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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: June 9, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Gertrude E. Belton, 202-523-5237

CHICAGO, IL

WHEN: July 8, at 9 a.m.
WHERE: Room 204A, Everett McKinley Dirksen Federal Building, 219 S. Dearborn Street, Chicago, IL.
RESERVATIONS: Call the Chicago Federal Information Center, 312-353-0339.

BOSTON, MA

WHEN: July 15, at 9 a.m.
WHERE: Main Auditorium, Federal Building, 10 Causeway Street, Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617-565-8129

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Presidential Documents

Title 3—

The President

Memorandum of May 12, 1987

Memorandum for the Secretary of State

By virtue of the authority vested in me as President by the Constitution and the statutes of the United States of America, including Section 621 of the Foreign Assistance Act of 1961, as amended, and Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of State the responsibility for submitting the first report and certifications required by Section 2013 of the Anti-Drug Abuse Act of 1986 (P.L. 99–570).

This memorandum shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, May 12, 1987.

[FR Doc. 87-12364
Filed 5-27-87; 12:17 pm]
Billing code 3195-01-M

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 AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. 292]

Food Stamp Program: Eligible Alien Status

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: The Immigration Reform and Control Act of 1986, Pub. L. 99–603, enacted on November 6, 1986, establishes a number of new categories of legal aliens. In accordance with the Food Stamp Act of 1977, as amended, some of these categories of legal aliens are eligible to participate in the Food Stamp Program (FSP). This rulemaking amends the current FSP regulations to specify those categories of legalized aliens who gain alien status as a result of the Immigration Reform and Control Act of 1986, and thereby may become eligible to participate in the Food Stamp Program.

DATES: The provisions of this rulemaking are effective retroactive to November 6, 1986, the date of enactment of the Immigration Reform and Control Act of 1986. Under the terms of the amendments made by that Act, and incorporated in this rulemaking, certain categories of aliens will not actually become eligible for food stamp benefits until specified dates in the future as reflected in this rulemaking. Comments must be received on or before July 28, 1987, to be assured of consideration.

ADDRESS: Comments should be addressed to Judith M. Seymour, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria, Va 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Room 708, Alexandria, Va.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour at the above address or by telephone at (703) 756–3429. Copies of the Regulatory Impact Analysis summarized in this preamble are available from Ms. Seymour.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1519–1. It has been determined that this rulemaking is a major action because it is anticipated that the Food Stamp Program's cost will increase by more than $100 million. However, this action will not result in an increase in costs or prices for consumers, individuals, or State and local governments. Additionally, this action will not have a significant effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

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

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The changes will affect food stamp applicants and the State and local agencies which administer the Food Stamp Program.

Memorandum of Law

Pursuant to section 4(a) of Executive Order 12291, the Department has determined that this rule is within the authority delegated by law and is consistent with Congressional intent.

Paperwork Reduction Act

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

Regulatory Impact Analysis

Need for Action

This action is required as a result of the Immigration Reform and Control Act of 1986 which establishes new categories of legal aliens. As a result, certain categories of aliens will gain eligible alien status to participate in the Food Stamp Program in accordance with section 6(f) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2015(f)).

Benefits

This action increases the number of potentially eligible food stamp recipients. This action will not affect the food purchasing power of current program participants.

Costs

The Department estimates that this action will increase the cost of the Program by approximately $17 million in Fiscal Year 1987, $148 million in Fiscal Year 1988, $180 million in 1989 and $106 million in 1990.

Public Participation

This rule implements certain amendments to the Immigration and Nationality Act made by the Immigration Reform and Control Act of 1986 related to the eligibility of specified categories of aliens to receive food stamps. It is nondiscretionary in that the provisions are specifically prescribed by law and cannot be affected in substance by public comment. Since this rulemaking merely implements the cited statutory provisions, it constitutes an interpretive rule for which public comment and publication 30 days prior to effective date are not required under 5 U.S.C. 553.

However, since the Department believes that an opportunity for public

comment could result in improved and simplified administration of the rule, it is being published as an interim rule and a 60-day comment period is being provided. All comments received during the comment period will be evaluated and considered when a final rule is published.

Background

Alien Status

Current Food Stamp Program (FSP) rules at 7 CFR 273.4, which are based on section 6(f) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2015(f)), provide that, in addition to other eligibility requirements specified in Part 273, a person must: (a) reside in the United States; and (b) be either a United States citizen or an alien who meets one of the criteria identified at 7 CFR 273.4(a)(2) through 273.4(a)(7) in order to participate in the Food Stamp Program. The criteria specified in section 6(f) of the Food Stamp Act and current program rules are that a person must be: (1) Lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (INA); (2) a continuous resident since entering the United States prior to June 30, 1948 and lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the INA; (3) qualified for entry pursuant to sections 207 and 208 of the INA; (4) granted asylum pursuant to section 208 of the INA; (5) lawfully present through an exercise of discretion by the Attorney General pursuant to section 212(d)(5) of the INA, or as a result of a grant of parole by the Attorney General; or (6) residing within the United States as a result of the Attorney General's judgment to withhold deportation on the grounds that the alien would otherwise be subject to persecution on account of race, religion or political opinion.

The Immigration Reform and Control Act of 1986 (Pub. L. 99-603), enacted on November 6, 1986, includes numerous provisions which expand the categories of aliens eligible for lawful resident status. Under operation of the Food Stamp Act and Pub. L. 99-603, these modifications to the categories of aliens eligible for lawful status also has a marked effect on alien applicants for FSP benefits. The categories of aliens who may now be eligible for FSP benefits include: (1) Those who have resided continuously in the United States since before January 1, 1972, in accordance with section 249 of the INA; (2) those who have been granted lawful permanent resident status by the Immigration and Naturalization Service (INS) and are aged, blind, or disabled as defined in section 1614(a)(1) of the Social Security Act; (3) those who were granted temporary resident status pursuant to section 245A(a) of the INA at least five years prior to applying for food stamps and who subsequently gained lawful permanent resident status pursuant to section 245A(b)(1) of the INA; (4) those who have resided in the United States and performed agricultural work for specified periods of time prior to May 1, 1986; and (5) additional agricultural workers who may be admitted in fiscal years 1990 through 1993. Each of these categories is discussed in further detail below.

Continuous Residency Date—7 CFR 273.4(a)(3)

As previously noted, pursuant to section 6(f) of the Food Stamp Act, current regulations at 7 CFR 273.4(a)(3) allow an alien to participate in the program if the alien has resided continuously in the United States since prior to June 30, 1948 and is considered to be lawfully admitted for permanent residence by the Attorney General pursuant to section 249 of the INA. Section 203 of Pub. L. 99-603 changes the continuous residency date of June 30, 1948 to January 1, 1972.

Accordingly, this rulemaking amends 7 CFR 273.4(a)(3) effective with the date of enactment of Pub. L. 99-603 to reflect the continuous residency date of January 1, 1972.

Newly Legalized Aliens—7 CFR 273.4(a)

In accordance with section 201 of Pub. L. 99-603, which amends section 245 of the INA, those aliens who do not qualify for permanent residence as described above, and all other illegal aliens who entered the United States before January 1, 1982 and subsequently resided continuously in the United States, may apply to INS to have their alien status adjusted to that of an alien lawfully admitted for temporary residence. Applications for such an adjustment must be submitted to INS within a 12-month period beginning on May 5, 1987. Aliens lawfully admitted for temporary residence under section 201 of Pub. L. 99-603, known as newly legalized aliens, may apply to INS for an adjustment to permanent resident status beginning with the nineteenth month after the month in which lawful temporary resident status was granted.

Section 245A(h)(1)(A)(iii) of the INA as added by section 201 of Pub. L. 99-603 further specifies that, with certain exceptions, newly legalized aliens who are granted a temporary or subsequent permanent resident status by INS under that section are prohibited from participating in the FSP and certain other types of public assistance programs for a five-year period following the date the alien is granted lawful temporary resident status. Thus, the majority of aliens who gain a lawful resident status under section 201 of Pub. L. 99-603 will not be eligible to participate in the FSP until at least May, 1992.

However, the law provides for two exceptions to the five-year prohibition on participating in the Food Stamp Program or certain other types of public assistance. These exceptions are: (1) Cuban and Haitian entrants (as defined in paragraph (1) or (2)(A) of section 501(c) of Pub. L. 96-422); or (2) an individual who is aged, blind or disabled as defined in section 1614(a)(1) of the Social Security Act (SSA).

In regard to the first exception to the five-year prohibition, Cuban and Haitian entrants are already eligible to participate in the Food Stamp Program in accordance with the Food Stamp Act and current regulations at 7 CFR 273.4(a)(6). Therefore, the eligibility of Cuban and Haitian entrants to participate in the FSP is not affected by the Immigration Reform and Control Act of 1986.

In regard to the second exception, section 201 of Pub. L. 99-603 amends the INA to allow newly legalized aliens who are aged, blind or disabled as defined in section 1614(a)(1) of the SSA to participate in the FSP without reference to the five-year prohibition. However, in accordance with section 6(f) of the Food Stamp Act, these aged, blind, or disabled aliens must be in permanent resident status in order to participate in the FSP. Since section 245A(b)(1) of the INA, as added by Pub. L. 99-603, prohibits newly legalized aliens from gaining permanent resident status before November 7, 1988, such aliens will not be eligible to participate in the FSP before that date.

Accordingly, 7 CFR 273.4 is amended to reflect the circumstances in which aliens who are newly legalized in accordance with Pub. L. 99-603 may participate in the FSP.

Special Agricultural Workers—7 CFR 273.4(a)

Section 210(a) of the INA, as added by section 302 of the Immigration Reform and Control Act of 1986, provides that aliens who can prove that they have lived in the United States and performed seasonal agricultural services for the required period of time may be granted lawful temporary resident status. These individuals are known as special

agricultural workers (SAWs) and are further categorized into two groups. The first group, SAW 1, must prove to INS that they have lived in the United States and performed agricultural work for at least 90 days in each of the three (3) twelve month periods preceding May 1, 1986. Aliens in the SAW 1 category may be lawfully admitted for permanent residence by INS after remaining in lawful temporary resident status for one year. The second group, SAW 2, must prove to INS that they have lived in the United States and performed seasonal agricultural work for at least 90 days in the 12 months prior to May 1, 1986. Aliens in the SAW 2 category may be lawfully admitted for permanent residence after remaining in a lawful temporary resident status for two years. Special agricultural workers may begin to submit applications to INS for adjustment to lawful temporary resident status on June 1, 1987. Such applications will be received by INS for 18 months beginning on June 1, 1987.

Although aliens who fall into a SAW category must remain in lawful temporary resident status for one or two years, section 210(a)(5) of the INA specifies that an alien lawfully admitted for temporary residence as a SAW is to be considered to be an alien lawfully admitted for permanent residence except for purposes of the immigration laws. Therefore, persons who are lawfully admitted in either a temporary or permanent resident status as a SAW are eligible to participate in the FSP, if otherwise eligible.

Accordingly, this rulemaking amends 7 CFR 273.4(a) to identify the eligible alien status of aliens who are lawfully admitted for temporary or permanent residence as special agricultural workers.

Additional Special Agricultural Workers—7 CFR 273.4(a)

In accordance with section 303 of Pub. L. 99-603, which amends newly added section 210 to the INA, additional special agricultural workers (ASAWs), also referred to as replenishment agricultural workers, may be granted a lawful temporary resident status by INS in fiscal years 1990 to 1993 after the Secretaries of Agriculture and Labor make a joint determination that a shortage of SAW workers exists. Aliens granted lawful temporary resident status as an ASAW must remain in temporary resident status for three years before an adjustment to lawful permanent resident status can be made. As with the SAW 1 and SAW 2 categories, Section 303 of Pub. L. 99-603 specifies that an ASAW worker admitted for temporary residence is to be considered an alien lawfully admitted for permanent residence except for purposes of the immigration laws. Therefore, ASAWs are eligible to participate in the FSP once they are granted lawful temporary resident status if they are otherwise eligible for program benefits.

Therefore, this rulemaking amends 7 CFR 273.4(a) to specify the eligible alien status of aliens categorized as additional special agricultural workers.

Verification—7 CFR 273.2(f)(1)(ii)

Current rules at 7 CFR 273.2(f)(1)(ii) specify that prior to certification, the State agency must verify the legal status of each applicant who identifies him or herself as an alien. The current procedures further identify the required INS documentation the alien must present in order to verify his or her alien status (e.g., Form I-151 of Form I-94 with appropriate annotation).

This interim rule requires that FSP applicant aliens legalized under the Immigration Reform and Control Act of 1986 provide verification to the eligibility worker which establishes their alien status. This rule specifies that acceptable verification may consist of documents, such as a notice, letter, or identification card that establishes that the alien has been admitted as a legal alien in one of the categories enumerated in the *Alien Status* section above.

Accordingly, this rulemaking amends 7 CFR 273.2(f)(1)(ii) of the regulations to specify the verification requirements of applicant aliens. For all other eligibility criteria, a State will follow current verification requirements at 7 CFR 273.2(f). However, the Department is concerned that its current verification procedures may not fully address obtaining verification from groups such as alien special agricultural workers who may have resources available to them in their home country. The Department will be publishing a proposed rulemaking next Fall regarding use of the INS Systematic Alien Verification for Entitlements (SAVE) system for verification of alien status. The Department requests that commenters on this interim rule provide the Department with suggestions regarding the adequacy of current verification procedures for this group and how the procedures might be improved through the future rulemaking.

Technical Revisions

Current verification procedures specified in 7 CFR 273.2(f)(1)(ii) of the Food Stamp Program regulations require that aliens who are lawfully admitted under 7 CFR 273.4(a)(2) and (3) present either: (1) An INS Form I-151; (2) a "Re-entry Permit" or passport booklet for lawful permanent aliens; or (3) Form I-181-B with the stamped annotation, "Processed for I-551, Temporary Evidence of Lawful Admission for Permanent Residence." We have been advised by INS officials that the Form I-181-B is no longer stamped with this annotation and should no longer be used as acceptable verification. Passport booklets, however, are stamped with this annotation and continue to be acceptable verification of eligible alien status.

Accordingly, this rulemaking amends 7 CFR 273.2(f)(1)(ii)(B) by omitting references to the Form 1-181-B.

Current rules at 7 CFR 273.4(a)(4) and (5) incorrectly refer to the Immigration and Nationality Act as the Immigration and Nationalization Act. Therefore, §§ 273.4(a)(4) and 273.4(a)(5) are amended to correct these references to the Immigration and Nationality Act.

Implementation

For aliens who became eligible for food stamps as the result of the change of the continuous residence date, as reflected in § 273.4(a)(3), this rule must be implemented retroactive to November 6, 1986. On December 16, 1986, the Department advised the Regional Administrators of the Food and Nutrition Service to advise their States of the provision and its effective date of November 6, 1986. The dates upon which aliens may become eligible under other provisions of these rules are: November 7, 1988 under § 273.4(a)(8); May 5, 1992 under § 273.4(a)(9); June 1, 1987 under § 273.4(a)(10); and October 1, 1989 through September 30, 1993 under § 273.4(a)(11).

Because these dates vary widely over several years, this rule requires State agencies to advise appropriate staff of the eligibility or ineligibility of applicant aliens who are affected by the enactment of Pub. L. 99-603.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reports and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation of Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(88) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation* * * *

(88) *Amendment No. 292.* (i) The effective date of the provisions of this amendment is retroactive to November 6, 1986.

(ii) The actual dates upon which aliens may become eligible under § 273.4(a) (8), (9), (10), and (11) are specified in those paragraphs. State agencies must inform their staff of the respective dates as they pertain to the eligibility or ineligibility of applicant aliens.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.2:

a. Paragraph (f)(1)(ii)(A) is amended by removing the reference to "(a)(7)" and adding the reference to "(a)(11)" in its place.

b. Paragraph (f)(1)(ii)(B) is amended by removing the second, third, and fourth sentences.

c. Paragraphs (f)(1)(ii)(D), (f)(1)(ii)(E), (f)(1)(ii)(F) are redesignated as paragraphs (f)(1)(ii)(E), (f)(1)(ii)(F), (f)(1)(ii)(G), respectively, and a new paragraph (f)(1)(ii)(D) is added which reads as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(ii) *Alien status.* * * *

(D) Aliens in the categories specified in § 273.4(a) (8) through (11) shall present documentation such as, but not limited to, a letter, notice of eligibility, or identification card which clearly identifies the alien has been granted legal status in one of those categories.

* * * * *

4. In § 273.4:

a. Paragraph (a)(2) is amended by adding a new sentence at the end of the paragraph which reads, "However, an alien lawfully admitted for permanent residence pursuant to section 245A of the Immigration and Nationality Act must be eligible as specified in paragraphs (a)(8) or (a)(9) of this section.".

b. Paragraph (a)(3) is amended by replacing the date June 30, 1948 with January 1, 1972.

c. Paragraph (a)(4) is amended by replacing the word "Nationalization" with "Nationality".

d. Paragraph (a)(5) is amended by replacing the word "Nationalization" with "Nationality".

e. New paragraphs (a)(8), (a)(9), (a)(10), and (a)(11) are added.

The additions read as follows:

§ 273.4 Citizenship and alien status.

(a) *Citizens and eligible aliens.* * * *

(8) An alien who is defined as aged, blind or disabled in accordance with section 1614(a)(1) of the Social Security Act and is considered to be lawfully admitted for permanent residence pursuant to section 245A(b)(1) of the Immigration and Nationality Act. Such aliens may obtain lawful permanent resident status under section 245(b)(1) of the Immigration and Nationality Act no earlier than November 7, 1988.

(9) An alien who is granted lawful temporary resident pursuant to section 245A of the Immigration and Nationality Act at least five years prior to applying for food stamps and who subsequently gained lawful permanent resident status pursuant to section 245A of the Immigration and Nationality Act. Such aliens may obtain temporary residence status no earlier than May 5, 1987.

(10) An alien who is, as of June 1, 1987, or thereafter, a special agricultural worker and lawfully admitted for temporary residence in accordance with section 210(a) of the Immigration and Nationality Act.

(11) An alien who is lawfully admitted for temporary residence as an additional special agricultural worker as of October 1, 1989 through September 30, 1993 in accordance with section 210A(a) of the Immigration and Nationality Act.

* * * * *

Dated: May 26, 1987.

John W. Bode,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 87–12307 Filed 5–28–87; 8:45 am]

BILLING CODE 3410-30-M

FEDERAL TRADE COMMISSION

16 CFR Part 801

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This action promulgates amendments to the premerger notification rules that require the parties to certain mergers or acquisitions to file reports with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable these enforcement agencies to determine whether a proposed merger or acquisition might violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. During the eight years the rules have been in effect, the Federal Trade Commission, with the concurrence of the Assistant Attorney General for Antitrust, has amended the premerger notification rules several times in order to improve the program's effectiveness and to lessen the burden of complying with the rules. These revisions are intended to improve the program's effectiveness by amending the definition of the term "control" as it applies to partnerships and other entities that do not have outstanding voting securities.

EFFECTIVE DATE: July 3, 1987.

FOR FURTHER INFORMATION CONTACT: John M. Sipple, Jr., Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

These amendments to the Hart-Scott-Rodino premerger notification rules are designed to improve the effectiveness of the premerger notification program. The Commission has determined that none of the amendments is a major rule, as that term is defined in Executive Order 12291. The amendments will not result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic market. None of the amendments expands the coverage of the premerger notification rules in a way that would affect small business. Therefore, pursuant to section 605(b) of the Administrative Procedure Act, 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354 (September 19, 1980), the Federal Trade Commission certifies that these rules will not have a significant

economic impact on a substantial number of small entities. Section 603 of the Administrative Procedure Act, 5 U.S.C. 603, requiring a final regulatory flexibility analysis of some rules, is therefore inapplicable.

Paperwork Reduction Act

The Hart-Scott-Rodino Premerger Notification rules and report form contain information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501–3518. Prior to promulgation, these requirements were reviewed and approved by the Office of Management and Budget. The amendments contained in this Notice were approved by OMB on April 29, 1987, for use through March 31, 1990 (OMB Control No. 3084–0005).

Background

Section 7A of the Clayton Act ("the act"), 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain acquisitions of assets or voting securities to give advance notice to the Federal Trade Commission (hereafter referred to as "the Commission") and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to as "the Assistant Attorney General"), and to wait certain designated periods before the consummation of such acquisitions. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of section 7A. This amendment to the Clayton Act does not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the act. Congress wanted to assure that large acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. To this end, Congress clearly intended to eliminate the large "midnight merger," which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Congress also provided an opportunity for the Commission or the Assistant Attorney General (who are sometimes hereafter referred to collectively as the "antitrust agencies" or the "enforcement agencies") to seek a court order enjoining the completion of those transactions that the agencies deem to present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy when a challenge by one of the enforcement agencies proved successful. Thus, the act requires that the antitrust agencies receive prior notification of significant acquisitions, provides certain tools to facilitate a prompt, thorough investigation of the competitive implications of these acquisitions, and assures the enforcement agencies an opportunity to seek a preliminary injunction before the parties to an acquisition are legally free to consummate it, reducing the problem of unscrambling the assets after the transaction has taken place.

Subsection 7A(d)(1) of the act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Subsection 7A(d)(2) of the act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority (A) to define the terms used in the act, (B) to exempt additional persons or transactions from the act's notification and waiting period requirements, and (C) to prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A.

On December 15, 1976, the Commission issued proposed rules and a proposed Notification and Report Form ("the Form") to implement the act. This proposed rulemaking was published in the **Federal Register** of December 20, 1976, 41 FR 55488. Because of the volume of public comment, it became clear to the Commission that some substantial revisions would have to be made in the original rules. On July 25, 1977, the Commission determined that additional public comment on the rules would be desirable and approved revised proposed rules and a revised proposed Notification and Report Form. The revised rules and Form were published in the **Federal Register** of August 1, 1977, 42 FR 39040. Additional changes in the revised rules and Form were made after the close of the comment period. The Commission formally promulgated the final rules and Form, and issued an accompanying Statement of Basis and Purpose on July 10, 1978. The Assistant Attorney General gave his formal concurrence on July 18, 1978. The final rules and Form and the Statement of Basis and Purpose were published in the **Federal Register** of July 31, 1978, 43 FR 33451, and became effective on September 5, 1978.

The rules are divided into three parts, which appear at 16 CFR Parts 801, 802, and 803. Part 801 defines a number of the terms used in the act and rules, and explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Notification and Report Form, which is completed by persons required to file notification, is an appendix to Part 803 of the rules.

Changes of a substantive nature have been made in the premerger notification rules or Form on five occasions since they were first promulgated. The first was an increase in the minimum dollar value exemption contained in § 802.20 of the rules. This amendment was proposed in the **Federal Register** of August 10, 1979, 44 FR 47099, and was published in final form in the **Federal Register** of November 21, 1979, 44 FR 60781. The second amendment replaced the requirement that certain revenue data for the year 1972 be provided in the Notification and Report Form with a requirement that comparable data be provided for the year 1977. This change was made because total revenues for the year 1977 broken down by Standard Industrial Classification (SIC) codes became available from the Bureau of the Census. The amendment appeared in the **Federal Register** of March 5, 1980, 45 FR 14205, and was effective May 3, 1980.

The third set of changes was published by the Federal Trade Commission as proposed rules changes in the **Federal Register** of July 29, 1981, 46 FR 38710. These revisions were designed to clarify and improve the effectiveness of the rules and of the Notification and Report Form as well as to reduce the burden of filing notification. Several comments on the proposed changes were received during the comment period. Final rules, which adopted some of the suggestions received during the comment period, but which were substantially the same as the proposed rules, were published in the **Federal Register** of July 29, 1983, 48 FR 34427, and became effective on August 29, 1983. The fourth change, replacing the requirement to provide 1977 revenue data with a requirement to provide 1982 data on the Form, was published in the **Federal Register** of March 26, 1986, 51 FR 10368.

The fifth set of changes to the rules and the Notification and Report Form was published by the Federal Trade Commission as proposed rule changes in the **Federal Register** of September 24, 1985, 50 FR 38742. Those thirteen

proposed revisions were designed to reduce the cost to the public of complying with the rules and to improve the program's effectiveness. The Commission decided to adopt nine of the proposals, to reject one proposal and to defer action on the other three. Final rules, which adopted some of the suggestions received from public comments, were published in the **Federal Register** of March 6, 1987, 52 FR 7066 and became effective on April 10, 1987. These changes included revisions to the Notification and Report Form, found in 16 CFR Part 803 (Appendix). The Form had previously undergone minor revisions on two other occasions.

These amendments to the premerger notification rules grow out of the comments on Proposal 1 of the September 24, 1985, **Federal Register** notice, the proposed "acquisition vehicle" rules. The underreporting problem that the "acquisition vehicle" approach was designed to solve is extensively discussed in that notice of proposed rulemaking. It explains both how in some circumstances an acquisition made by a partnership is not subject to the reporting and waiting obligations of the act, and how in similar circumstances an acquisition made by a newly-formed corporation that has no controlling owner is not subject to the obligations of the act. The proposed rules would have required both types of transactions to be reported.

Upon reviewing the comments on the "acquisition vehicle" proposal, the Commission concluded that that approach appeared likely to require filings in connection with numerous competitively insignificant transactions and that a less inclusive approach could accomplish the primary objective of the proposal: Covering acquisitions by partnerships that really are controlled by another entity. In addition, it appears that there have been no problems associated with acquisitions by newly-formed corporations. The Commission therefore reconsidered its proposal and developed a new approach that applies only to partnerships and other entities that do not have outstanding voting securities. On March 6, 1987, the Commission proposed in the **Federal Register**, 52 FR 7095, amendments to its premerger notification rules to implement this approach.

Four comments were received.

Comments

1. Unocal Corporation
2. Latham & Watkins
3. American Bar Association Section on Antitrust Law
4. Sullivan & Cromwell.

Authority: The Federal Trade Commission, with the concurrence of the Assistant Attorney General, promulgates these amendments to the premerger notification rules pursuant to section 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by section 201 of the Hart-Scott Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

Statement of Basis and Purpose for the Commission's Revised Premerger Notification Rules

Section 801.1(b) Control

Under previous staff interpretations, acquisitions made by certain partnerships were not reportable under the act although acquisitions by similarly structured corporations were reportable. No report was required even if an acquisition was by a partnership that was owned and operated principally by one person, and even if that person was a competitor of the acquired person. Because that result is inconsistent with the treatment of corporations that are dominated by one person and with the objectives of the act and the rules, the Commission proposed amendments to its rules to alter that special treatment of partnerships. Having considered public comments on its proposals, the Commission now amends the definition of control in § 801.1(b) to provide that persons owning 50 percent or more of partnerships or other entities that do not have outstanding voting securities will control such entities. Those persons will now be required to report acquisitions by the entities they own, just as persons must report acquisitions by corporations if they own 50 percent or more of the outstanding voting securities of those corporations. This proposal imposes no reporting obligation on owners of minority interests.

The Commission is also amending the alternative definition of control, which is based on the contractual power to designate members of an entity's board of directors or analogous body. The change—from the power to designate a majority to the power to designate 50 percent—results in a uniform 50 percent criterion for all three definitions of control in the rules.

The Purpose of the New Control Definition

Previously, acquisitions by partnerships and other entities that have no outstanding voting securities were frequently not subject to premerger review as a result of two principles of premerger reporting: One, a formal rule for calculating assets of an entity, 16 CFR 801.11(e), and the other, a Premerger Notification Office informal interpretation that a partnership is its own "ultimate parent entity" (that is, a partnership is not controlled by its partners). Section 801.11(e) directs that an entity without a balance sheet not include, in determining its size, any assets that are contributed to the entity for the purpose of making an acquisition. Thus, for example, assume that a partnership is formed to buy a $1 billion company and the partners contribute $1 billion in cash for the purpose of making the acquisition. If the partnership has no other assets (and no sales), the subsequent acquisition of the $1 billion company by the partnership is not reportable. The partnership does not meet the $10 million minimum asset criterion of section 7A(a)(2) of the act because § 801.11(e) directs the partnership not to count the $1 billion that will be used to pay for the acquisition. The informal interpretation deems the acquisition to have been made by the partnership itself, which has no other assets, rather than by its partners, who may well have other assets. Consequently, the size of the partnership is determined by valuing only the partnership's assets.

Of course, if the partnership were employed in the acquisition "for the purpose of avoiding the obligations to comply with the requirements of the act," its existence would be disregarded and the obligations of the act would be determined by applying the act and the rules to the substance of the transaction. 16 CFR 801.90. For example, some persons might be tempted to make an acquisition through a partnership for the purpose of avoiding reporting or delaying their premerger notifications to the antitrust agencies until they were required by the federal securities laws to announce their acquisition publicly. If a partnership were formed for the purpose of avoiding or delaying reporting, § 801.90 would base the reporting requirement on the substance of the transaction. If, for example, the substance is an acquisition by a single person, notwithstanding the structuring of the transaction in the form of a partnership, that person would be required to comply with the obligations of the act prior to consummating the transaction.

These amendments require controlling partners, rather than partnerships, to report transactions in certain other circumstances. Section 801.1(b)(1)(ii) provides that a partnership or other unincorporated entity is deemed to be controlled by any person who owns 50 percent or more of the entity. Thus, a partner who meets the statutory $10 million minimum size criteria and owns

50 percent or more of the partnership would be required to file the notification for an otherwise reportable acquisition by the partnership. The amendments abolish the overly general presumption that partnerships are always independent entities.

These amendments mean, in the example of the acquisition of the $1 billion company discussed above, that the transaction would be reportable if one of the partners were entitled to fifty percent or more of the partnership's profits (or, upon dissolution, of its assets), and that partner's total assets or annual net sales were $10 million or more. That controlling partner, or its parent, would be the "ultimate parent entity" pursuant to § 801.1(a)(3). It would therefore be deemed to be the person making the acquisition.

This attribution of control to persons owning such large economic interests is appropriate, because, as a general rule, they control these entities in the common sense of that word. The antitrust review should therefore include a comparison of the business holdings of the acquired entity with the business holdings of both the partnership and the controlling partner. By requiring the controlling partner to file, the premerger antitrust review will automatically consider both. While not perfect, this concept, which relies on the entitlement to profits or to assets in the event of dissolution, seems an adequate indicator of control where one person has a right to 50 percent or more of the profits or is entitled to 50 percent or more of the assets upon dissolution. At the very least, it seems unlikely that such an entity would be permitted to continue its existence if it operated in any way that was adverse to the wishes of the 50 percent owner. Consequently, the Commission considers this proposal to be an appropriate supplement to its existing definition of control.

The 50 percent ownership requirement parallels in important respects the treatment of corporations under the existing control rule. Although effective or working control of a corporation can exist as a practical matter with a smaller percentage of shares, § 801.1(b) deems a corporation to be a controlled entity only if one person owns "50 percent or more of the outstanding voting securities" or has a right "presently to designate a majority of the board of directors." While this 50 percent requirement understates actual control of many corporations, the rule is clear and easily determinable.

The rule is arguably overinclusive because one corporation with two 50 percent owners is deemed to have two ultimate parent entities. Nevertheless, this rule correctly reflects the joint control that generally exists in such circumstances. In the Commission's experience, this requirement that both controlling entities file has neither prevented persons from fulfilling the premerger notification requirements nor had a negative impact on business decisions.

The 50 percent ownership criterion serves similar functions for determining control of unincorporated entities. It is an objective and predictable standard. Moreover, the degree of ownership is sufficient to assure in almost all instances that the entities and those deemed to be controlling owners will act in concert to comply with the act's obligations.

In formulating the 50 percent ownership criterion, consideration was given to whether other indicators of control should be included. For example, the Commission might have proposed treating all general partners or the sole general partner of a limited partnership as controlling the partnership. While the Commission did not doubt its authority to attribute control on the basis of this and other criteria, the Commission declined to utilize that authority at this time because it might require many unnecessary filings. For example, limited partnerships with sole general partners are common entities whose investments often have little competitive significance. Moreover, if a rule required sole general partners to file notifications, it could easily be avoided by appointing a second or third general partner. At present, a rule requiring all general partners to file seems unnecessary and therefore unduly burdensome, but the Commission retains the option of promulgating such a rule should underreporting of significant acquisitions occur under the rule promulgated here.

