tank facilities based on the assumption that they would be subject to the Part 264 requirements of the final rule. The estimated cost assuming the SQG facilities had two underground tanks would result in 21 out of 84 model facilities experiencing significant impacts. The annualized cost assuming SQG facilities had two aboveground tanks would result in four model facilities experiencing significant impacts. Finally, the annualized cost assuming SQG facilities had one aboveground tank and one underground tank would result in 23 model facilities experiencing significant impacts.

The economic effects of the hazardous waste tank regulations on SQGs that are required to meet the Part 264 standards would vary widely from facility to facility depending upon financial strength, quantity of waste, number and type of tanks, current waste management practices, and changes required to comply with the regulations. Certain SQGs, given the variability of their financial strength and potential lack of waste management alternatives, may incur significant adverse financial effects. Because of data limitations, however, it is not possible to determine the frequency of these situations.

The economic analysis for permitted or interim status small quantity generator tank system facilities assumed that the facilities are all small businesses. Although these results seem to indicate that impacts may be significant for some small quantity generators that must comply with interim status and permitting requirements, a Regulatory Flexibility Analysis is not necessary because the Agency does not expect a substantial number of small businesses to be

significantly affected. The most important reason for this is that SQG facilities have accumulation tanks that will not be subject to this regulation. Additional reasons why the impacts on SQG facilities will be significantly less than the model suggests are the following:

- Most SQG tank facilities will have only one tank, thus reducing our estimates of economic impacts (a sensitivity analysis indicates that compliance costs for one permitted aboveground tank system result in zero significantly-affected model firms, while the compliance costs for one permitted underground tank system result in five significantly-affected model firms);
- SQG tank facilities make up only 10 to 15 percent of the total SQG population, most of which will not be significantly affected;
- None of the medium sized model firms in any industry were significantly affected, and, based on the SQG survey data, such firms are expected to compose two-thirds of the SQG tank population; and

Finally, we do not anticipate that requiring secondary containment for new tank systems will result in significant financial impacts. The incremental costs of providing secondary containment for new tank systems, as shown in Tables 5 and 6, are less than the compliance costs for existing tank systems under these new requirements. Thus, we expect even fewer impacts for facilities installing new tanks than found for facilities with existing tanks.

For example, we compared the incremental annualized cost for installing new small tanks in compliance with the final rule to the model financial data to assess potential impacts for small quantity generators. The results indicate that, at most, two model firms (of 84) may experience significant financial impacts as a result of complying with the new tank requirements. This is in contrast to the estimated 23 significantly-affected model firms for the analysis of compliance with full interim status and permitting requirements.

VIII. Supporting Documents

In preparing this final rule, the Agency has used many sources of data and information, the most significant of which are listed below. They have been placed in the rulemaking docket at U.S. Environmental Protection Agency, EPA RCRA Docket (Sub-basement), 401 M Street, SW., Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675.

The Agency has used the background documents supporting the existing RCRA tank regulation, the Agency's June 16, 1985, proposal to amend the existing RCRA tank regulation, and other information gathered since proposal.

The major sources of information are the following, which are available for viewing only at the EPA RCRA Docket:

1. "Hazardous Waste Tanks Risk Analysis," ICF, Incorporated and Pope-Reid Associates, Inc. (June 1986). The objective of this study was to analyze and assess the human health risks associated with releases of contaminants from hazardous waste tanks. An analysis included the population of four tank categories: RCRA-permitted storage tanks; treatment tanks that are not exempt under EPA's wastewater treatment tank (WWT) exemption; small quantity generator (SQG) tanks; and accumulation tanks (tanks that store waste for less than 90-days and are, therefore, not required to obtain an RCRA permit). The analysis focused on five regulatory scenarios, namely, no revised regulatory requirement (baseline): secondary), containment; partial secondary containment and ground-water monitoring), corrosion protection for portions of steel tanks in contact with the soil: and leak testing and ground-water monitoring.
2. Public Comments on the June 26, 1985 proposal to revise the existing RCRA tank standards. All the public comments received on the revised tank standards proposal are included in the docket at EPA Headquarters. These comments were considered by EPA in developing today's final rule.
3. Response to Public Comments on the Revised Hazardous Waste Storage and Treatment Tank Standards, Versar Inc. (June 1986). This document provides an analysis of public comments received in response to the proposed revised standards for hazardous waste storage and treatment tank systems. The analysis identified 54 issues in which a variety of comments by 89 commenters were identified and classified and the Agency's response was documented.
4. "Assessment of the Technical Environmental and Safety Aspects of Storage of Hazardous Waste in Underground Tanks," SCS Engineers, (February 1984). The objectives of this study were to define current practices for hazardous waste storage in underground tanks; evaluate these practices in relation to data on spills and damages and best engineering judgment; estimate the relative probability and magnitude of releases from underground tanks, and examine appropriate alternatives for prevention and/or migration of releases.
5. "Underground Tank Leak Detection Program Status Report," California Regional Water Quality Control Board—San Francisco Bay Region, (October 1983). The objectives of this study were to identify geographical areas (within the San Francisco Bay region) where the ground water is of particular concern, develop a facilities information questionnaire; develop subsurface investigation guidelines; identify priority facilities; and request the completion of subsurface investigations. The investigation focused on industrial facilities storing hazardous materials including: acids, metals, resins, solvents, and fuels. Included in the study were facilities with underground containment including: product storage tanks, waste tanks and sumps, fuel tanks, and piping systems associated with these tanks. The information includes questionnaire data on 1,918 facilities as well as the results of subsurface investigations at 80 facilities.
6. "Quarterly Status Report on Toxic Cleanup Cases," State of California—California Regional Water Quality Control Board—San Francisco Bay Region (March 1986). This report includes a brief summary and status of 144 toxic cleanup cases currently in progress. Information includes the extent of contamination and description of remedial action.
7. "Results of API Tank and Piping Leak Survey," American Petroleum Institute (1981). This study includes the statistical results of 1,717 completed "Tank and Piping Leak Survey Questionnaire" forms. The survey's primary purpose was to obtain information on the exact location of perforations in tanks to support the effectiveness of various tank testing procedures.
8. "Analysis of Causes of Release Incidents Based on the Underground Storage Tank Release Incidents Data Base," Versar, Inc. (June 1986). The objectives of this study were to investigate the causes of release incidents based on available information on 12,500 underground storage tank release incidents.
9. "Underground Motor Fuel Storage Tanks: A National Survey," Volumes I and II, USEPA, Office of Pesticides and Toxic Substances, Washington, DC (EPA 560/6-86-013) (June 1986).

IX. Executive Order 12291

Sections 2 and 3 of Executive Order 12291 (46 FR 13193; February 9, 1981) require that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as one that is likely to result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs and prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As previously discussed in section VII of this preamble, today's final regulations will have none of the above effects. Because the final amendments to the regulations applicable to RCRA tank facilities do not meet the definition of a

major regulation, the Agency has not conducted a Regulatory Impact Analysis. EPA has prepared background information supporting this determination; this documentation is in the Economic Impact Analysis Report, which may be examined at the RCRA Public Docket Office.

X. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050-0050.

XI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (U.S.C. 601 *et seg.*), whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rules on small entities (i.e., small business, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. EPA has conducted an analysis of the impacts on small businesses, which is included in the Economic Impact Analysis Report (EIAR).

EPA has established guidelines for determining whether a regulatory flexibility analysis (RFA) is required to accompany a rulemaking package. The guidelines state that if at least 20 percent of the universe of "small entities" are affected by the rule, then a RFA is required. In addition, the EPA criteria should be applied to evaluate if a regulation will have a "significant impact" on small entities. If any one of the following four criteria is met, the regulation should be assumed to have a "significant impact":

(1) Annual compliance costs will increase the relevant production costs for small entities by more than 5 percent;

(2) The ratio of compliance costs to sales will be 10 percent higher for small entities than for large entities;

(3) Capital costs of compliance will represent a significant portion of the capital available to small entities, taking into account internal cash flow plus external financing capabilities; or

(4) The costs of the regulation will likely result in closures of small entities.

The Agency used a cash flow analysis to examine the extent to which the compliance costs will represent a potentially significant portion of capital available to small entities and the likelihood of small business plant closures.

To determine whether a substantial number of small businesses would be significantly affected by the final regulations, EPA compared average compliance costs for small businesses to net income levels of model small business financial characteristics for each affected industry. This analysis allowed the Agency to determine at what level compliance costs would be greater than 20 percent of the model small business net income, thereby indicating significant impacts. Based on a distribution of small business net incomes for each industry, the Agency estimated whether a substantial number of small businesses that must comply with the regulations may incur financial hardship as a result. If less than 20 percent of the small businesses within each affected industry are predicted to incur significant impacts, then EPA does not consider the regulations to result in significant small business impacts.

Similarly, to examine the impacts of the affected small quantity generator population, the Agency compared the range of potential compliance costs to model plant financial characteristics. The Agency used model plants for SQG facilities because actual facility financial data for the SQG survey sample were generally unavailable. These model plants differ in terms of the types and quantities of wastes generated, and in their financial characteristics. Two size categories of model plants were used to represent 42 industries: establishments with 1-9 employees and those with 10-49 employees.

The analysis of the effects of the regulations on small businesses shows that less than 20 percent of potentially affected small businesses within each affected industry nationwide are likely to be significantly affected by the regulations. In addition, the plant closure analysis indicated that there would be no plant closures as a result of the regulations. Finally, our analysis of small quantity generators suggests that very few and certainly less than 20 percent of the affected small quantity generators will be significantly affected by this rule because most SQG tank facilities will not require interim status or storage permits.

The Economic Impact Analysis Report (EIAR) for this rulemaking provides a more detailed discussion of the Agency's methodology for, and findings from, assessing small business impacts attributable to the hazardous waste tank rule. The EIAR is available for public viewing in the docket for today's rulemaking. On the basis of the analysis conducted, EPA has determined that this rulemaking will not have significant economic impact on a substantial number of small entities.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous materials, Waste treatment and disposal.

40 CFR Part 261

Intergovernmental relations, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 262

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements' Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: June 30, 1986.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

40 CFR Part 260 is amended as follows:

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

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, and 3019 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, and 6939).

2. Section 260.10 is amended by adding the following terms and definitions in alphabetical order:

§ 260.10 Definitions.

* * * * *

"Aboveground tank" means a device meeting the definition of "tank" in § 260.10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

* * * * *

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

* * * * *

"Component" means either the tank or ancillary equipment of a tank system.

* * * * *

"Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

* * * * *

"Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations—which cannot be canceled or modified without substantial loss—for physical construction of the site or installation of the tank system to be completed within a reasonable time.

* * * * *

"Inground tank" means a device meeting the definition of "tank" in § 260.10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

* * * * *

"Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

* * * * *

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

* * * * *

"New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of § 264.193(g)(2) and § 265.193(g)(2), a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system.")

* * * * *

"Onground tank" means a device meeting the definition of "tank" in § 260.10 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

* * * * *

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities.

* * * * *

"Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

* * * * *

"Underground tank" means a device meeting the definition of "tank" in § 260.10 whose entire surface area is totally below the surface of and covered by the ground.

* * * * *

"Unfit-for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

* * * * *

"Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

4. Section 261.4 is amended by adding paragraph (a)(8) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as

occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

40 CFR Part 262 is amended as follows:

5. The authority citation for Part 262 is revised to read as follows:

Authority: Secs. 1006, 2002, 3001, 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937).

6. Section 262.34 is amended by revising paragraphs (a)(1) and (d)(2), by redesignating existing paragraphs (d)(3) and (d)(4) as (d)(4) and (d)(5), respectively, and by adding a new paragraph (d)(3), as follows:

§ 262.34 Accumulation time.

(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

(1) The waste is placed in containers and the generator complies with Subpart I of 40 CFR Part 265, or the waste is placed in tanks and the generator complies with Subpart J of 40 CFR Part 265, except § 265.197(c), and § 265.200. In addition, such a generator is exempt from all the requirements in Subparts G and H of 40 CFR Part 265, except for § 265.111 and § 265.114.

* * * * *

(d) * * *

(2) The generator complies with the requirements of Subpart I of Part 265, except § 265.176;

(3) The generator complies with the requirements of § 265.201 in Subpart J of Part 265;

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 264 is amended as follows:

7. The Authority citation for Part 264 is revised to read as follows:

Authority: Secs. 1006, 2002, 3004, and 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

8. The Table of Contents and heading of Part 264, Subpart J—Tanks, is revised to read as follows:

* * * * *

Subpart J—Tank Systems

Sec.
264.190 Applicability.
264.191 Assessment of existing tank system's integrity.
264.192 Design and installation of new tank systems or components.
264.193 Containment and detection of releases.
264.194 General operating requirements.
264.195 Inspections.
264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.
264.197 Closure and post-closure care.
264.198 Special requirements for ignitable or reactive wastes.
264.199 Special requirements for incompatible wastes.

* * * * *

9. Section 264.15 is amended by revising paragraph (b)(4) to read as follows:

§ 264.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction of any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the terms and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.253, 264.254, 264.303, and 264.347, where applicable.

* * * * *

10. Section 264.73 is amended by revising paragraph (b)(6) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(6) Monitoring, testing, or analytical data where required by Subpart F and §§ 264.191, 264.193, 264.195, 264.226, 264.253, 264.254, 264.276, 264.278, 264.280, 264.303, 264.309, and 264.347.

* * * * *

11. Section 264.110 is amended by adding a new paragraph (b)(3) to read as follows:

§ 264.110 Applicability.

* * * * *

(b) * * *

(3) Tank systems that are required under § 264.197 to meet the requirements for landfills.

12. Section 264.140 is amended by adding a new paragraph (b)(3) to read as follows:

§ 264.140 Applicability.

* * * * *

(b) * * *

(3) Tank systems that are required under § 264.197 to meet the requirements for landfills.

* * * * *

13. The Subpart J—Tank Systems requirements are amended by revising the Subpart as follows:

Subpart J—Tank Systems

§ 264.190 Applicability.

The requirements of this Subpart apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in paragraphs (a) and (b) of this section or in § 264.1 of this part.

(a) Tanks that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in § 264.193. To demonstrate the absence or presence of free liquids in the stored/treated waste, EPA Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication No. SW-846) must be used.

(b) Tanks, including sumps, as defined in § 260.10, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in § 264 193 of this subpart.

(Information collection requirement contained in paragraph (a) was approved by the Office of Management and Budget under control number 2050-0050.)

§ 264.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 264.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment

reviewed and certified by an independent, qualified registered professional engineer, in accordance with § 270.11(d), that attests to the tank system's integrity by January 12, 1988.

(b) This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

(1) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(2) Hazardous characteristics of the waste(s) that have been and will be handled;

(3) Existing corrosion protection measures;

(4) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(5) Results of a leak test, internal inspection, or other tank integrity examination such that:

(i) For non-enterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects, and

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination, that is certified by an independent, qualified, registered professional engineer in accordance with § 270.11(d), that addresses cracks, leaks, corrosion, and erosion.

[Note.—The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.]

(c) Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986, must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

(d) If, as a result of the assessment conducted in accordance with paragraph (a), a tank system is found to be leaking or unfit for use, the owner or operator must comply with the requirements of § 264.196.

Approved by the Office of Management and Budget under control number 2050-0050.]

§ 264.192 Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must obtain and submit to the Regional Administrator, at time of submittal of Part B information, a written assessment, reviewed and certified by an independent, qualified registered professional engineer, in accordance with § 270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Regional Administrator to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

(1) Design standard(s) according to which tank(s) and/or the ancillary equipment are constructed;

(2) Hazardous characteristics of the waste(s) to be handled;

(3) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

(i) Factors affecting the potential for corrosion, including but not limited to:

(A) Soil moisture content;

(B) Soil pH;

(C) Soil sulfides level;

(D) Soil resistivity;

(E) Structure to soil potential;

(F) Influence of nearby underground metal structures (e.g., piping);

(G) Existence of stray electric current;

(H) Existing corrosion-protection measures (e.g., coating, cathodic protection), and

(ii) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

(A) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.;

(B) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (e.g., impressed current or sacrificial anodes); and

(C) Electrical isolation devices such as insulating joints, flanges, etc.

[Note.—The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)—Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in providing corrosion protection for tank systems.]

(4) For underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

(5) Design considerations to ensure that:

(i) Tank foundations will maintain the load of a full tank;

(ii) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of § 264.18(a); and

(iii) Tank systems will withstand the effects of frost heave.

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or component, must inspect the system for the presence of any of the following items:

(1) Weld breaks;

(2) Punctures;

(3) Scrapes of protective coatings;

(4) Cracks;

(5) Corrosion;

(6) Other structural damage or inadequate construction/installation.

All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

(c) New tank systems or components that are placed underground and that are backfilled must be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(d) All new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to

remedy the leak(s) in the system must be performed prior to the tank system being covered, enclosed, or placed into use.

(e) Ancillary equipment must be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

[Note.—The piping system installation procedures described in American Petroleum Institute (API) Publication 1615 (November 1979), "Installation of Underground Petroleum Storage Systems," or ANSI Standard B31.3, "Petroleum Refinery Piping," and ANSI Standard B31.4 "Liquid Petroleum Transportation Piping System," may be used, where applicable, as guidelines for proper installation of piping systems.]

(f) The owner or operator must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under paragraph (a)(3) of this section, or other corrosion protection if the Regional Administrator believes other corrosion protection is necessary to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated must be supervised by an independent corrosion expert to ensure proper installation.

(g) The owner or operator must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of paragraphs (b) through (f) of this section, that attest that the tank system was properly designed and installed and that repairs, pursuant to paragraphs (b) and (d) of this section, were performed. These written statements must also include the certification statement as required in § 270.11(d) of this Chapter.

(Information collection requirements contained in paragraphs (a) and (g) were approved by the Office of Management and Budget under control number 2050-0050.)

§ 264.193 Containment and detection of releases.

(a) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section must be provided (except as provided in paragraphs (f) and (g) of this section):

(1) For all new tank systems or components, prior to their being put into service;

(2) For all existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987;

(3) For those existing tank systems of known and documented age, within two years after January 12, 1987 or when the tank system has reached 15 years of age, whichever comes later; and

(4) For those existing tank systems for which the age cannot be documented, within eight years of January 12, 1987; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, whichever comes later; and

(5) For tank systems that store or treat materials that become hazardous wastes subsequent to January 12, 1987, within the time intervals required in paragraphs (a)(1) through (a)(4) of this section, except that the date that a material becomes a hazardous waste must be used in place of January 12, 1987.

(b) Secondary containment systems must be:

(1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(c) To meet the requirements of paragraph (b) of this section, secondary containment systems must be at a minimum:

(1) Constructed of or lined with materials that are compatible with the wastes(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic).

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the owner or operator can demonstrate to the Regional Administrator that existing detection technologies or site conditions will not allow detection of a release within 24 hours; and

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment, if the owner or operator can demonstrate to the Regional Administrator that removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

[Note.—If the collected material is a hazardous waste under Part 261 of this chapter, it is subject to management as a hazardous waste in accordance with all applicable requirements of Parts 262 through 265 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 sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR Part 302.]

(d) Secondary containment for tanks must include one or more of the following devices:

(1) A liner (external to the tank);

(2) A vault;

(3) A double-walled tank; or

(4) An equivalent device as approved by the Regional Administrator

(e) In addition to the requirements of paragraphs (b), (c), and (d) of this section, secondary containment systems must satisfy the following requirements:

(1) External liner systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(iii) Free of cracks or gaps; and

(iv) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

(2) Vault systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event:

(iii) Constructed with chemical-resistant water stops in place at all Joints (if any):

(iv) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

(v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

(A) Meets the definition of ignitable waste under § 262.21 of this chapter; or

(B) Meets the definition of reactive waste under § 262.21 of this chapter, and may form an ignitable or explosive vapor.

(vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(3) Double-walled tanks must be:

(i) Designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell: and

(iii) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time, if the owner or operator can demonstrate to the Regional Administrator, and the Regional Administrator concludes, that the existing detection technology or site conditions would not allow detection of a release within 24 hours.

[Note.—The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.]

(f) Ancillary equipment must be provided with secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of paragraphs (b) and (c) of this section except for:

(1) Aboveground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(2) Welded flanges, welded Joints, and welded connections, that are visually inspected for leaks on a daily basis;

(3) Sealless or magnetic coupling pumps, that are visually inspected for leaks on a daily basis; and

(4) Pressurized aboveground piping systems with automatic shut-off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

(g) The owner or operator may obtain a variance from the requirements of this section if the Regional Administrator finds, as a result of a demonstration by the owner or operator that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituents into the ground water; or surface water at least as effectively as secondary containment during the active life of the tank system *or* that in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with paragraph (g)(2) of this section, be exempted from the secondary containment requirements of this section.

(1) In deciding whether to grant a variance based on a demonstration of equivalent protection of ground water and surface water, the Regional Administrator will consider:

(i) The nature and quantity of the wastes;

(ii) The proposed alternate design and operation;

(iii) The hydrogeologic setting of the facility, including the thickness of soils present between the tank system and ground water, and

(iv) All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to ground water or surface water

(2) In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the Regional Administrator will consider:

(i) The potential adverse effects on ground water, surface water, and land quality taking into account:

(A) The physical and chemical characteristics of the waste in the tank system, including its potential for migration.

(B) The hydrogeological characteristics of the facility and surrounding land,

(C) The potential for health risks caused by human exposure to waste constituents,

(D) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents, and

(E) The persistence and permanence of the potential adverse effects;

(ii) The potential adverse effects of a release on ground-water quality, taking into account:

(A) The quantity and quality of ground water and the direction of ground-water flow,

(B) The proximity and withdrawal rates of ground-water users,

(C) The current and future uses of ground water in the area, and

(D) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground-water quality;

(iii) The potential adverse effects of a release on surface water quality, taking into account:

(A) The quantity and quality of ground water and the direction of ground-water flow,

(B) The patterns of rainfall in the region,

(C) The proximity of the tank system to surface waters,

(D) The current and future uses of surface waters in the area and any water quality standards established for those surface waters, and

(E) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality; and

(iv) The potential adverse effects of a release on the land surrounding the tank system, taking into account:

(A) The patterns of rainfall in the region, and

(B) The current and future uses of the surrounding land.

(3) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (g)(1) of this section, at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), must:

(i) Comply with the requirements of § 264.196, except paragraph (d), and

(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(A) Enable the tank system for which the variance was granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

(B) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water; and

(iii) If contaminated soil cannot be removed or decontaminated in accordance with paragraph (g)(3)(ii) of this section, comply with the requirement of § 264.197(b).

(4) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (g)(1) of this section, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), must:

(i) Comply with the requirements of § 264.196 (a), (b), (c), and (d); and

(ii) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if ground water has been contaminated, the owner or operator must comply with the requirements of § 264.197(b); and

(iii) If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of paragraphs (a) through (f) of this section or reapply for a variance from secondary containment and meet the requirements for new tank systems in § 264.192 if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil can be decontaminated or removed and ground water or surface water has not been contaminated.

(h) The following procedures must be followed in order to request a variance from secondary containment:

(1) The Regional Administrator must be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in paragraph (g) according to the following schedule:

(i) For existing tank systems, at least 24 months prior to the date that secondary containment must be provided in accordance with paragraph (a) of this section.

(ii) For new tank systems, at least 30 days prior to entering into a contract for installation.

(2) As part of the notification, the owner or operator must also submit to the Regional Administrator a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in paragraph (g)(1) or paragraph (g)(2) of this section;

(3) The demonstration for a variance must be completed within 180 days after notifying the Regional Administrator of an intent to conduct the demonstration; and

(4) If a variance is granted under this paragraph, the Regional Administrator will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

(i) All tank systems, until such time as secondary containment that meets the requirements of this section is provided, must comply with the following:

(1) For non-enterable underground tanks, a leak test that meets the requirements of § 264.191(a) or other tank integrity method, as approved or required by the Regional Administrator, must be conducted at least annually.

(2) For other than non-enterable underground tanks, the owner or operator must either (i) conduct a leak test as in paragraph (i)(1) or (ii) of this section develop a schedule and procedure for an assessment of the overall condition of the tank system by an independent, qualified registered professional engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

(3) For ancillary equipment, a leak test or other integrity assessment as approved by the Regional Administrator must be conducted at least annually.

[Note.—The practices described in the American Petroleum Institute (API) Publication Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines for assessing the overall condition of the tank system.]

(4) The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with paragraphs (i)(1) through (i)(3) of this section.

(5) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in paragraphs (i)(1) through (i)(3) of this section, the owner or operator must comply with the requirements of § 264.196.

(Information collection requirements contained in paragraphs (c), (d), (e), (g), (h), and (i) were approved by the Office of Management and Budget under control number 2050-0050.)

§ 264.194 General operating requirements.

(a) Hazardous wastes or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) The owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

(1) Spill prevention controls (e.g., check valves, dry disconnect couplings);

(2) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The owner or operator must comply with the requirements of § 264.196 if a leak or spill occurs in the tank system.

(Information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 2050-0050)

§ 264.195 Inspections.

(a) The owner or operator must develop and follow a schedule and procedure for inspecting overfill controls.

(b) The owner or operator must inspect at least once each operating day:

(1) Aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(2) Data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

[Note.—Section 264.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 264.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a leak. Also, 40 CFR Part 302 may require the owner or operator to notify the National Response Center of a release.]

(c) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter; and

(2) All sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

[Note.—The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)—Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.]

(d) The owner or operator must document in the operating record of the facility an inspection of those items in paragraphs (a) through (c) of this section.

(Information collection requirements contained in paragraph (a) and (d) were approved by the Office of Management and Budget under control number 2050-0050)

§ 264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements:

(a) *Cessation of Use; prevent flow or addition of wastes.* The owner or operator must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) *Removal of waste from tank system or secondary containment system.* (1) If the release was from the tank system, the owner/operator must, within 24 hours after detection of the leak or, if the owner/operator demonstrates that it is not possible, at the earliest practicable time, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, all released materials must be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) *Containment of visible releases to the environment.* The owner/operator must immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water; and

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) *Notifications, reports.* (1) Any release to the environment, except as provided in paragraph (d)(2) of this section, must be reported to the Regional Administrator within 24 hours of its detection. If the release has been reported pursuant to 40 CFR Part 302, that report will satisfy this requirement.

(2) A leak or spill of hazardous waste that is:

(i) Less than or equal to a quantity of one (1) pound and

(ii) Immediately contained and cleaned-up is exempted from the requirements of this paragraph.

(3) Within 30 days of detection of a release to the environment, a report containing the following information must be submitted to the Regional Administrator:

(i) Likely route of migration of the release;

(ii) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

(iii) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data must be submitted to the Regional Administrator as soon as they become available.

(iv) Proximity to downgradient drinking water, surface water, and population areas; and

(v) Description of response actions taken or planned.

(e) *Provision of secondary containment, repair, or closure.* (1) Unless the owner/operator satisfies the requirements of paragraphs (e)(2) through (4) of this section, the tank system must be closed in accordance with § 264.197.

(2) If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

(4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner/operator must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of § 264.193 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of paragraph (f) of this section are satisfied. If a component is replaced to comply with the requirements of this subparagraph, that component must satisfy the requirements for new tank systems or components in §§ 264.192 and 264.193. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with § 264.193 prior to being returned to use.

(f) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to the Regional Administrator within seven days after returning the tank system to use.

[Note.—The Regional Administrator may, on the basis of any information received that

there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order under RCRA sections 3004(w), 3008(h), or 7003(a) requiring corrective action or such other response as deemed necessary to protect human health or the environment.]

[Note.—See § 264.15(c) for the requirements necessary to remedy a failure. Also, 40 CFR Part 302 may require the owner or operator to notify the National Response Center of certain releases.]

(Information collection requirements contained in paragraphs (d), (e), and (f) were approved by the Office of Management and Budget under control number 2050-0050)

§ 264.197 Closure and post-closure care.

(a) At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless § 261.3(d) of this Chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in Subparts G and H of this Part.

(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (a) of this section, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 264.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in Subparts G and H of this Part.

(c) If an owner or operator has a tank system that does not have secondary containment that meets the requirements of § 264.193 (b) through (f) and is not exempt from the secondary containment requirements in accordance with § 264.193(g), then:

(1) The closure plan for the tank system must include both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section.

(2) A contingent post-closure plan for complying with paragraph (b) of this section must be prepared and submitted as part of the permit application.

(3) The cost estimates calculated for closure and post-closure care must reflect the costs of complying with the contingent closure plan and the contingent post-closure plan, if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under paragraph (a) of this section.

(4) Financial assurance must be based on the cost estimates in paragraph (c)(3) of this section.

(5) For the purposes of the contingent closure and post-closure plans, such a tank system is considered to be a landfill, and the contingent plans must meet all of the closure, post-closure, and financial responsibility requirements for landfills under Subparts G and H of this Part.

(Information collection requirements contained in paragraphs (a)-(c) were approved by the Office of Management and Budget under control number 2050-0050)

§ 264.198 Special requirements for ignitable or reactive wastes.

(a) Ignitable or reactive waste must not be placed in tank systems, unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the tank system so that:

(i) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this Chapter, and

(ii) Section 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 that may cause the waste to ignite or react; or

(3) The tank system is used solely for emergencies.

(b) The owner or operator of a facility where ignitable or reactive waste is stored or treated in a tank must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981), (incorporated by reference, see § 260.11).

§ 264.199 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, must not be placed in the same tank system, unless § 264.17(b) is complied with.

(b) Hazardous waste must not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless § 264.17(b) is complied with.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 265 is amended as follows:

14. The Authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935).

15. The Table of Contents and the heading of Part 265, Subpart J—Tanks is revised to read as follows:

* * * * *

Subpart J—Tank Systems

Sec.
265.190 Applicability.
265.191 Assessment of existing tank system's integrity.
265.192 Design and installation of new tank systems or components.
265.193 Containment and detection of releases.
265.194 General operating requirements.
265.195 Inspections.
265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.
265.197 Closure and post-closure care.
265.198 Special requirements for ignitable or reactive wastes.
265.199 Special requirements for incompatible wastes.
265.200 Waste analysis and trial tests.
265.201 Special requirements for generators of between 100 and 1,000 kg/mo that accumulate hazardous waste in tanks.

* * * * *

16. Section 265.13 is amended by revising paragraph (b)(6) to read as follows:

§ 265.13 General waste analysis.

* * * * *

(b) * * *

(6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 265.200, 265.225, 265.252, 265.273, 265.314, 265.345, 265.375, and 265.402.

* * * * *

17. Section 265.15 is amended by revising paragraph (b)(4) to read as follows:

§ 265.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the

equipment and the probability of an environmental or human health incident if the deterioration, or malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.347, 265.377, and 265.403.

* * * * *

18. Section 265.73 is amended by revising paragraphs (b)(3) and (b)(6) to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(3) Records and results of waste analysis and trial tests performed as specified in §§ 265.13, 265.200, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, and 265.402.

* * * * *

(6) Monitoring, testing, or analytical data when required by §§ 265.90, 265.94, 265.191, 265.193, 265.195, 265.276, 265.278, 265.280(d)(1), 265.347, and 265.377; and

* * * * *

19. Section 265.110 is amended by revising paragraph (b)(2) to read as follows:

§ 265.110 Applicability.

* * * * *

(b) * * *

(2) Tank systems that are required under § 265.197 to meet requirements for landfills.

* * * * *

20. Section 265.140 is amended by revising paragraph (b) to read as follows:

§ 265.140 Applicability.

* * * * *

(b) The requirements of §§ 265.144 and 265.146 apply only to owners and operators of disposal facilities and tank systems that are required under § 265.197 to meet the requirements for landfills

* * * * *

21. The Subpart J is revised to read as follows:

Subpart J—Tank Systems

§ 265.190 Applicability.

The regulations of this Subpart apply to owners or operators of facilities that use tank systems for storing or treating hazardous waste, except as otherwise provided in paragraphs (a) and (b) of this section or in § 265.1 of this part.

(a) Tanks that are used to store or treat hazardous waste containing no free liquids and that are situated inside a building with an impermeable floor are exempted from the requirements of § 265.193 of this subpart. To demonstrate the absence or presence of free liquids in the stored/treated waste, EPA Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication No. SW-846) must be used.

(b) Tanks, including sumps, as defined in § 260.10, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in § 265.193.

(Information collection requirement contained in paragraph (a) was approved by the Office of Management and Budget under control number 2050-0050.)

§ 265.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 265.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified, registered professional engineer in accordance with § 270.11(d), that attests to the tank system's integrity by January 12, 1988.

(b) This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

(1) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(2) Hazardous characteristics of the waste(s) that have been or will be handled;

(3) Existing corrosion protection measures;

(4) Documented age of the tank system, if available, (otherwise, an estimate of the age); and

(5) Results of a leak test, internal inspection, or other tank integrity examination such that:

(i) For non-enterable underground tanks, this assessment must consist of a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects.

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described above, or an internal inspection and/or other tank integrity examination certified by an independent, qualified, registered professional engineer in accordance with § 270.11(d) that addresses cracks, leaks, corrosion, and erosion.

[Note.—The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines in conducting the integrity examination of an other than non-enterable underground tank system.]

(c) Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986 must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

(d) If, as a result of the assessment conducted in accordance with paragraph (a) of this section, a tank system is found to be leaking or unfit for use, the owner or operator must comply with the requirements of § 265.196.

(Information collection requirements contained in paragraphs (a)-(d) were approved by the Office of Management and Budget under control number 2050-0050.)

§ 265.192 Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by an independent, qualified, registered professional engineer in accordance with § 270.11(d) attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:

(1) Design standard(s) according to which the tank(s) and ancillary equipment is or will be constructed.

(2) Hazardous characteristics of the waste(s) to be handled.

(3) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or will be in contact with the soil or with water, a determination by a corrosion expert of:

(i) Factors affecting the potential for corrosion, including but not limited to:

(A) Soil moisture content;

(B) Soil pH;

(C) Soil sulfides level;

(D) Soil resistivity;

(E) Structure to soil potential;

(F) Influence of nearby underground metal structures (e.g., piping);

(G) Stray electric current;

(H) Existing corrosion-protection measures (e.g., coating, cathodic protection), and

(ii) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

(A) Corrosion-resistant materials of construction such as special alloys, fiberglass-reinforced plastic, etc.;

(B) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (e.g., impressed current or sacrificial anodes); and

(C) Electrical isolation devices such as insulating joints, flanges, etc.

[Note.—The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)—Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in providing corrosion protection for tank systems.]

(4) For underground tank system components that are likely to be affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

(5) Design considerations to ensure that:

(i) Tank foundations will maintain the load of a full tank;

(ii) Tank systems will be anchored to prevent flotation or dislodgement where the tank system is placed in a saturated zone, or is located within a seismic fault zone; and

(iii) Tank systems will withstand the effects of frost heave.

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems, must inspect the system or component for the presence of any of the following items:

(1) Weld breaks;

(2) Punctures;

(3) Scrapes of protective coatings;

(4) Cracks;

(5) Corrosion;

(6) Other structural damage or inadequate construction or installation.

All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

(c) New tank systems or components and piping that are placed underground and that are backfilled must be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is carefully installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(d) All new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system must be performed prior to the tank system being covered, enclosed, or placed in use.

(e) Ancillary equipment must be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion or contraction.

[Note.—The piping system installation procedures described in American Petroleum Institute (API) Publication 1615 (November 1979), "Installation of Underground Petroleum Storage Systems," or ANSI Standard B31.3, "Petroleum Refinery System," may be used, where applicable, as guidelines for proper installation of piping systems.]

(f) The owner or operator must provide the type and degree of corrosion protection necessary, based on the information provided under paragraph (a)(3) of this section, to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated must be supervised by an independent corrosion expert to ensure proper installation.

(g) The owner or operator must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of paragraphs (b) through (f) of this section to attest that the tank system was properly designed and installed and that repairs, pursuant to paragraphs (b) and (d) of this section were performed. These written statements must also include the certification statement as required in § 270.11(d) of this chapter.

(Information collection requirements contained in paragraphs (a) and (g) were approved by the Office of Management and Budget under control number 2050-0050.)

§ 265.193 Containment and detection of releases.

(a) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section must be provided (except as provided in paragraphs (f) and (g) of this section):

(1) For all new tank systems or components, prior to their being put into service;

(2) For all existing tanks used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987;

(3) For those existing tank systems of known and documentable age, within two years after January 12, 1987, or when the tank systems have reached 15 years of age, whichever comes later;

(4) For those existing tank system for which the age cannot be documented, within eight years of January 12, 1987; but if the age of the facility age is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, whichever comes later; and

(5) For tank systems that store or treat materials that become hazardous wastes subsequent to January 12, 1987, within the time intervals required in paragraphs (a)(1) through (a)(4) of this section, except that the date that a material becomes a hazardous waste must be used in place of January 12, 1987.

(b) Secondary containment systems must be:

(1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(c) To meet the requirements of paragraph (b) of this section, secondary containment systems must be at a minimum:

(1) Constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrological forces),

physical contact with the waste to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic);

(2) Placed on a foundation or base capable of providing support to the secondary containment system and resistance to pressure gradients above and below the system and capable of preventing failure due to settlement, compression, or uplift;

(3) Provided with a leak detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the existing detection technology or site conditions will not allow detection of a release within 24 hours;

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health or the environment, if removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

[Note.—If the collected material is a hazardous waste under Part 261 of this chapter, it is subject to management as a hazardous waste in accordance with all applicable requirements of Parts 262 through 265 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 sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to Publicly Owned Treatment Works (POTWs), it is subject to the requirements of section 307 of the Clear Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR Part 302.]

(d) Secondary containment for tanks must include one or more of the following devices:

(1) A liner (external to the tank);

(2) A vault;

(3) A double-walled tank; or

(4) An equivalent device as approved by the Regional Administrator.

(e) In addition to the requirements of paragraphs (b), (c), and (d) of this section, secondary containment systems must satisfy the following requirements:

(1) External liner systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

(iii) Free of cracks or gaps; and

(iv) Designed and installed to completely surround the tank and to cover all surrounding earth likely to come into contact with the waste if released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

(2) Vault systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

(iii) Constructed with chemical-resistant water stops in place at all joints (if any);

(iv) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

(v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

(A) Meets the definition of ignitable waste under § 262.21 of this chapter, or

(B) Meets the definition of reactive waste under § 262.21 of this chapter and may form an ignitable or explosive vapor; and

(vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(3) Double-walled tanks must be:

(i) Designed as an integral structure (i.e., an inner tank within an outer shell) so that any release from the inner tank is contained by the outer shell;

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and the external surface of the outer shell; and

(iii) Provided with a built-in, continuous leak detection system capable of detecting a release within 24 hours or at the earliest practicable time, if the owner or operator can demonstrate to the Regional Administrator, and the Regional Administrator concurs, that the existing leak detection technology or site conditions will not allow detection of a release within 24 hours.

[Note.—The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tank" may be used as guidelines for aspects of the design of underground steel double-walled tanks.]

(f) Ancillary equipment must be provided with full secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of paragraphs (b) and (c) of this section except for:

(1) Aboveground piping (exclusive of flanges, joints, valves, and connections) that are visually inspected for leaks on a daily basis;

(2) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

(3) Sealless or magnetic coupling pumps that are visually inspected for leaks on a daily basis; and

(4) Pressurized aboveground piping systems with automatic shut-off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

(g) The owner or operator may obtain a variance from the requirements of this Section if the Regional Administrator finds, as a result of a demonstration by the owner or operator, either:

(1) That alternative design and operating practices, together with location characteristics, will prevent the migration of hazardous waste or hazardous constituents into the ground water *or* surface water at least as effectively as secondary containment during the active life of the tank system or (2) that in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with paragraph (g)(2) of this section, be exempted from the secondary containment requirements of this section. Application for a variance as allowed in paragraph (g) of this section does not waive compliance with the requirements of this Subpart for new tank systems.

(1) In deciding whether to grant a variance based on a demonstration of equivalent protection of ground water and surface water, the Regional Administrator will consider:

(i) The nature and quantity of the waste;

(ii) The proposed alternate design and operation;

(iii) The hydrogeologic setting of the facility, including the thickness of soils between the tank system and ground water; and

(iv) All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to ground water or surface water.

(2) In deciding whether to grant a variance, based on a demonstration of no substantial present or potential hazard, the Regional Administrator will consider:

(i) The potential adverse effects on ground water, surface water, and land quality taking into account:

(A) The physical and chemical characteristics of the waste in the tank system, including its potential for migration,

(B) The hydrogeological characteristics of the facility and surrounding land,

(C) The potential for health risks caused by human exposure to waste constituents,

(D) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents, and

(E) The persistence and permanence of the potential adverse effects;

(ii) The potential adverse effects of a release on ground-water quality, taking into account:

(A) The quantity and quality of ground water and the direction of ground-water flow,

(B) The proximity and withdrawal rates of water in the area,

(C) The current and future uses of ground water in the area, and

(D) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground-water quality;

(iii) The potential adverse effects of a release on surface water quality, taking into account:

(A) The quantity and quality of ground water and the direction of ground-water flow,

(B) The patterns of rainfall in the region,

(C) The proximity of the tank system to surface waters,

(D) The current and future uses of surface waters in the area and any water quality standards established for those surface waters, and

(E) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality; and

(iv) The potential adverse effects of a release on the land surrounding the tank system, taking into account:

(A) The patterns of rainfall in the region, and

(B) The current and future uses of the surrounding land.

(3) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (g)(1) of this section, at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), must:

(i) Comply with the requirements of § 265.196, except paragraph (d); and

(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(A) Enable the tank system, for which the variance was granted, to resume operation with the capability for the detection of and response to releases at least equivalent to the capability it had prior to the release, and

(B) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water; and

(iii) If contaminated soil cannot be removed or decontaminated in accordance with paragraph (g)(3)(ii) of this section, comply with the requirements of § 264.197(b);

(4) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (g)(1) of this section, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), must:

(i) Comply with the requirements of § 265.196(a), (b), (c), and (d); and

(ii) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed, or if ground water has been contaminated, the owner or operator must comply with the requirements of § 265.197(b);

(iii) If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of paragraphs (a) through (f) of this section or reapply for a variance from secondary containment and meet the requirements for new tank systems in § 265.192 if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil can be decontaminated or removed, and ground water or surface water has not been contaminated.

(h) The following procedures must be followed in order to request a variance from secondary containment:

(1) The Regional Administrator must be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in paragraph (g) of this section according to the following schedule:

(i) For existing tank systems, at least 24 months prior to the date that secondary containment must be provided in accordance with paragraph (a) of this section; and

(ii) For new tank systems, at least 30 days prior to entering into a contract for installation of the tank system.

(2) As part of the notification, the owner or operator must also submit to the Regional Administrator a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in paragraph (g)(1) or paragraph (g)(2) of this section.

(3) The demonstration for a variance must be completed and submitted to the Regional Administrator within 180 days after notifying the Regional Administrator of intent to conduct the demonstration.

(4) The Regional Administrator will inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration for a variance. The Regional Administrator also will hold a public hearing, in response to a request or at his own discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined.

(5) The Regional Administrator will approve or disapprove the request for a variance within 90 days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not

include sufficient information, the 90-day time period will begin when the Regional Administrator receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in paragraph (h)(4) of this section is extended, the 90-day time period will be similarly extended.

(i) All tank systems, until such time as secondary containment meeting the requirements of this section is provided, must comply with the following:

(1) For non-enterable underground tanks, a leak test that meets the requirements of § 265.191(a) must be conducted at least annually;

(2) For other than non-enterable underground tanks and for all ancillary equipment, an annual leak test, as described in paragraph (i)(1) of this section, or an internal inspection or other tank integrity examination by an independent, qualified, registered professional engineer that addresses cracks, leaks, corrosion, and erosion must be conducted at least annually. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed.

[Note.—The practices described in the American Petroleum Institute (API) Publication Guide for Inspection of Refining Equipment, Chapter XIII, "Atmospheric and Low Pressure Storage Tanks," 4th edition, 1981, may be used, when applicable, as guidelines for assessing the overall condition of the tank system.]

(3) The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with paragraphs (i)(1) through (i)(3) of this section.

(4) If a tank system or component is found to be leaking or unfit-for-use as a result of the leak test or assessment in paragraphs (i)(1) through (i)(3) of this section, the owner or operator must comply with the requirements of § 265.196.

(Information collection requirements contained in paragraphs (c)–(e) and (g)–(i) were approved by the Office of Management and Budget under control number 2050–0050.)

§ 265.194 General operating requirements.

(a) Hazardous wastes or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the secondary containment system to rupture, leak, corrode, or otherwise fail.

(b) The owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include at a minimum:

(1) Spill prevention controls (e.g., check valves, dry discount couplings);

(2) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The owner or operator must comply with the requirements of § 265.196 if a leak or spill occurs in the tank system.

(Information collection requirements contained in paragraphs (c) were approved by the Office of Management and Budget under control number 2050–0050.)

§ 265.195 Inspections.

(a) The owner or operator must inspect, where present, at least once each operating day:

(1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

(2) The aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(3) Data gathered from monitoring equipment and leak-detection equipment, (e.g., pressure and temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and

(4) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation);

[Note.—Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 265.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a release. Also, 40 CFR Part 302 may require the owner or operator to notify the National Response Center of a release.]

(b) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation, and annually thereafter; and

(2) All sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

[Note.—The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP–02–85)—Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.]

(c) The owner or operator must document in the operating record of the facility an inspection of those items in paragraphs (a) and (b) of this section.

(Information collection requirements contained in paragraphs (a)–(c) were approved by the Office of Management and Budget under control number 2050–0050.)

§ 265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements:

(a) *Cessation of use; prevent flow or addition of wastes.* The owner or operator must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) *Removal of waste from tank system or secondary containment system.* (1) If the release was from the tank system, the owner or operator must, within 24 hours after detection of the leak or, if the owner or operator demonstrates that that is not possible, at the earliest practicable time remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the release was to a secondary containment system, all released materials must be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) *Containment of visible releases to the environment.* The owner or operator must immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water; and

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) *Notifications, reports.* (1) Any release to the environment, except as provided in paragraph (d)(2) of this section, must be reported to the Regional Administrator within 24 hours

of detection. If the release has been reported pursuant to 40 CFR Part 302, that report will satisfy this requirement.

(2) A leak or spill of hazardous waste that is:

(i) Less than or equal to a quantity of one (1) pound, and

(ii) Immediately contained and cleaned-up is exempted from the requirements of this paragraph.

(3) Within 30 days of detection of a release to the environment, a report containing the following information must be submitted to the Regional Administrator:

(i) Likely route of migration of the release;

(ii) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

(iii) Results of any monitoring or sampling conducted in connection with the release, (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data must be submitted to the Regional Administrator as soon as they become available.;

(iv) Proximity to downgradient drinking water, surface water, and population areas; and

(v) Description of response actions taken or planned.

(e) *Provision of secondary containment, repair, or closure.* (1) Unless the owner or operator satisfies the requirements of paragraphs (e) (2) through (4) of this section, the tank system must be closed in accordance with § 265.197.

(2) If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

(4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner/operator must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of § 265.193 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of paragraph (f) of this section are satisfied. If a component is replaced to comply with the requirements of this subparagraph, that component must satisfy the requirements for new tank systems or components in §§ 265.192 and 265.193. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with § 265.193 prior to being returned to use.

(f) *Certification of major repairs.* If the owner or operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered professional engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to the Regional Administrator within seven days after returning the tank system to use.

[Note.—The Regional Administrator may, on the basis of any information received that there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order under RCRA sections 3004(w), 3008(h), or 7003(a) requiring corrective action or such other response as deemed necessary to protect human health or the environment.]

[Note.—See § 265.15(c) for the requirements necessary to remedy a failure. Also, 40 CFR Part 302 requires the owner or operator to notify the National Response Center of a release of any "reportable quantity."]

(Information collection requirements contained in paragraphs (d)–(f) were approved by the Office of Management and Budget under control number 2050–0050.)

§ 265.197 Closure and post-closure care.

(a) At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless § 261.3(d) of this Chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in Subparts G and H of this Part.