Each of the four comments received addresses whether the amendments as proposed are adequate to remedy the underreporting problem caused by the interpretation that makes some acquisitions by partnerships and certain other entities not subject to reporting requirements. All four support "the concepts underlying these proposals" and consider them to be "a considerable improvement over the present Rules" (See Comment 3). The comments neither suggest that these amendments would not have required all the publicized unreported partnership transactions to have been reported, nor criticize the workability of the amendments. Three of the comments noted that partnerships could be set up in such a manner that no partner would control it under the amendments as proposed. Accordingly, these comments favor some action in addition to the proposed rule, but each makes a different suggestion.

The Commission welcomes the suggestions, which relate to abuses that may occur in the future. For the present, the Commission believes its proposed amendments are sufficient, and that the public interest will be served best by their immediate adoption. The amendments as proposed place acquisitions undertaken by partnerships on equal footing with acquisitions undertaken by corporations, and the Commission is not aware of any problem with the existing definition of control as it pertains to corporations. The Commission is not persuaded of the need to expand the reporting obligation to cover numerous competitively insignificant transactions in anticipation of avoidance devices that may never be used.

However, the Commission is considering whether, in light of its adoption of the "partnership control" rule, it should also revise its rules to require reporting the acquisition of control of a partnership. Currently, the staff interpretation makes acquisition of less than a 100 percent interest in a partnersnip not reportable, because a partnership interest is deemed to be neither a voting security nor an asset. The Commission is also considering the suggestion of Comment 3 from the American Bar Association Section of Antitrust Law that the economic incentive not to observe premerger reporting obligations might be eliminated by adopting a blanket exemption for all transactions in which an acquiring person would hold less than 5 percent of the voting securities of an issuer. That comment suggests that such acquisitions are unlikely to have antitrust implications.

Changing the Majority Control Criterion

Prior to these amendments, an entity was deemed controlled by a person that had the contractual power to designate a majority of the entity's board of directors. That rule reflects the Commission's belief that such a person should be deemed to control the entity whether or not that entity also is deemed to be controlled according to other criteria. Thus, under the existing rules, a single entity may be deemed controlled by one person that holds 50 percent of the outstanding voting securities of the entity and also by another person who has a contractual right to appoint a majority (i.e., more than 50 percent) of that entity's board of directors (or of individuals exercising similar functions). The Commission has

concluded, however, that no purpose was served and some confusion was generated by inferring control by virtue of ability to appoint directors only when one person may appoint *more than* 50 percent of the directors. It has therefore revised this criterion to parallel the other control concepts that are based on 50 percent ownership. Under this amendment, an entity is deemed to be controlled by a person with the right to appoint exactly 50 percent, as well as more than 50 percent, of the entity's directors.

The basis of this decision is illustrated by the following example. Consider a nonprofit joint venture corporation created by two persons that is not deemed to be controlled under § 801.1(b)(1) because it does not issue voting securities, it does not distribute profits and it would disburse assets widely in the event of dissolution. If the power to appoint directors of this venture is split evenly between the two persons that formed the entity, such an entity can be deemed controlled solely as a result of the contractual right to appoint directors. There is no reason to treat the control of this corporation differently from a corporation in which the voting shares are split evenly. Both rights are likely to result in an evenly divided board of directors. Accordingly, the amended rule deems an entity to be controlled by a person that has a contractual right to appoint 50 percent or more of the "directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions."

As noted in the discussion above, the Commission has experienced no problems administering its "50 percent or more of the outstanding voting securities" criterion. Even though that requires in appropriate circumstances more than one person to file as the ultimate parent entity of a single issuer, all persons required to file have been able to supply the information required. This experience appears to confirm the Commission's premise that if one person owns 50 percent of an entity it is at least in joint control of the entity. In the case of a person able to appoint 50 percent of a board of directors (or individuals exercising similar functions), it is even clearer that the entity cannot act without that person's assent. The Commission therefore has amended its rules so as to deem a person to control an entity if that person has the contractual right to appoint 50 percent or more of the board of directors (or of individuals exercising similar functions) of the entity.

This amendment similarly modifies a Commission staff informal interpretation of § 801.1(b). The Premerger Notification Office deems a corporation controlled if a person can designate a *majority* of the board as a result of both holding voting securities and having a contractual power to designate directors. In other words, in determining whether an entity is controlled pursuant to § 801.1(b)(2), the staff adds directors elected to the board as a result of holding voting securities to directors designated as a result of a contractual power. Under the amendment, the staff will deem the entity controlled by a person who, as a result of such combined rights, has the power to designate 50 percent or more of the directors.

Operation of the Control Rules

Amended § 801.1(b)(1)(ii) deems an entity to be controlled by a person entitled to 50 percent or more of the entity's profits, or by a person entitled, upon dissolution, to 50 percent or more of the entity's assets. This provision does not apply if the entity has outstanding voting securities. The amendment thus creates two systems for determining control: One for entities that have outstanding voting securities, and another for all other entities.

These non-overlapping rules for determining control are each supplemented by the alternative—contractual power to designate—control concept. In other words, § 801.1(b)(1)(i) and § 801.1(b)(1)(ii) are mutually exclusive; an entity cannot be controlled both under paragraph (b)(1)(i) by a person that holds 50 percent of the voting securities issued by the entity and under paragraph (b)(1)(ii) by another person that has a right to 50 percent of the entity's profits. Because the entity had outstanding voting securities, paragraph (b)(1)(ii) does not apply; thus the entity would not be controlled on the basis of a right to profits or to assets upon dissolution. In contrast, under proposed paragraph (b)(2) the entity deemed controlled under (b)(1)(i) as a result of voting securities held by one person would be deemed also controlled under proposed paragraph (b)(2) by another person that had a contractual right to appoint 50 percent or more of the entity's board of directors.

Similarly, an entity that was deemed controlled under paragraph (b)(1)(ii), because a person had a right to 50 percent of its profits or assets, would also be deemed controlled under (b)(2) if another person had the right to appoint at least 50 percent of that entity's board of directors (or analogous body). This overlap would be quite rare, however. As explained above, the Commission staff concluded that partnerships do not possess "individuals exercising similar functions" to directors; therefore, paragraph (b)(2) applies only to other entities that do not have outstanding voting securities.

In addition, the 50 percent or more criteria in paragraphs (b)(1)(i) and (b)(2) means that under each paragraph two persons can be deemed to control an entity; and under paragraph (b)(1)(ii), four persons could conceivably control an entity, as two persons could each be entitled to 50 percent of the entity's profits and two different persons each be entitled to 50 percent of the entity's assets upon dissolution. It is, thus, theoretically possible that as many as six persons could be deemed to control one entity (four under (b)(1)(ii) plus two under (b)(2)). However, as Comment 3 notes, it would be extraordinary for an entity to allocate those incidents of ownership in such different percentages.

As described above, paragraph (b)(1)(ii) is intended to apply only in circumstances in which paragraph (b)(1)(i) does not apply; that is, it applies only to entities that have no outstanding voting securities. Typically, this means paragraph (b)(1)(i) applies to corporations and paragraph (b)(1)(ii) applies to non-corporate entities. It should be noted, however, that some corporations (for example, entities incorporated under not-for-profit statutes that do not issue voting securities) are subject to paragraph (b)(1)(ii). Similarly, some unincorporated entities (for example, joint stock companies) may have outstanding voting securities. For them, control is determined by paragraph (b)(1)(i).

For purposes of these rules, the fact that an entity issues securities that have some voting rights is not sufficient to deem them voting securities. Limited partnerships commonly issue certificates subject to the Securities Act of 1933 to limited partners. These partnership shares may be transferable and may entitle their holders to vote on a variety of matters, but typically the entities would not be subject to paragraph (b)(1)(i). The definition of "voting security" in § 801.1(f)(1) states that the holder of the security must be entitled "to vote for the election of directors of the issuer, or with respect to unincorporated entities, individuals exercising similar functions." Because most unincorporated entities do not have bodies analogous to boards of directors or do not elect the membership of such bodies, the securities are not "voting securities" within the meaning of the rules.

The rights to profits and to assets, upon dissolution, described in paragraph (b)(1)(ii) are ownership rights and not creditor rights. Thus, the right to assets, upon dissolution, means after all debt obligations have been satisfied. The right to profits is calculated after payment of any royalty, franchise fee or other expense based on income. Also, as Comment 3 notes, there may be instances in which profits are shared with employees in lieu of compensation, rather than as a return on investment. These compensation distributions should not be included in calculating the right to profits under paragraph (b)(1)(ii). Where parties are in doubt as to the manner in which they should calculate percentage rights to profits or to assets, upon dissolution, they should seek the advice of the Premerger Notification Office.

As is the case with other control provisions, a person deemed to control an entity under paragraph (b)(1)(ii) has attributed to it all the assets of the controlled entity. See § 801.1(c)(8). Thus if "A" controls pursuant to paragraph (b)(1)(ii) a partnership B (because "A" is entitled to 50 percent of B's profits, or 50 percent of B's assets upon dissolution), "A" must include the value of all of B's assets in determining the total assets of "A." "A" must include all of B's assets to determine whether it meets the minimum size criteria of section 7A(a)(2) of the act, even though "A" does not have a right to the other 50 percent of B's profits or assets. Furthermore, if B is entitled to 50 percent of the profits of partnership C, "A" will be deemed to control C also and also must include all the assets of C in determining the size of "A."

Finally, Comment 3 from the ABA Section of Antitrust Law raises three additional questions about these amendments: First, it asks whether the following transaction is exempt from reporting obligations: A person that controls a partnership acquires assets from the partnership. As a general matter, the Commission agrees it would be logical to exempt such transactions if acquisition of control of the partnership were a reportable event. However, as noted above, under current staff interpretations, acquisition of control is not normally a reportable event. Consequently, the Commission is not prepared now to exempt the asset acquisition. It will consider such an exemption as it considers making the acquisition of control of a partnership a reportable event.

Second, Comment 3 asks how to resolve the apparent conflict between the amended definition of control and the definition in § 801.1(c)(5), which states that the beneficiary of a trust (regardless of the percentage of its profits to which he is entitled) does not hold the assets of the trust. It is the Commission's intention that the control amendments, although adopted more recently, do not supersede the more specific treatment of trust assets mandated by § 801.1(c).

The Section of Antitrust Law also raises concerns that rapid implementation of the amendments might disrupt transactions that are nearing completion. For these reasons the section suggests the effective date of the amendments should be delayed for 60 or even 90 days after promulgation of the amendments. The Commission believes that its 35 day period is adequate to prevent disruption and that a longer period might invite the very abuses these amendments are intended to eliminate.

List of Subjects in 16 CFR Part 801

Antitrust.

Accordingly 16 CFR Part 801 is amended as set out below.

PART 801—COVERAGE RULES

1. *Authority.* The authority for Part 801 continues to read as follows:

Authority: Sec. 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

2. Section 801.1 is amended by revising the introductory text of paragraph (b), paragraphs (b) (1) and (2), and by designating the existing example as example (1), and adding new examples (2) through (4), as set forth below.

§ 801.1 Definitions.

(b) *Control.* The term "control" (as used in the terms "control(s)," "controlling," "controlled by" and "under common control with") means:

(1) *Either.* (i) Holding 50 percent or more of the outstanding voting securities of an issuer or

(ii) In the case of an entity that has no outstanding voting securities, having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity; or

(2) Having the contractual power presently to designate 50 percent or more of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions:

Examples 1. * * *

2. A statutory limited partnership agreement provides as follows: The general partner "A" is entitled to 50 percent of the partnership profits, "B" is entitled to 40 percent of the profits and "C" is entitled to 10 percent of the profits. Upon dissolution, "B" is entitled to 75 percent of the partnership assets and "C" is entitled to 25 percent of those assets. All limited and general partners are entitled to vote on the following matters: the dissolution of the partnership, the transfer of assets not in the ordinary course of business, any change in the nature of the business, and the removal of the general partner. The interest of each partner is evidenced by an ownership certificate that is transferable under the terms of the partnership agreement and is subject to the Securities Act of 1933. For purposes of these rules, control of this partnership is determined by subparagraph (1)(ii) of this paragraph. Although partnership interests may be securities and have some voting rights attached to them, they do not entitle the owner of that interest to vote for a corporate "director" or "an individual exercising similar functions" as required by § 801.1(f)(1) below. Thus control of a partnership is not determined on the basis of either subparagraph (1)(i) or (2) of this paragraph. Consequently, "A" is deemed to control the partnership because of its right to 50 percent of the partnership's profits. "B" is also deemed to control the partnership because it is entitled to 75 percent of the partnership's assets upon dissolution.

3. "A" is a nonprofit charitable foundation that has formed a partnership joint venture with "B," a nonprofit university, to establish C, a nonprofit hospital corporation that does not issue voting securities. Pursuant to its charter all surplus revenue from the hospital in excess of expenses and necessary capital investments is to be disbursed evenly to "A" and "B." In the event of dissolution of the hospital corporation, the assets of the hospital are to be contributed to a local charitable medical facility then in need of financial assistance. Notwithstanding the hospital's designation of its disbursement funds as surplus rather than profits to maintain its charitable image, "A" and "B" would each be deemed to control C, pursuant to § 801.1(b)(1)(ii), because each is entitled to 50 percent of the excess of the hospital's revenues over expenditures.

4. "A" is entitled to 50 percent of the profits of partnership B and 50 percent of the profits of partnership C. B and C form a partnership E with "D" in which each entity has a right to one-third of the profits. When E acquires company X, "A" must report the transaction (assuming it is otherwise reportable). Pursuant to § 801.1(b)(1)(ii), E is deemed to be controlled by "A," even though "A" ultimately will receive only one-third of the profits of E. Because B and C are considered as part of "A," the rules attribute all profits to which B and C are entitled (two-thirds of the profits of E in this example) to "A."

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87-12256 Filed 5-28-87; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 6, 10, 18, 19, 54, 123, 141, 143, 144, and 145

[T.D. 87-75]

Elimination of Various Customs Forms and Certain Information Collection Requirements

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule, Treasury.

SUMMARY: This document amends the Customs Regulations by eliminating Customs forms that are obsolete and eliminating information collection requirements determined to be obsolete or unduly burdensome. The forms being eliminated are unnecessary either because the procedure being documented has been discontinued or because the information sought can be supplied on a different form with no loss of accuracy. The information collection aspects of the document were the subject of two previous **Federal Register** notices. After announcing the intention to review its regulations and reviewing the comments received in response, Customs published a list of regulations containing information collection requirements proposed for deletion. After further review, most of the information collection requirements as published in the list are being eliminated. These changes merely conform the regulations to existing law or practice. They are nonsubstantive and essentially are procedural.

EFFECTIVE DATE: June 29, 1987.

FOR FURTHER INFORMATION CONTACT: Concerning Customs forms: Skip Simpson, Paperwork Management Branch (202-566-9181); Concerning information collection requirements: Pat Barbare, Office of Inspection and Control (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

Customs Forms

As part of a continuing program to keep its regulations current, the Customs Service has determined that various Customs forms should be removed from the Customs Regulations contained in Chapter I, Title 19, Code of Federal Regulations (19 CFR Chapter I). The changes also correct certain references where old forms have been replaced with new ones.

Customs Forms Affected

1. Customs Form 5119-A, Informal Entry, is used by importers to enter low value merchandise. It is presented directly to a Customs cashier for payment of duties and taxes. Customs has revised Customs Form 7501, Entry Summary, so that it can be used for both formal, as well as informal entries. Therefore, Customs Form 7501, can replace Customs Form 5119-A, and the regulations are being amended accordingly. (See §§ 6.7, 10.71, 123.4, 143.24, 143.25, 145.12.)

2. Customs Form 7519, Combined Rewarehouse Entry and Withdrawal for Consumption and Permit, is used by a consignee of merchandise withdrawn from warehouse for transportation who wishes to pay duty and obtain possession of the merchandise immediately upon its arrival at its destination. It has been determined that due to the infrequent use of Customs Form 7519 it can be eliminated, and Customs Form 7501, Entry Summary, can be substituted in its place. (See §§ 10.81, 141.61, 144.42.)

3. Customs Form 7520, Manifest of Baggage Shipped in Bond, is used to send passenger baggage or commercial samples in bond from one Customs port to another, or in some instances from point to point in Mexico or Canada, respectively, through the U.S. It has been determined that Customs Form 7512, Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit, can be substituted for Customs Form 7520. Therefore, the regulations are being amended to remove reference to Customs Form 7520. (See §§ 6.16, 18.2, 18.13, 123.52, 123.64.)

4. Customs Form 7524, U.S.-Canada In-Transit Baggage Card, is used to facilitate the movement of baggage arriving at a port on the Canadian border for in-transit movement through the U.S. in bond and return to Canada. In response to a survey, the Customs regions that could have a use for this form noted that the form is unnecessary. The regulations are being amended to eliminate reference to Customs Form 7524, and substitute Customs Form 7512-B, United States-Canada Transit Manifest, in its place. (See §§ 123.64, 123.65.)

5. Customs Form 7529, Carrier's Certificate and Release Order, is used by an importer as evidence of the right to make entry of merchandise not released directly to the carrier. It serves as proof to Customs that the importer has paid to the carrier all shipping and related charges. However, since most commercial shipments are released directly to the carrier, Customs Form 7529 has become less important in recent years. For merchandise not released directly to the carrier, § 141.11(a), Customs Regulations (19 CFR 141.11(a)), provides alternative methods of presenting evidence of the right to make entry. Section 141.11(a) is being amended to remove reference to Customs Form 7529.

Information Collection Requirements

By notice published in the **Federal Register** on June 10, 1983 (48 FR 26831), Customs announced that it was undertaking a review of its regulations to identify those having a significant economic impact on a substantial number of small entities. The intended goal of this review was to modify Customs procedures to reduce or eliminate regulatory requirements found to be obsolete or unduly burdensome.

After considering the comments received in response to that notice, and further review of the matter, by notice published on December 26, 1985 (50 FR 52799), certain regulations containing information collection requirements were listed and comments were requested on the proposal that these requirements be deleted from the regulations.

Discussion of Comments

The only public comment received in response to the notice expressed general support for the idea of regulatory reduction, as well as specific support for a reduction in the reporting requirement in § 10.98(e), Customs Regulations (19 CFR 10.98(e)), relating to metals. However, the reporting requirement referred to is one of a few requirements that, on review, Customs has decided to retain. It has been determined that the proof of use needed to liquidate entries of copper-bearing fluxing material is supplied by the reporting requirement contained in § 10.98(e).

The other information collection requirements which had been proposed for deletion, but have been determined to still be necessary are as follows:

Sections 10.93 through 10.96 Records and declarations for receipt, transfer, and use of bonded wool and hair.

The information collection requirements contained in these sections must be retained because the temporary suspension of duties on wool and hair has ended. These products have been dutiable since July 1, 1985. Therefore, the information collection requirements must remain in the regulations.

Section 10.134 Declaration of importer of intended use of merchandise imported under actual use provisions of the Tariff Schedules of the United States (19 U.S.C. 1202).

It was determined that the requirement for this declaration should be retained because it provides a general statement of intent used to monitor compliance with the actual use provisions of the Tariff Schedules. The statement is a valuable tool in investigating cases of possible fraud involving actual use provisions.

Section 12.99 Declaration by importer or consignee in support of a permitted entry of a switchblade knife.

It was determined that removing this requirement from the regulations would give the false impression that no exceptions existed to the general prohibition against importation of switchblade knives. To avoid this confusion, the requirement is being left in the regulations.

Section 54.6 Statement of importer that articles in chief value of metal are to be used in such manner which renders them fit only for recovery of the metal content.

It was determined that this information collection requirement is still necessary because it relates to the destruction operation associated with semi-conductors being destroyed in a foreign trade zone to salvage the metal content. However, this section is being amended to cross-reference § 10.134, Customs Regulations, whereby a declaration of intended use may be made either through a specific statement or by mere entry for that purpose, provided the district director is satisfied that the merchandise will be so used.

Upon further review, it has been determined to proceed with the deletion of the following information collection requirements from the regulations:

19 CFR Section	Description
4.41(a)	Application for permission to enter wrecked cargo.
6.12(g)	Requirement to post a copy of schedule of charges for servicing aircraft at an airport.
10.6(a)	Certificate of foreign shipper that boxes or barrels were made from American shooks or staves.
10.6(b)	Certificate of box maker that boxes or barrels were made from American shooks or staves.
10.9(g), (h)	Certificate of owner, importer, consignee or agent that processed articles entered are a portion of articles exported for processing that are covered by a certificate of registration.
10.10	Statement of cameraman, shipper, or other person identifying films and stating that they were exposed abroad and are shipped for use as newsreel of current events abroad.
10.35(b)	Declaration by importer of a model of women's wearing apparel that the article will be used solely as a model, etc.
10.35(d)	Requirement to mark for identification purposes imported models of women's wearing apparel.
10.50	Declaration of American artist residing temporarily abroad in support of duty-free entry of a work of art.
10.53(a), (b)	Declaration in connection with the entry of antiques.
10.54(b)	Certificate of manager or other responsible employee of the Gobelin or other factory or producer establishing the character of the Gobelin or other hand-woven tapestry in support of duty-free entry.
10.56(f)	Declaration of owner or consignee that vegetable oil has been rendered permanently unfit for use as food.
10.58(a)	Requirement as to marking of bolting cloth for milling purposes in support of duty-free entry.
10.64a	Declaration for withdrawal of fuel from a Customs bonded warehouse to be laden as aircraft supplies.
10.66(a)(2), (b)	Declaration of foreign shipper that merchandise was exported from the U.S. for temporary use at an exhibition and is being returned.
10.70(a)	Declaration in connection with the entry of purebred animals for breeding purposes.
10.72	Declaration in connection with the entry of horses or mules imported solely for slaughter.
10.73	Certificate of ultimate consignee of cows being imported solely for dairy purposes in support of claim for reduced rate of duty.
10.74(a)	Owners descriptive list of domestic animals driven across boundary for pasturage.
10.74(b)	Declaration in connection with the return of domestic animals previously driven across boundary for pasturage.
10.79	Declaration of master of taking vessel in support of duty-free entry of products of American fisheries.
10.82(a)(1)	Certificate of person making withdrawal of salt used in curing fish taken by an American vessel.
10.82(a)(2)	Certificate of master and at least one other person employed on vessel in connection with the withdrawal of salt used for curing fish.
10.82(a)(3)	Certificate of at least two persons employed on shore in curing fish with salt.
10.82(b)	Certificate of person employed on shore curing fish with salt.
10.90(a)	Application of importer for the importation of master records and metal matrices.
10.90(b)	Statement evidencing agreement between importer and manufacturer concerning the use of master records and metal matrices.
10.90(d)	Declaration of importer as to use of master records and metal matrices.
10.106	Declaration of importer in connection with wheat unfit for human consumption.
10.108(b)	Statement in connection with entry of articles previously imported into U.S. with duty paid, exported under lease, and now being reimported.
10.110	Certificate for strategic materials acquired by the Commodity Credit Corporation as result of barter or exchange of agricultural commodities or products.
12.99	Declaration by importer or consignee in support of a permitted entry of a switchblade knife.
19.16	Various reporting requirements relating to the operation of cigar manufacturing warehouses.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

Because this document will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by the E.O. are not required.

Public Notice Requirement

Inasmuch as the amendments concerning Customs forms merely change the form used to comply with preexisting regulations, and no new regulatory burdens are imposed on the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

In General

Customs duties and inspection, Imports, Exports.

19 CFR Part 4

Cargo vessels, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 6

Air carriers, Aircraft, Airports.

19 CFR Part 10

Art, Exports, Fisheries, Oil imports, Packaging and containers, Petroleum, Tobacco, Wildlife.

19 CFR Part 18

Common carriers.

19 CFR Part 19

Tobacco.

19 CFR Part 54

Metals.

19 CFR Part 123

Canada, Reporting and recordkeeping requirements, Mexico.

19 CFR Part 141

Imports.

19 CFR Part 143

Imports.

19 CFR Part 144

Warehouses.

19 CFR Part 145

Postal Service.

Amendments to the Regulations

Parts 4, 6, 10, 18, 19, 54, 123, 141, 143, 144 and 145, Customs Regulations (19 CFR Parts 4, 6, 10, 18, 19, 54, 123, 141, 143, 144, and 145) are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3 and 2103.

§ 4.41 [Amended]

2. Section 4.41(a) is amended by removing the words "written application for permission to enter the wrecked cargo", and inserting, in their place, "entry on Customs Form 7501".

PART 6—AIR COMMERCE REGULATIONS

1. The authority citation for Part 6 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1624; 49 U.S.C. 1474, 1509.

§ 6.7 [Amended]

2. Section 6.7(b)(3)(ii) is amended by removing the number "5119-A" and inserting, in its place, "7501".

§ 6.12 [Amended]

3. Section 6.12(g) is amended by removing the last sentence.

§ 6.16 [Amended]

4. Section 6.16 is amended by removing the words, "or Customs Form 7520".

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624.

2. The heading and text of § 10.6 are revised to read as follows:

§ 10.6 Shooks and staves; claim for duty exemption.

An importer, seeking an exemption from duty on account of boxes or barrels made from American shooks or staves, must make such a claim on Customs Form 3311 at the time of filing the entry. Upon receipt, from the district director at the port of exportation of the shooks and staves, of corroboration that the records of exportation do not conflict materially with such a claim, the exemption may be allowed. If the claim for an exemption is disallowed in full or in part, the importer may file a request within 15 days of the date of the district director's notice to him of any disallowance, for referral of the question to the Commissioner of Customs for review.

§ 10.9 [Amended]

3. Section 10.9 is amended by removing paragraph (g) and (h) and redesignating paragraphs (i), (j), (k), and (l) as (g), (h), (i), and (j), respectively.

§ 10.10 [Removed and reserved]

4. Part 10 is amended by removing § 10.10 and marking it "Reserved". Part 10 is further amended by removing footnote 8 to § 10.10.

§ 10.35 [Amended]

5. Section 10.35 is amended by removing paragraphs (b) and (d), and redesignating paragraph (c) as (b).

§ 10.50 [Removed and reserved]

6. Part 10 is amended by removing § 10.50 and marking it "Reserved". Part 10 is further amended by removing footnote 45 to § 10.50.

§ 10.53 [Amended]

7. Section 10.53 is amended by removing paragraphs (a) and (b) and redesignating paragraphs (c), (d), (e), (f), (g), (h), and (i) as (a), (b), (c), (d), (e), (f), and (g), respectively. Part 10 is further amended by removing footnotes 48 and 50 to § 10.53.

8. In redesignated §§ 10.53 (b) and (c), the phrase, "paragraph (g)" is removed and, "paragraph (e)" is inserted, in its place.

9. In redesignated § 10.53(e)(6), the phrase, "paragraphs (a), (b) and (c)" is removed and, "paragraph (a)" is inserted, in its place.

§ 10.54 [Amended]

10. Section 10.54 is amended by removing the "(a)" in front of the first paragraph and by removing paragraph (b).

Part 10 is further amended by removing footnote 51 to § 10.54.

§ 10.56 [Amended]

11. Section 10.56(f) is amended by placing a period after the word "denatured" and removing the remainder of the paragraph, including the form.

12. Section 10.58(a) is revised to read as follows and footnote 55 is removed.

§ 10.58 Bolting cloths; marking.

(a) As a prerequisite to the free entry of bolting cloth for milling purposes under item 357.25, Tariff Schedules of the United States, the cloth shall be indelibly marked from selvage to selvage at intervals of not more then 4 inches with "bolting cloth expressly for milling purposes" in block letters 3 inches in height. Bolting cloths composed of silk imported expressly for milling purposes shall be considered only such cloths as are suitable for and are used in the act or process of grading, screening, bolting, separating, classifying, or sifting dry materials, or dry materials mixed with water, if the water is merely a carrying medium.

* * * * *

§ 10.64a [Removed and reserved]

13. Part 10 is amended by removing § 10.64a and making it "Reserved".

§ 10.66 [Amended]

14. Section 10.66 is amended by removing paragraph (a)(2) and by redesignating paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3), respectively. Part 10 is further amended by removing footnotes 61 and 62 to § 10.66.

15. Section 10.66(b) is amended by removing the last sentence.

§ 10.70 [Amended]

16. Section 10.70 is amended by removing paragraph (a), removing footnotes 64 and 65, and by redesignating paragraph (b) as (a) and revising the section heading and first sentence of redesignated paragraph (a) to read as follows:

§ 10.70 Purebred animals for breeding purposes; certificate.

(a) In connection with the entry of purebred animals for breeding purposes under item 100.01, Tariff Schedules of the United States, no claim for free entry shall be allowed in liquidation of the entry until the district director has received from the Department of Agriculture a certificate that the animal is purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed. * * *

* * * * *

17. Section 10.70 is further amended by redesignating paragraph (c) as (b).

§ 10.71 [Amended]

18. Section 10.71(f) is amended by removing the phrase, "informal entry (Customs Form 5119-A)", and inserting,

in its place, "entry summary (Customs Form 7501)".

§ 10.72 [Removed and reserved]

19. Part 10 is amended by removing § 10.72 and marking it "Reserved." Part 10 is further amended by removing footnote 66 to § 10.72.

§ 10.73 [Removed and reserved]

20. Part 10 is amended by removing § 10.73 and marking it "Reserved." Part 10 is further amended by removing footnote 67 to § 10.73.

21. The heading and text of § 10.74 are revised to read as follows and footnote 68 is removed:

§ 10.74 Animals straying across boundary for pasturage; offspring.

When domestic animals for which free entry is to be claimed under item 100.03, Tariff Schedules of the United States, have strayed across the boundary line, they may be returned, together with their offspring, without entry if brought back within 30 days; otherwise entry shall be required. The owner of any such animal shall report its return to the nearest Customs office and hold it for such inspection and treatment as may be deemed necessary by a representative of the Amimal and Plant Health Inspection Service of the Department of Agriculture. Any such arrival found not to have been so reported or held shall be subject to seizure and forfeiture pursuant to 18 U.S.C. 545.

* * * * *

22. Section 10.78(a) is revised to read as follows:

§ 10.78 Entry.

(a) No entry shall be required for fish or other marine products taken on the high seas by vessels of the U.S. or by residents of the U.S. in undocumented vessels owned in the U.S. when such fish or other products are brought into port by the taking vessel or are transferred at sea to another fishing vessel of the same fleet and brought into port.

* * * * *

§ 10.79 [Removed and reserved]

23. Part 10 is amended by removing § 10.79 and marking it "Reserved."

§ 10.81 [Amended]

24. Section 10.81(b) is amended by removing the number "7519" and inserting, in its place, "7501".

§ 10.82 [Removed and reserved]

25. Part 10 is amended by removing § 10.82 and marking it "Reserved".

26. Section 10.83(a) is revised to read as follows:

§ 10.83 Bond; cancellation; extension.

(a) If it shall appear to the satisfaction of the district director holding the bond referred to in § 10.80, that the entire quantity of salt covered by the bond has been duly accounted for, either by having been used in curing fish or by the payment of duty, the district director may cancel the charges against the bond. The district director may require additional evidence in corroboration of the proof of use produced.

* * * * *

§ 10.90 [Amended]

27. Section 10.90 is amended by removing paragraphs (a), (b), and (d), as well as footnote 81 to paragraph (a), and by redesignating paragraphs (c), (e), (f), and (g), as (a), (b), (c), and (d), respectively.

28. Redesignated § 10.90(d) is amended by removing the phrase, "If and when the application is approved," and changing the word "entries" to "Entries."

§ 10.98 [Amended]

29. Section 10.98(e) is amended by removing the words, "Perth Amboy, N.J.," and inserting, in their place, "the port or ports where the entries are to be liquidated."

§ 10.101 [Amended]

30. Section 10.101 is amended in the following manner:

(a) In paragraph (b), the third sentence, the word "blanket" is removed.

(b) In the heading to paragraph (c), the word "Blanket" is removed, and "carrier's" is changed to "Carrier's".

(c) Paragraph (c) is further amended by removing the last sentence.

§ 10.106 [Removed and reserved]

31. Part 10 is amended by removing § 10.106 and the note immediately following and marking it "Reserved."

§ 10.108 [Amended]

32. Section 10.108 is amended by removing the "(a)" in front of paragraph (a), and by removing paragraph (b). Part 10 is further amended by removing footnote 100 to § 10.108.

§ 10.110 [Removed and reserved]

33. Part 10 is amended by removing § 10.110 and marking it "Reserved." Part 10 is further amended by removing footnote 103 to § 10.110.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The authority citation for Part 18 continues to read as follows:

Authority: 5. U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1551, 1552, 1553, 1624.

Section 18.13 also issued under 19 U.S.C. 1498(a).

§ 18.2 [Amended]

2. Section 18.2(a)(2)(ii) is amended by removing the words, "or 7520,".

3. Section 18.2(c)(1) is amended by removing from the first sentence, the words "either" and "or 7520".

§ 18.13 [Amended]

4. Section 18.13(b) is revised to read as follows:

§ 18.13 Procedure; manifest

* * * * *

(b) A Customs manifest for baggage shipped in bond, Customs Form 7512, shall be prepared in triplicate for each shipment. The related Customs Form 7512–C (destination) shall be delivered to the carrier to accompany the baggage and shall be delivered by the carrier to the district director at the port of destination as a notice of arrival.

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The authority citation for Part 19 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624.

§ 19.16 [Removed and Reserved]

2. Part 19 is amended by removing § 19.16 and marking it "Reserved."

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

1. The authority citation for Part 54 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote. 11, Tariff Schedules of the United States), 1624.

§ 54.5 [Amended]

2. § 54.5(a) is amended by removing the numbers "911.11 and 911.12" and inserting, in their place, "870.50, 870.55 and 870.60".

3. Section 54.6(a) is revised to read as follows:

§ 54.6 Proof of intent; bond; proof of use; liquidation.

(a) There shall be filed in connection with the entry [1] a statement of the importer consistent with the requirements of § 10.134 of this chapter.

* * * * *

4. In footnote 1 to § 54.6(a) and in § 54.6(d), the numbers "911.11 or 911.12" are removed, and the numbers "870.50,

870.55 or 870.60" are inserted, in their place.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for Part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1624.

Section 123.4 also issued under 19 U.S.C. 1484, 1498.

Section 123.51 also issued under 19 U.S.C. 1554.

Sections 123.52, 123.64 also issued under 19 U.S.C. 1553.

§ 123.4 [Amended]

2. Section 123.4(b) is amended by removing the number "5119–A" and, inserting, in its place, "7501".

§ 123.52 [Amended]

3. Section 123.52 is amended by removing the number "7520" from paragraphs (e) and (f), and inserting, in both those places, "7512".

§ 123.64 [Amended]

4. Section 123.64 is amended by removing the number "7520" from paragraphs (b) and (c), and inserting, in all three places "7512".

§ 123.64, 123.65 [Amended]

5. Sections 123.64(d)(2) and 123.65(b)(2) are amended by removing the words, "7524, Canada A–21" and inserting, in both places, "7512–B (Canada 8½) or Customs Form 7533–C (Canada A4–½)".

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

§ 141.11 [Amended]

2. Section 141.11(a)(4) is amended by removing the words, "on Customs Form 7529,". The section is further amended by removing subparagraph (5) and marking it "Reserved."

§ 141.61 [Amended]

3. Section 141.61(a)(2) is amended by placing a comma after "7505", removing the words, "or 7519," and inserting in their place the words, "or entry summary, Customs Form 7501,". The section is further amended by removing from paragraph (e)(1)(i)(A) the words, "the rewarehouse entry, Customs Form 7519;".

4. Sections 141.61(f)(1)(iv) and 141.61(f)(2)(i) are amended by removing the words "and 7519" and replacing the comma which appears after "7506", in both places, with a period.

§ 141.68 [Amended]

5. Section 141.68(h) is amended in the following manner:

(a) In the first sentence, the words, "or informal "entry" are added immediately after the words, "appraisement entry," and the words "an informal entry, Customs Form 5119–A" are removed.

(b) In the second and third sentences, the words "5119–A or" are removed.

§ 141.111 [Amended]

6. Section 141.111 is amended in the following manner:

(a) In paragraph (b), subparagraph (1) is removed and marked "Reserved."

(b) Paragraph (c) is removed and marked "Reserved."

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

1. The authority citation for Part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

§ 143.23 [Amended]

2. In § 143.23, the introductory text is amended by removing the number "5119–A" and inserting, in its place, "7501".

§ 143.24 [Amended]

3. Section 143.24 is amended in the following manner:

(a) In the section heading, a period is placed after "7501" and the phrase, "and Customs Form 5119–A" is removed.

(b) In the second sentence of the section, "5119–A" is removed and "7501" is inserted, in its place.

§ 143.25 [Amended]

4. Section 143.25 is amended by removing the phrase, "Customs Form 5119–A or, where used,".

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The authority citation for Part 144 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1854; 19 U.S.C. 66, 1311, 1312, 1484, 1552, 1553, 1555, 1556, 1557, 1559, 1562, 1563, 1623, 1624, 1646(a); 26 U.S.C. 5214.

§ 144.42 [Amended]

2. Section 144.42(b)(1) is amended by removing the phrase, "7519 (Combined Rewarehouse Entry and Withdrawal for Consumption, and Permit)" and replacing it with "7501 (Consumption Entry)".

3. Sections 144.42(b)(2) and (3) are amended by removing the number "7519" and inserting, in both places, "7501".

PART 145—MAIL IMPORTATIONS

1. The authority citation for Part 145 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624.

Section 145.4 also issued under 18 U.S.C. 545; 19 U.S.C. 1618.

Section 145.12 also issued under 19 U.S.C. 1315, 1484, 1498.

§ 145.4 [Amended]

2. Section 145.4(c) is amended by removing "5119–A" and inserting, in its place, "7501".

§ 145.12 [Amended]

3. Section 145.12 is amended in the following manner:

(a) In paragraph (b)(1), the words "informal entry (Customs Form 5119–A)" are removed and replaced with, "entry summary (Customs Form 7501)".

(b) In paragraph (c), the number "5119–A" is removed and replaced with, "7501".

(c) In paragraph (e)(1), the words "informal entry, Customs Form 5119–A" are removed and replaced with, "entry summary, Customs Form 7501,".

Michael H. Lane,

Acting Commissioner of Customs.

Approved April 29, 1987.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 87–12255 Filed 5–28–87; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 87F–0014]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to lower the inherent viscosity specification for poly(tetramethylene terephthalate) copolymers. This action responds to a petition filed by General Electric Co., Plastics Group.

DATES: Effective May 29, 1987; objections by June 29, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 16, 1987 (52 FR 8112), FDA announced that a petition (FAP 7B3983) had been filed by General Electric Co., Plastics Group, Pittsfield, MA 01201, proposing that § 177.1660 *Poly(tetramethylene terephthalate)* (21 CFR 177.1660) be amended in paragraph (c)(1) to lower the inherent viscosity specification from 0.8 to 0.6.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed lowering of the inherent viscosity of poly(tetramethylene terephthalate) copolymers, which represents a lower molecular weight of the polymer, is safe, and that § 177.1660(c)(1) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by this regulation may at any time on or before June 29, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 177.1660 [Amended]

2. Section 177.1660 *Poly(tetramethylene terephthalate)* is amended in paragraph (c)(1) by revising "0.8" to read "0.6".

Dated: May 18, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-12228 Filed 5-28-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 86F-0458]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to add two polymers to the list of substances in which *N,N'*-hexamethylenebis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) may be safely used as an antioxidant. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective May 29, 1987; objections by June 29, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 23, 1986 (51 FR 45954), FDA announced that a petition (FAP 7B3969) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 (21 CFR 178.2010) be amended to provide for additional uses of *N,N'*-hexamethylenebis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) as an antioxidant for polymers intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive uses are safe, and that 21 CFR 178.2110(b) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for FAP 7B3969 (December 23, 1986; 51 FR 45954). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

Any person who will be adversely affected by this regulation may at any time on or before June 29, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing

is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intented to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat, 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.2010 paragraph (b) is amended in the entry "*N,N'*-Hexamethylenebis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide)" by adding new entries 6 and 7 to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
N,N'-Hexamethylenebis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) (CAS Reg. No. 23128-74-7).	For use only: * * * 6. At levels not to exceed 0.5 percent by weight of polyoxymethylene copolymer complying with § 177.2470 of this chapter. 7. At levels not to exceed 0.5 percent by weight of polyoxymethylene homopolymer complying with § 177.2480 of this chapter.
* *	* * *

Dated: May 18, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-12227 Filed 5-28-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of Acetyl-Alpha-Methylfentanyl, Alpha-Methylthiofentanyl, Beta-Hydroxyfentanyl, 3-Methylthiofentanyl, Para-Fluorofentanyl and Thiofentanyl Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to place the narcotic substances, acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This action is based on findings made by the DEA Administrator, after a review and evaluation of the relevant data by both DEA and the Assistant Secretary for Health, that acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl meet the statutory criteria for inclusion in Schedule I of the CSA. As a result of this final rule, the regulatory controls and criminal sanctions of Schedule I will be applicable to the manufacture, distribution, importation, exportation and possession of the six referenced fentanyl analogs.

EFFECTIVE DATE: May 29, 1987.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl are potent analogs of the Schedule II synthetic narcotic analgesic fentanyl. Each of these fentanyl analogs behaves as a typical morphine-like compound in rodent antinociceptive tests. Further, each analog substitutes completely for morphine when administered to morphine dependent withdrawn monkeys. The six fentanyl analogs have been produced in clandestine laboratories, identified in drug evidence submissions and associated with a number of overdose deaths.

Acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl are temporarily controlled in Schedule I of the CSA pursuant to the emergency scheduling provisions of 21 U.S.C. 811(h) (51 FR 4722, 50 FR 43698). The temporary scheduling of para-fluorofentanyl expires on September 10, 1987 (52 FR 7270) and the temporary scheduling of the other five fentanyl analogs expires on May 29, 1987 (51 FR 42834).

On November 28, 1986, in a notice of proposed rulemaking published in the **Federal Register** (51 FR 43025), after a review of the relevant data, the DEA Administrator proposed to place acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl and thiofentanyl into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). Likewise, on March 10, 1987, the DEA Administrator proposed to place para-fluorofentanyl into Schedule I of the CSA (52 FR 7280). Both proposed rules provided for the submission of comments or objections regarding the proposals by any interested parties. DEA received no comments or objections nor were there any requests for hearings.

In both proposed rules, the DEA Administrator stated that before issuing final rules in these matters, he would take into consideration the scientific and medical evaluations and scheduling recommendations of the Secretary of the Department of Health and Human Services in accordance with 21 U.S.C. 811(b). Scientific and medical evaluations and scheduling recommendations have been received from the Assistant Secretary for Health, Department of Health and Human Services for acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl. Based upon the investigations and reviews conducted by DEA and upon the scientific and medical evaluations and recommendations of the Assistant Secretary for Health received in

accordance with 21 U.S.C. 811(b), the DEA Administrator, pursuant to the provisions of 21 U.S.C. 811(a) and (b), finds that:

(1) Acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl each has a potential for abuse;

(2) Acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl each has no currently accepted medical use in treatment in the United States, and

(3) Acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl each lacks accepted safety for use under medical supervision.

The above findings are consistent with the placement of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthio-fentanyl, para-fluorofentanyl and thiofentanyl into Schedule I of the CSA. The Administrator further finds that acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl and opiates as defined in 21 U.S.C. 802(18) since they have an addiction-forming and an addiction-sustaining liability similar to that of morphine. Consequently, acetyl-alpha-methylfentanyl, alpha-methyl-thiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl are narcotics since the definition of narcotic, as stated in 21 U.S.C. 802(17)(A), includes: "Opium, opiates, derivatives of opium and opiates."

In accordance with 21 U.S.C. 811(h)(5), the emergency scheduling orders for acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl shall be vacated on the effective data of this final rule, placing the above named fentanyl analogs into Schedule I of the CSA pursuant to 21 U.S.C. 811(a).

Since acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl are already under temporary control in Schedule I, all regulations applicable to Schedule I narcotic substances will continue to be effective as of [May 29, 1987]. The current applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl or thiofentanyl, or who engages in research or conducts instructional activities with respect to these substances, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* Acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl must comply with the requirements of §§ 1302.03–1302.05, 1302.07 and 132.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl or thiofentanyl, shall submit applications pursuant to §§ 1303.12 and 1302.22 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl or thiofentanyl shall take an inventory pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations of all stocks of these substances on hand.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations shall maintain such records on acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl.

7. *Records.* All registrants required to submit records pursuant to §§ 1304.34–1304.37 of Title 21 of the Code of Federal Regulations shall do so regarding acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl.

8. *Order Forms.* All registrants involved in the distribution of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl or thiofentanyl must comply with the order form requirements of §§ 1305.01–1305.16 of Title 21 of the the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* The Administrator, Drug Enforcement Administration, hereby orders that any activity with respect to acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl, or thiofentanyl not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act shall be unlawful. Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the placement of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl into Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the control of six substances with no legitimate medical use or manufacture in the United States. In accordance with the provisions of 21 U.S.C. 811(a), this scheduling action is a formal rulemaking "on the record after opportunity for a hearing." Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby orders that 21 CFR 1308.11 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. In § 1308.11, the introductory text of paragraph (b) is revised to read as follows:

* * * * *

§ 1308.11 Schedule I.

* * * * *

(b) *Opiates.* Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of paragraph (b)(34) only, the term isomer includes the optical and geometric isomers):

* * * * *

3. Section 1308.11 is further amended by redesignating paragraphs (b)(1) through (b)(6) as (b)(2) through (b)(7), paragraphs (b)(7) and (b)(8) as (b)(9) and (b)(10), paragraphs (b)(9) through (b)(30) as (b)(12) through (b)(33), paragraphs (b)(31) through (b)(36) as (b)(35) through (b)(40), paragraphs (b)(37) through (b)(46) as (b)(42) through (b)(51) and paragraphs (b)(47) and (b)(48) as (b)(53) and (b)(54) and by adding new paragraphs (b)(1), (b)(8), (b)(11), (b)(34), (b)(41) and (b)(52) as follows:

§ 1308.11 Schedule I

* * * * *

(b) * * *

(1) Acetyl-alpha-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide)—9815

* * * * *

(8) Alpha-methylthiofentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide)—9832

* * * * *

(11) Beta-hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide)—9830

* * * * *

(34) 3-methylthiofentanyl (*N*-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide)—9833

(41) Para-fluorofentanyl (*N*-(4-fluorophenyl)-*N*-[1-(2-phenethyl)-4-piperidinyl] propanamide—9812

* * * * *

(52) Thiofentanyl (*N*-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide—9835

* * * * *

§ 1308.11 [Amended]

4. Section 1308.11 is further amended by removing paragraphs (g)(1), (g)(2), (g)(4), (g)(6), (g)(8) and (g)(9) and redesignating existing paragraph (g)(3) as (g)(1), existing paragraph (g)(5) as (g)(2), and existing paragraph (g)(7) as (g)(3).

Dated: May 27, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-12417 Filed 5-28-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1956

New York State Plan for State and Local Government Employees

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Approval of supplements to the New York State public employee only State plan: Change in developmental schedule; change in staffing plan; completion of a developmental step.

SUMMARY: This notice approves the supplement revising the approved New York development schedule in 29 CFR 1956.51 (the supplement amends the dates in the developmental schedule for steps (b), (g) and (h) and changes step (1) to reflect New York's intention to implement a public sector consultation program through written procedures rather than promulgation of regulations); approves the supplement for a State initiated change reassigning two positions from Industrial Hygiene Consultation to Industrial Hygiene Enforcement; and, approves completion of a developmental step (adoption of all OSHA standards promulgated as of July 1, 1983 (within three months after plan approval)).

EFFECTIVE DATE: May 29, 1987.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3647, Washington, DC 20210, Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

A. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Occupational Safety and Health Administration will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and Part 1956.

On June 1, 1984, notice was published in the **Federal Register** (49 FR 22994), of the initial approval of the New York plan applicable only to public employees and adoption of Subpart F of Part 1956 containing the approval decision and description of the plan, including the developmental schedule in § 1956.51.

B. Description of Supplements

1. Developmental Schedule

The State submitted a revised developmental schedule on April 1, 1986 which amends the dates of completion for steps (b) inspections, Citations; (g) Non-discrimination Procedures; and, (h) Review Procedures; and changes step (1) to reflect New York's intention to implement its public sector consultation program through written procedures rather than promulgation of regulations. (The New York State Labor Department's Division of Safety and Health since 1975 also has had an on-site consultation program in the private sector, administered separately from its public employee State plan under section 7(c)(1) of the Act). Completion of developmental steps (b), (g) and (h), as amended, and implementation and completion of step (1), as amended, will be accomplished within the three year period as provided by OSHA Regulation at 29 CFR 1956.2(b). The State's revision of the dates of completion for the three developmental steps does not diminish its responsibility to complete all developmental steps within the three year period as provided in OSHA Regulation at 29 CFR 1956.2(b). Further, New York's intention to implement an on-site consultation program through written procedures rather than promulgation of regulations provides for the establishment, implementation and administration of an effective voluntary compliance program and does not diminish the State's ability to provide on-site consultation services to public employers as a component of its approved State plan.

2. Change in Staffing Plan

On September 3, 1986, the State submitted a supplement providing for the reassignment of two positions from Industrial Hygiene Consultation to Industrial Hygiene Enforcement. One (1) Industrial Hygiene Consultation position

was changed to an Industrial Hygiene Enforcement position in the Albany District and the other one (1) to an enforcement position in the Buffalo District, both changes to meet the enforcement workload. Neither of these changes diminishes the consultation program's effectiveness in Albany nor the Buffalo Districts. A total of ten (10) Industrial Hygienists is now operating on a full-time basis in the consultation program, and ten (10) in the enforcement program.

3. Completion of a Development Step

By letter dated November 14, 1984, the State submitted a supplement in fulfillment of developmental step § 1956.51(a), providing revisions and additions to its existing public employee occupational safety and health standards to bring them into conformance with Federal OSHA standards as of July 1, 1983, and containing documentation that New York has promulgated safety and health standards identical to all Federal OSHA standards as of July 1, 1983. The State standards were approved in the **Federal Register** on August 26, 1986 (51 FR 30449).

C. Public Participation

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the New York supplements are consistent with commitments in the approved State plan, which was previously made available for public comment. Good cause is, therefore, found for approval of these supplements, and further public participation would be unnecessary.

D. Location of Plan Supplement for Inspection and Copying

A copy of the plan and its supplements may be inspected and copied during normal business hours at the following locations:

Directorate of Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N-3476, Washington, DC 20210

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036

State of New York Department of Labor, State Office Building Campus, Building 12, Room 579, Albany, New York 12226

Division of Occupational Safety and Health, State of New York Department of Labor, 1 Main Street, Room 811, Brooklyn, New York 11201

List of Subjects in 29 CFR Part 1956

Intergovernmental relations, Law enforcement, Occupational safety and health.

E. Decision

After careful consideration and review by the OSHA Regional and National Offices, the New York plan supplements described above are hereby approved under 29 CFR Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

(Secs. 8, 18, Pub. L. 91-596, 84 Stat. 1608, 29 U.S.C. 657, 667; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable)

Signed at Washington, DC this 26th day of May, 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1956—[AMENDED]

Accordingly, Subpart F of 29 CFR Part 1956 is hereby amended as follows:

1. The authority citation for 29 CFR Part 1956 continues to read as follows:

Authority: Secs. 8, 18, Pub. L. 91-596, 84 Stat. 1608, 29 U.S.C. 657, 667; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable.

2. 29 CFR 1956.51 (b), (g), (h) and (l) are revised to read as follows:

§ 1956.51 Developmental schedule.

* * * * *

(b) Promulgate regulations for inspections, citations and abatement, equivalent to 29 CFR Part 1903 (within three years after plan approval).

* * * * *

(g) Develop employee nondiscrimination procedures (within three years after plan approval).

* * * * *

(h) Promulgate procedures for review of contested cases (within three years after plan approval).

* * * * *

(l) Develop on-site consultation procedures for state and local government employers (within three years after plan approval).

* * * * *

§ 1956.52 [Amended]

3. Section 1956.52 is amended by adding new paragraph (b) as follows:

* * * * *

(b) In accordance with 29 CFR 1956.51(a) the State of New York has promulgated standards identical to all Federal OSHA standards promulgated as of July 1, 1983. This supplement was approved by the Assistant Secretary on August 26, 1986. (51 FR 30449).

4. A new § 1956.55, *Changes to approved plans,* has been added to read as follows:

§ 1956.55 Changes to approved plans.

In accordance with Part 1953, the following New York plan changes were approved by the Assistant Secretary:

(a) The State submitted a staffing pattern change involving the reassignment of two positions from Industrial Hygiene Consultation to Industrial Hygiene Enforcement. The Assistant Secretary approved the supplement on May 26, 1987.

[FR Doc. 87-12266 Filed 5-28-87; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 763

Rules Governing Public Access; Kahoolawe Island and Kaula, HI

AGENCY: Department of the Navy, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending the Rules Governing Public Access, codified in 32 CFR Part 763, to reflect that Kahoolawe Island and Kaula are now under the cognizance of Commander Naval Base, Pearl Harbor, Hawaii, vice Commander Third Fleet.

EFFECTIVE DATE: May 29, 1987.

FOR FURTHER INFORMATION CONTACT: Staff Judge Advocate, Commander Naval Base, Pearl Harbor, HI 96860-5020, (808) 471-0284.

SUPPLEMENTARY INFORMATION: This amendment is made solely to identify the commander having cognizance of Kahoolawe Island and Kaula. It does not originate any requirement of general applicability and future effect for implementing, interpreting, or prescribing law or policy, or practice and procedure requirements constituting authority for prospective actions having substantial and direct impact on the public, or a significant portion of the public. Publishing this amendment for public comment is unnecessary since it would serve no purpose, and significant and legitimate interests of the Department of the Navy and the public

(cost savings) will be served by omitting such publication for public comment.

PART 763—[AMENDED]

1. The authority citation for 32 CFR Part 763 continues to read as follows:

Authority: 50 U.S.C. 797; DoD Dir. 5200.8 of Aug. 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714; E.O. No. 10436, 3 CFR 1949–1953 Comp. p. 930, (1958).

§§ 763.4 and 763.5 [Amended]

2. For the reasons set out in the preamble, 32 CFR 763 is amended by removing the words "Commander Third Fleet" and inserting in their place the words "Commander Naval Base" in the following places:

a. 32 CFR 763.4(a)
b. 32 CFR 763.4(b)
c. 32 CFR 763.5(a) introductory text
d. 32 CFR 763.5(a)(1)
e. 32 CFR 763.5(a)(2), lines 1–2
f. 32 CFR 763.5(a)(2), lines 4–5
g. 32 CFR 763.5(b)
h. 32 CFR 763.5(c)

Dated: May 20, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 87–12224 Filed 5–28–87; 8:45 am]

BILLING CODE 3810-AE-M

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32 CFR Part 770

Base Entry Regulations for Naval Installations in the State of Hawaii

AGENCY: Department of the Navy, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending the Base Entry Regulations for Naval Installations in the State of Hawaii, codified in 32 CFR Part 770, Subpart C, to reflect that the cognizant commander authorized to grant access to Kahoolawe Island and Kaula is now Commander Naval Base, Pearl Harbor, Hawaii, vice Commander Third Fleet.

EFFECTIVE DATE: May 29, 1987.

FOR FURTHER INFORMATION CONTACT: Staff Judge Advocate, Commander Naval Base, Pearl Harbor, HI 96860–5020 (808) 471–0284.

SUPPLEMENTARY INFORMATION: This amendment is made solely to identify the cognizant commander authorized to grant access to Kahoolawe Island and Kaula. It does not originate any requirement of general applicability and future effect for implementing, interpreting, or prescribing law or policy, or practice and procedure requirements constituting authority for prospective actions having substantial and direct impact on the public, or a significant portion of the public. Publishing this amendment for public comment is unnecessary since it would serve no purpose, and significant and legitimate interests of the Department of the Navy and the public (cost savings) will be served by omitting such publication for public comment.

PART 770—[AMENDED]

1. The authority citation for 32 CFR Part 770, Subpart C, continues to read as follows:

Authority: 50 U.S.C. 797; DoD Dir. 5200.8 of Aug. 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702, 770.714.

§ 770.31 [Amended]

2. For the reasons set out in the preamble, 32 CFR Part 770, Subpart C, is amended by removing the words "Commander Third Fleet" and inserting in their place the words "Commander Naval Base" in the following places:

a. 32 CFR 770.31(c)(1)
b. 32 CFR 770.31(c)(2)

Date: May 20, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 87–12223 Filed 5–28–87; 8:45 am]

BILLING CODE 3810-AE-M

Department of the Air Force

32 CFR Part 856

Aircraft Arresting Systems

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force has revised Part 856 of Chapter VII, Title 32, of the Code of Federal Regulations, which establishes policy on managing aircraft arresting systems. This revision provides additional information and makes minor changes to update and to clarify the part.

EFFECTIVE DATE: June 29, 1987.

FOR FURTHER INFORMATION CONTACT: Lt Col Purcell, HQ USAF/LEEV, Washington, DC 20332–5000, telephone (202) 767–6240.

SUPPLEMENTARY INFORMATION: The Department of the Air Force published a notice of proposed rulemaking on aircraft arresting systems in the **Federal Register** on January 9, 1987 (52 FR 803). No comments were received.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 32 CFR Part 856

Aircraft, airports and aviation safety.

Therefore, 32 CFR Part 856 is revised to read as follows:

PART 856—AIRCRAFT ARRESTING SYSTEMS

Sec.
856.0 Purpose.
856.1 Concept on the use of aircraft arresting systems.
856.2 Definitions.
856.3 What systems are authorized.
856.4 Authorized use of aircraft arresting systems.
856.5 Pilot responsibilities.
856.6 Use of systems by non-United States government aircraft.
856.7 Installing a system at a joint-use airport.
856.8 Agreements required for operation of the systems.
856.9 Format for letter of agreement with FAA.

Authority: Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 856.0 Purpose.

This part establishes policy on managing aircraft arresting systems. It applies to all locations where arrestment capable aircraft use the runway complex, either routinely or in an emergency situation. It applies to U.S. Air Force Reserve and Air National Guard units.

§ 856.1 Concept on the use of aircraft arresting systems.

The Air Force has revised its policy on the use of arresting systems to allow for both operational and emergency arrestments. At some bases, certain aircraft (for example, the F–4) routinely make operational arrestments under certain adverse weather and runway conditions. This procedure reduces accidents and incidents resulting from the loss of directional control or braking action. However, aircraft that do not have tailhooks (for example, the T–38) have structural limitations allowing an arrestment only in an emergency stopping situation. Related policy management and operation of these systems is in the following publications.

(a) AFR 60–11, Aircraft Movement on the Ground.

(b) AFM 86–2, Standard Facility Requirements.

(c) AFM 88–14, Visual Air Navigation Facilities.

(d) AFR 88–16, Standards for Marking Airfields.

§ 856.2 Definitions.

(a) *Aircraft arresting system (AAS).* A series of components used to engage an aircraft and absorb the forward momentum of a routine or emergency landing or aborted takeoff. (Each system consists, generally, of energy absorbers and one or more securing or snaring receivers such as hook-cables or pendant-cables attached to a net.)

(1) *Aircraft arresting barrier (BARRIER).* A device not dependent on an aircraft hook, to engage and absorb the forward momentum of an emergency landing or an aborted takeoff.

(2) *Aircraft arresting cable (H/C).* A device used to engage hook-equipped aircraft to absorb the kinetic energy of a landing or aborted takeoff aircraft.

(b) *Aircraft arresting complex.* An airfield layout comprised of one or more aircraft arresting systems of the same or different types. (See § 856.3 for classification of runways).

(c) *Arrestment capable aircraft.* Aircraft which has recognized arrestment procedures in its appropriate Flight Manual.

(d) *Cycle time.* The time measured between the engagement of an aircraft with an arresting system and completely repositioning the arresting system for another engagement. This includes normal inspection and system cooling time according to the appropriate 35E8 series Technical Orders (TO).

(e) *Emergency arresting system (EAS).* Used primarily to prevent damage to aircraft and possible loss of life during an aborted takeoff or a landing emergency.

(f) *Energy absorber.* The mechanism through which the kinetic energy of the aircraft is dissipated. Examples of energy absorbers are weights and rotary hydraulic or friction brakes.

(g) *Hook-cable.* A cable or wire rope which is engaged by the arresting hook of an aircraft during an arrestment.

(h) *Location identification.* An arresting system is identified by stating whether it is located either on the approach end or the departure end of the runway. (That is, a BAK–12 on the approach end of runway 36 is on the south end of the runway.) Always use the term "approach end" or "departure end" in referring to an arresting system which is installed near the end of the runway.

(i) *Mobile aircraft arresting system (MAAS).* A rapidly installed and relocatable arresting system developed for use at air bases in high threat areas where runways may be damaged by enemy attack. The system uses BAK 12 energy absorbers mounted on trailers which can be rapidly anchored in place.

(j) *Operational arresting system (OAS).* Generally a rapid cycle system used to enhance the tactical mission or to avert a possible emergency which may be caused by meteorological conditions, a short runway, or known or suspected aircraft malfunctions. The OAS is used on a daily basis as opposed to the emergency-only use of an EAS.

(k) *Pendant-cable.* A cable or wire rope suspended from the net of an aircraft arresting barrier which engages a structural portion of the aircraft during an arrestment.

(l) *Reset time.* The time required to make the arresting system ready for another engagement after aircraft release.

§ 856.3 What systems are authorized.

ANG units are authorized systems in accordance with AFM 86–2. An EAS or an OAS should be installed on each runway used by arrestment compatible aircraft. An additional system (of either type) also should be installed if the installation's primary mission involves the operation of arrestment capable aircraft, or if the runway's closure (because of an inoperative system) would seriously degrade mission capability. When developing an aircraft arresting complex, maximum mission capability should be provided within the limits imposed by cost effectiveness. In evaluating the requirement for installing an arresting system, there are four classes of runways which must be considered:

(a) *Class A runway.* This runway is intended primarily for operating tactical or training aircraft. For example, a fully developed Class A runway could have the following arresting systems:

(1) An arresting barrier at each end, generally located in the overrun, but placed to provide the runout prescribed in AFM 86–2.

(2) A bi-directional emergency arresting system on each end of the runway, placed 950 to 1,500 feet up the runway from the threshold. (This system may also have an OAS capability.)

(3) A bi-directional operational arrestment system placed 1,500 to 2,500 feet up the runway from the threshold. It must be placed at least 1,200 feet from the EAS, and far enough from it to avoid any possible conflict with the runout from the EAS.

(4) An OAS placed at the midpoint of the runway. The installation of this additional system must be specifically approved by HQ USAF.

(b) *Class B runway.* A runway that is a prime alternate for a Class A runway. It should have an EAS or OAS 950 to 1,500 feet from each end of the runway, as well as a backup EAS in the overrun.

(c) *Class C runway.* A runway that requires only a single EAS capability on each end of the runway for either hook or nonhook equipped aircraft.

(d) *Class D runway.* A runway that does not have an arresting system requirement.

§ 856.4 Authorized use of aircraft arresting systems.

A deviation from the following policy is authorized only when directed by the installation commander (or designated representative) because of meteorological conditions, safety of flight, or peculiar operational conditions:

(a) Under normal operations and conditions, unidirectional barrier nets or arresting cables are disconnected and, preferably, removed on the approach end of the runway. Aircraft will takeoff and land toward the most compatible arresting system available; however, tailhook-equipped aircraft do not takeoff over a raised remote-controlled net barrier if a more compatible arresting system is available. If there is no remote-control function, or cold weather makes the remote function unreliable, the barrier net is raised manually and left in a cocked position on the departure end of the runway. Bi-directional arresting gear is kept in the ready position on the approach end of the runway, unless directed otherwise and noted in Flight Information Publications (FLIP).

(b) If arrestment capable aircraft are landing with known or suspected radio failure, the departure end barrier net is raised and the hook cable positioned for aircraft engagement. Also, the arresting gear at the approach end is positioned for engagement, unless the aircraft is vulnerable to an inadvertent engagement because of an unguarded tailhook.