(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (a) of this section, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 265.310) In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in Subparts G and H of this Part.

(c) If an owner or operator has a tank system which does not have secondary containment that meets the requirements of § 265.193(b) through (f) and which is not exempt from the secondary containment requirements in accordance with § 265.193(g), then,

(1) The closure plan for the tank system must include both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section.

(2) A contingent post-closure plan for complying with paragraph (b) of this section must be prepared and submitted as part of the permit application.

(3) The cost estimates calculated for closure and post-closure care must reflect the costs of complying with the contingent closure plan and the contingent post-closure plan, if these costs are greater than the costs of complying with the closure plan prepared for the expected closure under paragraph (a) of this section.

(4) Financial assurance must be based on the cost estimates in paragraph (c)(3) of this section.

(5) For the purposes of the contingent closure and post-closure plans, such a tank system is considered to be a landfill, and the contingent plans must meet all of the closure, post-closure, and financial responsibility requirements for landfills under Subparts G and H of this Part.

(Information collection requirements contained in paragraphs (a)–(c) were approved by the Office of Management and Budget under control number 2050–0050.)

§ 265.198 Special requirements for ignitable or reactive wastes.

(a) Ignitable or reactive waste must not be placed in a tank system, unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the tank system so that:

(i) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste

under §§ 261.21 or 261.23 of this Chapter; and

(ii) Section 265.17(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 that may cause the waste to ignite or react; or

(3) The tank system is used solely for emergencies.

(b) The owner or operator of a facility where ignitable or reactive waste is stored or treated in tanks must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2–1 through 2–6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981), (incorporated by reference, see § 260.11).

§ 265.199 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible waste and materials, must not be placed in the same tank system, unless § 265.17(b) is complied with.

(b) Hazardous waste must not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless § 265.17(b) is complied with.

§ 265.200 Waste analysis and trial tests.

In addition to performing the waste analysis required by § 265.13, the owner or operator must, whenever a tank system is to be used to treat chemically or to store a hazardous waste that is substantially different from waste previously treated or stored in that tank system; or treat chemically a hazardous waste with a substantially different process than any previously used in that tank system:

(a) Conduct waste analyses and trial treatment or storage tests (e.g., bench-scale or pilot-plant scale tests); or

(b) Obtain written, documented information on similar waste under similar operating conditions to show that the proposed treatment or storage will meet the requirements of § 265.194(a).

[Note.—Section 265.13 requires the waste analysis plan to include analyses needed to comply with §§ 265.198 and 265.199. Section 265.73 requires the owner or operator to place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.]

§ 265.201 Special requirements for generators of between 100 and 1,000 kg/mo that accumulate hazardous waste in tanks.

(a) The requirements of this section apply to small quantity generators of more than 100 kg but less than 1,000 kg of hazardous waste in a calendar month, that accumulate hazardous waste in tanks for less than 180 days (or 270 days if the generator must ship the waste greater than 200 miles), and do not accumulate over 6,000 kg on-site at any time.

(b) Generators of between 100 and 1,000 kg/mo hazardous waste must comply with the following general operating requirements:

(1) Treatment or storage of hazardous waste in tanks must comply with § 265.17(b).

(2) Hazardous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(3) Uncovered tanks must be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.

(4) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a stand-by tank).

[Note.—These systems are intended to be used in the event of a leak or overflow from the tank due to a system failure (e.g., a malfunction in the treatment process, a crack in the tank, etc.).]

(c) Generators of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must inspect, where present:

(1) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage 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) at least once each operating day to ensure that the tank is being operated according to its design;

(3) The level of waste in the tank at least once each operating day to ensure compliance with § 265.192(c);

(4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

[Note.—As required by § 265.15(c), the owner or operator must remedy any deterioration or malfunction he finds.]

(d) Generators of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.

[Note.—At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of this chapter, that any 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, 263, and 265 of this chapter.]

(e) Generators of between 100 and 1,000 kg/mo must comply with the following special requirements for ignitable or reactive waste:

(1) Ignitable or reactive waste must not be placed in a tank, unless:

(i) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that (A) 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 (B) § 265.17(b) is complied with; or

(ii) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(iii) The tank is used solely for emergencies.

(2) The owner or operator of a facility which treats or stores ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2–1 through 2–6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981) (incorporated by reference, see § 260.11).

(f) Generators of between 100 and 1,000 kg/mo must comply with the following special requirements for incompatible wastes:

(1) Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same tank, unless § 265.17(b) is complied with.

(2) Hazardous waste must not be placed in an unwashed tank which previously held an incompatible waste

or material, unless § 265.17(b) is complied with.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

40 CFR Part 270 is amended as follows:

22. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974).

23. Section 270.14 is amended by revising paragraphs (b)(5) and (b)(13) to read as follows:

§ 270.14 Contents of Part B: general requirements.

* * * * *

(b) * * *

(5) A copy of the general inspection schedule required by § 264.15(b); include where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, and 264.303.

* * * * *

(13) A copy of the closure plan and, where applicable, the post-closure plan required by §§ 264.112, 264 118, and 264.197. Include, where applicable, as part of the plans, specific requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264 310, and 264.351.

* * * * *

24. Section 270.16, is revised to read as follows:

§ 270.16 Specific Part B information requirements for tank systems.

Except as otherwise provided in § 264.190, owners and operators of facilities that use tanks to store or treat hazardous waste must provide the following additional information:

(a) A written assessment that is reviewed and certified by an independent, qualified, registered professional engineer to the structural integrity and suitability for handling hazardous waste of each tank system, as required under §§ 264.191 and 264.192;

(b) Dimensions and capacity of each tank;

(c) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents);

(d) A diagram of piping, instrumentation, and process flow for each tank system;

(e) A description of materials and equipment used to provide external corrosion protection, as required under § 264.191(c);

(f) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with § 264.192 (b), (c), (d), and (e);

(g) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of § 264.193 (a), (b), (c), (d), (e), and (f);

(h) For tank systems for which a variance from the requirements of § 264.193 is sought (as provided by §§ 264.193(g)):

(1) Detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water during the life of the facility, or

(2) A detailed assessment of the substantial present or potential hazards posed to human health or the environment should a release enter the environment.

(i) Description of controls and practices to prevent spills and overflows, as required under § 264.194(b); and

(j) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of §§ 264.198 and 264.199.

(Information collection requirements contained in paragraphs (a)–(j) were approved by the Office of Management and Budget under control number 2050–0050.)

§ 270.72 [Amended].

25. In § 270.72, paragraph (e) is amended by adding the following sentence after the last sentence:

§ 270.72 Changes during interim status.

* * * * *

(e) * * * Changes under this section do not include changes made solely for the purpose of complying with requirements of § 265.193 for tanks and ancillary equipment.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

26. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

27. In § 271.1, paragraph (j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of Regulation	Federal Register Reference
*	* * *	*
July 14, 1986	Hazardous Waste Tank Regulations[1]—260.10; 262.34(a)(1); 264.110; 264.140; 264.190–264.199; 265.110; 265.140; 265.190–265.200; 270.14(b); 270.16; and 270.72(e).	51 FR [Insert page number]
*	* * *	*

[1]These regulations implement HSWA only to the extent that they apply to tank systems owned or operated by small quantity generators, establish leak detection requirements for all new underground tank systems, and establish permitting standards for underground tank systems that cannot be entered for inspection.

[FR Doc. 86–15265 Filed 7–11–86; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[SWH-FRL-3028-9(a)]

Hazardous Waste Management System; Standards Applicable to Generators of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: EPA published regulations in 1980 under the Resource Conservation and Recovery Act (RCRA) that allowed hazardous waste generators to accumulate hazardous waste on-site in tanks or containers for up to 90 days without obtaining a permit or meeting financial responsibility requirements. As a result of new information and public comment on EPA's June 26, 1985 tank proposal [50 FR 26444], EPA is reconsidering the application of this exemption to accumulation in tanks, and possibly containers, and is requesting data and comment with respect to a range of options for modifying the exemption.

DATE: Comments will be accepted on this notice until October 14, 1986.

ADDRESSES: The public must submit an original and two copies of their comments to: EPA, RCRA Docket (S-212), 401 M Street, SW, Washington, DC. Communications should be identify the docket number "F-86-NDAA-FFFFF". The RCRA docket is located at: EPA, RCRA docket-Sub-basement, 401 M Street, Washington, DC 20460. The docket is opened from 9:30-3:30 Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call Mia Zmud at 475-9327 or Kate Blow at 382-4675 to make an appointment. The public may copy a maximum of 50 pages from any one regulatory docket at not cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: Robert Axelrad, (202) 382-4637, Office of Solid Waste (WH562B), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or the RCRA/Superfund Hotline, (800) 424-9346 (in Washington, DC, 382-3000).

SUPPLEMENTARY INFORMATION:

I. Background

In regulations promulgated in 1980 establishing a federal program for management of hazardous wastes, EPA adopted special requirements in 40 CFR 262.34 which, if met by generators of hazardous waste, would allow them to accumulate the waste on-site in tanks or containers without having to obtain a RCRA permit as a storage or treatment facility. The basis for the special 90-day accumulation rule was that generation of hazardous waste necessarily requires some accumulation of that waste prior to taking it to a hazardous waste management facility, and that ninety days would provide sufficient time for such accumulation to occur in all reasonable situations. By allowing short-term accumulation without a permit, the exemption reflected the congressional intent that the RCRA program not interfere with manufacturing processes. *See, e.g.*, H.R. Rep. No. 1491, 94th Cong., 2d Sess. 26 (1976).

Recognizing that holding hazardous waste for even a short period entails many of the same risks of human health and the environment as long-term storage, the Agency imposed specific requirements for short-term accumulation in tanks and containers. The requirements were designed to ensure that short-term accumulation of hazardous wastes would be done in a manner that would ensure protection of human health and the environment. *See* 40 CFR 262.34; 45 FR 33066, 33143 (May 19, 1980).

Since promulgation of the 1980 regulation, however, new concerns have been raised regarding the risks that accumulation tanks may be posing to human health and the environment. These concerns are based in part on information indicating that a significant number of tanks currently operating under interim status may be leaking (*see* 50 FR 26484 (June 26, 1985)). EPA believes that the potential for release resulting from failure of these tanks systems is probably the same for 90-day tanks; in fact, the amount of waste released may be greater if undetected for long periods of time due to the high throughput of wastes at 90-day storage facilities.

While EPA has today issued additional standards to upgrade the existing technical requirements for tanks, *e.g.* secondary containment, there requirements neither address existing contamination at the generator's site nor the possibility of cleanup of future contamination. Unless the generator is engaged in other, regulated hazardous waste management activities at the facility that would require him to obtain a permit, he would not be subject to the corrective action requirements of RCRA section 3004(u). This is because section 3004(u) requirements are applicable only to permitted units, and the 90-day accumulation tanks are exempt from the permitting requirement. In addition, section 3008(h) administrative orders, which are available against facilities that have or need interim status, are not available for these accumulation tanks if there are no other regulated units at the facility site with interim status, because § 262.34 exempts 90-day tanks from interim status.

On the other hand, if 90-day tanks were to be treated as interim status or permitted tanks, corrective action requirements would be applicable regardless of the existence of other waste management activities at the facility. Because many generators do not conduct other permitted waste management activities, EPA is concerned that the risks posed by leaking accumulation tanks may not be properly addressed under the current regulatory scheme. Perhaps more importantly, corrective action problems for the facility as a whole are not addressed if there is no permitting involved. Similarly, the Agency is concerned that the potential for releases from 90-day containers may be akin to that from such interim status or permitted units, and that if there are not other regulated units at the facility, these container releases will go unaddressed because of the unavailability of sections 3004(u) and 3008(h).

II. Formulation of New Policy—Factors

In light of these concerns, the Agency is currently examining the § 262.34 exemption.[1] It must be emphasized that EPA is not abandoning the basic tenet of the exemption—that there is a distinction between production activities and waste management, and therefore that a regulatory distinction recognizing this difference is both necessary and appropriate. EPA continues to believe that it is inappropriate to regulate generators' production activities under Subtitle C; there must be waste management activity in order to trigger Subtitle C controls. At the same time, it may be inappropriate to define the distinction between these two activities in terms of a 90-day (or any other time) period. The 90-day period was based on evidence showing that most wastes are removed from the site of generation within 90 days and that, for most industries, this limit would not be disruptive. However, there is also evidence that many types of waste management activities occur during the 90-day period.

[1] Note that the 180/270-day exemption for small quantity generators is not affected because it is required by statute (RCRA 3001(d)). *See also* 51 FR 10146, 10161 (March 24, 1986).

Consideration of a number of factors is necessary to find a balance between the goal of noninterference with production processes and *bona fide* accumulation activities, and the goal or protecting public health and environment from improper waste management activities. The first factor for consideration is the risk presented by the exemption. As discussed above, the risk may be quite similar to that presented by interim status/permitted tanks (or containers). In addition, the risk presented by the facility as a whole may go unaddressed without application of the corrective action provisions that would be triggered by the permitting process.

A second factor to consider is the extent to which generators' production processes would be disrupted if the Agency were to address these risks by requiring permits, or imposing other requirements, for all types of storage, including temporary accumulation. In assessing the potential impact on generators, though, the Agency also would consider the mitigating effect that other regulatory provisions may have. For example, § 262.34(c) provides that a generator may accumulate, without a permit or interim status, up to 55 gallons of hazardous waste (or one quart of acutely hazardous waste) in containers at satellite areas where wastes are initially generated, prior to being removed to a central accumulation or storage area. Under this rule, a generator may accumulate up to 55 gallons of containerized hazardous waste for an indefinite period of time at these initial accumulation areas. If this provision is left in place, generators presumably could continue with necessary accumulation activity in satellite areas and thus may have time to accumulate economical shipments of hazardous waste.

However, because of the relatively minimal standards applicable to satellite containers and bacause there is no time limit on storage of significant amounts of waste, EPA is concerned that retaining the satellite rule, in the event the 90-day rule were modified, might encourage generators to rely more extensively on the satellite provision. This, in turn, would result in increased use of container storage. Therefore, it may be appropriate to modify the satellite provision as well. EPA requests comment on this issue. In addition, since EPA has very little information on releases from containers, we request comment and data on any release incidences from satellite containers, as well as on the number of satellite containers/areas per facility.

Another rule that may provide adequate protection against interference with generator production activities is EPA's revised definition of solid waste (40 CFR Part 261; 50 FR 614 (January 4, 1985)). In defining what materials are solid and hazardous wastes, EPA carefully considered the distinction between production and waste management activities. For example, when secondary materials (*i.e.*, spent materials, sludges, by-products and scrap metal) are used as a feedstock in a manufacturing operation or are directly used as substitutes for commercial products, EPA deems the materials to be functioning as raw materials, not wastes. Also, when secondary materials are returned to the original primary production process (from which they are generated) without first being reclaimed ("closed loop" production processes), the recycling activity does not constitute waste management. EPA already has expanded this "closed loop" exemption to tanks under certain conditions in the final tank rule published today. (See section IV.A.2.; *see also* 50 FR at 619–20.)

III. Possible Approaches to Modifying Exemption

The Agency is considering a full range of possible approaches in light of the factors outlined above. We invite comment on the following options and also invite additional, alternative suggestions. We also invite comment on the appropriateness of the factors themselves. The current options are:

1. Abandon the 90-day accumulation exemption for tanks, or tanks and containers, and regulate all accumulation tanks/containers as storage or treatment facilities requiring permits, possibly using a streamlined procedure and/or imposing lesser substantive requirements.

2. Redefine the scope of the exemption. The concepts used in EPA's solid waste rulemaking, described above, could be applied to limit the exemption to accumulation activities clearly linked to the production process. For example, unless the accumulated materials are returned to the original primary production process, they would be regulated as waste material.

3. Abandon the exemption with the possibility of exemptions on a case-by-case basis. EPA has taken this approach in § 260.31, where applicants for the exemption would be required to submit certain information.

4. Retain the exemption but allow EPA to remove its coverage from certain units, requiring them to be permitted. Recommendations on which units should be subject to permitting are requested.

5. Retain the exemption as it now exists.

Alternative or additional measures might also include a requirement to self-certify compliance with certain provisions (rather than requiring active Agency assessment by requiring, for example, a permit); the use of volume or other types of cutoffs rather than a time cutoff; the use of a shorter than 90-day period; the imposition of closure requirements including notification and corrective action; and the imposition of most requirements only on in- or below-ground units, with the exemption remaining for above-ground units (because of the visibility of any leak in above-ground units). Commenters are also requested to suggest criteria for the Agency to apply in making case-by-case determinations under Options 3 or 4 and in narrowing the scope of the exemption under Option 2.

Finally, EPA is soliciting any data that could be relevant in deciding whether to modify the 90-day accumulator exemption. For example, the Agency would like information responsive to any of the following questions:

1. How many 90-day accumulation tanks and containers exist with no other regulated hazardous waste management units at the facility? How many 90-day tanks or containers exist where there are other regulated units at the facility?

2. Which industries are the primary users of 90-day accumulator tanks? Of 90-day accumulator containers?

3. How many 90-day tanks or containers are typically located at a facility? Are they typically located at one or a few locations or spread throughout the plant? Does the pattern vary by industry?

4. What are the sizes of the 90-day tanks and containers and how do they compare to the size of interim status or permitted tanks or containers? How does their throughput compare? Does it vary by industry?

5. What would be the incremental cost of any of the options identified above, or any alternative option suggested by a commenter?

6. What is the actual or anticipated (*e.g.*, modeled) rate, amount, and volume of releases from 90-day accumulation tanks or containers and how does this compare to releases from interim status/permitted tanks or containers? Are there any data or other evidence to suggest that 90-day containers may pose a lower risk to human health or the environment than 90-day tanks?

7. Are there any data or other evidence on the rate, amount, and volume of releases from satellite accumulation containers? Are there any data on the number of satellite areas/containers per facility?

Dated: June 30, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-15266 Filed 7-11-86; 8:45 am]

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federal register

Monday
July 14, 1986

Part III

Department of Education

Handicapped Special Studies Program; Proposed Annual Evaluation Priorities; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Handicapped Special Studies Program; Proposed Annual Evaluation Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed annual evaluation priorities.

SUMMARY: The Secretary proposes annual evaluation priorities for the Handicapped Special Studies program. These studies have been selected to ensure effective use of program funds and to meet requirements of the Education of the Handicapped Act (EHA).

DATE: Comments must be received on or before October 14, 1986.

ADDRESS: Comments should be addressed to: Susan Sanchez, Research Projects Branch, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Susan Sanchez. Telephone: (202) 732-1117.

SUPPLEMENTARY INFORMATION: The Handicapped Special Studies program, authorized by Section 618 of Part B of the Education of the Handicapped Act (EHA), as amended, supports studies to evaluate the impact of the Act, including States' efforts toward providing a free appropriate public education to handicapped children (20 U.S.C. 1401, 1411 *et seq.*). Section 618 of the Act requires that the results of these studies be included in the annual report submitted to the Congress by the Department.

Under section 618(c) of the EHA, as amended by the Education of the Handicapped Act Amendments of 1983, Pub. L. 98-199, the Secretary is expressly required to submit to the appropriate committees of each House of the Congress and publish in the **Federal Register** for review and comment proposed annual priorities for evaluations conducted under section 618.

In fiscal year 1986, two priorities were announced including a contract to implement the longitudinal study design of the educational progress of handicapped students. The other priority was for the support of evaluation studies to assess the impact and effectiveness of programs assisted under the EHA. The priority for implementing the longitudinal study is restated for fiscal year 1987 since an award for this contract is not being made in fiscal year 1986. Three additional priorities will be proposed for new awards in fiscal year 1987.

Proposed Priorities

(a) Availability of Qualified Special Education Personnel

This proposed priority would support a contract to analyze and study State certification requirements and employment data describing the number and qualifications of special education personnel currently educating handicapped children. The purpose of the analysis and study is to provide information about the status of efforts to hire and retain qualified special education personnel, and to identify the options for relieving possible shortages. The Department hopes that this one-time study will lead to improved reporting under section 618(b)(5) of the EHA, as amended by the Education of the Handicapped Act Amendments of 1983, which requires the Secretary of Education to annually report on the numbers and types of special education personnel currently employed and the numbers and types of additional personnel needed to adequately carry out the mandates established in the EHA.

(b) Federal Analyses and Support

This priority would provide funds for a contract to improve efficiency and quality of State and local data collection procedures. Efforts will be made to work with representatives of State and local agencies to improve data quality, to edit, verify and analyze the data reported by States as specified in Section 618 of the EHA, and to provide the necessary reports and supporting documentation for inclusion in the Annual Report to Congress on the implementation of the Act.

(c) State Educational Agency/Federal Evaluation Studies Projects

This proposed priority would support evaluation studies to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act. Within this proposed priority, studies would be invited that address: (1) The impact and effectiveness of delivering special education to handicapped children in regular educational placements, and (2) the impact of interagency coordination on the nature and amount of related services that are provided. However, applications that meet the invitational priorities described in items (1) and (2) will not receive a competitive preference over other applications that propose evaluation studies that assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act. In accordance with Section 618(d) of the Act, as amended by the Education of the Handicapped Act Amendments of 1983, the Secretary proposes to enter into cooperative agreements with State educational agencies to carry out these studies.

(d) Educational Progress of Handicapped Students

This proposed priority would support a contract to implement a study design that was developed under a fiscal year 1984 priority funded under this program. The design implementation contract will collect, analyze and report data for a longitudinal study of a sample of handicapped students, encompassing the full range of handicapping conditions, and examine their educational progress while in special education and their occupational, educational, and independent living status after graduating from secondary school or otherwise leaving special education. This study is specifically required by Section 618(e)(1) of the Act, as added by the Education of the Handicapped Act Amendments of 1983. This award is to implement the longitudinal study design activity announced in the fiscal year 1984 special studies priorities.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document provides early notification of the Department's plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed evaluation priorities.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 3517, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1418)

(Catalog of Federal Domestic Assistance Number 84.159; Handicapped Special Studies Program)

Dated: July 9, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-15760 Filed 7-11-86; 8:45 am]

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federal register

Monday
July 14, 1986

Part IV

Department of Education

34 CFR Parts 400, 401, and 415

State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 400, 401, and 415

State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends regulations governing the State Vocational Education Program and makes a technical amendment in the regulation governing one of the Secretary's Discretionary Programs of Vocational Education. These regulations implement statutory changes contained in Pub. L. 99–159 and make minor technical and typographical corrections.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mrs. Sharon A. Jones, Chairperson, Vocational Education Regulations Task Force, U.S. Department of Education, (Room 620, Reporters Building), 400 Maryland Avenue SW., Washington, DC 20202–5609. Telephone: (202) 732–2237.

SUPPLEMENTARY INFORMATION:

Background

These amendments implement recent changes to the Carl D. Perkins Vocational Education Act (Act), 20 U.S.C. 2301 *et seq.*, made by Title VII of the National Science, Engineering, and Mathematics Authorization Act of 1986, Pub. L. 99–159.

The regulations being amended affect the State Vocational Education Program which assists States in conducting, directly or through awards to local recipients, vocational education programs. The regulations that govern the State Vocational Education Program are in 34 CFR Parts 400 and 401, and were published in the **Federal Register** on August 16, 1985 (50 FR 33226).

Summary of Major Provisions

(a) Section 401.15(d) is revised to implement the new statutory requirement that States certify to the Secretary the establishment and membership of State councils by the beginning of each State plan period. Under the existing regulations State councils must be certified at least 90 days prior to the beginning of each State plan period.

(b) Section 401.19 is revised by eliminating the requirement that the State plan include a description of the manner in which the State reserves funds for services and activities for individuals with limited English proficiency. This requirement is unnecessary in light of the new statutory formula for reserving funds for such persons.

(c) Sections 400.4(b) and 401.30(b)(1) are revised to reflect the new statutory requirement that the Secretary provide funds to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands of State councils on vocational education. The Territories were not provided funds to establish State councils under the current regulations.

(d) Section 401.96(b) is revised to implement the new statutory formula for utilizing funds to provide vocational education services and activities for individuals with limited English proficiency under the Vocational Opportunities Program for disadvantaged individuals. These regulations interpret the statute as distributing funds based on the number of individuals with limited English proficiency enrolled in vocational education. Because of interpretive difficulties with the original statutory formula, the existing regulations permit States to implement the formula in several ways.