(c) During ice and snow removal, barrier net and hook cables may be removed from the runway, but the runway should be returned to operational status as quickly as possible. Runways and overruns should be cleared to allow for an obstacle-free runout of the arresting system, plus the length of the arrested aircraft.

§ 856.5 Pilot responsibilities.

Each pilot must understand the capabilities and limitations of each arresting system, and how it may affect his or her aircraft operations. Information on the compatibility of these systems should be included in the Aircraft Flight Manual. In addition, the pilot must:

(a) Determine the status of the arresting system at each base of takeoff and intended landing, as well as any alternate or planned emergency bases, before beginning a flight.

(b) For remote control systems, use the emergency radio phraseology, "barrier, barrier, barrier" or "cable, cable, cable," when emergency conditions require the tower to raise the barrier net or ready a hook-cable for possible engagement.

(c) Know the effect of each aircraft configuration on the probability of a successful engagement. The pilot should also be aware of possible damage caused by an inadvertent engagement, landing on, rolling over, or impacting hook-cables or other associated arresting equipment.

§ 856.6 Use of systems by non-United States government aircraft.

In an emergency, the pilot of a non-U.S. government aircraft, on request, may use the aircraft arresting system at an Air Force base or a joint-use airport in the U.S. or overseas.

§ 856.7 Installing a system at a joint-use airport.

At a civil airport used jointly by the Air Force and a civil agency, the procedures for installing an arresting system are as follows:

(a) At a civil airport used jointly by the Air National Guard and a civil agency, the procedures for installing an arresting system are in ANGR 86-1, Chapter 2.

(b) The responsible Air Force commander notifies the airport manager that the Air Force needs to install an arresting system.

(c) If the airport manager agrees that the system should be installed, the Air Force commander submits the required plans or sketches to the Federal Aviation Administration (FAA) regional office through the Air Force representative of the FAA region.

(d) If the airport manager or the FAA disagrees with these specifications, the Air Force commander informs the MAJCOM, which can request that HQ USAF/LEEV resolve the disagreement.

(e) If an arresting system is required, but the lease does not authorize, or prohibits the government from placing an additional structure on the leased premises, the Air Force commander submits a request through the MAJCOM to HQ USAF/LEEV for action as prescribed by AFR 87-1, and attaches a brief statement explaining or quoting the lease restriction.

§ 856.8 Agreements required for operation of the systems.

(a) *Military rights agreement at an oversea base.* These systems are installed under the military rights agreement with the host government. If a separate agreement is specifically required to install the system, the base commander takes action to obtain it from the host government and coordinates these negotiations with the local U.S. diplomatic respresentative. If the commander cannot reach an agreement, the MAJCOM is notified. If still unresolved after MAJCOM's efforts, then HQ USAF/LEEV is notified.

(b) *Liability agreements at a joint-use civil airport.* If the Air Force installs an arresting system for the primary use of U.S. military aircraft at a joint-use civil airport, the FAA acts for, and on behalf of, the Air Force in operating this equipment. However:

(1) Any third-party claim presented for damage, injury, or death, resulting from the FAA operation of the system for military aircraft or from the Air Force or Air National Guard maintenance of the system, is the responsibility of the Air Force and is processed under Part 842 of this chapter (as prescribed for any claim against the Air Force).

(2) A separate agreement between the Air Force and the FAA is not required concerning liability for damage arising from the intentional operation of the system by FAA personnel for civil aircraft, because such claims are the responsibility of FAA.

(c) *Operational agreement with FAA for a joint-use civil airport.* The MAJCOM has authority to negotiate the written agreement for this use, but may redelegate this authority to the base commander. The agreement must describe FAA functions and responsibilities covering the remote control operation of arresting systems by FAA air traffic controllers (§ 856.9).

§ 856.9 Format for letter of agreement with FAA.

The following operational agreement is entered into between the (FAA office and address) and (designated command) for the operation and use of aircraft arresting equipment installed on (designated runway, airport name and address).

(a) *General provisions.* (1) This agreement governs the use of the arresting barrier (BARRIER), and hook-cable arresting systems for military aircraft and in an emergency for civil aircraft at pilot request.

(2) This agreement becomes effective when the tower chief receives notice in writing from the base commander that:

(i) The arresting system has been accepted from the contractor and is commissioned and fully operational, or

(ii) The arresting system is available on a limited basis for emergency use. If the arresting system has not been accepted from the contractor, this notification must be accompanied by a written statement from the contractor authorizing the emergency use of the system, and waiving any claim against the FAA for damage to the system as the result of such use, or

(iii) A NOTAM has been issued specifying condition in paragraph (a)(2)(i) or (ii) of this section. Before receipt of the letter from the base commander, the tower arresting system controls will be de-energized by the military and placarded "INOPERATIVE" by the Chief Controller, and will not be activated by tower personnel under any circumstance.

(3) Automatic aircraft arresting systems can be installed on the runway or in the overrun. The barrier or hook-cable will be raised or lowered by control tower personnel by a remote-control panel in the control tower.

(4) When the arresting systems are in commission or emergency use status as described above, controllers will operate the tower arresting system controls at the request of a pilot of any military aircraft (regardless of the service concerned, type of aircraft, or whether the operation is routine or emergency) and at the request of a civil pilot in an emergency. The tower will also comply with requests for arresting system operations by a mobile control unit, the base operations officer, or a designated representative.

(5) NOTAMS covering operational or outage status of the barrier or hook cable will be originated by the military. During a NOTAMed outage for repair or maintenance, the tower personnel will operate the controls provided that the outage NOTAM contains the statement "available for emergency use" and the tower is provided a copy. Otherwise, tower controls will be de-energized by the military and posted "INOPERATIVE" by the Chief, Controller, and will not be activated by tower personnel under any circumstances.

(6) During the NOTAMed outages owing to failure of tower controls or control lines to the facility, or on notification by tower personnel of malfunction of the arresting system mechanism or remote control system (see paragraph (b)(8) of this section for notice), the military crew at the system site will have full and final responsibility for operating the arresting

device. The arresting system crew will maintain a listening watch on air and ground frequencies and have transmitting and receiving capability with the tower on the ground control frequency keeping personnel informed of the position of the system.

(b) *Operations.* (1) Normally all military aircraft takeoffs and landings are made toward an operational arresting system in the "ready" configuration. It is the pilot's responsibility to request the control tower operator to raise or lower the barrier or hook cable.

(Note.—For normal operations, request to raise the barrier or cable shall be interpreted to mean the runway approach end barrier or cable.) Example: "Duluth Tower, Joy 32 on base gear down and locked raise cable." When the pilot advises the control tower that he or she is ready for takeoff, a request for the barrier or cable to be raised may be made. The departure end cable will also be raised as for normal operations.

(2) When barrier/cable is requested, tower personnel advise the pilot of the indicated barrier/cable position as part of takeoff or landing information. Example: "Joy 32 cleared for takeoff, barrier indicates up."

(3) The barrier/cable operating status may be requested by the pilot at any time.

(4) The barrier/cable controls are in the down position except when the pilots or other authorized personnel request that the barrier/cable be raised.

(5) Tower personnel raise the departure end barrier and both approach and departure end cables for known or suspected radio failure landing by any arrestment capable military aircraft. If there is doubt regarding the ability of an aircraft to engage a system, the system should be activated.

(6) The standard emergency phraseology for the barrier to be raised to the up position is "barrier, barrier, barrier" and for the cable to be raised is "cable, cable, cable."

(7) Tower personnel initiate normal crash procedures when an aircraft engages the barrier/cable if these procedures have not previously been initiated.

(8) When there is a malfunction of the barrier or hook-cable mechanism or remote control system, the tower personnel notify Base Operations immediately.

Executed at _____

Dated _____

For the Federal Aviation Agency

_____

(Signed)

(Title) _____

(Region) _____

(Address) _____

For the Air Force

_____

(Signed)

_____

(Title)

(MAJCOM) _____

(Address)

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-12201 Filed 5-28-87; 8:45 am]

BILLING CODE 3910-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

Use of Privately Owned Microfilm Equipment To Copy Records in the National Archives and Presidential Libraries

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is issuing regulations to govern the use of privately-owned or leased microfilm equipment to copy records in the National Archives and in the Presidential Libraries. The rule is intended to protect and preserve archival records. This rule provides specific criteria for approving requests to use microfilm equipment, and it establishes procedures for microfilming the records. The rule applies to individuals and organizations that wish to microfilm archival records. It also affects Federal agencies that wish to microfilm records after transfer to the National Archives.

EFFECTIVE DATE: May 29, 1987. NARA will begin accepting requests to microfilm records under this regulation immediately.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202-523-3214 (FTS 523-3214).

SUPPLEMENTARY INFORMATION: The National Archives and Records Administration (NARA) issued a notice of proposed rulemaking on this subject on October 29, 1986 (51 FR 39547). NARA initiated this rulemaking out of concern for the preservation of its archival records and donated historical materials. As we pointed out in the preamble to the proposed rule, microfilming can be one of serveral methods of preserving records. Researcher use of microfilm or microfiche copies of records minimizes damage to the original records which occurs through repeated handling of the documents. The existence of a microfilm copy also provides insurance against the loss of valuable information should an original record be damaged or destroyed.

We also noted that one of the concerns prompting the proposed rule was the potential for damage to records from improper handling during microfilming by privately owned microfilm equipment. In fact, there have been several observed instances this year where a private microfilmer has damaged documents while filming. Some damage occurred even as the commercial microfilmers specifically demonstrated for the NARA staff their routine document handling techniques.

To ensure that the benefits of private microfilming outweigh the risk to the records, NARA proposed to establish conditions under which privately owned microfilm equipment could be used to film archival records and donated historical materials in the National Archives and Presidental Libraries for microfilm publications. Comments were received from six micropublishers; nine editors of microfilm publication projects; a micropublishing industry association; an organization representing historical associations; two members of Congress, and three components of Federal agencies. All comments have been considered carefully in the promulgation of this final rule.

Applicability to Federal Agencies

Two components of the Department of Justice (DOJ) and the Bureau of Land Management (BLM) commented on the applicability of the rule to Federal agencies. DOJ noted that the conditions imposed by the proposed rule would seriously impede DOJ's extensive program of microfilming records for litigation support. BLM suggested allowing the originating agency to borrow the records for microfilming in a Federal agency microphotographic facility.

NARA's mission includes making the records in the Naitonal Archives available to Fedeal agencies who need them to carry out official agency business. We agree that some accommodation must be made for Federal agency needs that will also ensure that the records are not mishandled during filming. Accordingly, we have modified § 1254.90 to handle separately Federal agency microfilming requests. Many of the equipment and microfilming standards and training requirements placed on private

microfilmers will apply also to agencies and/or their contractor personnel; however, this regulations does not set the requirements for Federal agencies. NARA will notify Federal agencies of the requirements for specific microfilming projects on a case-by-case basis.

Submission of Requests to Microfilm Records by April 1

Four micropublishers objected to the requirement in § 1254.92(b) that requests must be submitted by the April 1 preceding the start of a fiscal year. Two of the comments pointed out that not all projects will require lengthy NARA evaluation or preparation.

NARA proposed an April 1 submission date for two reasons. First, when a micropublisher wishes to film a body of archival records, NARA must verify records arrangement, screen the records for possible restrictions, remove classification markings, and perform any document conservation action necessary before filming. These activities have required diversion of NARA resources from other scheduled records projects that would benefit the public. We have been especially concerned with the preservation resources being used to prepare records scheduled for microfilming by the micropublishers, regardless of the preservation priority placed on those records in NARA's long-range preservation plan.

Under this rule, we plan to hire temporary employees to perform as much of the preparation work as possible, including simple document conservation. Where more complicated conservation work must be done and the work is not scheduled to be done by NARA for a period of time, we will attempt to contract for the conservation services. The April 1 deadline was established to allow us six-months lead-time to accomplish the hiring and the preparatory work.

Second, the National Archives Building, where most private microfilming is done, has space available for a maximum of 10 microfilm cameras at any one time. With increased microfilming activity by micropublishers, NARA has faced problems scheduling the use of this space. We believe that the space can be more effectively scheduled with a longer lead time between the date when a request is made and the date when filming is to start.

We agree with the commenters that our proposed April 1 deadline was set too far in advance for projects scheduled to begin later in a fiscal year and for small projects which require little preparation. Therefore, we have modified this paragraph to provide that requests should be submitted six months in advance of the proposed starting date of the microfilming project. We have also added the provision that requests submitted with less advance notice will be considered and may be approved if space is available in the area set aside for private microfilming and if the records require minimal preparation for filming. This latter provision should help microfilmers especially at the Presidential Libraries, where requests can normally be accepted with less advance notice. To prevent any single micropublisher from reserving all the camera spaces in a NARA facility for a long period of time, we have also added two restrictions on submission of requests: Requests are limited to a single microfilming project and NARA will not accept additional requests from the same individual or organization to microfilm records at the same NARA facility while NARA is evaluating a pending request to microfilm records at that facility. NARA will establish the number of camera spaces available to a single project based upon the total number of projects approved for filming at that time.

Copyright Disclaimers and Filming of Uncopyrighted Targets

Five commenters objected to the provision in § 1254.92(c)(6) that a credit to the National Archives or Presidential Library be placed at the beginning of each roll or fiche and to the requirement in § 1254.92(c)(7) that uncopyrighted targets be used in filming. The commenters claimed unspecified increased costs and inefficiencies under these provisions. All but one commenter stated that the credit with its copyright disclaimer was not needed since the absence of copyright over Federal documents is well established. One micropublisher, on the other hand, claimed the right to copyright the editorial arrangement of the documents.

We have modified these paragraphs in response to the comments. Proposed § 1254.92(c)(6) has been renumbered § 1254.92(c)(5) and modified to require only that the credit must appear at the beginning of a microfilm publication and in any publicity material or descriptions of the publication. Proposed § 1254.92(c)(7) is now § 1254.92(c)(6) and has been modified to allow the use of copyrighted targets and other editorial materials when the National Archives and Records Administration is given a royalty-free worldwide license to sell the publication after seven years, or earlier if there is no commercial distributor.

Evaluating Requests

Section 1254.94(a) states that NARA will evaluate requests on the basis of the extent to which projects would further NARA efforts to preserve and make available historically valuable records. Three commenters found this criteria to be too vague. One of the commenters stated that any project that does not pose a threat to preservation of the records should be allowed.

We have decided to retain this provision. Where we are faced with the probability that we will receive more technically acceptable requests then we have staff and space to accommodate, some evaluative criteria are needed to determine which proposals should be approved. Under these circumstances, a proposal to film a heavily used group of records should be given priority over a proposal to film rarely requested records because the former proposal will better enhance the preservation of the records by enabling NARA to replace heavy reference use of the original records with use of the film in NARA research rooms and sale of the microfilm publication by the micropublisher. If space and staff constraints are not a problem, we do not expect to use this criteria in reaching our decision on a proposal.

Approving Only Requests to Microfilm a Complete Body of Records

This policy, stated in § 1254.94(b), generated strong opposition from three micropublishers and three editors of microfilm projects which use selective filming. NARA proposed this policy to enhance the preservation of the records being filmed. As we noted in this preamble and in the preamble to the notice of proposed rulemaking, the use of microfilm copies of records prevents damage to the original records resulting from repeated handling, thereby helping to preserve the original records. We are not able to retire records from reference use, however, if a complete copy of the records is not available.

The potential risk to the records during the microfilming process is justifiable only if future wear on the records can be avoided. Therefore, the final rule does not modify the requirement that only complete bodies of records will be approved for microfilming by private parties.

This policy does not prevent micropublishers from continuing to prepare selective microfilm publications. The micropublisher may apply under this regulation to film a complete body of records, provide NARA a copy of the film, and then select images from the

film to be used in the selective publication; the added filming costs could be offset by the ability of the micropublisher to send the film to an editor for selection rather than paying travel expenses to bring the editor to a NARA facility to select the records. If the micropublisher chooses to film a complete body of records and then create a selective micropublication, NARA will require that any descriptive material on the publication clearly states that only a selection of records is reproduced in the publication. Alternatively, the micropublisher may choose to photocopy the selected records and film the photocopies, a practice followed at the Library of Congress where private microfilming is prohibited. The NARA lab can also film the documents on a reimbursable basis, following the fee schedule in 36 CFR Part 1258. Under these latter alternatives, the micropublisher would follow the general NARA procedures for access to the records found elsewhere in Part 1254 instead of this regulation.

Providing to NARA a Duplicate Negative Containing No Splices

Two commenters objected to the requirement in § 1254.94(d) to provide NARA a splice-free silver halide duplicate negative, citing additional production costs. We believe that the cost burden was caused by the requirement in the proposed rule that NARA's copy contain no editorial or other copyrighted material produced by the micropublisher. In order to provide NARA's copy, the micropublisher would have to prepare a special camera negative. As we have modified this final rule to allow the requester to film copyrightable material if NARA is granted a royalty-free license, the micropublisher will be able to make NARA's duplicate negative from the original camera negative that will be used for the microfilm publication. We have retained the requirement that NARA's copy be splice-free since that copy will become our microfilm master from which our duplicate preservation and research copies will be made.

Sale of Microfilm by NARA

The proposal that NARA could sell copies of the microfilm after two years raised strong disagreement. The commenters expressed concern that NARA would be unfairly competing with the micropublishers because NARA would be selling its copies at a much lower price before the micropublisher could recover development and marketing costs. All but two micropublishers stated that NARA should not sell privately produced microfilm for at least five years. One micropublisher recommended at least a ten-year waiting period while the other objected to any NARA sales, except if the micropublisher goes out of business. Two other commenters also felt the two year period was too short; one of these recommended a seven year delay.

When we proposed the two year period, we were unfamiliar with the length of time needed by private micropublishers to recover their costs. Our concern was that the privately produced microfilm might become unavailable to the public after the micropublisher's initial marketing effort. There is no intent to compete unfairly with the private sector on the sale of their microfilm publications. We have, therefore, modified § 1254.94(d) to provide that NARA may sell copies of privately produced microfilm publications seven years after filming at NARA is completed, or earlier if there is no commercial distribution.

Disapproval of Requests to Microfilm Records Which Have Previously Been Microfilmed

Section 1254.94(f)(1) states that NARA normally will not approve requests to microfilm records which have previously been microfilmed and made available to the public. Two commenters suggested that this provision not apply when the existing microfilm is substandard. The National Archives has had a high quality microfilm publication program for over 40 years. Some NARA microfilm does not meet industry standards because the quality of the original documents precludes a perfect microform image or because the original microfilm made outside NARA was not of archival quality. As industry standards evolve with new technological advances, it is possible that microfilm which meets the standards in existence today will be judged "substandard" in the future. We do not think it appropriate to exempt all records for which film is below the prevailing industry standards, as one of the commenters recommended. The use of the words "normally not approve" indicates that there may be exceptions to this policy. NARA may grant exceptions in cases where NARA agrees that refilming the records is likely to produce a better image. In such cases, NARA will continue to sell its own publication after the records are refilmed. Therefore, we have not modified this section.

Disapproval of Requests for Records Which Have Been Approved for Filming by Another Party

One micropublisher questioned what would happen if NARA received requests from two parties to film the same records during the same year. The commenter recommended that a "first-come, first-served" policy be followed in such cases. Since we are dropping the April 1 deadline for submission of requests, we have essentially adopted a "first-come, first-served" policy. It is unlikely that we would receive a second request to film a body of records while we are evaluating the first request. If we did, however, we reserve the right to approve the second request if that request is superior to the first request; e.g., the second requester has a better record of microfilming in accordance with NARA specifications.

Disapproval of Requests for Records Which NARA Plans to Film or Which Relate Closely to Other Records Previously Filmed or Approved for Filming by NARA

One commenter stated that these provisions were too vague and open-ended, and other commenters informally asked NARA to define the term "closely related records." As NARA uses this term in the regulation, closely related records are series which are frequently used together and which should have a common microfilming format or share a common index in order to make the records most usable for the researcher. An example of closely related records are Southern Claims Commission Records, where approved claims are filed in one series and disallowed claims are filed in another series. Both series must be used by genealogists searching for individual applications. Requests to microfilm records of individual diplomatic posts, on the other hand, would not be denied under this provision because each series is frequently used without reference to another series.

We have modified § 1254.94(f)(3) to allow exceptions to this provision at the discretion of NARA.

Disapproval of Requests for Records With High Research Demand Which Would Have to be Closed for An Extended Period of Time for Filming

We agree with the commenters who noted that records having a high research demand are the ones that should be filmed. Our concern is the need to close records to researchers while the records are being prepared for microfilming and during the filming process. Depending on the size of the

body of records and the proposed microfilming schedule of the requester, the records could be closed to research for several weeks or months during NARA's peak research periods. We have retained the criterion, but have added a sentence to alert requesters that NARA is willing to work with them to develop filming schedules that avoid the need to close records for a long period. NARA may suggest, for example, that filming be done during a slow research period or that the filming schedule be broken into small segments.

Disapproval of Requests to Film Oversize Records, Bound Volumes, and Other Formats Requiring Special Equipment

One commenter stated that these categories of records should not automatically be denied for filming. Determinations should be made on the basis of filming the records safely, given actual equipment available and handling required for a defined set of records. We agree and have adopted the comment in § 1254.94(g)(6). Requesters are cautioned that the space available for use by micropublishers in NARA facilities may be inadequate for equipment acceptable for filming oversize records.

Disapproval of Requests to Microfilm in NARA Facilities Where No Space Is Available

One commenter termed this provision needlessly restrictive while another indicted that it would affect the commenter's microfilming plans. Section 1254.94(i) was included in the proposed rule to address the space problems which NARA has in some of its field locations. Space for private microfilming is very limited or not available in some of the National Archives Field Branches. We are not willing to move the records to another NARA facility for private microfilming because of the physical security difficulties which a temporary move would cause. Consequently, we have made no change to this paragraph.

We have added a new paragraph § 1254.94(j), which states that Federal agency microfilming takes precedence over private microfilming when there is insufficient space to accommodate both at the same time. The Department of Justice, for example, often needs to microfilm records for court cases. If an agency has a need to microfilm records while all space is occupied by private microfilmers, a private microfilmer may be required to suspend microfilming temporarily. NARA's first statutory mission is to serve the needs of Federal agencies in carrying out the Government's business.

Fess for Microfilm Preparation

Several questions were raised concerning § 1254.96. One nonprofit organization asked whether they might use their own volunteers for some of the microfilm preparation work in lieu of being assessed a fee. While NARA has the authority to accept voluntary services and there may be instances where some of the preparation could be done by volunteers, we do not believe it is appropriate to address the issue in the regulation.

Two micropublishers requested that a schedule of fees be provided with the rule. No schedule was provided in the proposed rule since the fees for microfilm preparation will depend on the work which must be done to a specific body of records. We have not provided a formal fee schedule in this final rule for the same reason. We have modified § 1254.96(a) to specify that fees will be based on direct salary costs (including benefits) and supplies when NARA staff is used or on the cost to NARA when a contractor performs the work. Section 1254.96(b) has been modified to indicate that the fees will be itemized when provided to the requester.

The arrangement of records will be verified or corrected by an archives technician (hourly salary rate including 16% benefits ranges from $8.24 to $14.69 per hour). Screening records for possible restrictions on use requires an archivist (hourly salary rate including 16% benefits ranges from $15.10 to $23.53). Depending on the document fastener and the fragility of the document, removal of document fasteners may be performed by an archives technician (hourly salary rate including 16% benefits range from $9.18 to $11.94) or by a conservator aide or a professional conservator (hourly salary rate including 16% beneifts ranges from $8.27 to $19.39). Similarly, document conservation actions may be performed by staff from the GS-5 to GS-12 level (hourly salary rate including 16% benefits ranges from $8.27 to $19.39), or by contract with a conservation center.

Equipment Standards

We have modified § 1254.98 to allow the use of specialized equipment with the approval of the Office of the National Archives.

Inspection of Film at Scheduled Intervals

One micropublisher objected to NARA inspection of the microfilm at scheduled intervals since the micropublisher does its own inspection and quality control. Three other micropublishers and the micropublishing industry association were not troubled by the concept of NARA inspection by recommended a less frequent inspection. We have retained the requirement for NARA inspection since NARA must ensure that its microfilming standards have been met. We have modified § 1254.100(k) to adopt the proposed industry inspection schedule. We have also specified that film must be delivered to NARA within five calendar days after processing to ensure that we can test the film for proper processing.

Other

Several commenters stated that the proposed rule would have a significant impact on their small businesses. We believe that the final rule has been modified to accommodate the concerns raised in their comments. Accordingly, as required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981.

List of Subjects in 36 CFR Part 1254

Archives and Records.

For the reasons set forth in the preamble, Chapter XII of Title 36 of the Code of Federal Regulations is amended as follows:

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for Part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101-2118.

2. Section 1254.70 is revised to read as follows:

§ 1254.70 NARA copying services.

(a) The copying of records will be done by personnel of the National Archives and Records Administration with equipment belonging to NARA. NARA reserves the right to make a duplicate, at NARA expense, of any material copied. Such duplicates may be used by NARA to make additional copies for others.

(b) In order to preserve the original records, records which are available on microfilm will not be copied by other means as long as a legible copy (electrostatic, photographic, or microfilm) can be made from the microfilm.

3. Subpart F is added to read as follows:

Subpart F—Microfilming Archival Records

Sec.
1254.90 General.
1254.92 Requests to microfilm records.
1254.94 Criteria for granting the requests.
1254.96 Microfilm preparation.
1254.98 Equipment standards.
1254.100 Microfilming procedures.
1254.102 Rescinding permission.

Subpart F—Microfilming Archival Records

§ 1254.90 General.

(a) This subpart establishes rules and procedures governing the use of privately owned microfilm equipment to film archival records and donated historical materials in the National Archives Building, the Pickett Street facility, the Washington National Records Center, the National Archives Field Branches, and the Presidential Libraries.

(b) Persons or organizations wishing to microfilm Federal agency records in the custody of a Federal Records Center should contact the director of the Center about procedures for obtaining permission to film those records.

(c) Federal agencies needing to microfilm archival records in support of the agency's mission must contact the Assistant Archivist for the National Archives, as soon as possible after the need is identified, for information concerning standards and procedures for microfilming archival records.

§ 1254.92 Requests to microfilm records.

(a) Requests to microfilm archival records or donated historical materials in the National Archives Building, the Washington National Records Center, the Pickett Street facility, or the National Archives Field Branches must be made in writing to the Assistant Archivist for the National Archives (NM), NARA, Washington DC 20408. Requests to microfilm records or donated historical materials in a Presidential Library must be made in writing to the Assistant Archivist for Presidential Libraries (NL), NARA, Washington DC 20408.

(b) Request to use privately owned microfilm equipment should be submitted six months in advance of the proposed starting date of the microfilming project. Requests submitted with less advance notice will be considered and may be approved if space is available for the cameras in the area set aside for private microfilming and if the records require minimal preparation for filming. Only one microfilming project may be included in a request. NARA will not accept additional requests from an individual or organization to microfilm records in a NARA facility while NARA is evaluating an earlier request from that individual or organization to microfilm records at that facility. NARA will establish the number of camera spaces available to a single project based upon the total number of projects approved for filming at that time.

(c) The request must include:

(1) A description of the records to be copied which includes the following elements:

(i) Agency of origin or, for donated historical materials, title of the collection,

(ii) Title of series or file segment;

(iii) Date span; and

(iv) Estimated volume in number of pages or cubic feet.

(2) The estimated amount of time (work-days) that the microfilm copying project will take; the date that the requester would like to begin the project; and the number of persons who would require training (see § 1254.100(b)).

(3) The number and a description of the equipment that will be used for copying including:

(i) The name of the manufacturer and model number; and

(ii) The type of light source to be employed (fluorescent, tungsten, or electronic flash) and if electronic flash (i.e., strobe) or fluorescent, whether the light source is filtered to omit ultraviolet radiation.

(4) A statement of the procedures which will be followed to ensure that all pages are copied, that the images on the microfilm are legible, and that the microfilm is properly processed. At a minimum, the procedures should meet the requirements specified in Part 1230 of this Chapter regarding the microfilming of permanent records.

(5) The requester must agree to credit the National Archives or the particular Presidential Library having custody of the original documents. The credit must appear at the beginning of a microfilm publication and in any publicity material or descriptions of the publication.

(i) If the original documents are Federal records, the requester must agree to include on the film this statement: "The documents reproduced in this publication are among the records of the (name or agency) in the custody of the National Archives of the United States. No copyright is claimed in these official U.S. Government records."

(ii) If the original documents are donated historical materials, the requester must agree to include on the film this statement: "The documents reproduced in this publication are donated historical materials from (name of donor) in the custody of the (name of Presidential Library or National Archives). The donor has dedicated his/her literary rights to the public."

(6) If the person or organization producing the film plans to copyright the microfilm publication, the National Archives and Records Administration must be given a royalty-free worldwide license to sell the publication seven years after filming at the NARA facility is completed, or earlier if there is no commercial distributor.

§ 1254.94 Criteria for granting the requests.

(a) NARA will evaluate the requests on the basis of the extent to which completion of a proposed project would further NARA's efforts to preserve and to make available to the public the historically valuable records of the Government.

(b) NARA will approve only requests to microfilm a complete body of records, such as an entire series or a major continous segment of a very large series which is reasonably divisible. Microfilming a complete body of records means that all documents within the file unit(s) to be microfilmed will be consecutively copied, from the first to the last page, not skipping any pages in between except for pages that are exact duplicates or blank pages that are not included in a pagination scheme.

(c) NARA will normally approve only requests which include assurances that the project will adhere to the specifications in Part 1230 of this Chapter which concern microfilm stock standards, index placement, and microfilm processing for permanent records.

(d) NARA will approve only requests which specify that NARA will receive a first generation silver halide duplicate negative containing no splices made from the original camera negative of the microform record created in accordance with Part 1230 of this Chapter.

(1) NARA may use this duplicate negative microform to make duplicate preservation and reference copies. The copies may be made available for NARA and public use in NARA facilities and programs.

(2) NARA may also sell copies of the microform seven years after filming at the NARA facility is completed, or earlier if there is no commerical distributor. NARA may choose to add its own editorial material to the microform copies which NARA distributes or sells.

(e) NARA will not approve any request that does not include all of the information required by § 1254.92.

(f) NARA will normally not approve requests to microfilm records:

(1) Which have previously been microfilmed and made available to the public;

(2) Which have been approved for microfilming by another party; or

(3) Which NARA plans to film as a NARA microfilm publication or which relate closely to other records previously microfilmed or approved for microfilming by NARA. Exceptions to this provision may be granted at the discretion of NARA.

(g) NARA will normally not approve requests to microfilm the following categories of records:

(1) Records which include documents with general or specific restrictions on access that preclude their reproduction;

(2) Records which include documents which are known to be protected by copyright;

(3) Records of high intrinsic value which may be handled only by authorized NARA personnel;

(4) Records in vulnerable physical condition;

(5) Records having a high research demand and which would have to be denied to others for an extended period of time during the microfilming process. Where possible, NARA will assist requesters in developing filming schedules that avoid the need to close records for a lengthy period of time; and

(6) Oversize records, bound volumes, and other formats that would be subject to excessive stress and possible damage from special equipment planned to be used by the requester, as well as records fastened with grommets, heavy duty staples, miscellaneous fasteners, or wafers and other adhesives that cannot be removed without tearing or breaking documents.

(h) NARA will normally not approve requests from persons or organizations who have failed to produce usable microfilm or to honor commitments made in previous requests, or who have had a previous permission to microfilm records rescinded because of their conduct.

(i) NARA will not approve requests to microfilm records in NARA facilities in which there is insufficient space available for private microfilming. NARA will not move records from a facility lacking space for private microfilming to another NARA facility for that purpose.

(j) Federal agencies microfilming records in support of the agency's mission may use the space set aside for private microfilming. Agency microfilming takes precedence over private microfilming when there is insufficient space to accommodate both at the same time.

§ 1254.96 Microfilm preparation.

(a) As part of its evluation of a request to microfilm records, NARA will determine the amount of microfilm preparation that NARA must do before the records can be microfilmed and the estimated cost of such preparation. The fees for microfilm preparation will be based on direct salary costs (including benefits) and supply costs when NARA staff performs the work. When the work is performed by a NARA contractor, the fees will be the cost to NARA. Microfilm preparation includes:

(1) Verifying or correcting the arrangement of records after withdrawn items are inviewed and refiled when appropriate;

(2) Screening the records for possible restrictions on use;

(3) Declassifying security classified records;

(4) Removing document fasteners from documents when the fasteners can be removed without damage to the documents; and

(5) Taking any document conservation actions that must be accomplished in order to film the records, such as document flattening or mending.

(b) NARA will provide the requester detailed information on the fees for microfilm preparation in the letter of approval. Payment of fees will be made in accordance with § 1258.14 of this Chapter. When a body of records will require extensive microfilm preparation, a different payment schedule may be established at the discretion of NARA.

§ 1254.98 Equipment standards.

(a) Equipment must be designed for the microfilming of documents in roll form or standard fiche form and be operable from a table top. Only planetary type camera equipment may be used. Automatic feed devices may not be used. Book cradles or other specialized equipment designed for use with bound volumes, oversized records, or other formats will be approved by the Office of the National Archives on a case-by-case basis.

(b) The power consumption of the equipment normally must not exceed 1.2 kilowatts. Power normally available is 115 volts, 60 hz. Requests for electricity exceeding that normally available must be made at least 90 days in advance.

(c) Equipment having clamps or other devices to exert pressure upon or to affix the record to any surface in a way that might damage the record may not be used.

(d) The equipment must not use a heat generating light source in close enough proximity to the records to result in their physicial distortion or degradation. All sources or ultraviolet light must be filtered.

§ 1254.100 Microfilming procedures.

(a) Equipment used must conform to the equipment standards in § 1254.98.

(b) Records must be handled in accordance with the training and instructions provided by NARA personnel so that documents are not damaged during copying and so that their original order is maintained. Only persons who have attended NARA training will be permitted to handle the records or supervise microfilming operations. Training will be offered only in Washington, DC.

(c) Records from only one file unit may be microfilmed at a time.

(d) Records may not be left unattended on the copying equipment or elsewhere.

(e) Under normal microfilming conditions, actual copying time per sheet must not exceed 30 seconds.

(f) Any lights used with the camera must be turned off when the camera is not in actual operation.

(g) Microfilm equipment may be operated only in the presence of the research room attendant or a designated NARA employee.

(h) The equipment normally should be in use each working day that it is in a NARA facility. The director of the NARA facility (as defined in § 1252.2 of this Chapter) will decide when equipment must be removed because of lack of regular use. The equipment must be promptly removed upon request of the facility director.

(i) NARA assumes no responsibility for loss or damage to microfilm equipment or supplies left unattended.

(j) NARA will inspect the microform output at scheduled intervals during the project to verify that the processed film meets the microfilm preparation and filming standards required by Part 1230 of this Chapter. To enable NARA to properly inspect the film, NARA must receive the film within 5 days after it has been processed. The person or organization producing the microfilm will provide NARA with a silver halide duplicate negative of the filmed records (see § 1254.94(d)) according to the schedule shown in (k). If the processed film does not meet the standards, NARA may require that the records be refilmed.

(k) When 10,000 or fewer images are filmed, the person or organization producing the microfilm will provide

NARA with a silver halide duplicate negative upon completion of the project. When the project involves more than 10,000 images, a silver halide duplicate negative of the first completed roll or segment of the project reproducing this image count will be provided to NARA for evaluation; subsequent completed segments of the project, in quantities approximating 100,000 or fewer images, will be provided to NARA within 30 days after filming unless NARA approved other arrangements.

§ 1254.102 Rescinding permission.

NARA may, at any time, rescind permission to microfilm records:

(a) If the person or organization fails to comply with the microfilming procedures in § 1254.100;

(b) If inspection of the processed microfilm reveals persistent problems with the quality of the filming or processing;

(c) If the person or organization fails to proceed with the microfilming or project as indicated in the request, or

(d) If the microfilming project is having an unanticipated adverse effect on the condition of the records or the space set aside in the NARA facility for microfilming.

Dated: May 5, 1987.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 87-12087 Filed 5-28-87; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 704, 710, 712, 716, and 717

[OPTS-84025; FRL-3210-3]

Reporting and Recordkeeping Requirements; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is revising the mailing address sections for Toxic Substances Control Act (TSCA) section 8 information submissions. This document revises the adddress to insert the correct one. The revision will help assure that TSCA submissions are properly sent to EPA headquarters.

DATE: This final rule is effective on May 29, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460, Telephone: (202) 554-1404.

SUPPLEMENTARY INFORMATION: This document revises the address for submissions under the section 8(a) Preliminary Assessment Information Rule and sections 8(a), 8(c), and 8(d) of TSCA by inserting the current one. Other addresses published previously for these submissions should no longer be used. EPA is also giving notice of the address to which responses to the final Comprehensive Assessment Information Rule should be sent. Because these are non-substantive changes, notice and public comment are unnecessary.

This **Federal Register** notice also serves to notify persons of a change in the mailing address for submissions under section 8(e) of TSCA. The address given in the previous policy statement ("Statement of Interpretation and Enforcement Policy; Notification of Substantial Risk," 43 FR 11110; March 16, 1978) should no longer be used. Section 8(e) submissions should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. ATTN: 8(e) Coordinator.

Lists of Subjects in 40 CFR Parts 704, 710, 712, 716, and 717

Chemicals, Environmental protection, Hazardous substances, Health and safety, Recordkeeping and reporting requirements, Significant adverse reactions.

Dated: May 18, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR Chapter I is amended as follows:

1. In Part 704:

a. The authority citation for Part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. By adding a new § 704.9 to read as follows:

§ 704.9 Where to send reports.

Reports must be submitted by certified mail to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. ATTN: 8(a) Notification.

§ 704.33 [Amended]

c. In § 704.33 paragraph (h) is removed.

§ 704.83 [Amended]

d. In § 704.83 paragraph (g) is removed.

§ 704.85 [Amended]

e. In § 704.85 paragraph (e) is removed.

§ 704.142 [Amended]

f. In § 704.142 paragraph (h) is removed.

§ 704.175 [Amended]

g. In § 704.175 paragraph (f) is removed.

2. In Part 710:

a. The authority citation for Part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 710.39 is amended by revising paragraph (b) to read as follows:

§ 710.39 Reporting form and instructions for submitting information.

* * * * *

(b) Complete instructions for completing the reporting form and preparing a computer tape report are given in the EPA publication entitled "Instructions for Reporting for the Partial Updating of the TSCA Chemical Inventory Data Base." Reporting forms and instruction booklets may be obtained from the following address: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. ATTN: Inventory Update Rule. Telephone: (202) 382-3698 or (202) 755-4880.

* * * * *

3. In Part 712:

a. The authority citation for Part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 712.28 is amended by revising paragraph (c) to read as follows:

§ 712.28 Form and instructions.

* * * * *

(c) Forms must be sent (preferably by certified mail) to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. ATTN: 8(a) PAIR Reporting.

* * * * *

4. In Part 716:

a. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 716.30 is amended by revising paragraph (c) to read as follows:

§ 716.30 Submission of copies of studies.

* * * * *

(c) Copies of health and safety studies and the accompanying cover letters must be submitted, preferably by certified mail, to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. ATTN: 8(d) Health and Safety Reporting Rule (Notification/Reporting).

c. Section 716.35 is amended by revising paragraph (c) to read as follows:

§ 716.35 Submission of lists of studies.

* * * * *

(c) Lists of health and safety studies should be submitted, preferably by certified mail, to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. ATTN: 8(d) Health and Safety Reporting Rule (Notification/Reporting).

5. In Part 717:

a. The authority citation for Part 717 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 717.17 is amended by revising paragraph (c) to read as follows:

§ 717.17 Inspection and reporting requirements.

* * * * *

(c) *How to report.* When required to report, firms must submit copies of records (preferably by certified mail) to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. ATTN: 8(c) Allegations.

[FR Doc. 87-12276 Filed 5-28-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6752]

List of Communities Eligible for the Sale of Flood Insurance; Michigan et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final Rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

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

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

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from futher flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

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

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

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

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Michigan:			
Evangeline, township of Charlevoix County	260800—New	Apr. 13, 1987, Emerg	
Houghton, township of Keweenaw County	260799—New	....do	
James, township of Saginaw County	260802—New	....do	
Marquette, city of Marquette County	260716	....do	
Stronach, township of Mainstee County	260801—New	....do	
Oklahoma: Mayes County unincorporated areas	400458	Apr. 8, 1987, Emerg	Nov. 22, 1987.
Michigan:			
Drummond Island, township of Chippewa County	2608032—New	Apr. 16, 1987, Emerg	Do
Fairbanks, township of Delta County	260804	....do	Do
Nahma, township of Delta County	260688	....do	Do

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Missouri: Marquand, city of Madison County	290894—New	do	Do
Texas: Crane, city of Crane County	480501	do	July 16, 1976.
Tennessee: Pegram, town of Cheatham County	470291A	Apr. 9, 1987, Emerg. Apr. 9, 1987, Reg	Nov. 5, 1976.
New York: Highland, town of Sullivan County	360822C	Aug. 30, 1974 Emerg.; Mar. 4, 1987, Reg.; Mar. 4, 1987, Susp.; Apr. 16, 1987, Rein.	Mar. 4, 1987.
New Hampshire: Sugar Hill, town of Grafton County.[1]	330074B	Sept. 15, 1975, Emerg.; Apr. 2, 1986, Reg.; Apr. 2, 1986, Susp.; Apr. 16, 1987, Rein.	Apr. 2, 1986.
Michigan: Masonville, town of Delta County	260687B	Mar. 31, 1982, Emerg.; Mar. 31, 1982, Reg	Jan. 20, 1978 and Mar. 1, 1979.
Alabama: Flint City, city of Morgan County	010354	Apr. 17, 1987, Emerg	Nov. 26, 1976.
Colorado: Larkspur, town of Douglas County	080317—New	Mar. 27, 1987 Emerg	Do
Nebraska: Phelps County, unincorporated areas	310465	do	Aug. 16, 1987.
North Carolina: Bath, town of Beaufort County	370288	Apr. 8, 1987, Emerg.; Apr. 8, 1987, Reg	Feb. 4, 1978.
South Carolina:			
Lockhart, town of Union County	450241	Apr. 8, 1987, Emerg	Jan. 26, 1978.
Union County, unincorporated areas	450185	do	May 26, 1978.
North Dakota:			
Gascoyne, city of Bowman County	380677—New	do	Do
Rhame, city of Bowman County	380678—New	do	Do
Michigan:			
Bay, township of Charlevoix County	260796—New	do	Do
Cherry Valley, township of Lake County	260798—New	do	Do
Michigan: Osceola, township of Osceloa County	260797—New	do	Do
Missouri: Fortescue, town of Holt County	290887	do	Do
Oklahoma: Osage County, unincorporated areas	400146	Feb. 23, 1987	Dec. 23, 1980.
Texas: Henderson County, unincorporated areas	481174	Apr. 8, 1987, Emerg	Nov. 22, 1977.
Oklahoma:			
Adair County, unincorporated areas	400501	Feb. 17, 1987, Emerg	Jan. 2, 1981.
Payne County, unincorporated areas	400493	Jan. 28, 1987, Emerg	Nov. 23, 1981.
Tuttle, town of Grady County	400443	Feb. 10, 1987, Emerg	June 25, 1976.
Texas:			
Fort Bend County, unincorporated areas	480228	Mar. 19, 1987, Emerg.; Mar. 19, 1987, Reg	Aug. 5, 1986.
Prairie View, city of Waller County	481544	Apr. 8, 1987, Emerg.; Apr. 8, 1987, Reg	Apr. 15, 1982.
Illinois: Braceville, village of Grundy County	171018—New	Apr. 23, 1987, Emerg	Do
Michigan: Union, township of Grand Traverse	260805—New	Apr. 23, 1987, Emerg	Do
New York:			
New Hempstead, village of Rockland County	361619	do	Do
Wesley Hills, village of Rockland County	361620	do	Do
Minnesota: Brookston, city of St. Louis	270419	July 9, 1975, Emerg.; Apr. 27, 1987, Withdrawn	Apr. 27, 1987.
Vermont: Wells, town of Rutland County.[1]	500271	June 25, 1975, Emerg.; Sept. 18, 1986, Susp.; Apr. 29, 1987, Rein.	Sept. 10, 1976.
Reinstatements into the Regular Program			
Pennsylvania: Burrell, township of Armstrong County.[1]	421303B	Feb. 11, 1987, Rein	Nov. 1, 1986.
Tennessee: Waynesboro, city of Wayne County	470201	Mar. 10, 1987, Rein	Jan. 16, 1987.
Pennsylvania:			
Stewart, township of Fayette County.[1]	421640B	Feb. 19, 1987, Rein	Jan. 1, 1987.
Metal, township of Franklin County.[1]	421653B	Mar. 12, 1987, Rein	Sept. 1, 1986.
Greenwood, township of Clearfield County.[1]	421523A	Mar. 18, 1987, Rein	Aug. 1, 1987.
Minnesota: Tintah, city of Traverse County	270482	Mar. 9, 1987, Rein	Aug. 19, 1986.
Vermont:			
Bloomfield, town of Essex County.[2]	500045A	Mar. 3, 1987, Rein	May 7, 1976.
Woodbury, town of Washington County.[1]	500314A	Mar. 3, 1987, Rein	Do
Tennessee: Bradford, city of Gibson County	470057B	Mar. 27, 1987, Rein	Feb. 16, 1983.
Virginia: Unincorporated Areas. Mathews County	510096A	do	Feb. 4, 1987.
Pennsylvania: Arona, borough of Westmoreland County	420871B	Feb. 11, 1987, Rein	Dec. 1, 1986.
Wisconsin:			
Kingston, village of Green Lake County.[1]	550168B	Apr. 2, 1987, Rein	Sept. 1, 1986.
New Berlin, city of Waukesha County	550487C	do	Mar. 18, 1986.
Tennessee: Campbell County, unincorporated areas.[1]	470016	Apr. 6, 1987, Rein	Aug. 5, 1987.
Iowa: Jefferson, city of Green County	190396A	Oct. 29, 1986, Rein	Sept. 1, 1986.
Region I			
Vermont: Johnson, village of Lamoille County	500232D	April 3, 1987, suspension withdrawn	Apr. 5, 1974, Feb. 1, 1979 and Apr. 3, 1987.
Region II			
New York: Essex, town of Essex County	361149C	do	Dec. 20, 1977 and Apr. 3, 1987.
Region III			
Delaware:			
New Castle, city of New Castle County	100026B	do	Dec. 26, 1975, May 1, 1974 and Apr. 3, 1987.
Newport, town of New Castle County	100054C	do	Dec. 20, 1974, June 15, 1978 and Apr. 3, 1987.
Pennsylvania: Northampton, township of Somerset County.	422520C	do	Jan. 3, 1975, Aug. 22, 1980, Sept. 24, 1984 and Apr. 3, 1987.
West Virginia: Elkins, city of Randolph County	40177D	do	Feb. 15, 1974, Apr. 9, 1976 and Apr. 3, 1987.
Region VI			
Arkansas: Bald Knob, city of White County.	050222D	do	Mar. 8, 1974, Jan. 16, 1976 and Apr. 3, 1987.
Region VII			
Missouri: Miner, village of Scott County	290687C	do	July 30, 1976, Jan. 9, 1979, Dec. 21, 1984 and Apr. 3, 1987.

[1] Regular Conversions.
[2] Emergency Program.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region I			
Maine: Hudson, town of, Penobscot County	230392	Apr. 17, 1987, suspension withdrawn	Apr. 17, 1987.
Vermont: Johnson, town of, Lamoille County	500063	do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region IV			
Mississippi: Warren County, unincorporated areas	280198	do	Do.
South Carolina:			
Charleston County, unincorporated areas	455413	do	Do.
McClellanville, town of, Charleston County	450039	do	Do.
Walterboro, city of, Colleton County	450058	do	Do.
Region V			
Indiana: La Fontaine, town of, Wabash County	180267	do	Do.
Wisconsin: Dousman, village of, Waukesha County	550480	do	Do.
Region II			
New York:			
Alexander, town of, Genesee County	360277	May 4, 1987, suspension withdrawal	June 4, 1987.
Alexander, village of, Genesee County	361496	do	Do.
Beekmantown, town of, Clinton County	360166	do	Do.
Peru, town of, Clinton County	361384	do	Do.
Region IV			
North Carolina:			
Bridgeton, town of, Craven County	370436	do	Do.
Craven County, unincorporated areas	370072	do	Do.
Havelock, city of, Craven County	370265	do	Do.
New Bern, city of, Craven County	370074	do	Do.
South Carolina: Marion, city of, Marion County	450142	do	Do.
Tennessee: Spring Hill, city of, Maury County	470278	do	Do.
Region V			
Michigan: Chocolay, township of, Marquette County	260448	do	Do.
Minnesota: Moorhead, city of, Clay County	275244	do	Do.
Region VI			
Texas:			
Bellaire, city of, Harris County	480289	do	Do.
Denton County, unincorporated areas	480774	do	Do.
Region VIII			
Colorado: Estes Park, town of, Larimer County	080193	do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Region I—Minimal Convesions			
Maine: Somerville, town of, Lincoln County	230512A	Apr. 3, 1987, suspension withdrawn	Apr. 3, 1987.
Region VII			
Kansas: Council Grove, city of Morris County	200234B	do	Dec. 28, 1973, Oct 31, 1975, and Apr. 3, 1987.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region I—Minimal Conversions			
Maine:			
Frenchboro, town of, Hancock County	230594	Apr. 17, 1987, suspension withdrawn	Apr. 17, 1987.
Troy, town of, Waldo County	230269	do	Do.
Region II			
New York: Laurens, village of, Otsego County	361351	do	Do.
Region III—Minimal Conversions			
Pennsylvania: Elk, township of, Tioga County	421154B	May 1, 1987, suspension withdrawn	May 1, 1987.
Region IV			
Florida: Mayo, town of Lafayette County	120132	do	Do.
Kentucky: Glasgow, city of, Barren County	210007	do	Do.
Region V			
Illinois: Clinton County, unincorporated areas	170044	do	Do.
Indiana: Randolph County, unincorporated areas	180429	do	Do.
Michigan:			
Tekonsha, village of, Calhoun County	260565	do	Do.
Wolverine Lake, village of, Oakland County	260480	do	Do.
Ohio: New Waterford, village of, Columbiana County	390663	do	Do.
Wisconsin:			
St. Croix Falls, city of, Polk County	550337	do	Do.
Stratford, village of, Marathon County	550256	do	Do.
Waldo, village of, Sheboygan County	550432	do	Do.
Wilson, village of, St. Croix County	550389	do	Do.
Region VII—Minimal Conversions			
Iowa: Griswold, city of, Cass County	190346	do	Do.
Kansas: Rozel, city of, Pawnee County	200260	do	Do.
Nebraska:			
Loup City, city of, Sherman County	310215	do	Do.
Webster County, unincorporated areas	310232	do	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Harold T. Duryee,
Administrator, Federal Insurance Administration.
[FR Doc. 87-11844 Filed 5-28-87; 8:45 am]
BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[Gen. Docket No. 85-305]

Subscription Television; Change in Classification; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error which appeared in the March 2, 1987 Federal Register (52 FR 6152).

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal (202) 254-6530.

SUPPLEMENTARY INFORMATION: Section 2.106 was amended by adding a new footnote NG148. We are correcting that footnote to read NG149. A later action, published March 11, 1987, (52 FR 7417) also added NG148. This is correct, however as this action was assigned the footnote officially released *before* the March 2 action.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-12052 Filed 5-28-87; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 22

Reinstatement of Positions of the Public Mobile Services Rules

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: A Commission's order eliminating §§ 22.13(f), 22.43(b)(2) and 22.44(c) of the FCC's rules, 47 CFR 22.13(f), 22.43(b)(2), and 22.44(c) (1985), was stayed and subsequently vacated by the U.S. Court of Appeals for the District of Columbia Circuit. As a result these rule sections are still in effect. However, they were eliminated from the Code of Federal Regulations. This Order reinstates these rule sections in the CFR.

EFFECTIVE DATE: May 29, 1987.

FOR FURTHER INFORMATION CONTACT: Carmen Borkowski, Mobile Services Division, Common Carrier Bureau; Tele: (202) 632-6450.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio.

Albert Halprin,
Chief, Common Carrier Bureau.

PART 22—[AMENDED]

1. The authority citation for Part 22 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.13 is amended by adding paragraph (f) to read as follows:

§ 22.13 General application requirements.

* * * * *

(f) *State certification*—(1) *General rule.* Licensees are required to comply with all applicable state certification requirements. Applicants may, but are not required to include evidence of state certification when filing FCC Form 401 or 489. The licensee under this part must complete construction in accordance with section 22.43 of the rules. A licensee must have all requisite state authority and be in operation within a year of the license grant or the license will automatically expire and must be submitted for cancellation.

(2) Denial of state certification. A pending application will be returned as unacceptable for filing where the applicant is denied state certification necessary to construct and/or operate the proposed facilities, and the state appeal process has been exhausted. Such applications will not be retained on file while the applicant pursues subsequent state applications. Where an applicant has been denied the necessary state certification and has exhausted the state appeal process, the applicant shall not resubmit its application to the Commission until after obtaining state certification.

(3) Applicant's duty to inform. The application shall include in Form 401 information regarding any adverse action which has been taken regarding the state certification application. The applicant shall promptly and fully advise the Commission of any adverse action regarding state certification taken while the application is pending.

3. Section 22.43 is amended by adding paragraph (b)(2) to read as follows:

§ 22.43 Period of construction.

(b) * * * * *

(2) *State certification.* No extension will be granted when state certification has been denied and all state appeals have been exhausted. If an applicant requests an extension due to lack of state certification, one 8-month extension may be granted when state law permits construction before certification is obtained. No more than two 8-month extensions may be granted when state law prohibits construction before certification is obtained. Lack of state certification must be due to a cause beyond applicant's control, and extensions will not be granted if there is lack of diligence in pursuing state certification. If the licensee files for state certification within 90 days of the license grant, a presumption of due diligence is created.

* * * * *

4. Section 22.44 is amended by adding paragraph (c) to read as follows:

§ 22.44 Termination of authorization

(c) *State certification.* Where the holder of an authorization is denied state certification and the state appeal process is exhausted before the end of the one year period, the license will be forfeited. If the licensee regains state certification before the end of the one year period, a request for reinstatement may be considered.

[FR Doc. 87-12051 Filed 5-28-87; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1043

[Ex Parte No. MC-183]

Clarification of Insurance Regulation

AGENCY: Interstate Commerce Commission.

ACTION: Final rules and clarification form.

SUMMARY: The Commission is issuing a final rule to correct an inadvertent error in an earlier proceeding concerning the regulations under § 1043.4, Title 49 of the Code of Federal Regulations. The correction will permit property brokers to file security other than a prescribed broker's surety bond as evidence of financial responsibility. The Commission is also correcting the language of the prescribed surety bond Form BMC-84 (Rev. 1977) to clarify that both shippers and motor carriers are entitled to the protection of the bond, and to reflect current statutory citations resulting from recodification of the Interstate Commerce Act. The current Form BMC 84 (Rev. 1977) will be accepted until the new revised Form BMC-84 forms are printed by the industry. Because of the proximity of the expiration date of OMB approval of Form BMC-84 (September 30, 1987) and the expense to insurers of printing too

few forms or having obsolete stock on their hands so soon after printing, we are specifically authorizing Form BMC-84 to be printed and used, as modified and clarified in this proceeding, without showing an expiration date until it has been submitted to OMB and approved for a longer period.

As these are merely minor changes to correct a previous ministerial error and to clarify the Commission's interpretation of the intended statutory coverage of motor carriers, as well as shippers under the prescribed surety bond, comments are not required. 5 U.S.C. 553(b)(A)(B).

EFFECTIVE DATE: May 29, 1987.

FOR FURTHER INFORMATION CONTACT: John W. Fristoe (202) 275-7844 or Heber P. Hardy (202) 275-7148.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission decision. To obtain a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, c/o Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan Area).

Energy and environmental considerations: This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that clarification and correction of these final rules will not have a significant impact on a substantial number of small entities. They do not require small entities to do anything substantially different in filing evidence of required coverage under 49 CFR 1043.4 than already is required. To the extent these rules provide greater flexibility for property brokers to comply with our requirements and clarify what parties are protected under a surety bond, this proceeding may have a beneficial impact on a substantial number of property brokers, shippers, and motor carriers.

List of Subjects in 49 CFR Part 1043

Insurance, Motor carriers, and Surety bonds.

Decided: April 9, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

Final Rules

For the reasons set forth in the preamble, 49 CFR Part 1043 is amended as follows:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for Part 1043 continues to read as follows:

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

2. Section 1043.4 is revised to read as follows:

§ 1043.4 Property broker surety bonds or other security.

A property broker must have a surety bond or other security in effect for $10,000. The Commission will not issue a property broker license until a surety bond or other security for the full limits of liability prescribed herein is in effect. The broker license shall remain in effect only as long as a surety bond or other security remains in effect and shall ensure the financial responsibility of the broker.

Clarification of Form

The Commission's prescribed Broker's Surety Bond, Form BMC 84 (Rev. 1977), is clarified and modified as follows:

1. The heading title is modified by deleting the words "Section 211(c) *of the Interstate Commerce Act*" and substituting the citation "49 U.S.C. 10927."

2. The second *whereas* Clause is modified by deleting the words "Section 211" and substituting the citation "49 U.S.C. 10927(b)."

3. The first *whereas* Clause and the paragraph following the second *whereas* Clause are modified by deleting the words "Part II of" in each place where those words precede the words "The Interstate Commerce Act" or the words "said Act."

4. The language in the three paragraphs, beginning with the first *whereas* Clause, is clarified by deleting the word "travelers" in each place where it appears and substituting the words "motor carriers."

5. The identification of Form BMC 84 (Rev. 1977) should be modified, upon reprint, to read "BMC 84 (Rev. 1987)."

[FR Doc. 87-12265 Filed 5-28-87; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 52, No. 103
Friday, May 29, 1987

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Informal Hearing Procedures for Materials Licensing Adjudications

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to provide rules of procedure for the conduct of informal adjudicatory hearings in materials licensing proceedings. The Atomic Energy Act of 1954 requires that the NRC, in any proceeding for the granting, suspending, revoking, or amending of an NRC license, including a license involving source, byproduct, and special nuclear materials, afford an interested person, upon request, a "hearing." The Commission previously has determined that the "hearing" provided for a materials licensing proceeding need not encompass all the procedures in NRC regulations that govern formal adjudications for the licensing of production and utilization facilities. Rather, the Commission has determined that, in most instances, an informal hearing with an opportunity to present written views is sufficient to fulfill this requirement. This proposed rule prescribed the procedures that would govern these informal proceedings.

DATES: Comment period expires July 28, 1987. Comments received after this date will be considered if it is practicable to do so, but assurance of consideration can be given only for comments filed on or before that date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Hand deliver comments to: Room 1121, 1717 H Street, NW., Washington, DC, between 8:15 a.m. and 5:00 p.m. Examine comments received at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Bollwerk, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (202) 634-3224.

SUPPLEMENTARY INFORMATION: Section 189a of the Atomic Energy Act of 1954 (AEA) (42 U.S.C. 2239(a)) provides that in any proceeding for the granting, suspending, revoking, or amending of any license, the agency shall grant a hearing upon the request of any person whose interest may be affected by the proceeding. Among the licenses issued by the agency are those for byproduct material (AEA sections 81-84, 42 U.S.C. 2111 through 2114, 10 CFR Parts 30 through 35), source material (AEA sections 61-69, 42 U.S.C. 2091-2099, 10 CFR Part 40), and special nuclear material (AEA sections 51-58, 42 U.S.C. 2071 through 2078, 10 CFR Part 70). In a February 1982 decision, the Commission declared that, with regard to materials licenses, the agency was not required to afford a formal, trial-type adjudicatory hearing under the Administrative Procedure Act (5 U.S.C. 554, 556, 557). *Kerr-McGee Corp.* (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232 (1982). Rather, the Commission found that it was sufficient to afford an informal hearing in which the parties are given an opportunity to present to the hearing officer their written views and whatever documentary evidence they wish. The Commission's interpretation of the type of hearing it need provide in connection with materials licensing actions was upheld by the United States Court of Appeals for the Seventh Circuit. *City of West Chicago* v. *NRC*, 701 F.2d 632 (7th Cir. 1983).

In order to specify the particular procedures that will be applicable in such informal proceedings, the Commission now proposes to add a new Subpart L to Part 2 of its rules in Title 10 of the Code of Federal Regulations. The chief differences from the Subpart G "Rules of General Applicability" for formal adjudications are discussed below.

Time for Filing a Hearing Petition

Under proposed § 2.1205(c), "interested persons" (other than an applicant or licensee) wishing to request a hearing on a materials licensing action would be required to file a petition for a hearing within thirty days of the agency's publication in the **Federal Register** of a notice of the receipt of an application or a notice of agency action relative to an application for a materials license. Thus, the publication of an initial **Federal Register** notice regarding a materials license application generally will trigger the time for filing a hearing petition.

Under current Commission practice, however, a **Federal Register** notice is not published with respect to each proposed or completed materials licensing action that may be subject to a hearing request. While the AEA specifically requires that "interested persons" be afforded a hearing upon request, it does not impose any requirement that the Commission publish a **Federal Register** notice with respect to each of the thousands of material licensing applications it receives annually. Because of the large number of materials licensing actions involved, the administrative and resource burden of a self-imposed requirement to provide notice in all instances, and the relative insignificance of many of the licensing actions involved, it has been the Commission's practice to provide a published notice only in significant cases. The Commission will retain this practice. If no notice is published, however, a petition is timely if it is filed within thirty days after the petitioner receives actual notice of the action or proposed action complained of, or within one year after completion of the agency action, whichever first occurs. Further, the proposed rule indicates that a hearing petition filed more than one year after completion of the agency's action will be granted upon a showing of "exceptional circumstances" that precluded the petitioner from discovering the agency action and petitioning for a hearing earlier.

The requirements in § 2.1205 for the filing of hearing petitions would not change the requirements in § 2.103(b) for the time for filing applicant hearing petitions following a notice of denial or a notice of proposed denial.

Provision for Hearings Subsequent to Grant of a License

While section 189a of the Atomic Energy Act (42 U.S.C. 2239(a)) has provisions that govern whether a hearing must be provided upon request

prior to staff action with regard to reactor construction permits and operating licenses, the Act says nothing specific about whether such a hearing requested by an interested person must be completed prior to agency action granting or denying a materials license. The proposed rule therefore does not preclude, and in fact contemplates, the grant of a license by the NRC staff prior to any initial decision in any proceeding convened as a result of a hearing request.

Of course, the lack of any statutory directive will not relieve the agency of any obligation constitutional due process may impose. Due process generally requires that if a constitutionally protected right to a hearing exists,[1] opportunity for that hearing must be afforded before agency action becomes effective. *E.g., Opp Cotton Mills* v. *Administrator,* 312 U.S. 126, 152–53 (1941). It also has been recognized, however, that in particular circumstances a balancing of the private and governmental interest involved may allow government action to precede any hearing. *See, e.g., Cleveland Board of Education* v. *Loudermill,* 470 U.S. 532, 542 n.7 (1985); *Hewitt* v. *Helms,* 459 U.S. 460, 476 n.8 (1983); *Parratt* v. *Taylor,* 451 U.S. 527, 540–41 (1981); *Barry* v. *Barchi,* 443 U.S. 55, 64 (1979). A weighting of those interests here has led the agency to conclude that a prelicensing hearing is not necessarily required.

The private rights involved in this instance are two-fold: The right of the applicant to a reasonably prompt administrative assessment of and determination about its application so it can go forth with its planned activities and the right of other "interested persons" to challenge the requested licensing action on the basis of their specific concerns about anticipated harm to radiological health and safety or the environment. Into this balance also must be weighted the governmental interest in avoiding delay in the administrative process that will be caused by halting all action on the application pending notice of opportunity for hearing and any hearing. The importance of this factor is heightened by the fact that the agency reviews and processes literally thousands of materials license applications each year. *Kerr McGee Corp.,* 15 NRC at 261. Finally, it is significant that the materials involved in the vast majority of cases, when compared to power reactors, involve substantially less hazard. *Id.* at 262.