(e) Section 401.97 is revised to reflect the new statutory provision which authorizes the use, under certain conditions, of in-kind contributions to meet the matching requirement under the Vocational Education Opportunities Program for disadvantaged individuals. The current regulations allow for the use of cash expenditures only. These regulations authorize an eligible recipient to make an in-kind contribution to the extent it determines that it cannot otherwise contribute.

(f) Sections 401.102 and 401.105 implement the new statutory requirements that a State may not expend for State administration of its Consumer and Homemaking Education Program and its Comprehensive Career Guidance and Counseling Program under Titles III–B and III–D, respectively, more than six percent of its allotment for each program. The existing regulations impose a six percent cap on expenditures for State leadership.

Changes as a Result of Comments

Amendments to the State Vocational Education Program and the Secretary's Discretionary Programs of Vocational Education Regulations were published as a notice of proposed rulemaking in the **Federal Register** on March 6, 1986 (51 FR 7908). The Secretary invited comments on whether additional guidance was needed on several issues. Appendix A to these regulations contains a summary of the comments received and the Secretary's response to those comments. Several comments were received on matters not raised in the notice of proposed rulemaking or which clearly violated the statute. These comments are not summarized in Appendix A.

(1) Section 401.73—Consumer and Homemaking Education Program

A new paragraph has been added to § 401.73 to clarify that under the Consumer and Homemaking Education Program the six percent limitation on State administration does not apply to funds used for State leadership and student organizations.

(2) Section 401.96—Example

In order to be consistent with section 203(a)(3) of the Act and § 401.96(b), the term "served" has been changed to "enrolled" in the second paragraph of the example following § 401.96.

Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Parts 400 and 401

Adult education, Education, Education of disadvantaged, Education of handicapped, Equal education opportunity, Private schools, Reporting and recordkeeping requirements, Schools, School construction, Vocational education, Women.

34 CFR Part 415

Educational facilities, Reporting and recordkeeping requirements, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Numbers 84.048 (Basic Grants to the States), 84.049 (Consumer and Homemaking Education Program), and 84.053 (State Councils of Vocational Education). Catalog of Federal Domestic Assistance Numbers have not been assigned for the Comprehensive Career Guidance and Counseling Program)

Dated: July 9, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by amending Parts 400, 401, and 415 as follows:

PART 400—VOCATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

1. The authority statement for 34 CFR Part 400 is revised to read as follows:

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

§ 400.4 [Amended]

2. In § 400.4, paragraph (b) is amended by removing the definition of "Insular Area."

PART 401—STATE VOCATIONAL EDUCATION PROGRAM

3. The authority statement for 34 CFR Part 401 is revised to read as follows:

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

4. In § 401.13, paragraph (a) introductory text is revised, paragraph (b) is revised, and a new paragraph (c) is added to read as follows:

§ 401.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?

(a) A State that desires to participate in the State Vocational Education Program shall assign one individual, within the appropriate agency established or designated by the State board under § 401.12(d) to administer vocational education programs within the State, to work full time to assist the State board to fulfill the purposes of the Act by—

* * * * *

(b) A State shall, in accordance with § 401.91(b), reserve at least $60,000 to carry out the provisions of paragraph (a) of this section, including the provision of necessary and reasonable staff support.

(c) For the purposes of this section, the term "State" includes only the fifty States and the District of Columbia.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0030) (Authority: Sec. 111(b); 20 U.S.C. 2321(b))

5. Section 401.14 is revised to read as follows:

§ 401.14 Must a State establish a State council on vocational education?

A State that desires to participate in the State Vocational Education Program shall establish a State council on vocational education, which must be appointed—

(a) By the Governor; or

(b) In the case of States in which the members of State board of education are elected, including election by the State legislature, by the State board of education.

(Authority: Sec. 112(a); 20 U.S.C. 2322(a); House Report No. 98-1129, 98th Cong. 2d Sess, p. 89 (1984))

6. In § 401.15, paragraph (d) is revised to read as follows:

§ 401.15 What are the membership requirements of the State council on vocational education?

* * * * *

(d) Each State shall certify to the Secretary the establishment and membership of the State council by the beginning of each State plan period described in § 401.17.

(Authority: Sec. 112(a), (b); 20 U.S.C. 2322(a), (b))

7. In § 401.16, paragraphs (6) introductory text and (b)(1) are revised to read as follows:

§ 401.16 What are the responsibilities of the State council on vocational education?

* * * * *

(b) Each State council on vocational education, during each State plan period described in § 401.17 unless otherwise indicated in the regulations in this section, shall—

(1) Meet with the State board or its representatives to advise on the development of the subsequent State plan, or any amendments to the current State plan, while the State plan or amendment is being developed;

* * * * *

(Authority: Sec. 112(c)-(f); 20 U.S.C. 2322(c)-(f))

(8) In § 401.19, paragraph (b)(6) is revised and paragraph (b)(14) is removed, to read as follows:

§ 401.19 What must the State plan contain?

* * * * *

(b) * * *

(6) The methods proposed for the joint planning and coordination of programs carried out under the Act with programs conducted under the JTPA, the Adult Education Act, Chapter 1 of the Education Consolidation and Improvement Act of 1981, the Education of the Handicapped Act, and the Rehabilitation Act of 1973, and with apprenticeship training programs.

(Authority: Sec. 113(b)(10); 20 U.S.C. 2323(b)(10))

* * * * *

§ 401.22 [Amended]

9. In § 401.22(b)(1), "national" is revised to read "natural".

10. In § 401.30, paragraph (b)(1) is revised to read as follows:

§ 401.30 How does the Secretary make allotments under the State Vocational Education Program?

* * * * *

(b)(1) From funds appropriated under section 3(c) of the Act, the Secretary allots funds each fiscal year for State councils on vocational education according to the provisions of section 112(f)(1) of the Act.

* * * * *

11. In § 401.73, paragraph (c)(2)(xi) is revised and a new paragraph (c)(2)(xii) is added, to read as follows:

§ 401.73 What activities does the Secretary support under the Consumer and Homemaking Education Program?

* * * * *

(c) * * *

(2) * * *

(xi) State leadership, including activities of student organizations; and

(xii) State administration, subject to § 401.102(c).

(Authority: Secs. 311, 312(a), (b); 20 U.S.C. 2361, 2362(a), (b))

12. In § 401.76, paragraph (c)(2)(ix) is revised to read as follows:

§ 401.76 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Program?

* * * * *

(c) * * *

(2) * * *

(ix) State and local administration, including supervision, subject to §§ 401.93(b) and 401.105(c);

* * * * *

13. In § 401.93, paragraph (b) heading and introductory text are republished and paragraph (b)(1) is revised to read as follows:

§ 401.93 What are the administrative cost requirements under the State Vocational Education Program?

* * * * *

(b) *Special Programs.* To administer—

(1) Each of the Special Programs under its State plan (other than the Consumer and Homemaking Education Program, the Comprehensive Career Guidance and Counseling Program, and the Industry-Education Partnership for Training in High-Technology Occupations Program) a State may use, in addition to funds reserved under § 401.91, no more than the amount of funds from its allotment for each program that is necessary and reasonable for the proper and efficient State administration of that program; and

* * * * *

14. In § 401.96, paragraph (b) is revised to read as follows:

§ 401.96 How does a State allocate funds for disadvantaged individuals under the Vocational Education Opportunities Program?

* * * * *

(b) A State shall ensure that funds allocated among participating eligible recipients under paragraph (a) of this section are used by each participating eligible recipient to provide vocational education services and activities for individuals with limited English proficiency at least in proportion to the number of individuals with limited English proficiency enrolled in vocational education in that eligible recipient in the program year preceding the program year in which the determination is made, compared to the total number of disadvantaged individuals, including individuals with limited English proficiency, so enrolled in the preceding program year.

Example: Assume that eligible recipient X enrolls 100 economically disadvantaged individuals and serves in its vocational education program 50 disadvantaged and limited English proficient individuals. Assume further that among all participating eligible recipients, there are 1000 of those persons enrolled and 400 of those individuals served, respectively. In the succeeding program year, eligible recipient X is eligible to receive under the Vocational Education Opportunities Program an amount for disadvantaged individuals equal to 1/10 (or 100 economically disadvantaged individuals enrolled in eligible recipient X/1000 economically disadvantaged individuals enrolled in the State) of ½ of the amount reserved for those individuals under § 401.92(b) and ⅛ (or 50 disadvantaged and limited English proficient individuals served by eligible recipient X/400 disadvantaged and limited English proficient individuals served in the State) of ½ of that same amount.

In addition to the assumptions made in the preceding paragraph, assume further that eligible recipient X enrolls 25 individuals with limited English proficiency in its vocational education program. In the succeeding program year, if eligible recipient X receives an award of $1,000 for disadvantaged individuals under the Vocational Education Opportunities Program, eligible recipient X must use $500 (or 25 individuals with limited English proficiency enrolled in eligible recipient X/50 disadvantaged and limited English proficient individuals enrolled in eligible recipient X times $1,000) for individuals with limited English proficiency.

(Authority: Sec. 203(a)(2), (3); 20 U.S.C. 2333(a)(2), (3))

15. Section 401.97 is revised to read as follows:

§ 401.97 How does a State match funds for handicapped individuals and disadvantaged individuals under the Vocational Education Opportunities Program?

(a) A State shall provide the non-Federal share of the cost of projects, services, and activities for handicapped individuals and for disadvantaged individuals under the Vocational Education Opportunities Program equitably from State and local sources, except that the State shall provide the non-Federal share of the cost from State sources if the State board determines that an eligible recipient cannot reasonably be expected to provide for these costs from local sources.

(b) Contributions from local sources towards the non-Federal share of the costs of projects, services, and activities for disadvantaged individuals under the Vocational Education Opportunities Program must be in cash or, to the extent the eligible recipient determines that it cannot otherwise provide the contribution, in the form of in-kind contributions, fairly valued, including facilities, overhead, personnel, equipment, and services.

(Authority: Sec. 502(b): 20 U.S.C. 2462(b))

16. In § 401.102, paragraph (b)(2) is revised and a new paragraph (c) is added to read as follows:

§ 401.102 How must funds be used under the Consumer and Homemaking Education Program?

* * * * *

(b) * * *

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and preparation in home economics education.

(c) A State may use, in addition to funds reserved under § 401.91, not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: Secs. 312(c), 313; 20 U.S.C. 2362(c), 2363)

17. In § 401.105, paragraph (b)(2) is revised and a new paragraph (c) is added to read as follows:

§ 401.105 How must funds be used under the Comprehensive Career Guidance and Counseling Program?

* * * * *

(b) * * *

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and knowledge in guidance and counseling.

(c) A State may use, in addition to funds reserved under § 401.91, not more than six percent of its allotment under this program for State administration of projects services, and activities under this program.

(Authority: Secs. 332(c), 333; 20 U.S.C. 2382(c), 2383)

PART 415—MODEL CENTERS FOR VOCATIONAL EDUCATION FOR OLDER INDIVIDUALS

18. The authority statement for 34 CFR Part 415 is revised to read as follows:

Authority: 20 U.S.C. 2417, unless otherwise noted.

§ 415.31 [Amended]

19. In § 415.31, paragraph (i)(2)(ii), "to the types" is revised to read "of the types".

Note.—This appendix is to be published in the Federal Register with the final regulations but is not to be codified in the Code of Federal Regulations.

Appendix A—Summary of comments and Responses

The following is a summary of the comments received on the notice of proposed rulemaking for the State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education published on March 6, 1986. Each comment is followed by a response that indicates why a change has been made or why no change is considered necessary. Specific comments are arranged in order of the sections of the final regulations to which they pertain.

PART 401—STATE VOCATIONAL EDUCATION PROGRAM

Section 401.16 State council—responsibilities.

Comment. One commenter recommended that § 401.16(b)(1) be modified by deleting the phrase "or its

representatives" because the development of the State plan is a non-delegable responsibility of the State board.

Response. No change has been made. The phrase "or its representatives" appears in section 112(d)(1) of the Act. The statute and regulations do not contemplate a delegation of responsibility, but merely recognize that State board members may not always personally participate in meetings where State plan provisions are developed.

Section 401.73 Special Programs—the Consumer and Homemaking Education Program.

Comment. Several commenters requested that § 401.73 be changed to clarify that State leadership, including the activities of student organizations, is not subject to the six percent limitation upon State administration imposed by § 401.102(c).

Response. A change has been made. Section 401.73(c)(2) now clarifies that the six percent cap imposed by § 401.102(c) applies only to State administrative costs.

Section 401.76 Special Programs—Comprehensive Career Guidance and Counseling Program.

Comment. One commenter proposed language, relating to various purposes of a career development program, to be added to § 401.76.

Response. No change has been made. The language in § 401.76 is taken from section 332 of the Act and, in the main, already reflects the commenter's suggested language.

Comment. One commenter urged that States should be encouraged to focus their efforts on career guidance and counseling in order to provide a transition from vocational guidance and counseling to career guidance and counseling at the local level.

Response. No change has been made. While the Secretary agrees that State and local agencies should modify their guidance and counseling programs in accordance with the Act, and encourages them to do so, the Secretary does not believe that additional regulatory language is warranted.

Section 401.96 Conditions a State must meet—allocations for disadvantaged individuals.

Comment. Several commenters objected to the formula, contained in proposed § 401.96(b), for using funds for vocational education programs, services, and activities for individuals with limited English proficiency under the Vocational Education Opportunities Program for disadvantaged individuals. The commenters said that in enacting section 705 of Pub. L. 99-159, Congress intended to reserve funds under that program for individuals with limited English proficiency on the basis of the number of such persons enrolled in the eligible recipient, rather than the number of such persons enrolled in vocational education in the eligible recipient, as provided by the proposed regulations. The commenters noted that the specific phrase "enrolled in vocational education" does not appear in the statute and that, in some instances, the proposed interpretation would reserve a smaller amount of funds for individuals with limited English proficiency than would be the case if the formula were based on the number of such persons enrolled in the eligible recipient. However, other commenters agreed with the Department's interpretation in § 401.96(b).

Response. No change has been made. The Secretary acknowledges that section 203(a)(3) of the Act, as amended by Pub. L. 99-159, might be read to require the use of funds under the disadvantaged program for individuals with limited English proficiency according to their enrollment in the eligible recipient rather than their enrollment in vocational education in the eligible recipient. However, for the following reasons, the Secretary believes that the commenters' arguments are not persuasive and that the interpretation contained in § 401.96(b) is the best interpretation of the statute.

First, several commenters noted that under section 203(a)(2)(B)(i) of the Act one half of the funds under the Vocational Education Opportunities Program for disadvantaged individuals is allotted to eligible recipients according to their relative enrollments of economically disadvantaged individuals. These commenters argued that Congress intended a parallel approach to govern the use of disadvantaged funds for the limited English proficient, i.e., using enrollment in the eligible recipient, rather than enrollment in vocational education in the eligible recipient as the basis for reserving funds. On the other hand, section 203(a)(2)(B)(ii), which allots the other half of the funds under the Vocational Education Opportunities Program for disadvantaged persons, does so on the basis of the number of disadvantaged individuals and individuals with limited English proficiency actually served in vocational education by the eligible recipient. Thus, for the purpose of allotting funds to eligible recipients under the Vocational Education Opportunities Program for disadvantaged individuals, Congress looked to both the number of certain students enrolled, and the number of certain students actually served in vocational education, and the asserted parallelism is unconvincing. In any event, the Secretary believes that section 203(a)(2)(B)(i) reflects the intent of Congress to allocate funds, in part, to eligible recipients in areas characterized by a large number of economically disadvantaged students, whereas section 203(a)(3) is intended to accomplish a somewhat different purpose, which is to ensure that the vocational education needs of a particular type of student, those with limited English proficiency, are adequately addressed.

Second, the Secretary believes that in enacting the current section 203(a)(3), Congress was principally concerned with establishing a precise measure of need of individuals with limited English proficiency for vocational education funding. As originally enacted by Pub. L. 98-524, section 203(a)(3) reserved funds for such individuals under the Vocational Education Opportunities Program for disadvantaged individuals according to the ratio between the number of individuals with limited English proficiency served by the eligible recipient and the population of the State. In an attempt to give a reasonable meaning to this original statutory language, the Secretary explained in the final regulations implementing Pub. L. 98-524 that this statutory language could be read to refer to the ratio between the number of individuals with limited English proficiency served in vocational education by the eligible recipient and the total population of such individuals served in vocational education in all participating eligible recipients. The Secretary went on to acknowledge that even this latter ratio—

> [would] not always [be] an equitable or appropriate means of allocating an eligible recipient's funds reserved for disadvantaged persons, including persons with limited English proficiency. For example, the ratio described . . . does not accurately reflect the relative numbers of limited English proficient persons and other disadvantaged persons in an eligible recipient who have a need for vocational education.

50 FR 33288 (Friday, August 16, 1985). Congress enacted Pub. L. 99-159 subsequent to this discussion explaining the need for a more precise formula.

Third, the Secretary believes that § 401.96(b) is consistent with the definition of "disadvantaged" which ties

the need for special services to participation in vocational education.

Finally, the Secretary believes that basing the formula on the number of individuals with limited English proficiency who are enrolled in vocational education in the eligible recipient more precisely reflects the actual need of such individuals for vocational education funding than basing the formula on the number of such individuals merely enrolled in the eligible recipient. Due to local factors, the relative enrollment of individuals with limited English proficiency in the eligible recipient may significantly understate or overstate the enrollment of such individuals in vocational education. If there are relatively more individuals with limited English proficiency enrolled in vocational education in an eligible recipient than in its general enrollment, the Secretary believes that the eligible recipient's use of funds for the disadvantaged should reflect that fact. On the other hand, as explained in the final regulations, the Secretary interprets section 203(a)(3) of the Act and § 401.96(b) of the regulations to establish only minimum funding requirement; an eligible recipient is free to use more than the required amount to meet the vocational education needs of individuals with limited English proficiency. Thus, if these were relatively more individuals with limited English proficiency in an eligible recipient's general enrollment than there were enrolled in its vocational education program, the eligible recipient would be free to use more of its funds for individuals with limited English proficiency that required, in order to attract a greater number of such individuals to its vocational education program.

Comment. One commenter suggested eliminating the "separate formula" for distributing funds for persons with limited English proficiency under the Vocational Opportunities Program for disadvantaged individuals as well as the requirement that these funds be expended for such students. The commenter felt that the expenditure of funds for disadvantaged students, including those with limited English proficiency, should be based solely on identified need.

Response. No change has been made. Section 203(a)(3) of the Act does not establish a "separate formula" for distributing funds under Title II, Part A of the Act. Funds reserved for individuals with limited English proficiency under Title II, Part A are allocated to eligible recipients in accordance with section 203(a)(2) of the Act and § 401.96(a) of the regulations. Section 203(a)(3) does, however, require an eligible recipient that receives funds reserved for disadvantaged individuals under Title II, Part A of the Act to use at least a minimum amount of those funds to provide vocational education services and activities for individuals with limited English proficiency.

Comment. One commenter said that the statutory reservation of funds for individuals with limited English proficiency might decrease the amount of services and funds for economically disadvantaged individuals. The commenter recommended that a percentage of the funds reserved for disadvantaged individuals under section 203(a)(2) of the Act be set aside for services for economically disadvantaged individuals as well as for individuals with limited English proficiency.

Response. No change has been made. The Secretary has no statutory authority to require eligible recipients to reserve funds allocated under section 203(a)(2) of the Act and § 401.96(a) of the regulations for economically disadvantaged individuals. Section 401.96, however, is only one of several provisions of the regulations intended to ensure adequate services and funding for economically disadvantaged individuals. For example, § 401.19(a)(12) requires that a State ensure that the needs of segments of the population in the State that have the highest rates of unemployment are thoroughly assessed and that the needs are reflected in, and addressed by, the State plan. Further, § 401.19(b)(4) requires that a State allocate more funds under the State Vocational Education Program to eligible recipients in economically depressed areas, or which have high unemployment, than it allocates to eligible recipients that are not in such areas.

Comment. Several commenters asked why, in the example following § 401.96, the term "served" was used instead of the term "enrolled" which is used in the Act.

Response. A change has been made. In order to be consistent with the section 203(a)(3) of the Act and § 401.96(b) of the regulations, the term "served" has been changed to "enrolled" in the second paragraph of the example following § 401.96.

Comment. One commenter questioned why the example following § 401.96 includes references to enrollments in the State when § 401.96(b), pertaining to the amount of funds to be used for individuals with limited English proficiency, is based on enrollments in an eligible recipient.

Response. No change has been made. Section 401.96 provides two examples. The first example illustrates the application of section 203(a)(2) of the Act and § 401.96(a), which provide for the allocation of funds to eligible recipients under the Vocational Education Opportunities Program for disadvantaged individuals. The second example illustrates section 203(a)(3) of the Act and § 401.96(b), which pertain to the reservation of such funds for individuals with limited English proficiency by eligible recipients.

Section 401.97 Conditions a State must meet—matching requirements for programs for disadvantaged individuals.

Comment. Several commenters thought that the use of in-kind contributions under the Vocational Education Opportunities Program for disadvantaged persons, as provided by section 502(b) of the Act, should not be subject to the statutory requirement, imposed by section 201(c)(2) of the Act, that funds under that program may be used solely for the supplemental or additional costs of programs, services, and activities for disadvantaged individuals. These commenters suggested that these sections of the Act be read independently in order to provide eligible recipients greater flexibility in meeting the matching requirement.

Response. No change has been made. Section 502(b) must be read in connection with section 201(c) of the Act, which clearly establishes that allowable costs, from Federal and non-Federal sources, for disadvantaged individuals under Title II, Part A of the Act are limited to the costs of supplemental or additional staff, equipment, materials, and services which are not provided to other individuals in vocational education and are essential for disadvantaged individuals to participate in vocational education. There is nothing in the language of section 502(b), or its legislative history, that indicates that, by permitting in-kind contributions under the Vocational Education Opportunities Program for disadvantaged individuals, Congress intended to change the rules governing allowable costs under that program.

Comment. Several commenters supported the regulation that permits the use of in-kind contributions. The commenters felt that this regulation would enable many schools, which otherwise would not be able to match, to participate in the program.

Response. No change has been made. Congress intended that the use of in-

kind contributions would "enable some areas to operate programs rather than refuse Federal funds and not serve [disadvantaged] students most in need." 131 Cong. Rec. H9212 (daily ed. October 24, 1985) (statement of Rep. Jeffords).

Comment. Several commenters wanted § 401.97(b) to restrict an eligible recipient's authority to use in-kind contributions to contributions donated by a third party.

Response. No change has been made. Section 502(b) of the Act does not authorize such a restriction.

Comment. Several commenters said that the Secretary should solicit public comment and develop guidelines to assist State and local agencies in determining accountable measures for what constitutes "fairly valued" in-kind contributions. The commenters thought Subpart G of 34 CFR Part 74 would provide a framework for the development of guidelines. Other commenters thought the Department should provide an extremely liberal interpretation of what in-kind contributions are permissible, thereby authorizing States to use the widest possible latitude in determining what in-kind contribution an eligible recipient may claim.

Response. No change has been made. The Secretary does not believe that additional guidance is needed beyond that provided in Subpart G of 34 CFR Part 74, which provides for grantee and third party in-kind contributions and implements Office of Management and Budget Circular A-102, and Appendix C to 34 CFR Part 74 ("Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments"), which implements Office of Management and Budget Circular A-87.

Comment. One commenter requested clarification on the difference between cash and in-kind contributions allowable under § 401.97(b). The commenter wondered how an eligible recipient could provide in-kind contributions if it did not use cash to pay for facilities (insurance, lights, heat, etc.), overhead, personnel, equipment, and services.