Taking these factors into account, the Commission believes that an appropriate balance is struck by its present practice of not requiring that completion of any requested hearing be a prerequisite to every licensing action by the agency while providing that any "interested person" who believes the effectiveness of the licensing action will be harmful to his or her interests can request a stay from the presiding officer. Section 2.1263 of the proposed rule outlines the procedure for making such requests.

Designation of a Single Hearing Officer

Unlike reactor licensing proceedings in which a three-member board is established to conduct any hearing, for most materials licensing proceedings only a single hearing officer would be appointed by the Chairman of the Atomic Safety and Licensing Board Panel (ASLBP) from the panel's membership to rule on a petition for hearing and, if a hearing is granted, preside over the adjudication. The exception to this rule is for proceedings on Part 70 licenses to receive new fuel at reactor facilities that are subject to an ongoing proceeding for an operating license under Part 50. In such instances, the three-member licensing board conducting the Part 50 proceeding also will consider the Part 70 application in accordance with the informal procedures in proposed Subpart L unless the board certifies to the Commission that the matters presented for adjudication are substantially the same as those being litigated in the operating license proceeding. Upon certification, the Part 70 issues can be adjudicated using the formal hearing procedures in 10 CFR Part 2, Subpart G.

Requirements for Standing

Under the proposed § 2.1205, the focus of an initial request for hearing or a petition to intervene is to be the issue of standing. In turn, the presiding officer's determination about whether the petitioner for a hearing has standing would be in accordance with the Commission's existing practice and would include a consideration of the factors set forth at 10 CFR 2.714(d). Nonetheless, the "distance standard" established by NRC case law for standing in nuclear reactor licensing proceedings, whereby persons residing within fifty miles of a facility generally are considered to have standing, *see, e.g., Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB–413, 5 NRC 1418, 1421 n.7 (1977), is not applicable in materials licensing proceedings. Instead, the interest of the petitioner must be assessed in terms of the particular licensed facility or activity at issue in the materials licensing proceeding.

Hearing File

Following a presiding officer's determination to grant a hearing request because the requestor has standing, § 2.1231 requires that the NRC staff assemble and make available to the presiding officer and the parties a hearing file of materials relevant to the licensing proceeding. The file would include the application and any amendment thereto, as well as any environmental assessment or impact statement and any NRC report or any correspondence between the NRC and the applicant relating to the application. The hearing file also would be placed by the staff in the NRC's public document room (PDR) and in any appropriate local PDR. If a local PDR did not exist, as it does not for the overwhelming majority of materials licenses, then the applicant would be responsible for making the hearing file provided by the NRC staff publicly available during regular business hours in the vicinity of the principal location where the nuclear material that is the subject of the application will be possessed. This could be done by the applicant in a number of different ways, including making the file available at a local public library.

Although the proposed rule provides that no discovery by the parties is allowed in informal proceedings, creation of the hearing file is intended to give all parties in such proceedings access to the central documentation relating to the application for use in preparing written and oral presentations. Moreover, as proposed § 2.1231(c) indicates, the NRC staff is given the continuing duty of keeping the hearing file for a proceeding current by supplementing it with appropriate documents that are generated after the file is established initially. Further, any issue that arises over the appropriate documents to be included in the file is to be resolved by the presiding officer.

[1] The due process right of a license applicant or a licensee to a hearing with regard to its request for licensing action has been recognized, *e.g., Buttrey* v. *United States,* 690 F. 2d 1170, 1177–78 (5th Cir. 1982), *cert. denied,* 461 U.S. 927 (1983); *Gallagher & Ascher Co.* v. *Simon,* 687 F.2d 1067, 1077 & n. 12 (7th Cir. 1982); whether other "interested persons" have such a due process right is less apparent, *City of West Chicago,* v. *NRC,* 701 F.2d 632, 645 (7th Cir. 1983). It also should be noted that in cases involving renewal of a license, the Administrative Procedure Act, 5 U.S.C. 558(c), and 10 CFR 2.109 provide that the existing license will remain in effect, whether or not the staff or an intervenor opposes license renewal, pending a final determination of the renewal application.

Written Presentations and Discretion To Hold Oral Presentations

Under the proposed rule, after a hearing file is established the parties would be given an opportunity to make written presentations. These presentations are to be made under oath or affirmation. Those filed by an applicant challenging a proposed denial or a denial of its licensing request must describe with particularity any deficiency or omission in the staff's action. Similarly, the written presentation of intervenors challenging an application for licensing action must describe in detail any deficiency or omission in the application. Each written presentation also must be supported by all documentation or information that supports or illustrates each deficiency or omission complained of. Subsequent attempts to present or to rely upon other documentation or information would require the permission of the presiding officer. In addition to receiving the parties' filings, the presiding officer could require that the parties answer his or her written questions.

If it appears to the presiding officer, in his or her discretion, that it is necessary for the creation of an adequate record for decision, oral presentations to the presiding officer by the parties or oral questioning of witnesses concerning the factual and legal issues presented by the licensing action are allowed. An oral presentation by the parties would be appropriate in instances when the presiding officer is convinced that such a presentation is the most expeditious way to clarify or resolve specific ambiguities or controversies arising from the written presentations. Although such presentations generally would be similar to the nontestimonial oral arguments held with respect to motions in formal adjudiciatory proceedings, in the event a party wished to make any additional factual presentations for the record, under § 2.1233(b) the presentor would be required to be under oath. Oral questioning of affiants or of principals or employees of the applicant or licensee, also under oath, might be allowed in addition to or in lieu of an oral presentation in instances when the veracity or demeanor of such individuals is at issue and is critical to resolving an important matter in controversy. Normally such questioning would be done by the presiding officer on the basis of his or her concerns and any questions of the parties the presiding officer finds appropriate. The proposed rule also contemplates that oral questioning could be done by the parties themselves, but only after the specific questions or the line of questions for the witness has been approved by the presiding officer. Free-ranging cross-examination would not be allowed. The Commission contemplates that oral presentations or oral questioning would not be necessary in the vast majority of cases.

Thereafter, on the basis of the hearing file, any information presented under oath in written or oral presentations, and any facts that might be officially noticed, the presiding officer would make an initial decision. This decision would be subject to review by an Atomic Safety and Licensing Appeal Board under the same procedures as exist for the appeal of initial decisions in formal adjudications under Subpart G of 10 CFR Part 2.

In the event that the presiding officer, on his own or at the request of any party, reaches the conclusion that a full and fair airing of the issues in the proceeding requires that additional procedures should be used, such as discovery or allowing the parties to cross-examine witnesses, or that the prodceeding should be conducted entirely in accordance with Subpart G in formal procedures, § 2.1209(j) authorizes the presiding officer to request authority to use the additional procedures or to have the Commission convene a formal adjudication. The Commission contemplates that this will not be appropriate in the vast majority of cases. *See generally Sequoyah Fuels Corporation* (Sequoyah UF_6 to UF_4 Facility), CLI-86-17, 24 NRC 489 (1986).

Role of The NRC Staff

Another important change in procedure proposed in these rules of procedure is the role provided for the NRC staff. In formal hearings under Subpart G of 10 CFR Part 2, the staff is a party to the proceeding. Under the proposed rule, in instances other than an applicant- or licensee-initiated hearing following a denial or proposed denial of an application, the staff need not assume such a role. Instead, it may decline to participate as a party in the proceeding. However, if the staff subsequently determined it wished to assume party status or the presiding officer decided it should participate as a party, under proposed § 2.1213 the presiding officer could afford or impose party status.

Restrictions on Private Communications with Adjudicators

Despite the lack of any statutory requirement that the Commission apply the *ex parte* and separation of functions prohibitions of the Administrative Procedure Act (5 U.S.C. 554(d), 557(d)) to informal adjudications, these prohibitions can in some circumstances have due process implications. *See Bethlehem Steel Corp.* v. *EPA*, 638 F.2d 994, 1008-10 (7th Cir.), *cert. denied*, 447 U.S. 921 (1980); *United States Lines* v. *FMC*, 584 F.2d 519, 536-42 (D.C. Cir. 1978). The crux of judicial concern in this regard is that the decision resulting from the adjudication should not be based upon information about which the parties have not had notice and a chance to provide their views. *Bethlehem Steel Corp.*, 638 F.2d at 1009-10; *United States Lines*, 584 F.2d at 540-41. Proposed § 2.1215(c) addresses this concern by providing that an initial decision can only be based upon information with respect to which all parties have had notice and an opportunity to comment.

Separate Views of Commissioner Asselstine

I do not support publication of this rule for one very simple reason. The rule contains no provision requiring that the Commission provide notice of licensing actions. Interested persons have a statutory right to a hearing on materials licensing actions. Yet, the NRC does not intend to provide notice of an opportunity for a hearing in any save a very few major actions. Absent notice there is little chance that anyone will learn that a licensing action is planned, let alone that they might have a right to a hearing on that action. A statutory right to a hearing is of little benefit if no one knows about it.

Environmental Impact; Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Review

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The Atomic Energy Act affords interested persons the right to a hearing regarding a materials licensing proceeding. As the Commission previously indicated in its decision in *Kerr McGee Corp.*, 15 NRC at 241, the use of informal procedures involves less cost and delay for the parties and the

Commission than the use of formal, trial-type procedures, the only other procedural alternative. Also, procedures must be in place to allow for the orderly conduct of those adjudications. Codifying the informal hearing procedures for materials licensing proceedings is preferable to the only other alternative, which is the present practice of setting forth the procedures to be followed on a case-by-case basis. By codifying the procedures, the Commission will avoid the expenditure of time and resources necessary to prepare the individual orders that previously have been used to designate those procedures. It thus is apparent that this proposed rule is the preferred alternative and the cost entailed in its promulgation and application is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

Backfit Analysis

This proposed rule does not modify or add to systems, structures, components, or design of a facility; the design approval or manufacturing license for a nuclear reactor facility; or the procedures or organization required to design, construct, or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

Regulatory Flexibility Certification

The proposed rule will not have a significant economic impact upon a substantial number of small entities. Many materials licensees or intervenors fall within the definition of small businesses found in section 34 of the Small Business Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121, or the NRC's size standards published December 9, 1985 (50 FR 50241). While the proposed rules, if adopted, would reduce the burden on licensees or intervenors because of the informal nature of the hearing, the requirement that they submit filings and documentary information detailing contested legal and factual issues is still required. Some cost reduction in comparison to the cost of participating in a formal adjudicatory hearing can be anticipated, although that reduction as a whole may not be significant. Further, the use of informal procedures will not increase significantly the burden upon licensees to respond to hearing requests. Since the Commission's determination in 1982 that use of such procedures was appropriate, it has received, on average, fewer than five hearing requests per year regarding materials licensing applications. Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC hereby certifies that this rule, if promulgated, will not have a significant economic impact upon a substantial number of small entities.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2:

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239).

Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239).

Sections 2.200 through 2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

Sections 2.300 through 2.309 also issued under Pub. L. 97-415, 96 Stat. 2071 (42 U.S.C. 2133).

Sections 2.600 through 2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 as amended (42 U.S.C. 4332).

Sections 2.700a, 2.719 also issued under 5 U.S.C. 554.

Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557.

Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552.

Sections 2.800 and 2.808 also issued under 5 U.S.C. 553.

Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039).

Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135).

2. Subpart L of Part 2 is added to read as follows:

Subpart L—Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings

Sec.
2.1201 Scope of subpart.
2.1203 Docket; filing; service.
2.1205 Request for a hearing; petition for leave to intervene.
2.1207 Designation of presiding officer.
2.1209 Power of presiding officer.
2.1211 Participation by a person not a party.
2.1213 Role of the NRC staff.
2.1215 Appearance and practice.

Hearings

2.1231 Hearing file; prohibition on discovery.
2.1233 Written presentations; written questions.
2.1235 Oral presentations; oral questions.
2.1237 Consideration of Commission rules and regulations in informal adjudications.
2.1239 Settlement of materials licensing proceedings.

Initial Decision, Commission Review, and Final Decision

2.1251 Initial decision and its effect.
2.1253 Appeals from initial decisions.
2.1255 Review by the Atomic Safety and Licensing Appeal Board.
2.1257 Review of decisions and actions of an Atomic Safety and Licensing Appeal Board.
2.1259 Final decision; petition for reconsideration.
2.1261 Authority of the Secretary to rule on procedural matters.
2.1263 Stays of NRC staff licensing actions and decisions of a presiding officer, an Atomic Safety and Licensing Appeal Board or the Commission, pending hearing or review.

Subpart L—Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings

§ 2.1201 Scope of subpart

The general rules in this subpart govern procedure in any adjudication initiated by a request for a hearing in a proceeding for the grant, transfer, renewal, or licensee-initiated amendment of a materials license subject to Parts 30, 32 throgh 35, 40, or 70 of this chapter. Any adjudication regarding a materials license subject to Parts 30, 32 through 35, 40, or 70 that is initiated by a notice of hearing issued under § 2.104, a notice of proposed action under § 2.105, or a request for hearing under Subpart B of 10 CFR Part 2 on an order to show cause, an order for modification of license, or a civil penalty, is to be conducted in accordance with the procedures set forth in Subpart G of 10 CFR Part 2.

§ 2.1203 Docket; filing; service.

(a) The Secretary shall maintain a docket for each adjudication subject to this subpart, commencing with the filing of a request for a hearing. All papers, including any request for a hearing, petition for leave to intervene, correspondence, exhibits, decisions, and orders, submitted or issued in the proceeding; the hearing file compiled in accordance with § 2.1231; and the transcripts of any oral presentations or oral questioning made in accordance with § 1235 must be filed with the Office of the Secretary and must be included in the docket.

(b) Documents will be considered filed with the Office of the Secretary in adjudications subject to this subpart either—

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at Room 1121, 1717 H. Street NW., Washington, DC, or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, *Attention:* Docketing and Service Branch.

Filing by mail or telegram will be complete as of the time of deposit in the mail or with the telegraph company.

(c) Computation of time shall be done in accordance with § 2.710.

(d) A request for a hearing or a petition for leave to intervene must be served in accordance with § 2.1205 (e) and (j). All other documents offered for filing are to be served as the presiding officer, the Atomic Safety and Licensing Appeal Board, or the Commission shall direct.

§ 2.1205 Request for a hearing; petition for leave to intervene.

(a) Any person whose interest may be affected by a proceeding for the grant, transfer, renewal, or licensee-initiated amendment of a materials license subject to this subpart may file a request for a hearing.

(b) An applicant for a license, a license amendment, a license transfer, or a license renewal who is issued a notice of proposed denial or a notice of denial must in all cases file a request for a hearing within the time specified in § 2.103.

(c) The request for a hearing of a person other than an applicant must be filed (1) within thirty (30) days of the agency's publication in the **Federal Register** of a notice of the receipt of, or action relative to, an application, or (2) if no such notice is published, within thirty (30) days after the requestor receives actual notice of a pending application or agency action granting an application or within one (1) year after agency action granting an application, whichever first occurs. A request for a hearing filed more than (1) year after effective completion of the agency action will be granted only upon a showing of exceptional circumstances for the late filing.

(d) The request for a hearing filed by a person other than an applicant must describe in detail—

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors of paragraph (g) of this section; and

(3) The specific aspect or aspects of the subject matter of the proceeding about which the requestor wishes to be heard.

(e) Each request for a hearing must be served, by delivering it personally or by mail to—

(1) The applicant (unless the requestor is the applicant); and

(2) The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(f) Within ten (10) days of service of a request for a hearing filed under paragraph (c) of this section, the applicant may file an answer. The NRC staff may file an answer to such a request for a hearing within ten (10) days of the designation of the presiding officer.

(g) In ruling on a request for a hearing filed under paragraph (c) of this section, the presiding officer shall determine that the requestor meets the judicial standard for standing and shall consider, among other factors—

(1) The nature of the requestor's right under the Act to be made a party to the proceeding;

(2) The nature and extent of the requestor's property, financial, or other interest in the proceeding; and

(3) The possible effect of any order that may be entered in the proceeding upon the requestor's interest.

(h) If a hearing request filed under paragraph (b) of this section is granted, the applicant and the NRC staff shall be parties to the proceeding. If a hearing request filed under paragraph (c) of this section is granted, the requestor shall be a party to the proceeding along with the applicant and the NRC staff, if the staff chooses to participate as a party in accordance with § 2.1213.

(i) If a request for a hearing is granted and no notice of opportunity for a hearing previously has been published in the **Federal Register**, a notice of hearing must be published in the **Federal Register** that must state—

(1) The time, place, and nature of the hearing;

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

(3) The matters of fact and law to be considered; and

(4) The time within which any other person whose interest may be affected by the proceeding may petition for leave to intervene, as specified in paragraph (j) of this section.

(j) Any petition for leave to intervene, which must be filed within thirty (30) days of the date of publication of the notice of hearing, must set forth the information required under paragraph (d) of this section. A petition for leave to intervene must be served upon the applicant and upon the NRC staff, by delivering it personally or by mail to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Within ten (10) days of service of a petition for leave to intervene, the NRC staff and the applicant may file an answer. Thereafter, the petition for leave to intervene must be ruled upon by the presiding officer, taking into account the factors set forth in paragraph (g) of this section. If the petition is granted, the petitioner shall be considered a party to the proceeding.

(k) A nontimely petition for leave to intervene will not be entertained absent a finding by the Commission or the presiding officer that the petition should be granted based upon a balancing of the factors set forth in § 2.714(a)(1) (i) through (v), in addition to those set forth in paragraph (g) of this section.

(l) The filing or granting of a request for a hearing or a petition for leave to intervene need not delay NRC staff action regarding an application for a materials licensing action covered by this subpart.

(m) An order granting a request for a hearing or a petition for leave to intervene may condition or limit participation in the interest of avoiding repetitive factual presentations and argument.

(n) In the event the presiding officer wholly denies a request for a hearing or a petition for leave to intervene, that action is appealable within ten (10) days of service of the order on the question whether the request for a hearing or the petition for leave to intervene should have been granted in whole or in part. If a request for a hearing or a petition for leave to intervene is granted, parties other than the requestor or petitioner may appeal that action within ten (10) days of service of the order on the

question whether the request for a hearing or the petition for leave to intervene should have been wholly denied. An appeal may be taken by filing and serving upon all parties a statement that succinctly sets out, with supporting argument, the errors alleged. The appeal may be supported or opposed by any party by filing a counter statement within fifteen (15) days of the service of the appeal brief.

§ 2.1207 Designation of presiding officer.

(a) Unless otherwise ordered by the Commission or as provided in paragraph (b) of this section, within ten (10) days of filing of a request for a hearing relating to a materials license proceeding covered by this subpart, the Chairman of the Atomic Safety and Licensing Board Panel shall issue an order designating a single member of the panel to rule on the request for a hearing and, if necessary, to serve as the presiding officer to conduct the hearing.

(b) For any request for hearing relating to an application under 10 CFR Part 70 to receive and store unirradiated fuel at the site of a production or utilization facility that also is the subject of a proceeding under the Subpart G of this part for the issuance of an operating license, the Chairman of the Atomic Safety and Licensing Board Panel shall issue an order designating a Licensing Board conducting the operating license proceeding to rule on the request for a hearing and, if necessary, to conduct the hearing in accordance with this subpart. Upon certification to the Commission by the Licensing Board designated to conduct the hearing that the matters presented for adjudication by the parties with respect to the Part 70 application are substantially the same as those being heard in the pending proceeding under 10 CFR Part 50, the Licensing Board may conduct the hearing in accordance with the procedures in Subpart G.

§ 2.1209 Power of presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order. The presiding officer has all powers necessary to those ends, including the power to—

(a) Regulate the course of the hearing and the conduct of the participants;

(b) Dispose of procedural requests or similar matters;

(c) Hold conferences before or during the hearing for settlement, simplification of the issues, or any other proper purpose;

(d) Certify questions to the Atomic Safety and Licensing Appeal Board for determination, either in the presiding officer's discretion or on direction of the Commission or the Atomic Safety and Licensing Appeal Board;

(e) Reopen a proceeding for the reception of further information at any time prior to initial decision;

(f) Administer oaths and affirmations;

(g) Issue initial decisions;

(h) Issue subpoenas requiring the attendance and testimony of witnesses at the hearing or the production of documents for the hearing;

(i) Receive written or oral evidence and take official notice of any fact in accordance with § 2.743(i);

(j) Recommend to the Commission that procedures other than those authorized under this subpart be used in a particular proceeding; and

(k) Take any other action consistent with the Act and this chapter.

§ 2.1211 Participation by a person not a party.

(a) The presiding officer may permit a person who is not a party to make a limited appearance in order to state his or her views on the issues. Limited appearances may be in writing or oral, at the discretion of the presiding officer, and are governed by rules adopted by the presiding officer. A limited appearance statement is not be considered part of the decisional record under § 2.1251(c).

(b) Upon request, the presiding officer shall afford the representative of an interested State, county, municipality, or an agency thereof, a reasonable opportunity to participate in a proceeding conducted under this Subpart, including an opportunity to make written and oral presentations in accordance with §§ 2.1233, 2.1235, without requiring the representative to take a position with respect to the issues. Participants under this subsection may notice an appeal of an initial decision in accordance with § 2.1253 with respect to any issue on which they participate.

§ 2.1213 Role of the NRC staff.

If a hearing request is filed under § 2.1205(b), the NRC staff shall be party to the proceeding. If a hearing request is filed under § 2.1205(c), within ten (10) days of the designation of a presiding officer pursuant to § 2.1207 the NRC staff shall notify the presiding officer whether or not the staff desires to participate as a party to the adjudication. Thereafter, upon a determination by the presiding officer that the resolution of any issue in the proceeding would be aided materially by staff's participation in the proceeding as a party, the presiding officer may order or permit the NRC staff to participate as a party with respect to that particular issue.

§ 2.1215 Appearance and practice.

(a) Representation by an attorney-at-law is not necessary in order for an individual, an organization, or a § 2.1211(b) participant to appear in an adjudication conducted under this subpart. If the representative of an organization is not an attorney-at-law, he or she must be a member or officer of the organization represented. Upon request of the presiding officer, an individual acting as a representative shall provide appropriate information establishing the basis of his or her authority to act in a representational capacity.

(b) Any action to reprimand, censure, or suspend a party, a § 2.1211(b) participant, or the representative of a party or a § 2.1211(b) participant must be in accordance with the procedures in § 2.713(c).

Hearings

§ 2.1231 Hearing file; prohibition on discovery.

(a) Within thirty (30) days of the presiding officer's entry of an order granting a request for a hearing, the NRC staff shall file and make available to the presiding officer, the applicant, and any other party to the proceeding a hearing file. Thereafter, within ten (10) days of the date a petition for leave to intervene or a request to participate under § 2.1211(b) is granted, the NRC staff shall make the hearing file available to the petitioner or the participant. The hearing file also shall be made available for public inspection and copying during regular business hours at the NRC Public Document Room in Washington, DC, and at any appropriate local public document room. In the event no appropriate local public document room exists, the applicant must make the hearing file available for public inspection and copying during regular business hours at a location in the vicinity of the principal location where the nuclear material that is the subject of the application will be possessed.

(b) The hearing file will consist of the application and any amendment thereto, any NRC environmental impact statement or assessment relating to the application, and any NRC report or any correspondence between the applicant and the NRC that is relevant to the application. The presiding officer will rule upon any issue regarding the

appropriate materials for the hearing file.

(c) The NRC staff has a continuing duty to keep the hearing file up to date with respect to the materials set forth in paragraph (b) of this section.

(d) A party may not seek discovery from any other party, § 2.1211(b) participant, or the NRC or its personnel, whether by document production, deposition, interrogatories, or otherwise.

§ 2.1233 Written presentations; written questions.

(a) At such time or times and in such sequence as the presiding officer may establish after publication of a notice of hearing in accordance with § 2.1205(i) and after the NRC staff has made the hearing file available in accordance with § 2.1231, the parties shall submit, under oath or affirmation, written presentations of their arguments and documentary data, informational material, and other supporting written evidence. The presiding officer also may, on his or her initiative, submit written questions to the parties to be answered in writing, under oath or affirmation, and supported by appropriate documentary data, informational material, or other written evidence.

(b) In a hearing initiated under § 2.1205(b), the initial written presentation of the applicant that is issued a notice of proposed denial or a notice of denial must describe in detail any deficiency or omission in the agency's denial or proposed denial of its application and what relief is sought with respect to each deficiency or omission.

(c) In a hearing initiated under § 2.1205(c), the initial written presentation of a party that requested a hearing or petitioned for leave to intervene must describe in detail any deficiency or omission in the license application with references to any particular section or portion of the application considered deficient, give a detailed statement of reasons why any particular section or portion is deficient or why an omission is material, and describe in detail what relief is sought with respect to each deficiency or omission.

(d) A party making an initial written presentation under this section must submit with its presentation or identify by reference to a generally available publication or source, such as the hearing file, all documentary data, informational material, or other written evidence upon which it relies to support or illustrate each omission or deficiency complained of. Thereafter, additional documentary data, informational material, or other written evidence can be submitted or referenced by any party, other than the NRC staff, or any § 2.1221(b) participant in a written presentation or in response to a written question only as the presiding officer, in his or her discretion, permits.

(e) Strict rules of evidence will not apply to written submission under this section, but the presiding officer may, on motion or on the presiding officer's own initiative, strike any portion of a written presentation or a response to a written question that is cumulative, irrelevant, immaterial, or unreliable.

§ 2.1235 Oral presentations; oral questions.

(a) Upon a determination that it is necessary for the creation of an adequate record for decision, in his or her discretion the presiding officer may allow or require oral presentations by the parties or pose questions orally to witnesses. The presiding officer may impose appropriate time limits on oral presentations and may entertain and pose questions to witnesses proposed by any party or allow a sponsoring party to pose any particular question or line of questions the presiding officer finds are appropriate.

(b) Oral presentations and responses to oral questioning to be relied upon as oral evidence must be given under oath or affirmation. All oral presentations or oral questioning must be stenographically reported and, unless the presiding officer orders otherwise, must be public.

(c) Strict rules of evidence will not apply to oral submissions under this section, but the presiding officer may, on motion or on the presiding officer's own initiative, strike any portion of an oral presentation or a response to oral questioning that is cumulative, irrelevant, immaterial or unreliable.

§ 2.1237 Consideration of Commission rules and regulations in informal adjudications.

(a) Except as provided in paragraph (b) of this section, any regulation of the Commission issued in its program for the licensing and regulation of production and utilization facilities, source material, special nuclear material, or byproduct material may not be challenged in any adjudication subject to this subpart.

(b) A party to an adjudication subject to this subpart may petition that the application of a Commission regulation specified in paragraph (a) of this section be waived or an exception made for the particular proceeding. The sole ground for such a request for waiver or exception must be that special circumstances exist such that application of the regulation to the subject matter of the proceeding would not serve the purposes for which the regulation was adopted. In the absence of a prima facie showing of special circumstances, the presiding officer may not further consider the matter. If the presiding officer determines that a prima facie showing has made, he or she shall certify directly to the Commission itself for determination the matter of whether special circumstances support a waiver or an exception. The Commission's determination shall be made after such further proceedings as the Commission deems appropriate.

§ 2.1239 Settlement of materials licensing proceedings.

The fair and reasonable settlement of proceedings subject to this subpart is encouraged. A settlement must be approved by the presiding officer or Atomic Safety and Licensing Appeal Board, as appropriate, in order to be binding in the proceeding.

Initial Decision, Commission Review, and Final Decision

§ 2.1251 Initial decision and its effect.

(a) Unless the Commission directs that the record be certified to it in accordance with paragraph (b) of this section, the presiding officer shall render an initial decision after completion of an informal hearing under this subpart. That initial decision constitutes the final action of the Commission forty-five (45) days after the date of issuance, unless an appeal is taken in accordance with § 2.1253.

(b) The Commission may direct that the presiding officer certify the record to it without an initial decision and may omit an initial decision and prepare a final decision upon a finding that due and timely execution of its functions so requires.

(c) An initial decision must be in writing and must be based only upon information in the record or facts officially noticed. The record must include all information submitted in the proceeding with respect to which all parties have been given reasonable prior notice and an opportunity to comment. The initial decisioin will include—

(1) Findings, conclusions, and rulings, with the reasons or basis for them, on all material issues of fact, law, or discretion presented on the record;

(2) The appropriate ruling, order, or denial of relief with its effective date; and

(3) The time within which appeals to the decision and a brief in support of those appeals may be filed, the time

within which briefs in support of or in opposition to appeals filed by another party may be filed, and the date when the decision becomes final in the absence of an appeal.

(d) Matters not put into controversy by the parties may not be examined and decided by the presiding officer or the Atomic Safety and Licensing Appeal Board. If the presiding officer or the Appeal Board believes that a serious safety, environmental, or common defense and security matter exists that has not been placed in controversy, the presiding officer or the Appeal Board promptly shall advise the Commission of the basis for that view, and the Commission may take appropriate action.

§ 2.1253 Appeals from initial decisions.

Parties and § 2.1211(b) participants may appeal from an initial decision under this subpart in accordance with the procedures set out in §§ 2.762 and 2.763.

§ 2.1255 Review by the Atomic Safety and Licensing Appeal Board.

The Commission authorizes the Atomic Safety and Licensing Appeal Board to exercise the authority and carry out the review functions to be performed under §§ 2.1205(n), 2.1209(d), and 2.1253.

§ 2.1257 Review of decisions and actions of an Atomic Safety and Licensing Appeal Board.

The Commission will not entertain any petition for review of decision or action of an Atomic Safety and Licensing Appeal Board under this subpart. Commission review is available only on the Commission's own motion issued within forty (40) days after the date of a decision or action by the Appeal Board under § 2.1255. Commission review will be conducted in accordance with such procedures as the Commission deems appropriate. Absent Commission review, the decision of the Appeal Board constitutes the final action of the Commission.

§ 2.1259 Final decision; petition for reconsideration.

(a) Commission or Atomic Safety and Licensing Appeal Board action to render a final decison must be in accordance with § 2.770.

(b) The provisions of § 2.771 govern the filing of petitions for reconsideration.

§ 2.1261 Authority of the Secretary to rule on procedural matters.

The Secretary or the Assistant Secretary may rule on procedural matters relating to proceedings conducted by the Commission itself under this subpart to the same extent they can do so under § 2.772 for proceedings under Subpart G.

§ 2.1263 Stays of NRC staff licensing actions and decisions of a presiding officer, an Atomic Safety and Licensing Appeal Board or the Commission, pending hearing or review.

Applications for a stay of any decision or action of the Commission, a presiding officer, or an Atomic Safety and Licensing Appeal Board or any action by the NRC staff in issuing a license in accordance with § 2.1205(l) are governed by § 2.788, except that any request for a stay of staff licensing action pending completion of an adjudication under this subpart must be filed at the time a request for a hearing or petition to intervene is filed or within ten (10) days of the staff's action, whichever is later.

Dated at Washington, DC, this 21st day of May, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-12304 Filed 5-28-87; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9154]

Volkswagen of America, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment; Correction

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; correction.

SUMMARY: This document corrects a Commission document previously published in the **Federal Register** on Wednesday, May 13, 1987, 52 FR 17960. The proposed consent agreement did not include the full text of Attachment B to the proposed order. A portion of the last paragraph of that section was not included (see 52 FR 17972). This notice contains the full text of Attachment B.

DATE: Comments will be received until June 16, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/H-238A, Robert M. Doyle, Washington, DC 20580. (202) 326-3114.

SUPPLEMENTARY INFORMATION:

List of Subjects in 16 CFR Part 13

Arbitration, Automobiles, Trade practices.

Attachment B, which was published at 52 FR 17971-17972, is set forth in full, below:

Attachment B—Background Statement; Engine Damage from Lack of Oil

Notice: Please read the attached "Oil Usage" Background Statement, if this case also involves a claim of excessive oil usage or consumption. It may contain useful facts for this case.

Background

This case may involve an owner's complaint about engine damage from lack of oil in a gasoline-fueled 1974-1979 [Volkswagen] water-cooled engine [Audi Fox or 5000].

Since 1981, the Federal Trade Commission (FTC) and [Volkswagen (VW)] [Volkswagen of America, Inc., the importer of Audi vehicles (Audi)] have been involved in an administrative lawsuit which includes allegations of excessive oil consumption and engine damage from lack of oil in 1974 to 1979 [VW cars with water-cooled gasoline engines] [Audi Fox and 5000 vehicles]. The FTC has alleged that [VW] [Audi] failed to tell consumers about an "abnormally high" number of engines damaged from lack of oil in these vehicles. [VW] [Audi] has denied this claim and has stated that it has at all times provided owners with more than sufficient information to operate and maintain their vehicles safely and economically. [VW] [Audi] and the FTC have now agreed to settle this dispute without further litigation.

As part of their settlement of this dispute, [VW] [Audi] and the FTC have agreed to allow such complaints to be submitted to mediation and arbitration. They have prepared this statement and the attached statement to give consumers, mediators and arbitrators potentially useful background facts. Some of these facts may not be widely known.

Engine Damage From Lack of Oil

Like other automobile engines, the [Volkswagen water-cooled] [Audi] engine will be severely damaged if it is run without sufficient lubricating oil circulating within the engine. Engine components which can be damaged in this manner include connecting rods, crankshaft, bearings and the engine block itself.

Whether a particular automobile engine is damaged from lack of oil depends on three factors: the engine's rate of oil consumption, its effective

crankcase capacity, and the intervals at which its oil level is checked and replenished.

Over the life of the engine (100,000 miles or more), the amount of oil consumed by individual 1974–1979 [VW] [Audi] vehicles has varied widely at various times from less than one quart per 7,500 miles (the oil change interval), to more than one quart per 400 miles ([VW's] [Audi's] maximum usage figure (345 miles for the 5000), which was published in 1977–1979 model year vehicle owner's literature).

[Starting with a full crankcase, Rabbit and Scirocco engines can consume approximately three quarts of oil (Dasher—2.5 quarts) without checking and refilling the oil before engine damage becomes an immediate risk. The maximum cruising range of these vehicles per tankful of gasoline, based on EPA mileage estimates, is approximately 275 miles.]

[Starting with a full crankcase, the Audi vehicles can consume approximately the following amounts of oil without checking and refilling the oil before engine damage becomes an immediate risk:

Fox	2.5 quarts.
5000	4.1 quarts.

The approximate maximum distance which these vehicles can be driven per tankful of gasoline, based on EPA mileage estimates, is as follows:

Fox	335 miles.
5000 (1978)	290 miles.
5000 (1979)	380 miles.

During the period 1974–1979 and thereafter, [Volkswagen] [Audi] received reports that a number of engines in its vehicles had been damaged from insufficient oil.

Between 1974 and 1979, [Volkswagen] [Audi] modified the recommendations in its owner's literature that operators of its vehicles check the oil level at periodic intervals as follows:

—1974–76 owner's manuals stated "the engine oil level should be checked from time to time";

—1977–78 owner's manuals stated: "make it a habit to have the engine oil level checked with every second fuel filling";

—1979 owner's manuals stated: "make it a habit to have the engine oil level checked with every fuel filling";

—1978–1979 Warranty and Maintenance booklets repeated the above advice on oil checking intervals and included statements as to the consequences of lack of sufficient engine oil.

[Volkswagen only: Volkswagen sent a letter to owners of 1975–1979 Rabbits and Sciroccos (Dasher owners did not receive this letter) to remind them to check the oil level with every fuel filling. The letter was sent to owners of standard transmission cars in approximately August 1979 and to owners of automatic transmission cars in approximately June 1980. Dealers were also told in August 1979 to attach a sticker reading "Check Engine Oil" around the fuel filler neck under the gas cap of each vehicle they serviced.]

The FTC claims that the information contained in the owner's manuals, [and] maintenance booklets [.] [, letter to consumers, and sticker] was insufficient to alert owners to the risk of serious engine damage from lack of oil. The FTC says that oil consumption in 1974–1979 water-cooled gasoline engines could unexpectedly increase because of deteriorating valve stem seals, and that [VW] [Audi] did not inform owners of this fact. The FTC also says that such an oil consumption increase, if undetected, could lead to severe engine damage from lack of oil, and the FTC claims that [VW] [Audi] did not tell consumers of these facts as well.

[VW] [Audi] says that the information and recommendations in its owner's literature [and communications] were significantly more detailed than those of any other manufacturer and were more than sufficient to prevent any engine damage. [VW] [Audi] denies that oil consumption or valve stem seal performance in its engines was in any way abnormal. [VW] [Audi] says that lubrication-related engine failures were not caused by oil consumption, but by insufficient oil level maintenance, compounded by a large increase in self-service gas stations in the 1970's.

The oil pressure warning light in automobiles is not specifically designed to measure oil level. Therefore, under some operating conditions, the engine may be damaged from low oil level before the oil pressure drops sufficiently to activate the dashboard light.

During the late 1970's, [Volkswagen] [Audi] received reports that some customers who complained of engine damage from lack of oil may have in fact been relying on their dashboard warning lights, rather than their oil dipsticks, to monitor the crankcase oil levels in their cars.

Prior to 1979, all [VW] [Audi] owner's manuals stated that, if the oil pressure warning light comes on while driving, the driver should stop at once, turn the engine off, check the oil level and replenish, if necessary, and not operate the vehicle if the warning light remains on while the engine is restarted. In the 1979 model year, Volkswagen first included additional language, which had not previously appeared in its owner's manuals. This new language stated specifically that the oil pressure warning light is not an oil level indicator and that the dipstick is the proper means of checking the oil level.

[Volkswagen's] [Audi's] Warranty

[Volkswagen] [Audi] provides a limited warranty with each new [Volkswagen] [Audi] vehicle sold by one of its dealers. The warranty generally covers any repair and adjustment needed to correct defects in materials and workmanship within the warranty period. However, complaints may occur after the warranty, including complaints of engine damage from lack of oil. A manufacturer's warranty is not necessarily the manufacturer's only responsibility, and should not determine the outcome of this case.

Emily H. Rock,

Secretary.

[FR Doc. 87–12257 Filed 5–28–87; 8:45 am]

BILLING CODE 6750-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3—Citizenship of Responsible Officers and Sponsorship]

Exchange Visitor Program; Citizenship of Responsible Officers and Sponsors

AGENCY: United States Information Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Information Agency proposes to amend Title 22, Code of Federal Regulations, Part 514 to provide that responsible Officers of designated sponsors be citizens of the United States and that designated sponsors be United States organizations and corporations.

DATES: Comments on the proposed rule will be accepted until July 28, 1987. All written communications received on or before the closing date will be considered by the Agency before taking action on a final rule.

ADDRESS: Interested persons should submit relevent views or arguments to Merry Lynn, Attorney Advisory, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485–7976.

FOR FURTHER INFORMATION CONTACT: Merry Lynn, Attorney Advisor, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485–7976.

SUPPLEMENTARY INFORMATION: Three new immigration bills became law in November, 1986: The Immigration Reform and Control Act of 1986, Pub. L. 99–603; The Immigration Marriage Fraud Amendments of 1986, Pub. L. 99–639; and

the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653.

(The State Department Efficiency Bill).

In light of the concern with immigration procedures, the United States Information Agency is in the process of reviewing the regulations governing the issuance of J–1 visas found at 22 CFR 514. In the course of review, the Agency has discovered that there is no written requirement that Responsible Officers be United States citizens. However, it has been the practice of the Exchange Visitor Facilitative Staff for the past five years to restrict designations to United States citizens. The agency believes that the person signing the Certificate of Eligibility Form IAP–66, as an agent of the United States Government, will better protect its interests, and will have a better understanding of the purposes of the exchange visitor program if he/she is a United States citizen. Likewise United States exchange organizations and corporations will better protect U.S. interests than foreign organizations and corporations.

Accordingly, the Agency proposes to modify the regulations by adding a requirement that the Responsible Officers be United States citizens and that all organizations other than international agencies be incorporated under the laws of the United States. Comments are sought from the Department of the State Consular Affairs and the Immigration and Naturalization Service as well as from the public.

The Agency has determined that this proposed rule is "non-major" under criteria set forth in Executive Order 12291. The rule not have an annual effect on the economy of $100 million or more; nor will it result in a major increase in costs or prices for consumers, individual industries, Federal, State or Local government agencies, or geographic regions. Furthermore, competition, employment investment, productivity, innovation, and the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets will not be adversely affected.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

The United States Information Agency proposes to amend the Regulations in Chapter V Part 514 of Title 22, Code of Federal Regulations as set forth below.

PART 514—[AMENDED]

1. The authority citation for 22 CFR Part 514 is revised as follows:

Authority: U.S. Information and Educational Exchange Act of 1948, as amended, Pub. L. 80–402, as amended (22 U.S.C. 1431–1442); Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87–256, 75 Stat. 527, 534, 535 (8 U.S.C. 1101, 1104, 1182, 1258 and 22 U.S.C. 2451–2460); Pub. L. 97–241, 96 Stat. 291; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101(a)(15)(j), 1182(e), 1182(j), 1258); Pub. L. 91–225, 84 Stat. 116, 117, (8 U.S.C. 1101, 1182); Pub. L. 97–116, 95 Stat. 1611, 1612, 1613 (8 U.S.C. 1101, 1182); Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.1 is amended by revising the definitions of "Responsible Officer" and "Spondor" as set forth below.

§ 514.1 Definitions.

* * * * *

"Responsible Officer" means the official of an organization sponsoring an Exchange-Visitor Program who has been listed with the Agency as being responsible for administering the program and carrying out the obligations which the organization assumes in undertaking to sponsor a program (see § 514.14). The designation of an Alternate Responsible Officers is permitted and encouraged. The Responsible Officer and all Alternate Responsible Officers must be United States citizens.

"Sponsor" means any reputable U.S. agency or organization or recognized international agency or organization having U.S. membership and offices which makes application as hereinafter prescribed to the Director for designation of a program under its sponsorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not incorporated under United States law may not be designated as a sponsor.

* * * * *

Dated: April 22, 1987.

C. Normand Poirier,

Acting General Counsel and Congressional Liaison.

[FR Doc. 87–12280 Filed 5–28–87; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R, Amdt.]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Active Duty Dependents Dental Plan

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment to rule.

SUMMARY: This proposed rule would amend Part 199 of Title 32, the Regulation which implements CHAMPUS programs, by adding a new section to implement Chapter 55, Title 10, section 1076a U.S.C., which authorizes the Active Duty Dependent Dental Plan. The proposed rule defines the benefits and eligibility requirements, provides for insurance or prepayment contracting for benefit administration and payment, provides for Government and uniformed Services member sharing in the cost of premiums for the insurance or prepayment contract, defines authorized providers, provides for benefit communications and implementation, establishes alternative delivery systems criteria and requirements, and provides an appeals procedure. Eligibility for the Program is limited to dependents of active duty members of the Uniformed Services residing in the 50 United States, District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

Benefits of the program are limited to diagnostic services, oral examinations, scaling deposits from teeth, polishing of teeth, topical application of fluoride to teeth, space maintenance, minor palliative emergency services, amalgam and composite restorations, stainless steel crowns for primary teeth, and dental appliance repairs, Benefits are further limited by the limitations and exclusions established for these benefits by the Director, OCHAMPUS or designee to assure quality of care and appropriate cost constraints. Authorized providers are dentists and dental hygienists practicing within the scope of their licenses.

DATES: Written comments must be received on or before July 13, 1987.

ADDRESS: Office of Civilian Health and Medical Program of the Uniform Services (OCHAMPUS), Policy Division, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Joseph C. Rhea, Policy Division, OCHAMPUS, telephone (303) 361–3278.

SUPPLEMENTARY INFORMATION: Chapter 55, title 10, section 1076a U.S.C. provides that "the Secretary of Defense may establish dental benefit plans for spouses and children (as described in section 1072(2)(D) of this title) of members of the uniformed services who are on active duty for a period of more than 30 days." This provision further requires that enrollment of participants be voluntary "and include provisions for premium-sharing between the Department of Defense and members

enrolling in the program." The law also specifies that the "member's share of the premium shall be paid by deductions from the basic pay of the member."

Eligibility is further limited by Congressional guidance to dependents of active duty members residing within the continental United States. We believe that a reasonable interpretation of this limitation should include the 50 states and the District of Columbia for reasons of equity among active duty dependents residing within the United States. In addition, active duty members' dependents residing in Puerto Rico have been included because of its Commonwealth status and the consistency of requirements for the practice of dentistry in that Commonwealth with the requirements of the 50 states and the District of Columbia. Finally, the U.S. Virgin Islands have been included because of its proximity to the Commonwealth of Pureto Rico, conformance of dental practice with the requirements of the United States, and the lack of Uniformed Services dental facilities in the Virgin Islands.

Two categories of dental benefits are provided:

"(1) Diagnostic, oral examination, and preventive services and palliative emergency care; and (2) basic restorative services of amalgam and composite restorations and stainless steel crowns for primary teeth, and dental appliance repairs."

The procedure coding and nomenclature for dental services established by the American Dental Association and commonly used by dental insurance and prepayment plans provides an appropriate basis for identifying the services which are proposed for inclusion in the benefit structure within the constraints of the intent of section 1076a and the level of appropriations provided for the dental plan. To assure quality of care and reasonable cost constraints within level of benefits, we believe it is necessary to permit the dental insurer or dental plan to use its expertise in proposing specific limitations and exclusions on the benefit plan to the Director, OCHAMPUS or designee for approval prior to implementation of the benefits.

Voluntary enrollment is provided for initially by permitting active duty members to decline enrollment of their dependents during a period of 90 days prior to the start of benefits on August 1, 1987. Active duty members may also disenroll their dependents when they transfer to a different duty station in a different locality from that in which they enrolled if dental care is provided to the member's dependents at a uniformed services dental facility or by another dental plan provided through the spouse's employment. Provisions are made for termination of benefits in instances required by military justice decisions. In all other cases, enrollment is for a minimum period of two years. Members who have declined enrollment may elect to enroll their dependents at any time for the minimum of two years subject to the exceptions identified above.

Provisions have been included to assure access to participating providers. Participating providers will be paid directly by the insurers and are paid at a percentile level of statewide and regional prevailing fees above nonparticipating providers adequate to produce an effective financial incentive for participation. Lists of participating providers will also be made available at most uniformed services installations to assist beneficiaries in selecting their civilian dentists. Nonparticipating providers will be paid at not less than the 50th percentile of the statewide or regional prevailing fees.

The Director, OCHAMPUS or designee may establish or use existing alterntive delivery systems for dental care, such as preferred provider organizations or similar provider-based or subcontractor-based agreements. If the alternative delivery system uses a discounted fee arrangement, the discount negotiated by the alternative delivery organization for all dental services must be made available to beneficiaries of this program. This provision helps attract beneficiaries to these organizations, which have additional criteria applied to assure quality of care and beneficiary satisfaction, and helps the Government assure beneficiaries of reasonable prices for all their dental services.

Some state laws require that dental alternative delivery systems be provided with beneficiaries having a choice between them and providers who elect not to participate in these arangements. Where this is the case, the use of alternative delivery systems by this program will generally comply with the state requirement.

In localities in other states, the insurer may elect to provide the same choice, or to establish the alternative delivery system with sufficient providers electing to participate to assure good quality and convenient access for beneficiaries, and to recognize only those providers in the alternative delivery system as authorized providers for payment under the program. Where only the alternative delivery system is to be recognized for payment under the program, those beneficaries who had established a patient relationship with a dentist prior to the decision to use the alternative delivery system could continue to receive benefit payments for services rendered by that dentist even if the dentist decided not to participate in the alternative delivery system. Use of an alternative delvery system is at the option of the insurer subject to approval by the government based on its evaluation that the proposed alternative delivery system meets the criteria established in the contract for beneficiary access, adequate capacity, and reduced cost.

To assist the beneificiary, provider, insurer, and the Government in communications regarding the program, the Director, OCHAMPUS or designee will develop and distribute a dental benefits brochure. This brochure will be used by all parties as the principal source of information concerning program benefits. In addition, it will be used by the insurer as the primary reference or policy in accordance with the law and regulation in the adjudication of claims.

Appeals provisions are provided where the member or beneficiary believes benefits of the program have been denied to the beneficiary by the insurer, and where the provider has been initially denied or subsequently removed by the insurer as an authorized provider. The appeals provisions provide for a reconsideration and decision by the insurer concerning a benficiary's or provider's complaint prior to initiation of an appeal. The reconsideration decision is final if the issue is (1) a benefit denial in the amount of less than $50, or (2) a request for formal review has not been received by OCHAMPUS within 60 days of the date of the notice of reconsideration determination containing the offer of appeal rights. In all other cases, the appealing party may request a formal review of the matter by OCHAMPUS, expcept that a requirement of law or regulation, or benefit exclusion and limitation approved in compliance with law and regulation shall be denied as a matter for formal review.

In summary, this proposed amendment to the part implements a new dental benefit program for dependents of active duty members of the uniformed services. The amendment proposes to implement the program by contracting with a dental insurer or dental prepayment organization to provide a premium-based benefit program in accordance with section 1076a of Chapter 55, Title 10 U.S.C. The proposed amendment provides for an insurance, service, or prepayment plan

which functions in a manner consistent with the law and the practices and benefits of dental care plans purchased by private sector employers. We believe the result of the provisions of this amendment will assure good service to its beneficiaries and minimum intrusion by the government into the available arrangements for effective and high quality delivery of the dental plan benefits.

The amendment is being published for proposed rulemaking at the same time as it is being coordinated with the Department of Defense, Department of Health and Human Services, Department of Transportation, and with other interested agencies in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

List of Subjects in 32 CFR Part 199

Dental insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, it is proposed to amend 32 CFR Part 199 as follows:

1. The authority citation for Part 199 is revised to read as follows:

Authority: 10 U.S.C. 1076a, 1079, 1086; 5 U.S.C. 301.

2. Section 199.13 is added to read as follows:

§ 199.13 Active duty dependents dental plan.

(a) *General provisions—(1)* Purpose. This section prescribes guidelines and policies for the delivery and administration of the Active Duty Dependents Dental Plan of the Uniformed Services for the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Commissioned Corps of the U.S. Public Health Service (USPHS), and the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA).

(2) *Applicability* —(i) *Geographic.* This section is applicable geographically within the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(ii) *Agency.* The Provisions of this section apply throughout the Department of Defense (DoD), the Coast Guard, the Commissioned Corps of the USPHS, and the Commissioned Corps of the NOAA.

(3) *Authority and responsibility*—(i) *Legislative authority*—(A) *Joint regulations.* 10 U.S.C. Chapter 55, 1076a authorizes the Secretary of Defense, in consultation with the Secretary of Health and Human Services and the Secretary of Transportation, to prescribe regulations for the administration of the Active Duty Dependents Dental Plan.

(B) *Administration.* 10 U.S.C. Chapter 55 also authorizes the Secretary of Defense to administer the Active Duty Dependents Dental Plan for the Army, Navy, Air Force, and Marine Corps under DoD jurisdiction, the Secretary of Transportation to administer the Active Duty Dependents Dental Plan for the Coast Guard, when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services to administer the Active Duty Dependents Dental Plan for the Commissioned Corps of the NOAA and the USPHS.

(ii) *Organizational delegations and assignments.*—(A) *Assistant Secretary of Defense (Health Affairs) (ASD(HA)).* The Secretary of Defense, by 32 CFR Part 367, delegated authority to the ASD(HA) to provide policy guidance, management control, and coordination as required for all DoD health and medical resources and functional areas including health benefit programs. Implementing authority is contained in 32 CFR Part 367. For additional implementing authority see § 199.1 (c) of this part.

(B) *Evidence of eligibility.* The Department of Defense, through the Defense Enrollment Eligibility Reporting System (DEERS), is responsible for establishing and maintaining a listing of persons eligible to receive benefits under the Active Duty Dependents Dental Plan.

(4) *Active duty dependents dental benefits plan.* This is a program of dental benefits provided by the U.S. Government under public law to specified categories of individuals who are qualified for these benefits by virtue of their relationship to one of the seven Uniformed Services, and their voluntary decision to accept enrollment in the program and cost share with the Government in the premium cost of the benefits. The Dependents Dental Plan is an insurance, service, or prepayment plan involving a contract guaranteeing the indemnification or payment of the enrolled member's dependents against a specified loss in return for a premium paid. Where state regulations, charter requirements, or other provisions of state and local regulation governing dental insurance and prepayment programs conflict with Federal law and regulation governing this Program, Federal law and regulation shall govern. Otherwise, this Program shall comply with state and local regulatory requirements.

(5) *Plan funds*—(i) *Funding sources.* The funds used by the Active Duty Dependents Dental Plan are appropriated funds furnished by the Congress through the annual appropriation acts for the Department of Defense and the DHHS and funds collected by the Uniformed Services monthly through payroll deductions as premium shares from enrolled members.

(ii) *Disposition of funds.* Plan funds are paid by the Government as premiums to an insurer, service, or prepaid dental care organization under a contract negotiated by the Director, OCHAMPUS, or a designee, under the provisions of the Federal Acquisition Regulation (FAR).

(iii) *Plan.* The Director, OCHAMPUS or designee provides an insurance policy, service plan, or prepaid contract of benefits in accordance with those prescribed by law and regulation; as interpreted and adjudicated in accord with the policy, service plan, or contract and a dental benefits brochure; and as prescribed by requirements of the dental plan organization's contract with the government.

(iv) *Contracting out.* The method of delivery of the Active Duty Dependents Dental Benefit Plan is through a competitively procured contract. The Director, OCHAMPUS, or a designee is responsible for negotiating, under provisions of the FAR, a contract for dental benefits insurance or prepayment which includes responsibility for (A) development, publication, and enforcement of benefit policy, exclusions, and limitations in compliance with the law, regulations, and the contract provisions; (B) adjudicating and procesing claims; and conducting related supporting activities, such as eligibility verification, provider relations, and beneficiary communications.

(6) *Role of Health Benefits Advisor (HBA).* The HBA is appointed (generally by the commander of a Uniformed Services medical treatment facility) to serve as an advisor to patients and staff in matters involving the Active Duty Dependents Dental Plan. The HBA may assist beneficiaries or sponsors in applying for benefits, in the preparation of claims, and in their relations with OCHAMPUS and the dental plan insurer. However, the HBA is not responsible for the plan's policies and procedures and has not authority to make benefits determinations or obligate the plan's funds. Advice given to beneficiaries as to determination of benefits or level of payment is not binding on OCHAMPUS or the insurer.

(7) *Disclosure of information to the public.* Records and information acquired in the administration of the

Active Duty Dependents Dental Plan are records of the Department of Defense and may be disclosed in accordance with 32 CFR Parts 286 and 286a, constituting the applicable DoD Directives and DoD Regulations implementing the Freedom of Information and the Privacy Acts.

(8) *Equality of benefits.* All claims submitted for benefits under the Active Duty Dependents Dental Plan shall be adjudicated in a consistent, fair, and equitable manner, without regard to the rank of the sponsor.

(9) *Coordination of benefits.* The dental plan insurer shall conduct coordination of benefits for the Active Duty Dependents Dental Plan in accordance with generally accepted business practices.

(10) *Information on participating providers.* The Director, OCHAMPUS or designee, shall develop and make available to Uniformed Services Health Benefits Advisors and military installation personnel centers copies of lists of participating providers and providers accepting assignment for all localities with significant numbers of dependents of active duty members. In addition, the Director, OCHAMPUS or designee, shall respond to inquiries regarding availability of participating providers in areas not covered by the lists of participating providers.

(b) *Definitions.* For most definitions applicable to the provisions of this section, refer to § 199.2. The following definitions apply to this section.

Assignment. Acceptance by a nonparticipating provider of payment directly from the insurer while reserving the right to charge the beneficiary or sponsor for any remaining amount of the fees for services which exceeds the prevailing fee allowance of the insurer.

Authorized Provider. A dentist or dental hygienist specifically authorized to provide benefits under the Active Duty Dependents Dental Plan in paragraph (f) of this section.

Beneficiary. A dependent of an active duty member who has been enrolled in the Active Duty Dependents Dental Plan, and has been determined to be eligible for benefits, as set forth in paragraph (c) of this section.

Beneficiary Liability. The legal obligation of a beneficiary, his or her estate, or responsible family member to pay for the costs of dental care of treatment received. Specifically, for the purposes of services and supplies covered by the Active Duty Dependents Dental Plan, beneficiary liability includes cost-sharing amounts for restorative services, and, any amount above the prevailing fee determination by the insurer for either preventive or restorative services where the provider selected by the beneficiary is not a participating provider or a provider within an approved alternative delivery system. Beneficiary liability also includes any expenses for services and supplies not covered by the Active Duty Dependents Dental Benefit Plan, less any discount provided as a part of the insurer's agreement with an approved alternative delivery system.

By report. Dental procedures which are authorized as benefits only in unusual circumstances requiring justification of exceptional conditions related to otherwise authorized procedures. For example, a house call might be justified based on an enrolled dependent's severe handicap which prevents visits in the dentist's office for traditional prophylaxis. Alternatively, additional drugs might be required separately from an otherwise authorized procedure because of an emergent reaction caused by drug interaction during the performance of a restoration procedure. These services are further defined in paragraph (e) of this section.

Cost-Share. The amount of money for which the beneficiary (or sponsor) is responsible in connection with otherwise covered dental services (other than disallowed amounts) as set forth in paragraphs (d) (6) and (e) of this section. Cost-sharing may also be referred to as "co-payment."

Defense Enrollment Eligibility Reporting System (DEERS). The automated system that is composed of two phases:

(1) Enrolling all active duty and retired service members, their dependents, and the dependents of deceased service members, and

(2) Verifying their eligibility for health care benefits in the direct care facilities and through the Active Duty Dependents Dental Plan.

Dental hygienist. Practitioner in rendering complete oral prophylaxis services, applying medication, performing dental radiography, and providing dental education services with an associate degree or bachelor's degree in the field, and licensed by an appropriate authority. Most, but not all, state laws require services to be performed under the supervision of a dentist.

Dentist. Doctor of Dental Medicine (D.M.D.) or Doctor of Dental Surgery (D.D.S.) who is licensed to practice dentistry by an appropriate authority.

Diagnostic services. Cateogory of dental services including (1) clinical oral examinations, (2) rediographic examinations, and (3) diagnostic laboratory tests and examinations provided in connection with other dental procedures authorized as benefits of the Active Duty Dependents Dental Plan and further defined in paragraph (e) of this section.

Emergency palliative services. Minor procedures performed for the immediate relief of pain and discomfort as further defined in paragraph (e) of this section. This definition excludes those procedures other than minor palliative services which may result in the relief of pain and discomfort, but constitute the usual initial stage or conclusive treatment in procedures not otherwise defined as benefits of the Active Duty Dependent Dental Plan.

Initial Determination. A formal written decision on an Active Duty Dependents Dental Plan claim, a request by a provider for approval as an authorized provider, or a decision disqualifying or excluding a provider as an authorized provider under the Active Duty Dependent Dental Plan. Rejection of a claim or a request for benefit or provider authorization for failure to comply with administrative requirements, including failure to submit reasonably requested information, is not an initial determination. Responses to general or specific inquiries regarding Active Duty Dependent Dental Plan benefits are not initial determinations.

Laboratory and Pathological Services. Laboratory and pathological examinations (including machine diagnostic tests that produce hard-copy results) ordered by a dentist when necessary to, and rendered in connection with other covered dental services.

Note.—Claims for enrolled Active Duty Dependent Dental Plan beneficiaries whose sponsor is classified as MIA are processed as dependents of an active duty service member.

Nonparticipating provider. A dentist or dental hygienist that furnished dental services to an Active Duty Dependents Dental Plan beneficiary, but who has not agreed to participate or to accept the insurer's fee allowances and applicable cost share as the total charge for the services. A nonparticipating provider looks to the beneficiary or sponsor for final responsibility for payment of his or her charge, but may accept payment (assignment of benefits) directly from the insurer or assist the beneficiary in filing the claim for reimbursement by the contractor. Where the nonparticipating provider does not accept payment directly from the insurer, the insurer pays the beneficiary or sponsor, not the provider.

Participating Provider. A dentist or dental hygienist who has agreed to accept the insurer's prevailing fee

allowances or other fee arrangements as the total charge (even though less than the actual billed amount), including provision for payment to the provider by the beneficiary (or sponsor) of the twenty percent cost-share for restorative services by the beneficiary (or sponsor).

Party to a Hearing. An appealing party or parties, the insurer, and OCHAMPUS.

Party to the Initial Determination. Includes the Active Duty Dependents Dental Plan, a beneficiary of the Active Duty Dependents Dental Plan and a participating provider of services whose interests have been adjudicated by the initial determination. In addition, a provider who has been denied approval as an authorized Active Duty Dependents Dental Plan provider is a party to that initial determination, as is a provider who is disqualified or excluded as an authorized provider, unless the provider is excluded under another federal or federally funded program. See paragraph (h) of this section for additional information concerning parties not entitled to administrative review under the Active Duty Dependents Dental Plan appeals procedures.

Preventive Services. Traditional prophylaxis including scaling deposits from teeth, polishing teeth, and topical application of fluoride to teeth as further defined in paragraph (e) of this section.

Provider. A dentist or dental hygienist as specified in paragraph (f) of this section.

Representative. Any person who has been appointed by a party to the intitial determination as counsel or advisor and who is otherwise eligible to serve as the counsel or advisor of the party to the initial determination, particularly in connection with a hearing.

Restorative services. Restoration of teeth including those procedures commonly described as amalgam restorations, resin restorations, pin retention, and stainless steel crowns for primary teeth as further defined in paragraph (e) of this section.

(c) *Enrollment and eligibility*—(1) *General.* Sections 1076a and 1072(2)(D) of 10 U.S.C., Chapter 55 set forth those persons who are eligible for voluntary enrollment in the Active Duty Dependents Dental Benefit Plan. A determination that a person is eligible for voluntary enrollment does not entitle such person automatically to benefit payments. The active duty member must enroll his or her dependents as defined in this section, and other sections of this part set forth additional requirements that must be met before eligibility for the plan is extended.

(2) *Persons eligible—Dependent.* A person who bears one of the following relationships to an active duty member (under a call or order that does not specify a period of 30 days or less).

(i) *Spouse.* A lawful husband or wife, regardless of whether or not dependent upon the active duty member.

(ii) *Child.* To be eligible, the child must be unmarried and a member of one of the classes set forth in paragraph (c)(2)(i)(B)(*1*) of this section and also meet the requirements of paragraph (c)(2)(i)(B)(*2*) of this section.

(A) A legitimate child.

(B) An adopted child whose adoption has been completed legally.

(3) A legitimate stepchild.

(4) An illegitimate child of a male member whose paternity has been determined judicially, or an illegitimate child of record of a female member who has been directed judically to support the child.

(5) An illegitimate child of a male active duty member whose paternity has not been determined judicially, or an illegitimate child of record of a female active duty member who (i) resides with or in a home provided by the member and (ii) is and continues to be dependent upon the member for over 50 percent of his or her support.

(6) An illegitimate child of the spouse of an active duty member (that is, the active duty member's stepchild) who (i) resides with or in a home provided by the active duty member or the parent who is the spouse of the member and (ii) is and continues to be dependent upon the member for over 50 percent of his or her support.

(7) In addition to meeting one of the criteria in paragraph (c) (1) through (6) of this section, the child:

(i) Must not be married.

(ii) Must be in one of the following three age groups:

(A) Not passed his or her 21st birthday.

(B) Passed his or her 21st birthday, but incapable of self-support because of a mental or physical incapacity that existed before his or her 21st birthday and dependent on the member for over 50 percent of his or her support. Such incapacity must be continuous. If the incapacity significantly improves or ceases at any time after age 21, even if such incapacity recurs subsequently, eligibility cannot be reinstated on the basis of the incapacity. If the child was not handicapped mentally or physically at his or her 21st birthday, but becomes so incapacitated after that time, no eligibility exists on the basis of the incapacity.

(C) Passed his or her 21st birthday, but not his or her 23rd birthday, dependent upon the member for over 50 percent of his or her support, and pursuing a full-time course of education in an institution of higher learning approved by the Secretary of Defense or the Department of Education (as appropriate) or by a state agency under 38 U.S.C., Chapter 34 and 35).