Response. No change has been made. Section 401.97(b) follows closely the language of section 502(b) of the Act. As the commenter suggests, however, an eligible recipient's contribution toward the cost of a project will normally be identified in the form of an expenditure of cash for an allowable cost, incurred either as a direct or indirect cost. See, for example, 34 CFR 74.51 and 74.52. The Secretary expects that most in-kind contributions toward the cost of programs for the disadvantaged under the Vocational Education Opportunities Program will be in the form of third-party in-kind contributions that the eligible recipient may claim in satisfaction of the matching requirement. However, it is possible that an eligible recipient might already own, for example, an item of equipment that would benefit its program for disadvantaged individuals, and the use of which would be consistent with the additional or supplementary cost requirement of the Act, but would not represent a cash expenditure. The Secretary encourages States and eligible recipients that have specific questions relating to section 502(b) of the Act to contact the Division of Vocational Education in the Office of Vocational and Adult Education, U.S. Department of Education.

Comment. Several commenters thought the regulations should require States to develop criteria which would be used by States in approving an eligible recipient's request to provide in-kind contributions. The commenters suggested that educational, employment and training, advocacy, and parent groups assist in developing criteria.

Response. No change has been made. While the States are free to develop such criteria, consistent with the Act, the Secretary does not believe there is a need to require all States to do so. In any event, under section 502(b) of the Act, the eligible recipient, not the State, makes the initial determination that in-kind contributions may be used, by determining "that it cannot otherwise provide [the non-Federal] contribution." However, along with its other monitoring responsibilities, States must ensure that in-kind contributions are used in accordance with the Act and the regulations.

Comment. Several commenters requested that in-kind contributions be allowed under the Vocational Education Opportunities Program for handicapped individuals.

Response. No change has been made. The Act does not authorize the use of in-kind contributions under that program.

Comment. One commenter recommended that additional guidance should be provided to State and local agencies in order to prevent the use of "soft" in-kind contributions based on staff time proposed but not actually devoted to a project. The commenter thought that frequent monitoring by the State and reporting of the actual amount of staff time devoted to services could satisfy the need for accountability.

Response. No change has been made. The Secretary expects that staff services contributed to a disadvantaged program will normally be identified as expenditures incurred on a direct or indirect basis. In-kind contributions of staff time, like other costs associated with personal services, must be supported by appropriate documentation. (See Appendix C to 34 CFR Part 74 and § 74.53(d).) Further, States and eligible recipients must establish fiscal control and fund accounting procedures that ensure proper accounting of funds.

Comment. One commenter said that guidelines are needed on how to prorate and document a third-party in-kind contribution which is used for disadvantaged individuals as well as a number of other target populations, including single parents, displaced homemakers, and non-traditional students.

Response. No change has been made. Guidance for documenting third-party contributions may be found in Subpart G of 34 CFR Part 74. However, it does not appear that a third-party in-kind contribution that is also used for a wide variety of non-disadvantaged students could be used by an eligible recipient to meet the cost-sharing requirement under the disadvantaged program because allowable costs under the program are limited to "supplemental or additional staff, equipment, materials, and services *not provided to other individuals in vocational education. . .*" (Section 201(c)(2), emphasis added).

Sections 401.102 and 401.105 Conditions a State must meet—the Consumer and Homemaking Education Program and the Comprehensive Career Guidance and Counseling Program.

Comment. A commenter requested further clarification of the definition of "State leadership activities." The commenter said that because State staff perform both administrative and leadership functions, the time devoted to each category of activity must be documented. The commenter said the documentation of time is burdensome, especially because the definition of "State leadership" is so vague.

Response. No change has been made. The Secretary does not believe that a separate, and possibly restrictive, definition of State leadership applicable to the Consumer and Homemaking Education Program and the Comprehensive Career Guidance and Counseling Program is warranted. However, in view of the commenter's point the Secretary believes that some additional guidance is desirable. As noted in the notice of proposed rulemaking, Secretary interprets State leadership, for the purposes of these programs, to include, but not be limited

to, curriculum development activities, personnel development activities, technical assistance, and research activities. The Secretary believes State leadership could also include the dissemination of information and the training of teachers or counselors. While it is not possible in all cases to distinguish clearly between State administrative activities and State leadership activities, in general, the former relate to what is required to perform the duties of the State under the Act properly and efficiently, while the latter relate to State level activities designed to promote or enhance the quality and effectiveness of the State's vocational education programs.

Comment. A commenter expressed the view that State leadership activities under the Comprehensive Career Guidance and Counseling Program should be explicitly defined to include developmental counseling, personnel development, technical assistance, and research as primary activities.

Response. No change has been made. The activities described by the commenter are permissible activities under § 401.105(b)(2). However, the Secretary believes that States should have the flexibility to focus on the particular leadership activities that best address their needs.

Comment. One commenter wanted § 401.105(b)(2) to be changed so that States would be required to use funds to provide "State leadership that is qualified by training, certification, and experience in guidance and counseling."

Response. No change has been made. Section 401.105(b)(2) reflects the language of section 333(a) of the Act.

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Monday
July 14, 1986

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21 and 36

Noise Certification Standards for Propeller-Driven Small Airplanes; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. 25034; Notice No. 86-10]

Noise Certification Standards for Propeller-Driven Small Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise noise certification standards for propeller-driven small airplanes by substituting the use of actual takeoff tests for the level flyover tests currently specified. This proposal would revise test procedures applicable to noise certification tests conducted on or after January 1, 1988. It would also revise the noise level limit numbers to approximate the sound levels measured and corrected in accordance with the current standard. These proposals result from industry requests that certification be more directly based upon typical in-service noise measurements and from studies conducted over a three year period under the auspices of the International Civil Aviation Organization. In addition, the FAA proposes to exempt both antique airplanes and airplanes modified by the addition of floats or skis from the acoustical change measurement and documentation requirements of Part 21.

DATE: Comments must be received on or before October 9, 1986.

ADDRESSES: Comments on this proposal maybe mailed in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25034, 800 Independence Avenue SW., Washington, DC 20591;

or deliver comments in duplicate to:

FAA Rules Docket, Room 915-G 800, Independence Avenue SW., Washington, DC 20591.

All comments must be marked: Docket No. 25034.

Comments may be examined in the Rules Docket, Room 915-G, weekdays except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Tedrick, Noise Policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 755-9027.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, and economic, impact that might result from adopting the proposals contained in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address listed above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in the light of comments received. All comments will be available (both before and after the closing date for comments) for examination in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25034." The postcard will be date/time stamped and mailed to the commenter.

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 NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedures.

Synopsis of the Proposal

Part 36 of the Federal Aviation Regulations (14 CFR Part 36) contains noise standards for aircraft type and airworthiness certification. Appendix F of Part 36 contains the provisions currently applicable to propeller-driven small airplanes. Currently, compliance with Appendix F is determined by a level flyover test which measures noise and uses a calculated "correction" that is intended to account for differences in aircraft performance between level flight and takeoff. This notice proposes to amend Part 36 by adding a new Appendix G that would substitute actual takeoff noise tests for the present level flyover tests and thus eliminate the need for the correction. The proposed rule provides the detailed test conditions and procedures for conducting such tests and sets appropriate noise level limits.

The proposed noise standards, if adopted, affect the following:

A. Certification Procedure Provisions

The NPRM would amend FAR Part 36 by adding a new Appendix G which contains the specifications for conducting takeoff noise certifications. This Appendix would also contain information on procedures for adjusting measured noise data for the differences in aircraft performance and acoustic propagation between the test day and the reference standard day. This notice proposes to make January 1, 1988 the effective date for the new Appendix G.

B. Noise Level Standard

This notice proposes the continued use of the A-weighted sound level (L_A) as the noise measure for propeller-driven small airplanes. Currently, Appendix F uses this unit, as do most state and local noise ordinances, because it allows easy comparison with other transportation noise measuring levels. Further, instrumentation for making these measurements is relatively inexpensive and readily available.

The proposed noise level limit is simply a translation of the current Appendix F noise limit. This translation accounts for the difference in noise level resulting from the change in test airspeed and from the change in distance that the airplane is from the microphone. As a result, the noise level limit proposed for Appendix G is 5 decibels higher than the limit in Appendix F. However, no change in absolute noise level requirements is expected to occur from this proposal.

C. Acoustical Change

FAR Part 21 would be amended to remove the present limitations on acoustical changes (changes that may increase the noise of a type design after the original version has been approved). These limitations were based on the use of the level flyover and, therefore, had no provision applying to increases in airplane weight or decreases in performance. Now, it is proposed to use the same acoustical change provisions that apply to the other airplanes (turbojets and propeller-driven airplanes

over 12,500 pounds maximum takeoff gross weight) that are noise certificated using a takeoff test.

The FAA also proposes to exempt from the acoustical change requirements antique airplanes (those that had flight time before January 1, 1955) and changes involving the addition of floats or skis. The owners of antique aircraft often experience difficulty in finding airworthy parts, engines, etc. to keep aircraft in safe operable condition. They, therefore, often opt to make changes based on current availability and safety. Since the typical operator of these older light aircraft owns only one airplane and since these acoustical change situations arise infrequently, the FAA does not believe that adding noise requirements is either economically or environmentally justified.

Regulatory History

On December 31, 1974, the FAA adopted noise standards (40 FR 1029) for propeller-driven small airplanes. That action prescribed noise standards for the issue of normal, utility, acrobatic, transport, and restricted type certificates. The rule also prescribed noise standards for airworthiness certificates and restricted category airworthiness certificates for newly produced propeller-driven small airplanes of older type designs. Finally, the rule prohibited acoustical changes in the type design of those airplanes where those changes increased noise levels beyond specified limits. Section 611 of the Federal Aviation Act of 1958 (49 U.S.C. 1431), as amended by the Noise Control Act of 1972 (Pub. L. 92-574) provided the statutory authority for these provisions. Notice 73-26 detailed the amendments and was published in the **Federal Register** on October 10, 1973 (38 FR 28016). A corrective amendment was published in the **Federal Register** on February 11, 1975 (40 FR 6346).

The standards adopted above were amended (41 FR 56506; December 23, 1976) as a result of two proposals submitted to the FAA by the Environmental Protection Agency (40 FR 820, January 3, 1975, and 40 FR 1061; January 6, 1975).

A further amendment (45 FR 67064, October 9, 1980) applied to new production previously exempt agricultural and fire-fighting airplanes (without flight time before January 1, 1980), and to acoustically changed airplanes (without flight time in the changed design before January 1, 1980) that had not been shown to comply with Part 36 noise levels.

In May 1983, the International Civil Aviation Organization (ICAO) Committee on Aircraft Noise recommended replacing the ICAO flyover noise standard with a takeoff noise standard. The rule contained in this notice is substantially the same as the ICAO recommendation except for microphone placement and different noise limits. A copy of the ICAO recommended practice has been placed in the docket and is available for examination.

Need for Regulation

The current noise certification method for propeller-driven small airplanes approximates the noise on takeoff by conducting lever flyovers and making "corrections" calculated from measured or assumed aircraft performance. However, the ground measurements recorded during an actual takeoff seldom agree with the Appendix F certificated levels. As a result, the General Aviation Manufacturers Association suggested that the noise certification rules should be changed to employ actual takeoff noise measurements.

Although the purpose of these proposals is to change the noise testing procedure rather than lower the absolute noise limitations, differences in the climb performance capabilities of different airplanes may cause some airplanes to exhibit more or less noise using a takeoff test than they exhibited during level flight. These differences, however, are not expected to be critical to whether or not the airplanes are certificated.

Additionally, under section 611 of the Federal Aviation Act of 1958, as amended (the Act), the FAA Administrator, in prescribing or amending aircraft noise regulations, is required to consider, among other things, whether the action is consistent with the highest degree of safety in air commerce and whether it is economically reasonable, technologically practicable, and appropriate for the particular type of aircraft to which it would apply. Based upon its review of the issues involved, the FAA believes that amendment of the current rule proposed in this notice, if adopted, will meet the requirements of section 611 of the Act.

Rule Structure and Timing

As a part of this proposal, the FAA would add a new Appendix G to Part 36. This appendix would be structured along the general lines of the current Appendix F which contains the requirements for certificating propeller-driven small airplanes using the level flyover test. While both procedures share some common elements (for instance, the use of the A-weighted decibel as the unit of noise measure), the proposed differences are so pervasive that concern for the clarity of the resulting regulation requires the use of a separate appendix.

Similarly, to simplify questions on the applicability of each procedure, the FAA proposes to require the use of Appendix G for all tests conducted on or after January 1, 1988, regardless of the date of application for type certification. This will reduce the regulatory burden that would have been imposed on applicants if different standards and different tests were required for various airplanes in the same product line or even differing models of the same airplane type. Appendix F would be removed from FAR Part 36 after January 1, 1988.

Analysis of the Proposed Amendments

The proposal to establish a takeoff test procedure for the noise certification of propeller-driven small airplanes would revise existing Parts 21 and 36 to the Federal Aviation Regulations (14 CFR Parts 21 and 36). Eight substantive changes, including the addition of one appendix to Part 36, are proposed as follows:

1. Section 21.93 defines those changes to an aircraft type design (acoustical changes) that require recertification for noise. Recertification for those "acoustical changes" for propeller-driven small airplanes is now limited to (a) changes on removal of mufflers or similar noise-control components or (b) increases in installed power or propeller tip speed. This notice proposes to remove those limitations on the definition of acoustic change. The proposal requires that any voluntary change in the type design of an airplane which increases the noise levels of that airplane is an "acoustical change". This change aligns the propeller driven small airplane "acoustic change" definition with that used by all other propeller-driven airplanes.

The FAA also proposes to amend § 21.93 to eliminate the need to recertificate for noise certain antique airplanes and airplanes which add (or substitute) floats or skis to already certificated aircraft configured for landings and takeoffs on land. The proposed definition of antique would limit this relief to U.S. registered airplanes with flight time prior to January 1, 1955. As such, this proposal parallels the exception in § 45.22(b) granted to antique aircraft from nationality and registration marking. No change in airworthiness (safety) requirements is proposed in this notice.

2. Two additional technical publications are proposed for

incorporation by reference in § 36.6. The publications contain technical specifications for noise measurement and analysis equipment and are available from the International Electro-technical Commission. These additional publications are also available for inspection in the Docket for this Notice.

3. Section 36.9 would be amended to provide that noise tests conducted for acoustical changes should be performed in accordance with the instructions in § 36.501. At present § 36.9 requires compliance with Appendix F. However, proposed § 36.501 will direct applicants to the appropriate appendix.

4. Section 36.501 would be amended to expand the function of this section to direct applicants for amended type certificates to the appropriate noise limit in either Appendix F or Appendix G.

5. Paragraphs (b) and (c) of § 36.501 would be amended to direct applicants for both new and amended type certificates to the appropriate regulation. The amendment proposes to make January 1, 1988, the date on or after which all noise certification tests for propeller-driven small airplanes would be conducted using the methods and procedures of the proposed new Appendix G. All tests completed before that data would use Appendix F. The noise levels appropriate to each procedure are contained in the applicable appendix.

6. The title of Appendix F would be changed to reflect that it contains only the flyover test requirements for propeller-driven small airplanes.

7. Similarly, the description of the scope of Appendix F, contained in F36.1, would be amended to reflect its proposed new status.

8. A new Appendix G would be added to FAR Part 36. It would have the following features:

Part A—General

The scope of Appendix G is specified in section G36.1. As proposed, the appendix would prescribe procedures and noise levels applicable to tests for noise certification of propeller-driven small airplanes conducted on or after January 1, 1988. Prior tests for propeller-driven small airplanes would be performed under Appendix F.

Part B—Noise Measurement

Section G36.101 would specify the general conditions for takeoff tests. These include both the physical conditions for the noise measurement field and the meteorological "test window". This notice proposes to enlarge the meteorological window over that which is allowable under Appendix F. Specifically, the temperature and relative humidity limits would be broadened to those currently allowable for large propeller-driven and turbojet powered aircraft. These broadened limits would decrease the costs to applicants of waiting for acceptable weather conditions before starting tests. The wind limit would be changed to include both a total wind limit and a limit on cross-wind velocity. Currently, Appendix F has only a total wind limit plus a requirement to align the airplane flight direction within ±15 degrees of the wind under certain circumstances. Obviously, the current provision does not address all the requirements necessary for the conduct of takeoff tests in which the airports are aligned with runways.

In section G36.103, the acoustical measurement system is specified. Since the noise unit chosen for Appendix G is the same as for Appendix F, no changes in this section are proposed.

Section G36.105 is similar to the corresponding section of Appendix F. Additionally, some further technical guidance is provided. Two additional documents from the International Electro-technical Commission are incorporated by reference. A reference to the calibration procedures contained in Appendix A is also added in order to clarify the requirements in this area. The section also broadens the means of recording sound level data by adding two more categories of acceptable instrumentation, graphic level recorders and sound level meters. These additions should increase the flexibility of the rule and lower costs to the applicant. Use of an expensive windscreen would be required when the winds are over 5 knots. This will improve the signal-to-noise ratio on windy days, improve data and increase the number of test days available to applicants with quiet aircraft.

Section G36.107 specifies the requirements for noise measurement procedures, including the overhead direction that the microphone must be pointed during the takeoff. The orientation of the microphone sensing elements during the test must be related to the direction from which the sound was coming during calibration. Similarly, the recorder must be calibrated within 10 decibels of the full-scale value. Both of these requirements are intended to ensure that differences between measurement systems will not affect measured sound levels.

The data recording, reporting and approval requirements are found in the proposed section G36.109. This section provides guidance on the types and extent of data necessary for noise certification. It includes information on the equipment and its response, in addition to meteorological and topography features that might affect noise measurements, aircraft performance, and noise levels. It is particularly important for takeoff noise test that information be gathered on aircraft performance and position when the airplane is directly over the microphone. Standard day performance is also necessary to provide the technical basis for adjustment of the measured noise to a common reference base.

Section G36.111 specifies airplane flight procedures. Distances are based from the microphone location at the noise measuring site. Specifically, the start of takeoff roll must be 8200 feet from the noise measuring site and the aircraft must pass over it within ten degrees fom the vertical and within twenty percent of the reference (standard day) altitude. The reference day that is proposed is a no-wind, sea level day at 59 °F and 70 percent relative humidity. The 59 °F standard is the same standard used for calculating aircraft performance for the airworthiness part of certification. By using this value (rather than the 77 °F used in Appendix F), applicants will not need to re-compute the performance of their aircraft solely for noise certification purposes. Such calculations are not currently necessary under Appendix F since aircraft noise during level flyover can generally be assumed to be independent of temperature.

Part C—Data Corrections

Section G36.201 contains the technical specifications for the corrections to measured data necessary under Appendix G. Corrections would be required to convert the data to standard reference conditions for (1) atmospheric absorption, (2) noise path length differences caused by conditions such as changes in altitude, (3) propeller tip speed, and (4) engine power. This section proposes to not require correction for atmospheric absorption if the test is conducted within a "no-correction" window (temperature between 50 and 95 °F and relative humidity between 45 and 95 percent). A similar "no-correction" window is provided for certain tests conducted within five percent of the reference power.

Section G36.203 would require the measurement point to be overflown at least six times in order to get enough measurements for a statistically valid average sound level. Further, the variation of these flights must be such

that the confidence limit does not exceed 1.5 decibels.

Part D—Noise Limits

The noise level limits proposed for the takeoff tests of propeller-driven small airplanes are contained in § G36.301. Below 1320 pounds, the noise would not be allowed to exceed 73 dB(A). Above 3300 pounds, the noise could not be more than 85 dB(A). Between these weights, the limit would vary lineary at a rate of 1 dB(A) for each 166 pounds.

These limits would apply to all tests conducted on or after January 1, 1988 for noise certification for a new or amended type certificate. While this section is intended to provide for the smooth transition to the different test procedure on the specified date, it is not intended to require additional testing for any certificate (including the continued issuance of airworthiness certificates) beyond the requirements of the present rule.

Regulatory Impact Evaluation

The FAA conducted a detailed regulatory evaluation which is included in the regulatory docket. This evaluation reviews all proposed changes to Parts 21 and 36. The FAA determined that the NPRM involves proposed rulemaking which is not considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and is not major as defined in Executive Order 12291.

Little or no increase in costs would result from the proposed changes in certification procedures. Such costs, when they occur, would result from limits on future versions of existing aircraft types where those affected aircraft types demonstrate poorer-than-average climb capabilities during takeoff.

The FAA invites comments on the regulatory evaluation which is included in the Docket.

Regulatory Flexibility Determination

As detailed in the evaluation, the costs and benefits associated with these proposed changes to FAR Parts 21 and 36 will accure principally to the operators of propeller-driven small aircraft. While a few of these operators are corporations, approximately 90% fall under the definition of small entities. The cost differential would be expected to be under $500 per aircraft per year for those aircraft subject to the proposed regulation. However, because the rule would not affect current production aircraft unless their designs were changed after January 1, 1988, less than five percent of the identified small entities are expected to be affected directly.

Therefore, the FAA certifies that the proposal, if promulgated, will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), the FAA has determined that this proposal would not constitute a major Federal action significantly affecting the quality of the human environment. The proposed amendment would have no net effect on noise levels around airports, including those used exclusively for general aviation. Therefore, no environmental assessment or environmental impact statement is necessary.

Trade Impact Analysis

Little or no impact on U.S. or foreign trade would occur if this proposal were adopted, since the proposed Appendix G does not differ in stringency from the current Appendix F and the costs of conducting the certification tests are roughly equal. Absent the rule, U.S. propeller-driven small aircraft exports may be placed at a competitive cost disadvantage since each model would be required to meet ICAO standards. The cost of multiple certifications would result in either higher selling prices or lower profits to U.S. manufacturers.

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 36

Agriculture, Aircraft, Noise control.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Parts 21 and 36 of the Federal Aviation Regulations (14 CFR Parts 21 and 36) as follows:

PART 21—[AMENDED]

1. The authority citation for Part 21 would be revised to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857F-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983.)

2. By amending § 21.93 by revising paragraph (b)(3) to read as follows:

§ 21.93 Classification of changes in type design.

* * * * *

(b) * * *

(3) Propeller driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories, except for airplanes that are:

(i) Designated for "agricultural aircraft operations" (as defined in § 137.3 of this chapter, effective January 1, 1966), or

(ii) Designated for dispensing fire fighting materials to which § 36.1583 of this chapter does not apply, or

(iii) U.S. registered, and that had flight time prior to January 1, 1955 or

(iv) Land configured aircraft reconfigured with floats or skis. This reconfiguration does not permit further exception from the requirements of this section upon any acoustical change not enumerated in § 21.93(b).

3. The authority citation for Part 36 would be revised to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 et seq.; E.O. 11514, 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

4. By amending § 36.6 by adding new paragraphs (c)(1), (iii), and (iv) to read as follows:

PART 36—[AMENDED]

§ 36.6 Incorporation by reference.

* * * * *

(c) * * *

(1) * * *

(iii) IEC Publication No. 651, entitled "Sound Level Meters," dated 1979.

(iv) IEC Publication No. 561, entitled "Electro-acoustical Measuring Equipment for Aircraft Noise Certification," dated 1976.

* * * * *

5. By revising § 36.9 to read as follows:

§ 36.9 Acoustical change: Propeller-driven small airplanes.

(a) For propeller-driven small airplanes in the normal, utility, aerobatic, transport, and restricted categories for which an acoustical change approval is applied for under § 21.93(b) of this chapter after January 1, 1975, the following apply:

(b) If the airplane was type certificated under this Part prior to a change in type design, it may not subsequently exceed the noise limits specified in § 36.501 of this Part.

(c) If the airplane was not type certificated under this Part prior to a change in type design, it may not exceed the higher of the two following values:

(1) The noise limit specified in § 36.501 of this part, or

(2) The noise level created prior to the change in type design, measured and corrected as prescribed in § 36.501 of this part.

§ 36.501 [Amended]

6. By amending paragraph (a)(1) of § 36.501 by revising the words "type certificate" to read "new or amended type certificate."

7. By revising paragraphs (b) and (c) of § 36.501 to read as follows:

* * * * *

(b) For aircraft covered by this subpart for which certification tests are completed before January 1, 1988, compliance must be shown with noise levels as measured and prescribed in Parts B and C of Appendix F, or under approved equivalent procedures. It must be shown that the noise level of the airplane is no greater than the applicable limit set in Part D of Appendix F.

(c) For aircraft covered by this subpart for which certification tests are not completed before January 1, 1988, compliance must be shown with noise levels as measured and prescribed in Part B and C of Appendix G, or under approved equivalent procedures. It must be shown that the noise level of the airplane is no greater than the applicable limit set in Part D of Appendix G.

* * * * *

8. By revising the title of Appendix F of Part 36 to read as follows:

Appendix F—Flyover Noise Requirements for Propeller-Driven Small Airplanes Certification Tests Before January 1, 1988

9. By revising section F36.1 of Appendix F of Part 36 to read as follows:

Section F36.1 Scope. This appendix prescribes limiting noise levels, and procedures for both measuring noise and for correcting noise data for the propeller driven small airplanes specified in §§ 36.1 and 36.501(a).

* * * * *

10. By adding a new Appendix G to Part 36 to read as follows:

Appendix G—Takeoff Noise Requirements for Propeller-Driven Small Aircraft for Certification Tests on or After January 1, 1988

Part A—General

Sec.

G36.1 Scope.

Part B—Noise Measurement

G36.101 General Test Conditions.
G36.103 Acoustical measurement system.
G36.105 Sensing, recording and reproduction equipment.
G36.107 Noise measurement procedures.
G36.109 Data recording, reporting and approval.
G36.111 Flight procedure.

Part C—Data Corrections

G36.201 Corrections to Test Results.
G36.203 Validity of results.

Part D—Noise Limits

G36.301 Aircraft noise limits.

Part A—General

Section G36.1 *Scope.* This appendix prescribes limiting noise levels and procedures for measuring noise and adjusting these data to standard conditions, for propeller driven small airplanes specified in §§ 36.1 and 36.501(b).

Part B—Noise Measurement

Sec. G36.101 General Test Conditions.

(a) The test area must be relatively flat terrain having no excessive sound absorption characteristics such as those caused by thick, matted, or tall grass, by shrubs, or by wooded areas. No obstructions which significantly influence the sound field from the airplane may exist within a conical space above the measurement position, the cone being defined by an axis normal to the ground and by a half-angle 75 degrees from the normal ground axis.

(b) The tests must be carried out under the following conditions:

(1) No precipitation,

(2) Ambient air temperature between 36 and 95 degrees F (2.2 and 35 degrees C),

(3) Relative humidity and ambient temperature is such that the sound attenuation in the one-third octave band centered at 8 kHz is not greater than 12 dB/100 meters and the relative humidity is between 20 percent and 95 percent, inclusively;

(4) Reported wind may not be above 10 knots (19 km/h) and cross wind not above 5 knots (9 km/h), using a 30-second average;

(5) No temperature inversion or anomalous wind condition that would significantly alter the noise level in the airplane when the noise is recorded at the required measuring point, and

(6) The meteorological measurements must be made between 10 ft. (3 m) and 33 ft. (10 m) of the surface. If the measurement site is within 1 n.m. of an airport meteorological station, measurements from that station may be used.

(c) The flight test procedures, measuring equipment, and noise measurement procedures must be approved by the FAA.

(d) Sound pressure level data for noise evaluation purposes must be obtained with acoustical equipment that complies with sec. G36.103 of this appendix.

Sec. G36.103 Acoustical Measurement System.

The acoustical measurement system must consist of approved equipment equivalent to the following:

(a) A microphone system with frequency response compatible with measurement and analysis system accuracy as prescribed in sec. G36.105 of this appendix.

(b) Tripods or similar microphone mountings that minimize interference with the sound being measured.

(c) Recording and reproducing equipment characteristics, frequency response, and dynamic range compatible with the response and accuracy requirements of Sec. G36.105 of this appendix.

(d) Acoustic calibrators using sine wave or broadband noise of known sound pressure level. If broadband noise is used, the signal must be described in terms of its average and maximum root-mean-square (rms) value for non-overload signal level.

Sec. G36.105 Sensing, Recording, and Reproducing Equipment.

(a) The noise produced by the airplane must be recorded. A magnetic tape recorder, graphic level recorder, or sound level meter is acceptable when approved by the regional certification authority.

(b) The characteristics of the complete system must comply with the recommendations in International Electrotechnical Commission (IEC) Publications No. 651, entitled "Sound Level Meters" and No. 561, entitled "Electro-acoustical Measuring Equipment for Aircraft Noise Certification" as incorporated by reference under § 36.6 of this Part.

(c) The response of the complete system to a sensibly plane progressive sinusoidal wave of constant amplitude must be within the tolerance limits specified in IEC Publication No. 651, over the frequency range 45 to 11,200 Hz.

(d) If limitations of the dynamic range of the equipment make it necessary, high frequency pre-emphasis must be added to the recording channel with the converse de-emphasis on playback. The pre-emphasis must be applied such that the instantaneous recorded sound pressure level of the noise signal between 800 and 11,200 Hz does not vary more than 20 dB between the maximum and minimum one-third octave bands.

(e) The output noise signal must be read through an "A" filter with dynamic characteristics designated "slow" as defined in IEC Publication No. 651. A graphic level recorder, sound level meter, or digital equivalent may be used.

(f) The equipment must be acoustically calibrated using facilities for acoustic free-field calibration and if analysis of the tape recording is requested by the Administrator, the analysis equipment shall be electronically calibrated by a method approved by the FAA. Calibrations shall be performed, as appropriate, in accordance with paragraph A36.3(e) of Appendix A of this Part.

(g) A windscreen must be employed with the microphone during all measurements of aircraft noise when the wind speed is in excess of 5 knots (9 km/hr).

Sec. G36.107 Noise Measurement Procedures.

(a) The microphones must be oriented in a known direction so that the maximum sound received arrives as nearly as possible in the direction for which the microphones are calibrated. The microphone sensing elements

must be approximately 4 ft. (1.2m) above ground.

(b) Immediately prior to and after each test, a recorded acoustic calibration of the system must be made in the field with an acoustic calibrator for the purposes of checking system sensitivity and providing an acoustic reference level for the analysis of the sound level data. If a tape recorder or graphic level recorder is used, the frequency response of the electrical system must be determined at a level with 10 dB of the full-scale reading used during the test, utilizing pink or pseudorandom noise.

(c) The ambient noise, including both acoustical background and electrical noise measurement systems, must be recorded and determined in the test area with the system gain set at levels which will be used for aircraft noise measurements. If aircraft sound pressure levels do not exceed the background sound pressure levels by at least 10 dB(A), a takeoff measurement point nearer to the start of takeoff roll must be used and the results must be adjusted to the reference measurement point by an approved method.

Sec. G36.109 Data Recording, Reporting, and Approval.

(a) Data representing physical measurements or adjustments to measured data must be recorded in permanent form and appended to the record, except that corrections to measurements for normal equipment response deviations need not be reported. All other adjustments must be approved. Estimates must be made of the individual errors inherent in each of the operations employed in obtaining the final data.

(b) Measured and corrected sound pressure levels obtained with equipment conforming to specifications described in Sec. G36.105 of this appendix must reported.

(c) The type of equipment used for measurement and analysis of all acoustical, airplane performance, and meteorological data must be reported.

(d) The following atmospheric data, measured immediately before, after, or during each test at the observation points prescribed in Sec. G36.101 of this appendix must be reported:

(1) Air temperature and relative humidity.

(2) Maximum and average wind velocities and directions for each run.

(e) Comments on local topography, ground cover, and events that might interfere with sound recordings must be reported.

(f) The aircraft position relative to the flight path reference point must be determined by an approved method independent of normal flight instrumentation, such as radar tracking, theodolite triangulation, or photographic scaling techniques.

(g) The following airplane information must be reported:

(1) Type, model, and serial numbers (if any) of airplanes, engines, and propellers;

(2) Any modifications or nonstandard equipment likely to affect the noise characteristics of the airplane;

(3) Maximum certificated takeoff weight;

(4) For each overflight, airspeed and air temperature at the flyover altitude over the measuring site determined by properly calibrated instruments;

(5) For each overflight, engine performance as manifold pressure or power, propeller speed (rpm) and other relevant parameters. Each parameter must be determined by properly calibrated instruments;

(6) Airspeed, position, and performance data necessary to make the corrections required in Sec. G36.201 of this appendix must be recorded by an approved method when the airplane is directly over the measuring site.

Sec. G36.111 Flight Procedures.

(a) The noise measurement point is on the extended centerline of the runway at a distance of 8200 ft (2500 m) from the start of takeoff roll. The aircraft must pass over the measurement point within ±10 degrees from the vertical and within 20% of the reference altitude.

(b) The reference procedures must be calculated for the following atmospheric conditions:

(1) Sea level atmospheric presure of 1013.25 mb (013.25 hPa);

(2) Ambient air temperature of 59 °F (15 °C);

(3) Relative humidity of 70 percent; and

(4) Zero wind.

(c) The takeoff reference flight path must be calculated assuming the following two segments:

(1) First segment.

(A) Takeoff power must be used from the brake release point to point at which the height of 50 ft (15 m) above the runway is reached.

(B) A constant takeoff configuration selected by the applicant must be maintained through this segment.

(C) The maximum weight of the airplane at brake-release must be the maximum for which noise certification is requested.

(D) The length of this first segment must correspond to the airworthiness approved value for a takeoff on a level paved runway (or the corresponding value for seaplanes).

(2) Second segment.

(A) The beginning of the second segment corresponds to the end of the first segment.

(B) The airplane must be in the climb configuration with landing gear up, if retractable, and flap setting corresponding to normal climb position throughout this second segment.

(C) The speed must be the speed for the best rate of climb (Vy).

(D) Maximum continuous installed power and rpm for variable pitch propeller(s). For fixed pitch propeller(s) the maximum power and rpm that can be delivered by the engine(s) must be maintained throughout the second segment.

Part C—Data Corrections

Sec. G36.201 Corrections to Test Results.

(a) These corrections take account of the effects of:

(1) Differences in atmospheric absorption between meteorological test conditions and reference conditions.

(2) Differences in the noise path length between the actual airplane flight path and the reference flight path.

(3) The change in the helical tip Mach number between test and reference conditions.

(4) The change in the engine power between test and reference conditions.

(b) Atmospheric absorption correction is required for noise data obtained when the temperature is outside the range of 50 to 95 degrees F (10 to 35 degrees C), when the relative humidity is outside the range of 45 and 95 percent. Noise data outside the applicable range must be corrected to 77 degrees F and 70 percent relative humidity by a method approved by the FAA.

(c) Mach number and power corrections must be made if:

(1) The propeller is a variable pitch type, or

(2) The propeller is fixed pitch type and the test power is not within 5 percent of the reference power.

(d) When the tests conditions are outside those specified, corrections must be applied by an approved procedure or by the following simplified procedure:

(1) Measured sound levels must be corrected from test day meteorological conditions to reference conditions by adding an increment equal to

$$\text{Delta (M)} = (\alpha - 0.7)\ H_T/1000$$

when H_T is the height in feet of the test aircraft when directly over the noise measurement point and is α the rate of absorption for the test day conditions at 500 Hz as specified in SAE ARP 866A, entitled "Standard Values of Atmospheric Absorption as a function of Temperature and Humidity for use in Evaluating Aircraft Flyover Noise" as incorporated by reference under § 36.6 of this Part.

(2) Measured sound levels in decibels must be corrected for height by algebraically adding an increment equal to

$$\text{Delta (1)} = 22 \log (H_T/H_R)$$

where H_T is the height of the test aircraft when directly over the noise measurement point and H_R is the reference height.

(3) Measured sound levels in decibels must be corrected for helical tip Mach number by algebraically adding an increment equal to:

$$\text{Delta (2)} = k \log (M_R/M_T)$$

where M_T and M_R are the test and reference helical tip Mach numbers, respectively. The value of k may be determined from approved data from the test aircraft. A nominal value of k=150 may be used when M_T is smaller than M_R; no correction is be made when M_T is larger than M_R. The reference helical tip Mach number M_R is the Mach number corresponding to the reference conditions (RPM, airspeed, temperature) above the measurement point.

(4) Measured sound levels in decibels must be corrected for engine power by algebraically adding an increment equal to:

$$\text{Delta (3)} = 17 \log (P_R/P_T)$$

where P_T and P_R are the test and reference engine powers respectively.

Sec. G36.203 Validity of Results.

(a) The measuring point must be overflown at least six times. The test results must produce an average noise level (L_{Amax}) value within a 90-percent confidence limit. The average noise level is the arithmetic average of the corrected acoustical measurements for all valid test runs over the measuring point.

(b) The samples must be large enough to establish statistically a 90-percent confidence limit not exceeding ±1.5 db(A). No test results may be omitted from the averaging process unless omission is approved by the FAA.

Part D—Noise Limits

Sec. G36.301 Aircraft noise limits.

(a) Compliance with this section must be shown with noise data measured and corrected as prescribed in Parts B and C of this appendix.

(b) For air planes for which application for a new or amended type certificate is made on or after January 1, 1988, the noise level must not exceed 73 dB(A) up to and including aircraft weights of 1,320 pounds (600 kg). For weights greater than 1,320 pounds up to and including 3,300 pounds (1,500 kg) the limit increases at the rate of 1 dB/166 pounds (1 db/75 kg) to 85 dB(A) at 3,300 pounds, after which it is constant at 85 dB(A) up to and including 12,500 pounds.

(Secs. 313(a), 603, and 611(b), Federal Aviation Act of 1958 as amended (49 U.S.C. §§ 1354(a), 1423, and 1431(b)); sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655 (c)); Title I, National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 *et seq.*); Executive Order 11514, March 5, 1970 and 14 CFR 11.45).

Note: For reasons discussed earlier in the preamble, the FAA has determined that this document: (1) involves a proposed regulation which in not major under Executive Order 12291, (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) it is certified under the criteria of the Regulatory Flexibility Act that this is a proposed rule, as promulgated will not have a significant impact on a substantial number of small entities. In addition, this proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Issued in Washington, DC on July 7, 1986.

Norman H. Plummer,

Director of Environment and Energy, AEE-1.

[FR Doc. 86-15569 Filed 7-11-86; 8:45 am]

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federal register

Monday
July 14, 1986

Part VI

Department of Commerce

37 CFR Part 401

Rights to Inventions Made by Nonprofit Organizations and Small Business Firms; Interim Final Rule

DEPARTMENT OF COMMERCE

37 CFR Part 401

[Docket No. 41278-6009]

Rights to Inventions Made by Nonprofit Organizations and Small Business Firms

AGENCY: Assistant Secretary for Productivity, Technology and Innovation, Commerce.

ACTION: Interim final rule.

SUMMARY: Pub. L. 98-620 amended Chapter 18 of Title 35, United States Code, dealing with patent rights in inventions made with Federal funding by nonprofit organizations and small business firms. It also reassigned responsibility for the promulgation of regulations implementing 35 U.S.C. 202-204 and the establishment of standard funding agreement provisions from the Office of Management and Budget (OMB) to the Secretary of Commerce. This regulation, to appear at 37 CFR Part 401, establishes such implementing regulations and standard funding agreement provisions.

DATES: July 14, 1986. Comments by: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Norman Latker, Director, Federal Technology Management Policy Division, Office of Productivity, Technology and Innovation, U.S. Department of Commerce, Room 4837, Washington, DC 20230. Phone: 202-377-0659.

SUPPLEMENTARY INFORMATION:

Background

Pub. L. 98-620 amended Chapter 18 of Title 35, United States Code, and assigned regulatory authority to the Secretary of Commerce. The Secretary has delegated his authority under 35 U.S.C. 206 to the Assistant Secretary for Productivity, Technology and Innovation. Section 206 of Title 35 U.S.C. requires that the regulations and the standard funding agreement be subject to public comment before their issuance. Accordingly, on April 4, 1985, the Assistant Secretary published a notice of proposed rulemaking in the **Federal Register** (50 FR 13524) for public comment. As noted at that time, the regulation closely follows OMB Circular A-124 which the regulation will replace. Differences between the proposed rule and the Circular were highlighted in Supplementary Information accompanying the notice of proposed rulemaking.

Additionally, to comply fully with section 206 of Title 35 U.S.C., the Department is requesting public comments on this Final Interim Rule. Comments should be sent to the address listed in the "**FOR FURTHER INFORMATION CONTACT**" section above. Comments received by September 12, 1986 will be considered in promulgating a final rule.

Copies of all comments received are available for public inspection in the Department's Central Reference Records Inspection Facility (CRRIF), room 6628 in the Hoover Building. Information about the availability of these records for inspection may be obtained from Mrs. Hedy Walters at (202) 377-3271.

Treatment of Substantative Comments on Regulation Provisions

Twenty-three comments from seventeen different sources were received on the proposed rule in response to the April 4 notice. The substantative issues raised in the twenty-three comments will first be discussed as they refer to the specific sections of the proposed regulation. General comments on issues not mentioned in the regulation will be discussed later in this Supplementary Information Section.

Section 401.1(a)—Two comments were received on this subject. One suggested adding a sentence alerting readers to the fact that the regulation also includes policy guidance concerning the administration of funding agreements that predate the effective date of the regulation. This was done.

The second comment suggested the reference to the statute implemented by this regulation should be to 35 U.S.C. 200-206 and 212 rather than just 202-204. This suggestion was rejected as authority granted the Secretary of Commerce by 35 U.S.C. 206 is limited to issuing regulations related only to sections 202-204.

Section 401.1(d)—Several comments from federal agencies suggested rewriting the first part of this section to better reflect the relationship of this regulation, agency regulations, and the FAR system. One agency suggested the regulation should permit agency-initiated deviations without approval by the Secretary of Commerce. This was rejected as being inconsistent with the statute's requirement to develop a standard patent rights clause. However, the need to obtain approval by the Secretary of Commerce of certain deviations requested by contractors has been eliminated and it has been made clear that modification and tailoring of clauses, as authorized elsewhere in the regulation, are not considered "deviations."

The suggestion by two agencies that the FAR be used as the regulatory implementation of Chapter 18 of Title 35, U.S.C. was not accepted because it would be inconsistent with the law and Congressional intent.

It was also suggested that limitations on deviations were too strict and that the more liberal deviation procedures of the FAR system should be adopted. This was not accepted.

As a result of one agency comment, § 401.1(d) has been revised to specify when regulations should be submitted to the Secretary for review.

One agency suggested that the opening sentence of § 401.1(d) be deleted or amended as it "may throw the validity of every other regulation implementing Pub. L. 98-620 into doubt since lack of coverage of a point by the Commerce regulations could suggest that no coverage is permitted." It is, in fact, the purpose of § 401.1(d) and the statute to override inconsistent regulations. That is also why it is directed that all regulations supplementing this part be submitted to the Secretary for review for consistency. The Department of Commerce will work with those responsible for Part 27 of the FAR system to ensure that it is consistent with this regulation.

Section 401.2(a)—A comment suggested that the definition of "funding agreement" include language removing 35 U.S.C. 212 from its coverage. This concern has been dealt with in §§ 401.1(a) and 401.3(a) which exclude 35 U.S.C. 212 awards.

Section 401.2(h)—A comment suggested that the word "possession" be added in the definition of "nonprofit organizations" after the word "state." This has not been done as the statutory definition does not include the word "possession." The need for seeking an amendment to the act is being studied.

Section 401.3(a)(2)—One agency comment raised the question of whether the exceptional circumstance provision of 35 U.S.C. 202(a)(ii) can be used to except from contractor ownership a class of research contracts and all their resulting inventions on the grounds that national security may require classification of some of the results of the research. Three responding agencies believed the general principle of contractor ownership should be preserved as it does not preclude the advanced classification of research contracts and their resulting inventions for national security reasons under provisions of law other than 35 U.S.C. 202(a)(ii). Agencies are encouraged to use established national security classification procedures set out in regulation and Executive Order to protect from public disclosure those

inventions which pose security risks. These procedures allow the contractor to elect to retain title to such inventions. Thus, if at some later date security classification is lifted the contractor can immediately commence commercialization. However, it is recognized that in some limited situations agencies may be able to use national security to justify an alternate ownership provision under the exceptional circumstance paragraph of 35 U.S.C. 202(a)(ii). In such cases provision must be made to permit the contractor to elect ownership if there is no security classification of a reported invention by the agency within six months. Accordingly, § 401.3(b) provides that should an agency exercise an exceptional circumstance exception under § 401.3(a)(2) and include provisions to own inventions on the basis of national security, the contractor shall be entitled to own any invention if the agency does not classify the contractor's invention report within six months of the date it is reported to the agency, or within the same period the Department of Energy does not, as authorized by regulation, law, Executive Order or implementing regulations thereto, prohibit unauthorized dissemination of the invention. Contracts in support of DOE's naval nuclear propulsion program are exempt from this paragraph.

Section 401.3(b)—Two agency comments suggested that the requirement to use the standard clause with modifications, even when exceptions under subsection 202(a) are invoked, is too restrictive. The language of the Act, particularly the introduction to 35 U.S.C. 202(c), makes no distinction between funding agreements under which the contractor retains the right to elect title and those in which this right has been curtailed through one of the exceptions. A standard clause will promote maximum uniformity and assurance that small business and nonprofit contractors understand their obligations.

Section 401.3(e)—Comments were requested on whether determinations of class exceptions should be allowed. One comment stated that the law contemplates case-by-case exceptions and felt that only rarely could a class exception be justified. On the other hand, one agency comment stated that class determinations are needed to reduce paperwork. That agency suggested the use of a single determination be authorized for multiple contracts involving identical circumstances to facilitate contracting so long as each contractor is accorded its right of appeal. This suggestion was accepted.

In response to one comment, language has been added requiring an agency to advise a contractor of its appeal rights when it notifies the contractor that one of the exceptions at 35 U.S.C. 202(a) are being invoked.

Section 401.3(g)—One agency comment expressed concern about this section's requirement to provide information to the Comptroller General. The requirement has been retained as it was developed during the drafting of OMB Circular A-124 at the request of and in consultation with the GAO.

Section 401.4(b)(3)—In response to one comment, the word "present" has been changed to "rely upon."

Section 401.4(b)(6)—In response to one comment, language has been added requiring the agency head to detail the basis for the rejection of facts found during the fact-finding process.

Section 401.5(a)—One agency comment pointed out that, particularly in grants or cooperative agreements where an agency has a policy of applying the standard clause in all subcontracts, paragraph (g)(3) is not needed and the standard clause could be simplified by eliminating paragraph (g)(2). This has been done by expanding § 401.5(a) to authorize such modification of the subcontract provisions of the standard clause at § 401.14.

Section 401.5(d)—At the suggestion of one agency, several minor changes to this section have been made. The most significant of these changes is the additional language that agencies are authorized to add to the standard clauses which allow agencies to identify international agreements that are "to be entered into." This change is needed to enable future agreements to be entered into during contract performance and is only to be applied to subject inventions made after the date of contract amendment.

In response to agency comments, the number of situations in which the language at the end of the subsection related to international agreements can be used has been increased to include all long-term contracts such as those frequently used for funding operation of Government-owned research facilities, and not just those involving a series of task orders.

Section 401.5(e)(2)—One comment suggested adding "or other form of protection of intellectual property" to this requirement. This has not been done because it goes beyond the scope of the Act.

Section 401.5(e)(3)—In response to several agency comments, the option of the agencies to obtain annual listings of reported subject inventions has been retained.

Section 401.5(f)—One university comment raised the question of whether a university licensing office on the same campus but organizationally separate from a university-operated, Government-owned facility would meet the "most effective technology transfer" standard in the last sentence of paragraph (k)(3) which is prescribed at § 401.5(f). The situation described meets the standard.

One agency comment suggested that language be added at the end of § 401.5(f) as follows: "However, in the case of facilities of the Department of Energy, the paragraph shall be used in contracts designated by the Department of Energy as management and operating contracts for such facilities in accordance with Subpart 17.6 of the Federal Acquisition Regulations as supplemented by the Department of Energy Acquisition Regulations." This suggestion has not been accepted because it is inappropriate to include language that is tied to other regulations that could change and which may contain definitions based on other objectives and purposes. However, DOE may designate such contracts, and to the extent it finds that the proposed language is consistent with 35 U.S.C. 204(c)(7)(E) and § 401.5(f) it may prescribe such language in its supplementary regulations or instructions.

Several comments suggested the deletion of the words "at the facility" from the clause language prescribed by § 401.5(f). The basis for this suggestion was that limiting the use of income to research at the facility will act as a deterrent to university investment in the promotion of inventions. This change has been made because it is more appropriate to leave the question of royalty sharing with the facility to negotiations among the interested parties.

Section 401.5(g)—For clarity, a paragraph has been added authorizing agencies to require that contractors operating Government-owned facilities furnish certain information concerning their invention reporting and disclosure procedures.

Section 401.6(c)—For clarity, a change has been made that agencies are expected to give notice only if they have actual knowledge of assignees or licensees.

Section 401.6(f)—For clarity, the words "or adopt" have been added to the subsection.

Section 401.6(g)—To conform with § 401.4(b)(6), language has been added requiring the agency head to detail the reasons for rejecting facts found during the fact-finding process.

Section 401.6(k)—For clarity, a paragraph has been added providing that exclusive licensees include "partially exclusive licensees" for purposes of march-in proceedings.

Section 401.7—Several comments expressed concern that it should be made clear that the small business preference not be construed to prevent a university from providing a right of first refusal or other type of option to a larger business that is providing support under a long-term agreement for research related to the invention. This change has been made because small business preference is intended to inhibit industrial support of university research.

One agency comment suggested that the Secretary's role may conflict with that of the agency in matters pertaining to the "domestic preference" in licensing agreements. Therefore, it was suggested that "matters in regard to the contractor's licensing practices would be better handled by the contractor agency." This comment was rejected because the role of the Secretary will not include involvement in an individual licensing decision.

One comment suggested that the regulations "need to reflect that no individual small business will have standing to attack any particular license agreement." This suggestion was not accepted because it is already reflected in the subsection and the clause.

Section 401.8(a)—One agency comment suggested relaxing the requirement that agencies receive periodic information on the utilization of inventions pending instructions by this Department. In response, a change has been made that agencies refrain, to the extent feasible, from specifying specific formats for the information and instead rely on information in the form in which it is customarily prepared by the contractor for its own internal reporting purposes. The Paperwork Reduction Act will apply to any information gathering efforts. If further experience under the regulations indicates that agencies' requests to contractors are developed on an uncoordinated basis or create undue burden, a uniform reporting system may be instituted.

Section 401.(8)(b)—In response to one agency comment, a provision has been added requiring contractor marking of utilization data which they wish to have protected.

Section 401.10—Several agencies suggested revising this subsection so that agencies may apply additional conditions. This has been permitted, providing the additional conditions are consistent with sections 201–206 of the statute. In addition, the royalty-sharing requirement with Government employee/inventors under paragraph (k)(2) of the clause at § 401.14(a) has been eliminated. Agencies may still require royalty-sharing with their employee/inventors on a case-by-case or other broader basis.

One university comment suggests that the coverage of this subsection be expanded so that disparate regulations do not develop among the various agencies. Agency activities will be monitored in order to attain consistency.

Section 401.12—One university comment suggests adding language to § 401.12 requiring the payment of reasonable royalties when licensing of background inventions is required. This change was not accepted because such payments can be negotiated in connection with the use of such provisions.

Section 401.13—One comment suggested that we add language to § 401.13 to state that the duration of an exclusive license granted by a university can extend for the life of the patent plus an extension of the patent term granted under the Drug Price Competition and Patent Term Restoration Act of 1984 As the Act now contains no restrictions on licensing, no such language is required.

One comment also requested the inclusion of language in § 401.13 making clear that a long-term license granted by a university to a small business firm prior to the enactment of Pub. L. 98–620 can be transferred to a large business firm without agency approval as part of the acquisition of the smaller firm. This suggestion was not accepted because under the current law, such a transfer does not require agency approval. The approvals required under OMB Circular A–124 for long-term licenses to other than small business firms are not applicable when a small business firm assigns this as part of a transfer of the firm to a larger firm.

Section 401.13(b)—In response to suggestions, advice in § 401.13(b) has been expanded to cover contract clauses predating Pub. L. 96–517.

Two university comments suggested waiving any requirement for agency approvals under funding agreements predating Pub. L. 98–620. This comment was not accepted as there is no authority to apply the law retroactively.

Section 401.13(c)—One agency suggested that the requirement that agencies not disclose information, which is part of a patent application, be limited to a period of no more than 18 months. This suggestion was accepted.

Section 401.14(a) (Standard Clause)—

Paragraph (c)(1)—One comment suggested that this subparagraph should specifically state that a proposed patent application would meet the disclosure requirements. This suggestion was not accepted as a proposed patent application, by definition, would meet the disclosure requirement.

Paragraph (c)(3)—In response to one suggestion, language has been added to make clear that filing in supranational patent offices will satisfy the foreign filing requirements.

Several comments suggested:

(a) The requirement to make foreign filings within ten months of the corresponding initial patent application forces a university to make a commitment to file foreign much earlier than such a decision would normally be made.

(b) Amending the subsection to either "authorize the filing" or "make a commitment to file."

(c) Adding "will file or authorize the preparation and filing."

One agency comment opposed the above changes noting that a contractor may withdraw its authorization to file at a time too late to permit the agency to protect its reversionary interests.

The issue raised by the above comments has been deferred pending a more comprehensive cost-benefit analysis. Contractors are reminded that paragraph (c)(4) of the standard clause (Sec. 401.14(a)) allows contractors to request extensions of time to file patent applications.

Paragraph (d)(ii)—One comment suggested that it is unreasonable to expect a contractor to file in every patent office in the world in order to protect its foreign rights. No change has been made because the statute clearly specifies the steps a contractor must take to secure title against reversion to the agency.

Paragraph (e)(4)–(6)—One agency comment recommended that the content of these clauses be moved into the preamble to the standard clause in the same manner as OMB Circular A–124. This has been done.

Paragraph (f)—One agency comment suggested adding language to paragraph (f) requiring contractors to submit, without agency request, a confirmatory license and a copy of any U.S. patent. This suggestion was not accepted as paragraph (f)(1) already requires a confirmatory license and the optional language at § 401.5(e) allows agencies to add language so they can obtain patent numbers.

Paragraph (h)—One agency comment suggested altering the last sentence of

this paragraph to follow the statutory language most closely. Alternatively, the comment suggested that "without permission of the contractor" be inserted at the end of that sentence. The alternative suggestion has been adopted as disclosure with the permission of the contractor would appear consistent with the stautory intent and language.

Paragraph (i)—One comment noted that other countries have local manufacture regulations and that in some cases there could be conflicts with the domestic manufacturing requirement. The comment suggested that some provision should be made in this subsection that an agency will automatically ameliorate the U.S. manufacture requirement if there is a direct conflict with a similar clause in another country and a single commercial embodiment would involve inventions from both countries. This suggestion was not accepted as there is sufficient latitude under the existing language to allow an agency to waive its requirements under such circumstances and therefore explicit discussion in the regulation is not warranted.

Paragraph (k)(2)—Several agency comments have pointed out that by requiring royalty-sharing with agency employees, there may be situations in which the employee would be placed in a violation of the conflict-of-interest statutes. This change has been accepted by adding to the paragraph the words "where the agency deems it appropriate."

One university comment suggested "inventor" be changed to "inventors" and that "we would like to hold open the possibility of sharing royalties with close technical associates of the inventor(s)." For clarity the first change has been made. The second change has not been made as such payments can be made and considered as "expenses incidental to the administration of subject inventions."

Section 401.14(b)—For clarification, several changes have been made to the alternative language prescribed for use by DOE when the exception at § 401.3(a)(4) is invoked and title to inventions made under the Navy nuclear propulsion or nuclear weapons programs are retained by DOE. These changes included elimination of the exclusive license provided to the contractor in fields of use other than Navy nuclear propulsion or nuclear weapons. While the statute does not mandate this right to contractors, DOE is urged to take a liberal approach in providing such right on a case-by-case basis as being within the spirit of the statute.

One university comment suggested that the requirement to assign title to inventions under paragraph (c)(1)(B) as prescribed at 401.14(b)(2) be limited to subject inventions that are "nuclear weapons, naval propulsion systems, components thereof, or directly therein." This suggestion has been rejected because it is not consistent with the statute. DOE is urged to take a liberal approach to granting waivers to inventions that fall within paragraph (c)(1)(B) as it is written but which are not within the scope of this suggested language, since we believe that to be within the spirit and intent of the statute.

At the request of DOE, provision has been made for the use of an alternative clause. Provisions for record keeping and reporting requirements will be submitted to OMB for review under the Paperwork Reduction Act.

Section 401.15(a)—This section has been revised to allow the Department of Energy to use their existing waiver procedures in lieu of the procedures prescribed in this section.

Treatment of Comments on Issues Not Mentioned in the Regulation

Successor contracts—The notice of proposed rulemaking requested comments on the issue of transfer of patent rights to successor contractors in contracts for the operation of Government-owned facilities. One agency favored authorizing agencies to add provisions dealing with this. Several universities and nonprofit organizations opposed transfer of their ownership as not being authorized by law. The Department believes the best solution to this issue would be to allow the federal agency and each of the contractors involved to negotiate issues of allocation of royalties, continuation of commercialization efforts, and other related issues taking into account the equities of the parties.

Cooperative Research Arrangements and "de minimus" Support—Several commenters suggested that some "de minimus" standard be established to define a threshold contribution of Government funding to the making of a jointly funded invention below which the regulations should not apply. There is no authority to make this change because the Act does not define "subject invention" in terms of the size of the Government financial contributions in making the invention.

Plant Variety Protection—One university comment suggested that separate regulatory coverage was needed in this area and indicated an intent to discuss this with the Department of Agriculture and to submit suggested changes later. A second comment expressed concern that, if literally read, the disclosure and election requirements could require substantial paperwork for plant varieties that were not found to be commercially viable. The Department of Agriculture indicates that they have no intent to require such paperwork. The Department of Commerce is working with the Department of Agriculture to determine whether changes in the clause may be appropriate for plant varieties.

Rulemaking Requirements

As stated in the proposed notice this regulation is not a major rule as defined in Executive Order 12291, and it adds no paperwork burdens. In fact, it reduces certain paperwork requirements of the regulations it replaces. And, as discussed in connection with the proposed rule, the General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a substantial economic impact on a substantial number of small entities.

List of Subjects in 37 CFR Part 401

Inventions and patents, Nonprofit organizations, Small businesses, Grant programs, Government contracts, Administrative practice and procedure.

Dated: July 9, 1986.

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

Accordingly, Chapter IV of Title 37 of the Code of Federal Regulations is amended by the addition of a new Part 401, to read as follows:

PART 401—RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

Sec.

401.1 Scope.
401.2 Definitions.
401.3 Use of the Standard Clauses at § 401.14
401.4 Contractor appeals of exceptions.
401.5 Modification and tailoring of clauses.
401.6 Exercise of match-in rights.
401.7 Small business preference.
401.8 Reporting on utilization of subject inventions.
401.9 Retention of rights by contractor employee inventor.
401.10 Government assignment to contractor of rights in invention of Government employee.
401.11 Appeals.
401.12 Licensing of background patent rights to third parties.

401.13 Administration of patent rights clauses.
401.14 Standard patent rights clauses.
401.15 Deferred determinations.
401.16 Submissions and Inquiries.

Authority: 35 U.S.C. 206 and the delegation of authority by the Secretary of Commerce to the Assistant Secretary for Productivity, Technology and Innovation at section 3(g) of DOO 10-1.

§ 401.1 Scope.

(a) This part implements 35 U.S.C. 202-204 and is applicable to all Federal agencies. It applies to all funding agreements with small business firms and nonprofit organizations executed after the effective date of this part, except for a funding agreement made primarily for educational purposes. Certain sections also provide guidance for the administration of funding agreements which predate the effective date of this part. In accordance with 35 U.S.C. 212, no scholarship, fellowship, training grant, or other funding agreement made by a Federal agency primarily to an awardee for educational purposes will contain any provision giving the Federal agency any rights to inventions made by the awardee.

(b) The "march-in" and appeals procedures in §§ 401.6 and 401.11 shall apply to any march-in or appeal proceeding under a funding agreement subject to Chapter 18 of Title 35, U.S.C., initiated after the effective date of this part even if the funding agreement was executed prior to that date.

(c) At the request of the contractor, a funding agreement for the operation of a Government-owned facility which is in effect on the effective date of this part shall be promptly amended to include the provisions required by § 401.3(a) unless the agency determines that one of the exceptions at 35 U.S.C. 202(a) (i)-(iv) (section 401.3(a)(i)-(4) of this part) is applicable and will be applied. If the exception at § 401.3(a) (4) is determined to be applicable, the funding agreement will be promptly amended to include the provisions required by § 401.3(b).

(d) This regulation supersedes OMB Circular A-124 and shall take preedence over any regulations dealing with ownership of inventions made by small businesses and nonprofit organizations which are inconsistent with it. This regulation will be followed by all agencies pending amendment of agency regulations to conform to this part and amended Chapter 18 of Title 35. Only deviations requested by a contractor and not inconsistent with Chapter 18 of Title 35, United States Code, may be made without approval of the Secretary. Modifications or tailoring of clauses as authorized by § 401.5 or § 401.3, when alternative provisions are used under § 401.3(a) (i)-(4), are not considered deviations requiring the Secretary's approval. Three copies of proposed and final agency regulations supplementing this part shall be submitted to the Secretary at the office set out in § 401.16 for approval for consistency with this part before they are submitted to the Office of Management and Budget for review under Executive Order 12291 or, if no submission is required to be made to OMB, before their submission to the **Federal Register** for publication.

(e) In the event an agency has outstanding prime funding agreements that do not contain patent flow-down provisions consistent with this part or earlier OFPP regulations (OMB Circular A-124 or OMB Bulletin 81-22), the agency shall take appropriate action to ensure that small business firms or nonprofit organizations that are subcontractors under any such agreements and that received their subcontractors after July 1, 1981, receive rights in their subject inventions that are consistent with Chapter 18 and this part.

(f) This part is not intended to apply to arrangements under which nonprofit organizations, small business firms, or others are allowed to use Government-owned research facilities and normal technical assistance provided to users of those facilities, whether on a reimbursable or nonreimbursable basis. This part is also not intended to apply to arrangements under which sponsors reimburse the Government or facility contractor for the contractor employee's time in performing work for the sponsor. Such arrangements are not considered "funding agreements" as defined at 35 U.S.C. 201(b) and § 401.2(a) of this part.

§ 401.2 Definitions.

As used in this part—

(a) The term "funding agreement" means any contact, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

(b) The term "contractor" means any person, small business firm or nonprofit organization which is a party to a funding agreement.

(c) The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(d) The term "subject invention" means any invention of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement; provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(e) The term "practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(f) The term "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(g) The term "small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this part, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.5 will be used.

(h) The term "nonprofit organization" means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(i) The term "Chapter 18" means Chapter 18 of Title 35 of the United States Code.

(j) The term "Secretary" means the Secretary of Commerce or his or her designee.

§ 401.3 Use of the Standard Clauses at § 401.14.

(a) Each funding agreement awarded to a small business firm or nonprofit organization (except those subject to 35 U.S.C. 212) shall contain the clause found in § 401.14(a) with such

modifications and tailoring as authorized or required elsewhere in this part. However, a funding agreement may contain alternative provisions—

(1) When the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government; or

(2) In exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of Chapter 18 of Title 35 of the United States Code; or

(3) When it is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities; or

(4) When the funding agreement includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs and all funding agreement limitations under this subparagraph on the contractor's right to elect title to a subject invention are limited to inventions occurring under the above two programs.

(b) When an agency exercises the exceptions at § 401.3(a)(2) or (3), it shall use the standard clause at § 401.14(a) with only such modifications as are necessary to address the exceptional circumstances or concerns which led to the use of the exception. For example, if the justification relates to a particular field of use or market, the clause might be modified along lines similar to those described in § 401.14(b). In any event, the clause should provide the contractor with an opportunity to receive greater rights in accordance with the procedures at 401.15. When an agency justifies and exercises the exception at § 401.3(a)(2) and uses an alternative provision in the funding agreement on the basis of national security, the provision shall provide the contractor with the right to elect ownership to any invention made under such funding agreement as provided by the Standard Patent Rights Clause found at § 401.14(a) if the invention is not classified by the agency within six months of the date it is reported to the agency, or within the same time period the Department of Energy does not, as authorized by regulation, law or Executive Order or implementing regulations thereto, prohibit unauthorized dissemination of the invention. Contracts in support of DOE's naval nuclear propulsion program are exempted from this paragraph.

(c) When the Department of Energy exercises the exception at § 401.3(a)(4), it shall use the clause prescribed at § 401.14(b) with such modification and tailoring as authorized or required elsewhere in this part.

(d) When a funding agreement involves a series of separate task orders, an agency may apply the exceptions at § 401.3(a)(2) or (3) to individual task orders, and it may structure the contract so that modified patent rights provisions will apply to the task order even though the clauses at either § 401.14(a) or (b) are applicable to the remainder of the work. Agencies are authorized to negotiate such modified provisions with respect to task orders added to a funding agreement after its initial award.

(e) Before utilizing any of the exceptions in paragraph 401.3(a) of this section, the agency shall prepare a written determination, including a statement of facts supporting the determination, that the conditions identified in the exception exist. A separate statement of facts shall be prepared for each exceptional circumstances determination, except that in appropriate cases a single determination may apply to both a funding agreement and any subcontracts issued under it or to any funding agreement to which an exception is applicable. In cases when § 401.3(a)(2) is used, the determination shall also include an analysis justifying the determination. This analysis should address with specificity how the alternate provisions will better achieve the objectives set forth in 35 U.S.C. 200. A copy of each determination, statement of facts, and, if applicable, analysis shall be promptly provided to the contractor or prospective contractor along with a notification to the contractor or prospective contractor of its rights to appeal the determination of the exception under 35 U.S.C. 202(b)(4) and § 401.4 of this part.

(f) Except for determinations under § 401.3(a)(3), the agency shall also provide copies of each determination, statement of fact, and analysis to the Secretary. These shall be sent within 30 days after the award of the funding agreement to which they pertain. Copies shall also be sent to the Chief Counsel for Advocacy of the Small Business Administration if the funding ageement is with a small business firm. If the Secretary of Commerce believes that any individual determination or pattern of determinations is contrary to the policies and objectives of this chapter or otherwise not in conformance with this chapter, the Secretary shall so advise the head of the agency concerned and the Administrator of the Office of Federal Procurement Policy and recommend corrective actions.

(g) To assist the Comptroller General of the United States to accomplish his or her responsibilities under 35 U.S.C. 202, each Federal agency that enters into any funding agreements with nonprofit organizations or small business firms shall accumulate and, at the request of the Comptroller General, provide the Comptroller General or his or her duly authorized representative the total number of prime agreements entered into with small business firms or nonprofit organizations that contain the patent rights clause in this part or under OMB Circular A-124 for each fiscal year beginning with October 1, 1982.

(h) To qualify for the standard clause, a prospective contractor may be required by an agency to certify that it is either a small business firm or a nonprofit organization. If the agency has reason to question the status of the prospective contractor as a small business firm, it may file a protest in accordance with 13 CFR 121.9. If it questions nonprofit status, it may require the prospective contractor to furnish evidence to establish its status as a nonprofit organization.

§ 401.4 Contractor appeals of exceptions.

(a) In accordance with 35 U.S.C. 202(b)(4) a contractor has the right to an administrative review of a determination to use one of the exceptions at § 401.3(a)(1)–(4) if the contractor believes that a determination is either (1) contrary to the policies and objectives of this chapter or (2) constitutes an abuse of discretion by the agency.

Paragraph (b) of this section specifies the procedures to be followed by contractors and agencies in such cases. The assertion of such a claim by the contractor shall not be used as a basis for withholding or delaying the award of a funding agreement or for suspending performance under an award. Pending final resolution of the claim the contract may be issued with the patent rights provision proposed by the agency; however, should the final decision be in favor of the contractor, the funding agreement will be amended accordingly and the amendment made retroactive to the effective date of the funding agreement.

(b)(1) A contractor may appeal a determination by providing written notice to the agency within 30 working days from the time it receives a copy of

the agency's determination, or within such longer time as an agency may specify in its regulations. The contractor's notice should specifically identify the basis for the appeal.

(2) The appeal shall be decided by the head of the agency or by his/her designee who is at a level above the person who made the determination. If the notice raises a genuine dispute over the material facts, the head of the agency or the designee shall undertake, or refer the matter for, fact-finding.

(3) Fact-finding shall be conducted in accordance with procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses and confront such persons as the agency may rely upon. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency.

(4) The official conducting the fact-finding shall prepare or adopt written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding along with a recommended decision. A copy of the findings of fact and recommended decision shall be sent to the contractor by registered or certified mail.

(5) Fact-finding should be completed within 45 working days from the date the agency receives the contractor's written notice.

(6) When fact-finding has been conducted, the head of the agency or designee shall base his or her decision on the facts found, together with any argument submitted by the contractor, agency officials or any other information in the administrative record. In cases referred for fact-finding, the agency head or the designee may reject only those facts that have been found to be clearly erroneous, but must explicitly state the rejection and indicate the basis for the contrary finding. The agency head or the designee may hear oral arguments after fact-finding provided that the contractor or contractor's attorney or representative is present and given an opportunity to make arguments and rebuttal. The decision of the agency head or the designee shall be in writing and, if it is unfavorable to the contractor shall include an explanation of the basis of the decision. The decision of the agency or designee shall be made within 30 working days after fact-finding or, if there was no fact-finding, within 45 working days from the date the agency received the contractor's written notice. A contractor adversely affected by a determination under this section may, at any time within sixty days after the determination is issued, file a petition in the United States Claim Court, which shall have jurisdiction to determine the appeal on the record and to affirm, reverse, remand, or modify as appropriate, the determination of the Federal agency.

§ 401.5 Modification and tailoring of clauses.

(a) Agencies should complete the blank in paragraph (g)(2) of the clauses at § 401.14 in accordance with their own or applicable Government-wide regulations such as the Federal Acquisition Regulation. In grants and cooperative agreements (and in contracts, if not inconsistent with the Federal Acquisition Regulation) agencies wishing to apply the same clause to all subcontractors as is applied to the contractor may delete paragraph (g)(2) of the clause and delete the words "to be performed by a small business firm or domestic nonprofit organization" from paragraph (g)(1). Also, if the funding agreement is a grant or cooperative agreement, paragraph (g)(3) may be deleted. When either paragraph (g)(2) or paragraphs (g)(2) and (3) are deleted, the remaining paragraph or paragraphs should be renumbered appropriately.

(b) Agencies should complete paragraph (l), "Communications", at the end of the clauses at § 401.14 by designating a central point of contact for communications on matters relating to the clause. Additional instructions on communications may also be included in paragraph (l).

(c) Agencies may replace the underlined words and phrases in the clauses at § 401.14 with those appropriate to the particular funding agreement. For example, "contracts" could be replaced by "grant," "contractor" by "grantee," and "contracting officer" by "grants officer." Depending on its use, "Federal agency" can be replaced either by the identification of the agency or by the specification of the particular office or official within the agency.

(d)(1) When the agency head or duly authorized designee determines at the time of contracting with a small business firm or nonprofit organization that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing treaty or international agreement, a sentence may be added at the end of paragraph (b) of the clauses at § 401.14 as follows:

> This license will include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements:

The blank above should be completed with the names of applicable existing treaties or international agreements, agreements of cooperation, memoranda of understanding, or similar arrangements including military agreements relating to weapons development and production. The above language is not intended to apply to treaties or other agreements that are in effect on the date of the award but which are not listed. Alternatively, agencies may use substantially similar language relating the Government's rights to specific treaties or other agreements identified elsewhere in the funding agreement. The language may also be modified to make clear that the rights granted to the foreign Government, and its nationals or an international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some cases exclusive licenses or even the assignment of title in the foreign country involved might be required. Agencies may also modify the language above to provide for the direct licensing by the contractor of the foreign government or international organization.

(2) If the funding agreement involves performance over an extended period of time, such as the typical funding agreement for the operation of a Government-owned facility, the following language may also be added:

> The *agency* reserves the right to unilaterally amend this *funding agreement* to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this *funding agreement* and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(e) Agencies may add subparagraphs to paragraph (f) of the clauses at § 401.14 to require the contractor to do one or more of the following:

(1) Provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

(2) Provide, upon request, the filing date, serial number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(3) Provide periodic (but no more frequently than annual) listings of all subject inventions which were disclosed to the agency during the period covered by the report.

(f) If the contract is with a nonprofit organization and is for the operation of a Government-owned contractor-operated facility, the following will be substituted for paragraph (k)(3) of the clause at §401.14(a):

(3) After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the *contractor* during any fiscal year on subject inventions under this or any successor *contract* containing the same requirement, up to any amount equal to five percent of the budget of the facility for that fiscal year, shall be used by the contractor for scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility. If the balance exceeds five percent, 75 percent of the excess above five percent shall be paid by the contractor to the Treasury of the United States and the remaining 25 percent shall be used by the *contractor* only for the same purposes as described above. To the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by *contractor* employees on location at the facility.

(g) If the contract is for the operation of a Government-owned facility, agencies may add the following at the end of paragraph (f) of the clause at § 401.14(a):

(5) The contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a description of the procedures to the *contracting officer* so that the *contracting officer* may evaluate and determine their effectiveness.

§ 401.6 Exercise of march-in rights.

(a) The following procedures shall govern the exercise of the march-in rights of the agencies set forth in 35 U.S.C. 203 and paragraph (j) of the clause at § 401.14.

(b) Whenever an agency receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding, it shall notify the contractor in writing of the information and request informal written or oral comments from the contractor as well as information relevant to the matter. In the absence of any comments from the contractor within 30 days, the agency may, at its discretion, proceed with the procedures below. If a comment is received within 30 days, or later if the agency has not initiated the procedures below, then the agency shall, within 60 days after it receives the comment, either initiate the procedures below or notify the contractor, in writing, that it will not pursue march-in rights on the basis of the available information.

(c) A march-in proceeding shall be initiated by the issuance of a written notice by the agency to the contractor and its assignee or exclusive licensee, as applicable and if known to the agency, stating that the agency is considering the exercise of march-in rights. The notice shall state the reasons for the proposed march-in in terms sufficient to put the contractor on notice of the facts upon which the action would be based and shall specify the field or fields of use in which the agency is considering requiring licensing. The notice shall advise the contractor (assignee or exclusive licensee) of its rights, as set forth in this section and in any supplemental agency regulations. The determination to exercise march-in rights shall be made by the head of the agency or his or her designee.

(d) Within 30 days after the receipt of the written notice of march-in, the contractor (assignee or exclusive licensee) may submit in person, in writing, or through a representative, information or argument in opposition to the proposed march-in, including any additional specific information which raises a genuine dispute over the material facts upon which the march-in is based. If the information presented raises a genuine dispute over the material facts, the head of the agency or designee shall undertake or refer the matter to another official for fact-finding.

(e) Fact-finding shall be conducted in accordance with the procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses and confront such persons as the agency may present. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency. Any portion of the march-in proceeding, including a fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the contractor, its assignee, or licensees shall be closed to the public, including potential licensees. In accordance with 35 U.S.C. 202(c)(5), agencies shall not disclose any such information obtained during a march-in proceeding to persons outside the Government except when such release is authorized by the contractor (assignee or licensee).

(f) The official conducting the fact-finding shall prepare or adopt written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding along with a recommended determination. A copy of the findings of fact shall be sent to the contractor (assignee or exclusive licensee) by registered or certified mail. The contractor (assignee or exclusive licensee) and agency representatives will be given 30 days to submit written arguments to the head of the agency or designee; and, upon request by the contractor oral arguments will be held before the agency head or designee that will make the final determination.

(g) In cases in which fact-finding has been conducted, the head of the agency or designee shall base his or her determination on the facts found, together with any other information and written or oral arguments submitted by the contractor (assignee or exclusive licensee) and agency representatives, and any other information in the administrative record. The consistency of the exercise of march-in rights with the policy and objectives of 35 U.S.C. 200 shall also be considered. In cases referred for fact-finding, the head of the agency or designee may reject only those facts that have been found to be clearly erroneous, but must explicitly state the rejection and indicate the basis for the contrary finding. Written notice of the determination whether march-in rights will be exercised shall be made by the head of the agency or designee and sent to the contractor (assignee or exclusive licensee) by certified or registered mail within 90 days after the completion of fact-finding or 90 days after oral arguments, whichever is later, or the proceedings will be deemed to have been terminated and thereafter no march-in based on the facts and reasons upon which the proceeding was initiated may be exercised.

(h) An agency may, at any time, terminate a march-in proceeding if it is satisfied that it does not wish to exercise march-in rights.

(i) The procedures of this Part shall also apply to the exercise of march-in rights against inventors receiving title to subject inventions under 35 U.S.C. 202(d) and, for that purpose, the term "contractor" as used in this section shall be deemed to include the inventor.

(j) An agency determination unfavorable to the contractor (assignee or exclusive licensee) shall be held in abeyance pending the exhaustion of appeals or petitions filed under 35 U.S.C. 203(2).

(k) For purposes of this section the term "exclusive licensee" includes a partially exclusive licensee.

(l) Agencies are authorized to issue supplemental procedures not inconsistent with this part for the conduct of march-in proceedings.

§ 401.7 Small business preference.

(a) Paragraph (k)(4) of the clauses at § 401.14 implements the small business preference requirement of 35 U.S.C. 202(c)(7)(D). Contractors are expected to use efforts that are reasonable under the circumstances to attract small business licensees. They are also expected to give small business firms that meet the standard outlined in the clause a preference over other applicants for licenses. What constitutes reasonable efforts to attract small business licensees will vary with the circumstances and the nature, duration, and expense of efforts needed to bring the invention to the market. Paragraph (k)(4) is not intended, for example, to prevent nonprofit organizations from providing larger firms with a right of first refusal or other options in inventions that relate to research being supported under long-term or other arrangements with larger companies. Under such circumstances it would not be reasonable to seek and to give a preference to small business licensees.

(b) Small business firms that believe a nonprofit organization is not meeting its obligations under the clause may report their concerns to the Secretary. To the extent deemed appropriate, the Secretary will undertake informal investigation of the concern, and, if appropriate, enter into discussions or negotiations with the nonprofit organization to the end of improving its efforts in meeting its obligations under the clause. However, in no event will the Secretary intervene in ongoing negotiations or contractor decisions concerning the licensing of a specific subject invention. All the above investigations, discussions, and negotiations of the Secretary will be in coordination with other interested agencies, including the Small Business Administration; and in the case of a contract for the operation of a Government-owned, contractor operated research or production facility, the Secretary will coordinate with the agency responsible for the facility prior to any discussions or negotiations with the contractor.

§ 401.8 Reporting on utilization of subject inventions.

(a) Paragraph (h) of the clauses at § 401.14 and its counterpart in the clause at Attachment A to OMB Circular A-124 provides that agencies have the right to receive periodic reports from the contractor on utilization of inventions. Agencies exercising this right should accept such information, to the extent feasible, in the format that the contractor normally prepares it for its own internal purposes. The prescription of forms should be avoided. However, any forms or standard questionnaires that are adopted by an agency for this purpose must comply with the requirements of the Paperwork Reduction Act. Copies shall be sent to the Secretary.

(b) In accordance with 35 U.S.C. 202(c)(5) and the terms of the clauses at § 401.14, agencies shall not disclose such information to persons outside the Government. Contractors will continue to provide confidential markings to help prevent inadvertent release outside the agency.

§ 401.9 Retention of rights by contractor employee inventor.

Agencies which allow an employee/inventor of the contractor to retain rights to a subject invention made under a funding agreement with a small business firm or nonprofit organization contractor, as authorized by 35 U.S.C. 202(d), will impose upon the inventor at least those conditions that would apply to a small business firm contractor under paragraphs (d)(i) and (iii); (f)(4); (h); (i); and (j) of the clause at section 401.14(a).

§ 401.10 Government assignment to contractor of rights in invention of government employee.

In any case when a Federal employee is a co-inventor of any invention made under a funding agreement with a small business firm or nonprofit organization and the Federal agency employing such co-inventor transfers or reassigns the right it has acquired in the subject invention from its employee to the contractor as authorized by 35 U.S.C. 202(e), the assignment will be made subject to the same conditions as apply to the contractor under the patent rights clause of its funding agreement. Agencies may add additional conditions so long as they are consistent with 35 U.S.C. 201-206.

§ 401.11 Appeals.

(a) As used in this section, the term "standard clause" means the clause at § 401.14 of this part and the clauses previously prescribed by either OMB Circular A-124 or OMB Bulletin 81-22.

(b) The agency official initially authorized to take any of the following actions shall provide the contractor with a written statement of the basis for his or her action at the time the action is taken, including any relevant facts that were relied upon in taking the action.

(1) A refusal to grant an extension under paragraph (c)(4) of the standard clauses.

(2) A request for a conveyance of title under paragraph (d) of the standard clauses.

(3) A refusal to grant a waiver under paragraph (i) of the standard clauses.

(4) A refusal to approve an assignment under paragraph (k)(1) of the standard clauses.

(5) A refusal to grant an extension of the exclusive license period under paragraph k(2) of the clauses prescribed by either OMB Circular A-124 or OMB Bulletin 81-22.

(c) Each agency shall establish and publish procedures under which any of the agency actions listed in paragraph (b) of this section may be appealed to the head of the agency or designee. Review at this level shall consider both the factual and legal basis for the actions and its consistency with the policy and objectives of 35 U.S.C. 200-206.

(d) Appeals procedures established under paragraph (c) of this section shall include administrative due process procedures and standards for fact-finding at least comparable to those set forth in § 401.6(e)-(g) whenever there is a dispute as to the factual basis for an agency request for a conveyance of title under paragraph (d) of the standard clause, including any dispute as to whether or not an invention is a subject invention.

(e) To the extent that any of the actions described in paragraph (b) of this section are subject to appeal under the Contracts Dispute Act, the procedures under that Act will satisfy the requirements of paragraphs (c) and (d) of this section.

§ 401.12 Licensing of background patent rights to third parties.

(a) A funding agreement with a small business firm or a domestic nonprofit organization will not contain a provision allowing a Federal agency to require the

licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the agency head and a written justification has been signed by the agency head. Any such provision will clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The agency head may not delegate the authority to approve such provisions or to sign the justification required for such provisions.

(b) A Federal agency will not require the licensing of third parties under any such provision unless the agency head determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the funding agreement and that such action is necessary to achieve practical application of the subject invention or work object. Any such determination will be on the record after an opportunity for an agency hearing. The contractor shall be given prompt notification of the determination by certified or registered mail. Any action commenced for judicial review of such determination shall be brought within sixty days after notification of such determination.

§ 401.13 Administration of patent rights clauses.

(a) In the event a subject invention is made under funding agreements of more than one agency, at the request of the contractor or on their own initiative the agencies shall designate one agency as responsible for administration of the rights of the Government in the invention.

(b) Agencies shall promptly grant, unless there is a significant reason not to, a request by a nonprofit organization under paragraph k(2) of the clauses prescribed by either OMB Circular A-124 or OMB Bulletin 81-22 inasmuch as 35 U.S.C. 202(c)(7) has since been amended to eliminate the limitation on the duration of exclusive licenses. Similarly, unless there is a significant reason not to, agencies shall promptly approve an assignment by a nonprofit organization to an organization which has as one of its primary functions the management of inventions when a request for approval has been necessitated under paragraph k(1) of the clauses prescribed by either OMB Circular A-124 or OMB Bulletin 81-22 because the patent management organization is engaged in or holds a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention. As amended, 35 U.S.C. 202(c)(7) no longer contains this limitation. The policy of this subsection should also be followed in connection with similar approvals that may be required under Institutional Patent Agreements, other patent rights clauses, or waivers that predate Chapter 18 of Title 35, United States Code.

(c) The President's Patent Policy Memorandum of February 18, 1983, states that agencies should protect the confidentiality of invention disclosure, patent applications, and utilization reports required in performance or in consequence of awards to the extent permitted by 35 U.S.C. 205 or other applicable laws. The following requirements should be followed for funding agreements covered by and predating this Part 401.

(1) To the extent authorized by 35 U.S.C. 205, agencies shall not disclose to third parties pursuant to requests under the Freedom of Information Act (FOIA) any information disclosing a subject invention for a reasonable time in order for a patent application to be filed. With respect to subject inventions of contractors that are small business firms or nonprofit organizations, a reasonable time shall be the time during which an initial patent application may be filed under paragraph c of the standard clause found at 401.14(a) or such other clause may be used in the funding agreement. However, an agency may disclose such subject inventions under the FOIA, at its discretion, after a contractor has elected not to retain title or after the time in which the contractor is required to make an election if the contractor has not made an election within that time. Similarly, an agency may honor an FOIA request at its discretion if it finds that the same information has previously been published by the inventor, contractor, or otherwise. If the agency plans to file itself when the contractor has not elected title, it may, of course, continue to avail itself of the authority of 35 U.S.C. 205.

(2) In accordance with 35 U.S.C. 205, agencies shall not disclose or release for a period of 18 months from the filing date of the application to third parties pursuant to requests under the Freedom of Information Act or otherwise copies of any document which the agency obtained under this clause which is part of an application for patent with the U.S. Patent and Trademark Office or any foreign patent office filed by the contractor (of its assignees, licensees, or employees) on a subject invention to which the contractor has elected to retain title.

(3) A number of agencis have policies to encourage public dissemination of the results of work supported by the agency through publication in Government or other publications of technical reports of contractors or others. In recognition of the fact that such publication, if it included descriptions of a subject invention could create bars to obtaining patent protection, it is the policy of the executive branch that agencies will not include in such publication programs copies of disclosures of inventions submitted by small business firms or nonprofit organizations, pursuant to paragraph c of the standard clause found at 401.14(a), except that under the same circumstances under which agencies are authorized to release such information pursuant to FOIA requests under paragraph (c)(1) of this section, agencies may publish such disclosures.

(4) Nothing in this paragraph is intended to preclude agencies from including in the publication activities described in the first sentence of paragraph (c)(3) of this section, the publication of materials describing a subject invention to the extent such materials were provided as part of a technical report or other submission of the contractor which were submitted independently of the requirements of the patent rights provisions of the contract. However, if a small business firm or nonprofit organization notifies the agency that a particular report or other submission contains a disclosure of a subject invention to which it has elected title or may elect title, the agency shall use reasonable efforts to restrict its publication of the material for six months from date of its receipt of the report or submission or, if earlier, until the contractor has filed an initial patent application. Agencies, of course, retain the discretion to delay publication for additional periods of time.

(5) Nothing in this paragraph (c) is intended to limit the authority of agencies provided in 35 U.S.C. 205 in circumstances not specifically described in this paragraph (c).

§ 401.14 Standard patent rights clauses.

(a) The following is the standard patent rights clause to be used as specified in § 401.3(a).

Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any noval variety of plant which is or may be protected under the

Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(2) "Subject invention" means any invention of the *contractor* conceived or first actually reduced to practice in the performance of work under this *contract*, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of *contract* performance.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights.

The *contractor* may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the *contractor* retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, Election of Title and Filing of Patent Application by *Contractor*.

(1) The *contractor* will disclose each subject invention to the *Federal agency* within two months after the inventor discloses it in writing to *contractor* personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the *contract* under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the *agency*, the *contractor* will promptly notify the *agency* of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the *contractor*.

(2) The *contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.

(3) The *contractor* will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The *contractor* will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the *agency*, be granted.

(d) Conditions When the Government May Obtain Title.

The *contractor* will convey to the *Federal agency*, upon written request, title to any subject invention—

(i) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the *agency* may only request title within 60 days after learning of the failure of the *contractor* to disclose or elect within the specified times.

(ii) In those countries in which the *contractor* fails to file patent applications within the times specified in (c) above; provided, however, that if the *contractor* has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the *Federal agency*, the *contractor* shall continue to retain title in that country.

(iii) In any country in which the *contractor* decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to *Contractor* and Protection of the *Contractor* Right to File.

(1) The *contractor* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *contractor* fails to disclose the invention within the times specified in (c), above. The *contractor's* license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the *contractor* is a party and includes the right to grant sublicenses of the same scope to the extent the *contractor* was legally obligated to do so at the time the *contract* was awarded. The license is transferable only with the approval of the *Federal agency* except when transferred to the successor of that party of the *contractor's* business to which the invention pertains.

(2) The *contractor's* domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and *agency* licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the *contractor* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the *funding Federal agency* to the extent the *contractor*, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the *funding Federal agency* will furnish the *contractor* a written notice of its intention to revoke or modify the license, and the *contractor* will be allowed thirty days (or such other time as may be authorized by the *funding Federal agency* for good cause shown by the *contractor*) after the notice to show cause why the license should not be revoked or modified. The *contractor* has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and *agency* regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor* Action to Protect the Government's Interest.

(1) The *contractor* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the *contractor* elects to retain title, and (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under *contract* in order that the *contractor* can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file

patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The *contractor* will notify the *Federal agency* of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The *contractor* agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the *contract*) awarded by (identify the Federal agency). The Government has certain rights in the invention."

(g) Subcontracts.

(1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the *contractor* in this clause, and the *contractor* will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The *contractor* will include in all other subcontracts, regardless of tier, for experimental, developmental or research work the patent rights clause required by (*cite section of agency implementing regulations or FAR*).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions.

The *contractor* agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the *contractor* or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the *agency* may reasonably specify. The *contractor* also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the *agency* agrees it will not disclose such information to persons outside the Government without permission of the *contractor*.

(i) Preference for United States Industry.

Notwithstanding any other provision of this clause, the *contractor* agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the *Federal agency* upon a showing by the *contractor* or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights.

The *contractor* agrees that with respect to any subject invention in which it has acquired title, the *Federal agency* has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the *agency* to require the *contractor*, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the *contractor*, assignee, or exclusive licensee refuses such a request the *Federal agency* has the right to grant such a license itself if the *Federal agency* determines that:

(1) Such action is necessary because the *contractor* or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the *contractor*, assignee of their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the *contractor*, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for *Contracts* with Nonprofit Organizations.

If the *contractor* is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the *contractor*;

(2) The *contractor* will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the *contractor* with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the *contractor*. However, the *contractor* agrees that the Secretary may review the *contractor's* licensing program and decisions regarding small business applicants, and the *contractor* will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the *contractor* could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communications.

(Complete According to Instructions at 401.5(b)).

(b) When the Department of Energy (DOE) determines to use alternative provisions under § 401.3(a)(4), the standard clause at § 401.14(a), above, shall be used with the following modifications unless a substitute clause is drafted by DOE:

(1) The title of the clause shall be changed to read as follows:

Patent Rights to Nonprofit DOE Facility Operators

(2) Add an "(A)" after "(1)" in paragraph (c)(1) and add subparagraphs (B) and (C) to paragraph (c)(1) as follows:

(B) If the subject invention occurred under activities funded by the naval nuclear propulsion or weapons related programs of *DOE*, then the provisions of this subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). In such cases the contractor agrees to assign the Government the entire right, title, and interest thereto throughout the world in and to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e),

below. The contractor, or an employee-inventor, with authorization of the contractor, may submit a request for greater rights at the time the invention is disclosed or within a reasonable time thereafter. *DOE* will process such a request in accordance with procedures at 37 CFR 401.15. Each determination of greater rights will be subject to paragraphs (h)–(k) of this clause and such additional conditions, if any, deemed to be appropriate by the *Department of Energy*.

(C) At the time an invention is disclosed in accordance with (c)(1)(A) above, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention occurred under a naval nuclear propulsion or weapons-related program of the **Department of Energy**. If this statement is not filed within this time, subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). The contractor statement will be deemed conclusive unless, within 60 days thereafter, the Contracting Officer disagrees in writing, in which case the determination of the Contracting Officer will be deemed conclusive unless the contractor files a claim under the Contract Disputes Act within 60 days after the Contracting Officer's determination. Pending resolution of the matter, the invention will be subject to subparagraph (c)(1)(B).

(3) Paragraph (k)(3) of the clause will be modified as prescribed at § 401.5(f).

§ 401.15 Deferred determinations.

(a) This section applies to requests for greater rights in subject inventions made by contractors when deferred determination provisions were included in the funding agreement because one of the exceptions at § 401.3(a) was applied, except that the Department of Energy is authorized to process deferred determinations either in accordance with its waiver regulations of this section. A contractor requesting greater rights should include with its request information on its plans and intentions to bring the invention to practical application. Within 90 days after receiving a request and supporting information, or sooner if a statutory bar to patenting is imminent, the agency should seek to make a determination. In any event, if a bar to patenting is imminent, unless the agency plans to file on its own, it shall authorize the contractor to file a patent application pending a determination by the agency. Such a filing shall normally be at the contractor's own risk and expense. However, if the agency subsequently refuses to allow the contractor to retain title and elects to proceed with the patent application under Government ownership, it shall reimburse the contractor for the cost of preparing and filing the patent application.

(b) If the circumstances of concerns which originally led the agency to invoke an exception under § 401.3(a) are not applicable to the actual subject invention or are no longer valid because of subsequent events, the agency should allow the contractor to retain title to the invention on the same conditions as would have applied if the standard clause at § 401.14(a) had been used originally.

(c) If paragraph (b) is not applicable the agency shall make its determination based on an assessment whether its own plans regarding the invention will better promote the policies and objectives of 35 U.S.C. 200 than will contractor ownership of the invention. Moreover, if the agency is concerned only about specific uses or applications of the invention, it shall consider leaving title in the contractor with additional conditions imposed upon the contractor's use of the invention for such applications or with expanded Government license rights in such applications.

(d) A determination not to allow the contractor to retain title to a subject invention or to restrict or condition its title with conditions differing from those in the clause at § 401.14(a), unless made by the head of the agency, shall be appealable by the contractor to an agency official at a level above the person who made the determination. This appeal shall be subject to the procedures applicable to appeals under § 401.11 of this part.

§ 401.16 Submissions and inquiries.

All submissions or inquiries should be directed to Federal Technology Management Policy Division, telephone number 202–377–0659, Room H4837, U.S. Department of Commerce, Washington, DC 20230.

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[3] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[4] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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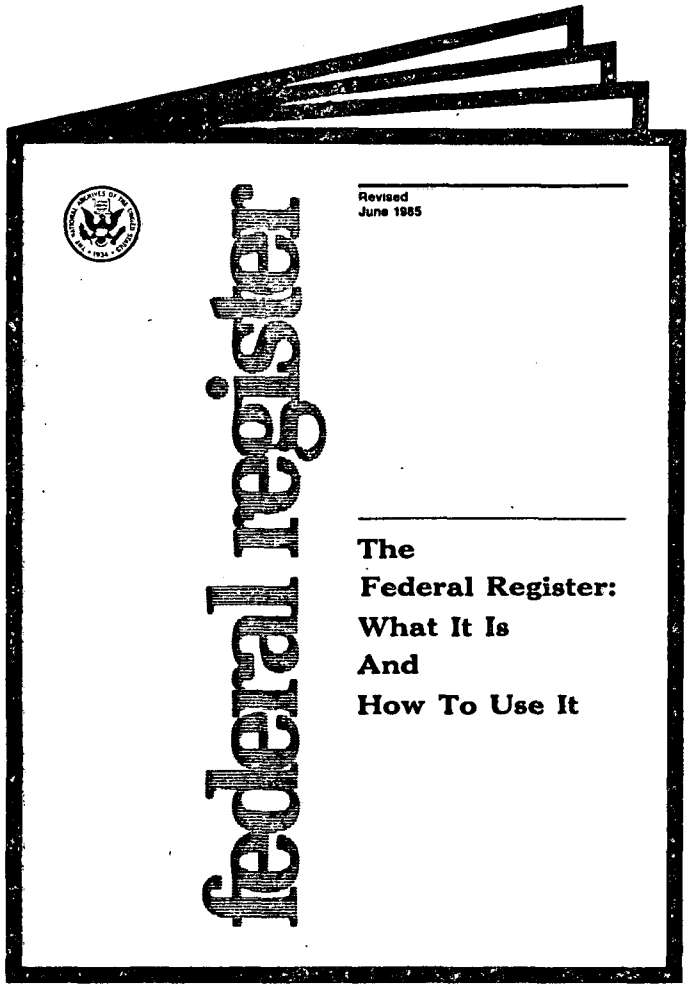

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