Note.—Courses of education offered by institutions listed in the "Education Directory, Part 3, Higher Education" or "Accredited Higher Institutions," issued periodically by the Department of Education meet the criteria approved by the Secretary of Defense or the Department of Education, (refer to § 199.3(b)(2)(iv)(C)(*1*) of this section). For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to Chapter 34 and 35 of 38 U.S.C., a statement may be obtained from the Department of Education, Washington, DC 20202.

(3) *Enrollment.*—(i) *Initial enrollment.* Eligible dependents of members on active duty status as of August 1, 1987 are automatically enrolled in the Active Duty Dependents Dental Benefit Plan, except where any of the following conditions apply: (A) Active duty member is serving an initial enlistment term with less than two years of active duty remaining, except that such members' dependents may be enrolled during the initial enrollment period for benefits beginning August 1, 1987 provided that the member has at least six months remaining in the initial enlistment term. Enrollment of dependents must be for a period of two years, and the active duty member serving an initial enlistment period with less than two years remaining (subject to the initial enrollment exception) does not qualify for enrollment of his or her dependents until a contractual commitment exists for a reenlistment period meeting the two-year minimum enrollment for dental benefits.

(B) Active duty member has completed an election to disenroll his or her dependents form the Active Duty Dependents Dental Plan.

(C) Active duty member has only one dependent who is under four years of age as of August 1, 1987, and the member does not complete an election to enroll the child.

(ii) *Subsequent enrollment.* Eligible active duty members may elect to enroll their dependents for a period of not less than two years, except where any of the conditions in paragraph (c)(3)(i) of this section apply.

(iii) *Inclusive family enrollment.* All eligible dependents of the active duty member must be enrolled if any are enrolled, except that a member may

elect to enroll only those dependents who are remotely located from the member (e.g., a child living with a divorced spouse or a child in college).

(4) *Beginning dates of eligibility*—(i) *Initial enrollment.* The beginning date of eligibility for benefits is August 1, 1987.

(ii) *Subsequent enrollment.* The beginning date of eligibility for benefits is the first day of the month following the month in which the election of enrollment is completed, signed, and received by the active duty member's Service representative, except that the date of eligibility shall not be earlier than September 1, 1987.

(5) *Changes in and termination of enrollment*—(i) *Changes in status of active duty member.* When an active duty member's period of active duty ends for any reason, his or her dependents lose their eligibility as of 12:01 a.m. of the first day of the month following the month in which the active duty ends.

(ii) *Desertion status of active duty member.* Eligibility for the Active Duty Dependent Dental Plan benefits ceases as of 12:01 a.m. of the day following the day a member is placed in desertion status. The member's dependents regain eligibility when the member is returned to military control and base pay is restored. Enrollment is restored for the dependents of the active duty member who has been in desertion status of less than six months by payment of back premiums due, and claims for sevices rendered during the retroactive period status greater than six months are not eligible to be enrolled until one year following the day the member was placed in desertion status. A member serving a sentence of confinement in conjunction with a sentence of a punitive discharge is still considered on active duty until such time as the discharge is executed.

(iii) *Changes in status of dependent*—(A) *Divorce.* A spouse separated from an active duty member by a final divorce decree loses all eligibility based on his or her formal marital relationship as of 12:01 a.m. of the day following the day the divorce becomes final. The eligibility of the member's own children (including adopted and eligible illegitimate children) is unaffected by the divorce. An unadopted stepchild, however, loses eligibility with the termination of the marriage, also as of 12:01 a.m. the day following the day the divorce becomes final.

(B) *Annulment.* A spouse whose marriage to an active duty member is dissolved by annulment loses eligibility as of 12:01 a.m. of the day following the date of court grants the annulment order. The fact that the annulment legally declares the entire marriage void from its inception does not affect the termination date of eligibility. When there are children, the eligibility of the member's own children (including adopted and eligible illegitimate children) is unaffected by the annulment. An unadopted stepchild, however, loses eligibility with the annulment of the marriage, also as of 12:01 a.m. of the day following the day the court grants the annulment order.

(c) *Adoption.* A child of an active duty member who is adopted by a person, other than a person whose dependents are eligible for the Active Duty Dependents Dental Plan benefits while the active duty member is living, thereby severing the legal relationship between the child and the sponsor, loses eligibility as of 12:01 a.m. of the day following the day the adoption becomes final.

(D) *Marriage of child.* A child of an active duty member who marries a person whose dependents are not eligible for the Active Duty Dependents Dental Plan, loses eligibility as of 12:01 a.m. on the day following the day of the marriage. However, should the marriage be terminated by death, divorce, or annulment before the child is 21 years old, the child again becomes eligible for enrollment as a dependent as of 12:01 a.m. of the day following the day of the occurrence that terminates the marriage and continues up to age 21 if the child does not remarry before that time. If the marriage terminates after the child's 21st birthday, there is no reinstatement of eligibility.

(E) *Disabling illness or injury of child age 21 or 22 who has eligibility based on his or her student status.* A child 21 or 22 years old who is pursuing a full-time course of higher education and who, either during the school year or between semesters, suffers a disabling illness or injury with resultant inability to resume attendance at the institution remains eligible for dental benefits for 6 months after the disability is removed or until the student passes his or her 23rd birthday, whichever occurs first. However, if recovery occurs before the 23rd birthday and there is resumption of a full-time course of higher education, dental benefits can be continued until the 23rd birthday. The normal vacation periods during an established school year do not change the eligibility status of a dependent child 21 or 22 years old in full-time student status. Unless an incapacitating condition existed before, and at the time of, a dependent child's 21st birthday, a dependent child 21 or 22 years old in student status does not have eligibility related to mental or physical incapacity as described in § 199.3(b)(2)(iv)(C)(*2*) of this section.

(iii) *Option to disenroll as a result of a change in active duty station.* When an active duty member makes a change in duty station resulting in a move of his or her dependents to a new locality, the member may elect to disenroll from the Plan if dental care for these benefits is available from a local military dental clinic available to the member's dependents.

(iv) *Option to disenroll as a result of electing other dental insurance coverage.* When an active duty member's dependents become enrolled in another dental insurance plan, the member may elect to disenroll from the Active Duty Dependents Dental Plan. Proof of other dental insurance coverage must be provided to the appropriate Service representative prior to approval of disenrollment.

(v) *Option to disenroll after an initial two-year enrollment.* When an active duty member's enrollment of his or her dependents has been in effect for a continuous period of two years, the member may disenroll his or her dependents at any time. Subsequently, the member may enroll his or her dependents for another minimum period of two years.

(6) *Eligibility determination and enrollment*—(i) *Eligibility determination and enrollment responsibility of Uniformed Services.* Determination of a person's eligibility and processing of enrollment in the Active Duty Dependents Dental Benefit Plan is the responsibility of the active duty member's Uniformed Service. For the purpose of program integrity, the appropriate Uniformed Service shall, upon request of the Director, OCHAMPUS, review the eligibility of a specific person when there is reason to question the eligibility status. In such cases, a report on the result of the review and any action taken will be submitted to the Director, OCHAMPUS, or a designee.

(ii) *Procedures for determination of eligibility.* Uniformed Services identification cards do not distinguish eligibility for the Active Duty Dependents Dental Plan. Procedures for the determination of eligibility are identified in § 199.3(f)(2) of this part, except that Uniformed Services identification cards do not provide evidence of eligibility for the dental plan.

(7) *Evidence of eligibility required.* Eligibility and enrollment in the Active Duty Dependents Dental Plan will be verified through the DEERS (DoD

1341.1-M,[2] "Defense Enrollment Eligibility Reporting System (DEERS) Program Manual," May 1982).

(i) *Acceptable evidence of eligibility and enrollment.* Eligibility information established and maintained in the DEERS files is the only acceptable evidence of eligibility.

(ii) *Responsibility for obtaining evidence of eligibility.* It is the responsibility of the active duty member, or Active Duty Dependent Dental Plan beneficiary, parent, or legal representative, when appropriate, to enroll and provide adequate evidence for entry into the DEERS file to establish eligibility for the Active Duty Dependents Dental Plan, and to ensure that all changes in status that may affect enrollment and eligibility are reported immediately to the appropriate Uniformed Service for action. Ineligibility for benefits is presumed in the absence of prescribed enrollment and eligibility evidence in the DEERS file.

(d) *Premium sharing*—(1) *General.* Active duty members enrolling their dependents in the Active Duty Dependents Dental Plan shall be required to pay a share of the premium cost for their dependents.

(2) *Premium classifications.* Premium classifications are established by the Secretary of Defense, or designee, and provide for a minimum of two classifications, single and family.

(3) *Premium amounts.* The premium amounts to be paid for the Active Duty Dependents Dental Plan are established by the Secretary of Defense or designee.

(4) *Proportion of member's premium share.* The proportion of premium share to be paid by the member is established by the Secretary of Defense or designee, at not more than 40 percent of the total premium.

(5) *Pay deduction.* The member's premium share shall be deducted from the basic pay of the member.

(e) *Plan benefits*—(1) *General*—(i) *Scope of benefits.* The Active Duty Dependents Dental Plan provides coverage for certain basic dental diagnostic, minor palliative emergency, preventive, and restorative services to eligible, enrolled dependents of active duty members as set forth in paragraph (c) of this section.

(ii) *Authority to act for the plan.* The authority to make benefit determinations and authorize plan payments under the Active Duty Dependents Dental Plan rests primarily with the insurance, service plan, or prepayment dental plan contractor, subject to compliance with federal law and regulation and government contract provisions. The Director, OCHAMPUS, or designee, provides required benefit policy decisions resulting from changes in federal law and regulations and appeal decisions. No other persons or agents (such as dentists or Uniformed Services health benefits advisors) have such authority.

(iii) *Right to information.* As a condition precedent to the provision of benefits hereunder, the Director, OCHAMPUS or designee shall be entitled to receive information from an authorized provider or other person, institution, or organization (including a local, state, or U.S. Government agency) providing services or supplies to the beneficiary for which claims for benefits are submitted. Such information and records may relate to attendance, testing, monitoring, examination, or diagnosis of dental disease or conditions; or treatment rendered; or services and supplies furnished to a beneficiary; and shall be necessary for the accurate and efficient administration and payment of benefits under this plan. Before a determination will be made on a claim of benefits, a beneficiary or active duty member must provide particular additional information relevant to the requested determination, when necessary. The recipient of such information shall in every case hold such records confidential except when—

(A) Disclosure of such information is authorized specifically by the beneficiary;

(B) Disclosure is necessary to permit authorized governmental officials to investigate and prosecute criminal actions; or

(C) Disclosure is authorized or required specifically under the terms of the Privacy Act or Freedom of Information Act (refer to paragraph (a)(7) of this section). For the purpose of determining the applicability of and implementing the provisions of other dental benefits coverage or entitlement, the Director, OCHAMPUS or a designee may release, without consent or notice to any beneficiary or sponsor, to any person, organization, government agency, provider, or other entity, any information with respect to any beneficiary when such release constitutes a routine use published in the **Federal Register** in accordance with DoD 5400.11-R (Privacy Act (5 U.S.C. 522a)). Before a person's claim of benefits will be adjudicated, the person must furnish to the Director, OCHAMPUS or designee information that reasonably may be expected to be in his or her possession and that is necessary to make the benefit determination. Failure to provide the requested information may result in denial of the claim.

(iv) *Dental insurance policy, prepayment, or dental service plan contract.* The Director, OCHAMPUS or designee shall develop for approval by OCHAMPUS, a standard insurance policy, prepayment agreement, or dental service plan contract designating OCHAMPUS as the policyholder or purchaser The policy shall be in the form customarily employed by the dental plan insurer, subject to its compliance with federal law and the provisions of this Regulation.

(v) *Dental benefits brochure*—(A) *Content.* The Director, OCHAMPUS or designee shall establish a dental benefits brochure explaining the benefits of the plan in common lay terminology. The brochure shall include the limitations and exclusions and other benefit determination rules for administering the benefits in accordance with the law and this part. The brochure shall include the rules for adjudication and payment of claims, appealable issues, and appeal procedures in sufficient detail to serve as a common basis for interpretation and understanding of the rules by providers, beneficiaries, claims examiners, correspondence specialists, employees and representatives of the government bodies, health benefits advisors, and other interested parties.

(B) *Distribution.* The dental benefit brochure shall be printed and distributed with the assistance of the Uniformed Services to all active duty members enrolling their dependents, health benefits advisors, major personnel centers at Uniformed Services installations, and authorized providers of care.

(vi) *Utilization review and quality assurance.* Claims submitted for benefits under the Active Duty Dependents Dental Plan are subject to review by the Director, OCHAMPUS or designee for quality of care and appropriate utilization. The Director, OCHAMPUS or designee is responsible for appropriate utilization review and quality assurance standards, norms, and criteria consistent with the level of benefits.

(vii) *Alternative course of treatment policy.* The Director, OCHAMPUS or designee may establish, in accordance with generally accepted dental benefit practices, an alternative course of treatment policy which provides reimbursement in instances where the dentist and beneficiary select a more expensive service, procedure, or course

[2] Copies may be obtained, if needed, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

of treatment than is customarily provided. The benefit policy must meet the following conditions:

(A) The service, procedure, or course of treatment must be consistent with sound professional standards of dental practice for the dental condition concerned.

(B) The service, procedure, or course of treatment must be a generally accepted alternative for a service or procedure covered by this plan for the dental condition.

(C) Payment for the alternative service or procedure may not exceed the lower of the prevailing limits for the alternative procedure, the prevailing limits or scheduled allowance for the otherwise authorized benefit procedure for which the alternative is substituted, or the actual charge for the alternative procedure.

(2) *Benefits*—(i) *Diagnostic, preventive, and emergency palliative services.* Benefits may be extended for those dental services described as oral examination, diagnostic, emergency minor palliative, and preventive services defined as traditional prophylaxis (i.e., scaling deposits from teeth, polishing teeth, and topical application of fluoride to teeth) when performed directly by dentists or dental hygienists as authorized under paragraph (f) of this section. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules approved by OCHAMPUS and provided in the dental benefits brochure) using the American Dental Association, Council on Dental Plans' Code On Dental Procedures and Nomenclature (6th revision) as follows:

(A) *Diagnostic.* (*1*) Clinical oral examinations including initial (00110), periodic (00120),and emergency (00130).

(*2*) Radiographs appropriate to the diagnosis and prevention of dental disease, where such services are not directly related to non-covered major procedures. Subject to the dental plan's exclusions and limitations approved by OCHAMPUS, these procedures are included within the range of 00210 to 00340.

(*3*) Tests and laboratory examinations appropriate to the diagnosis and prevention of dental disease, where such services are not directly related to non-covered major procedures. These procedures (00410 to 00999) are included, subject ot the dental plan's exclusions and limitations as adopted by OCHAMPUS and provided in the dental benefits brochure.

(B) *Preventive.* (*1*) Dental prophylaxis, including adult 01110) and child 01120).

(*2*) Topical fluoride treatment, including prophylaxis for a child (01201) and an adult 01205), and (where the Director, OCHAMPUS or designee determines to be appropriate) without prophylaxis for a child (01203) and an adult (01204).

(*3*) Space maintenance with passive appliances for those procedures included within the range of 01510 and 01550.

(C) *Emergency palliative.* Minor palliative procedure for immediate and temporary relief of pain and suffering (09110).

(ii) *Restorative.* Benefits may be extended for basic restorative services of amalgam, composite restorations, and stainless steel crowns for primary teeth when performed directly by dentists or dental hygienists, or under orders and supervision by dentists, as authorized under paragraph (f) of this section. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules as adopted by OCHAMPUS and provided in the dental benefits brochure) using the American Dental Association, Council on Dental Plans' Code On Dental Procedures and Nomenclature (6th revision) as follows:

(A) Amalgam restorations, including polishing of one to four surfaces for primary and permanent teeth and included within the range of 02110 and 02161.

(B) Silicate restorations (02210).

(C) Resin restorations (subject to accepted dental practice) of one to four surfaces and included within the range of 02330 and 02387.

(D) Stainless steel crown for primary tooth (02930).

(E) Pin retention (02951).

(iii) *Dental appliance repairs.* Benefits may be extended for repairs to dentures when performed directly by dentists, or under orders and supervision by dentists as authorized under paragraph (f) of this section; subject to the dental plan's exclusions and limitations as adopted by OCHAMPUS and provided in the dental benefits brochure. These procedures are included within the range of 05510 and 05660.

(iv) *Services "By Report."* The following procedures are authorized when performed directly by dentists or dental hygienists only in unusual circumstances requiring justification of exceptional conditions directly related to otherwise authorized procedures. They are generally reserved for use where mental or physical impairements prevent the rendering of otherwise authorized procedures of this dental plan without one or more of these additional services. Use of the procedures may not result in the fragmentation of services normally included in a single procedure. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules as adopted by OCHAMPUS and provided in the dental benefits brochure) using the American Dental Association, Council on Dental Plans' Code On Dental Procedures and Nomenclature (6th revision) as follows:

(A) Local anesthesia (additional where not attendant to restorations or other procedures in which it is normally included—09210).

(B) Consultation (09310).

(C) House call (09440).

(D) Hospital call (09420).

(E) Office visit (after hours—09440).

(F) Drug injection (09610).

(G) Other drugs (09630).

(v) *Exclusion of adjunctive dental care.* Under limited circumstances, benefits are available for dental services and supplies under CHAMPUS when the dental care is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition, and is essential to the control of the primary medical condition; or is required in preparation for or as the result of dental trauma which may be or is caused by medically necessary treatment of an injury or disease (iatrogenic). These benefits are excluded under the Active Duty Dependents Dental Plan. For further information on adjunctive dental care benefits under CHAMPUS, see § 199.4 (e) (10) (i) and (ii) of this part.

(vi) *Benefit limitations and exclusions.* The Director, OCHAMPUS or designee may establish such exclusions and limitations as are consistent with those established by dental insurance and prepayment plans to control utilization and quality of care for the services and items covered by this dental plan. The exclusions and limitations which are established shall be published in the dental benefits brochure.

(3) *Beneficiary or sponsor liability*—(i) *Diagnostic, preventive, and emergency palliative services.* Enrolled dependents of active duty members or their sponsors are responsible for the payment of only amounts for services rendered by nonparticipating providers of care which exceed the equivalent of the statewide or regional prevailing fee levels as established by the insurer. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, the dental plan will reimburse the

dependent, or sponsor, or the nonparticipating provider selected by the dependent within 35 miles of the dependent's place of residence at the level of the provider's usual fees.

(ii) *Restorative services.* Enrolled dependents of active duty members or their sponsors are responsible for payment of 20 percent of the amounts determined by the insurer for services rendered by participating providers of care or 20 percent of these amounts plus any remainder of the charges made by nonparticipating providers of care. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, dependents or their sponsors are responsible for payment of 20 percent of the charges made by nonparticipating providers located within 35 miles of the dependent's place of residence.

(iii) *Dental appliance repairs.* Enrolled dependents of active duty members are responsible for payment of the cost sharing amounts as provided in paragraph (e)(4)(ii) of this section.

(iv) *Services "By report."* Enrolled dependents of active duty members or their sponsors are responsible for payment of these services in accordance with their relationship to the otherwise authorized benefit procedures. For example, home visit charges which occur primarily for the purpose of rendering restorative services require payment of the 20 percent, while a home visit for purposes of dental prophylaxis do not require payment of the 20 percent. Payment of any remaining amount in excess of the prevailing charge limits established by the insurer would be required for services rendered by nonparticipating providers in either of the examples given, subject to the exceptions for dependent lack of access to participating providers as provided in paragraph (e)(3) (i) and (ii) of this section.

(v) *Amounts over the dental insurer's established allowances for charges.* It is the responsibility of the dental plan insurer to determine allowable charges for the procedures identified as benefits of this plan. All benefits of the plan are based on the insurer's determination of the allowable charges, subject to the exceptions for lack of access to participating providers as provided in paragraphs (e)(3)(i) and (ii) of this section.

(f) *Authorized providers*—(1) *General.* This section sets forth general policies and procedures that are the basis for the Active Duty Dependents Dental Plan cost sharing of dental services and supplies provided by or under the direct supervision of dentists, and by dental hygienists within the scope of their licensure.

(i) *Listing of provider does not guarantee payment of benefits.* The fact that a type of provider is listed in this section is not to be construed to mean that the Active Duty Dependents Dental Plan will pay automatically a claim for services or supplies provided by such a provider. The Director, OCHAMPUS or designee also must determine if the patient is an eligible beneficiary, whether the services or supplies billed are authorized and medically necessary, and whether any of the authorized exclusions of otherwise qualified providers presented in this section apply.

(ii) *Conflict of interest.* See § 199.9(d)(2)(iv) of this part.

(iii) *Fraudulent practices or procedures.* See § 199.9(c) of this part.

(iv) *Utilization review and quality assurance.* Services and supplies furnished by providers of care shall be subjected to utilization review and quality assurance standards, norms, and criteria established by the dental plan. Utilization review and quality assurance assessments shall be performed by the dental plan consistent with the nature and level of benefits of the plan, and shall include analysis of the data and findings by the dental plan insurer from other dental accounts.

(v) *Provider required.* In order to be considered benefits, all services and supplies shall be rendered by, prescribed by, or furnished at the direction of, or on the order of an Active Duty Dependents Dental Plan authorized provider practicing within the scope of his or her license.

(vi) *Participating provider.* An authorized provider may elect to participate and accept the fee or charge determinations as established and made known to the provider by the dental plan insurer. The fee or charge determinations are binding upon the provider in accordance with the dental plan insurer's procedures for participation. The authorized provider may not participate on a claim-by-claim basis. The participating provider must agree to accept within one day of a request for appointment, beneficiaries in need of emergency palliative treatment. Payment to the participating provider is based on the lower of the actual charge or the insurer's determination of the allowable charge. Payment is made directly to the participating provider, and the participating provider may charge the beneficiary only for the 20 percent cost share of the allowable charge for authorized restorative services in addition to the charges for any services not authorized as benefits.

(vii) *Nonparticipating provider.* An authorized provider may elect for all beneficiaries not to participate and request the beneficiary or sponsor to pay any amount of the provider's billed charge in excess of the dental plan insurer's determination of allowable charges. Neither the government nor the dental plan insurer shall have any responsibility for any amounts over the allowable charges as determined by the dental plan insurer, except where the dental plan insurer is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days. In such instances of the nonavailability of a participating provider, the nonparticipating provider located within 35 miles of the dependent's place of residence shall be paid his or her usual fees, less the 20 percent cost share for restorative services and related services by report.

(A) *Assignment.* A nonparticipating provider may accept assignment of claims for all beneficiaries by filing the claims completed with the assistance of the beneficiary or sponsor for direct payment by the dental plan insurer to the provider.

(B) *Nonassignment.* A nonparticipating provider for all beneficiaries may request the beneficiary or sponsor to file the claim directly with the dental plan insurer, making arrangements with the beneficiary or sponsor for direct payment by the beneficiary or sponsor.

(2) *Dentists.* Subject to standards of participation provisions of this part, the following are authorized providers of care:

(i) Doctors of Dental Surgery (D.D.S.) having a degree from an accredited school of dentistry, licensed to practice dentistry by a state board of dental examiners, and practicing within the scope of their licenses, whether in individual, group, or clinic practice settings.

(ii) Doctors of Dental Medicine (D.M.D.) having a degree from an accredited school of dentistry, licensed to practice dentistry by a state board of dental examiners, and practicing within the scope of their licenses, whether in individual, group, or clinic practice settings.

(3) *Dental hygienists.* Subject to state licensure laws and standards of participation provisions of this part, dental hygienists having either an associate degree or baccalaureate degree from an accredited school of

dental hygiene, licensed to practice dental hygiene by a state board, and practicing within the scope of their licenses, whether in individual, group, or clinic practice settings. Dental hygienists are not authorized as independent providers of care except in a small number of states where independent practice is included in the state licensure provisions. In all other states, the dental hygienist performs services under the supervision of a dentist.

(4) *Alternative delivery systems*—(1) *General.* Alternative delivery systems may be established by the Director, OCHAMPUS or designee as authorized providers. Only dentists and dental hygienists shall be authorized to provide or direct the provision of authorized services and supplies in an approved alternative delivery system.

(ii) *Defined.* An alternative delivery system may be any approved arrangement for a preferred provider organization, dental health maintenance or clinic organization, or other contracted arrangement which is approved by OCHAMPUS in accordance with requirements and guidelines.

(iii) *Elective or exclusive arrangement.* Alternative delivery systems may be established by contract or other arrangement on either an elective or exclusive basis for beneficiary selection of participating and authorized providers in accordance with contractual requirements and guidelines.

(iv) *Provider election of participation.* Otherwise authorized providers must be provided with the opportunity of applying for participation in an alternative delivery system and of achieving participation status based on reasonable criteria for timeliness of application, quality of care, cost containment, and acceptance of reimbursement allowances.

(v) *Limitation on authorized providers.* Where exclusive alternative delivery systems are established, only providers participating in the alternative delivery system are authorized providers of care. In such instances, the dental plan shall continue to pay beneficiary claims for services rendered by otherwise authorized providers in accordance with established rules for reimbursement of nonparticipating providers where the beneficiary has established a patient relationship with the nonparticipating provider prior to the dental plan's proposal to subcontract with the alternative delivery system.

(vi) *Charge agreements.* Where the alternative delivery system employs a discounted free-for-service reimbursement methodology or schedule of charges or rates which includes all or most dental services and procedures recognized by the American Dental Association, Council on Dental Care Programs "Code on Dental Procedures and Nonenclature (6th Revision)," the discounts or schedule of charges or rates for all dental services and procedures shall be extended by its participating providers to beneficiaries of the Active Duty Dependents Dental Plan as an incentive for beneficiary participation in the alternative delivery system.

(5) *Billing practices.* The Director, OCHAMPUS, or designee, approves the dental plan's procedures governing the itemization and completion of claims for services rendered by authorized providers to enrolled beneficiaries of the Active Duty Dependents Dental Plan consistent with the insurer's existing procedures for completion and submittal of dental claims for its other dental plans and accounts.

(6) *Reimbursement of authorized providers.* The Director, OCHAMPUS or designee, approves the dental plan methodology for reimbursement of services rendered by authorized providers consistent with law, regulation, and contract provisions, and the benefits of the Active Duty Dependents Dental Plan. The following general requirements for the methodology shall be met, subject to modifications and exceptions approved by the Director, OCHAMPUS or a designee.

(i) Nonparticipating providers (or the dependents or sponsors for unassigned claims) shall be reimbursed at the equivalent of not less than the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower; less any cost share amount due for restorative services, except where the dental plan insurer is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days. In such instances of the nonavailability of a participating provider, the nonparticipating provider located within 35 miles of the dependent's place of residence shall be paid his or her usual fees, less the 20 percent cost share for restorative services and related services by report.

(ii) Participating providers shall be reimbursed at the equivalent of a percentile of prevailing charges sufficiently above the 50th percentile of prevailing charges made for similar services in the same locality (region) or state as to constitute a significant financial incentive for participation, or the provider's actual charge, whichever is lower; less any cost share amount due for restorative services.

(g) *Benefit payment*—(1) *General.* Active Duty Dependent Dental Plan benefit payments are made either directly to the provider or to the beneficiary or sponsor, depending on the manner in which the claim is submitted or the terms of the subcontract of an alternative delivery system with the dental plan insurer.

(2) *Benefit payments made to a participating provider.* When the authorized provider has elected to participate in accordance with the arrangement and procedures established by the dental plan insurer, payment is made based on the lower of the actual charge or the insurer's determination of the allowable charge. Payment is made directly to the participating provider as payment in full, less the 20 percent cost share of the allowable charge for any of the restorative services authorized as benefits. The beneficiary or sponsor is responsible only for any required cost-sharing.

(3) *Benefit payments made to a nonparticipating provider.* When the authorized provider has elected not to participate in accordance with the arrangement and procedures established by the dental plan, payment is made by the insurer based on the lower of the actual charge or the insurer's determination of the allowable charge. The beneficiary is responsible for payment of the 20 percent cost-share of the allowable charge for any restorative services authorized as benefits, and any amount of the charge for all services above the allowable charge. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, dependents or their sponsors are responsible for payment of 20 percent of the charges made by nonparticipating providers located within 35 miles of the dependent's place of residence.

(i) Assigned claims are claims submitted directly by the nonparticipating provider and are paid directly to the provider.

(ii) Nonassigned claims are claims submitted by the beneficiary or sponsor and are paid directly to the claimant.

(4) *Dental Explanation of Benefits (DEOB).* An explanation of benefits is sent to the beneficiary or sponsor and provides the following information:

(i) Name and address of the beneficiary.

(ii) Social Security Account Number (SSAN) of the sponsor.

(ii) Name and address of the provider.

(iii) Services or supplies covered by the claim for which the DEOB applies.

(iv) Dates the services or supplies were provided.

(v) Amount billed; allowable charge; and amount of payment.

(vi) To whom payment, if any, was made.

(vii) Reasons for any denial.

(viii) Recourse available to beneficiary for review of claim decision (refer to paragraph (h) of this section).

(5) *Fraud*—(i) *Federal laws.* 18 U.S.C. 287 and 1001 provide for criminal penalties for submitting knowingly or making any false, fictitious, or fraudulent statement or claim in any matter within the jurisdiction of any department or agency of the United States. Examples of fraud include situations in which ineligible persons not enrolled in the Active Duty Dependents Dental Plan obtain care and file claims for benefits under the name and identification of an enrolled beneficiary; or when providers submit claims for services and supplies not rendered to enrolled beneficiaries; or when a participating provider bills the beneficiary for amounts over the dental plan insurer's determination of allowable charges.

(ii) *Suspected fraud.* Any person, including the dental plan insurer, who becomes aware of a suspected fraud shall report the circumstances in writing, together with copies of any available documents pertaining thereto, to the Director, OCHAMPUS, or a designee, who shall initiate an official investigaiton of the case.

(h) *Appeal and hearing procedures*—(1) *General.* This section sets forth the policies and procedures for appealing decisions made by the dental plan adversely affecting the rights and liabilities of beneficiaries, participating providers, and providers denied the status of authorized provider under the Active Duty Dependents Dental Plan. An appeal under the Active Duty Dependents Dental Plan is an administrative review of program determinations made under the provisions of law and regulation. An appeal cannot challenge the propriety, equity, or legality of any provision of law and regulation.

(i) *Initial determination*—(A) *Notice of initial determination and right to appeal.* (*1*) The dental plan contractor shall mail notices of initial determinations to the Active Duty Dependents Dental Plan beneficiary at the last known address. For beneficiaries who are under 18 years of age or who are incompetent, a notice issued to the parent or guardian constitutes notice to the beneficiary.

(*2*) The dental plan contractor shall notify providers of an initial determination on a claim only if the providers participated in the claim or accepted assignment.

(*3*) Notice of an initial determination on a claim by the dental plan contractor shall be made in the contractor's explanation of benefits (beneficiary) or with the summary of payment (provider).

(*4*) Each notice of an initial determination on a request for benefit authorization, a request by a provider for approval as an authorized provider, or a decision to disqualify or exclude a provider as an authorized provider under the Active Duty Dependents Dental Plan shall state the reason for the determination and the underlying facts supporting the determination.

(*5*) In any case when the initial determination is adverse to the beneficiary or participating provider or to the provider seeking approval as an authorized provider, the notice shall include a statement of the beneficiary's or provider's right to appeal the determination. The procedure for filing the appeal also shall be explained.

(B) *Effect of initial determination.* The initial determination is final, unless appealed in accordance with this section or unless the initial determination is reopened by OCHAMPUS or the dental plan contractor.

(ii) *Participation in an appeal.* Participation in an appeal is limited to any party to the initial determination, including OCHAMPUS, the dental plan contractor, and authorized representatives of the parties. Any party to the initial determination, except OCHAMPUS and the dental plan contractor, may appeal an adverse determination. The appealing party is the party who actually files the appeal.

(A) *Parties to the initial determination.* For purposes of these appeal and hearing procedures, the following are not parties to an initial determination and are not entitled to administrative review under this section.

(*1*) A provider disqualified or excluded as an authorized provider under the Active Duty Dependents Dental Plan based on a determination under another Federal or federally funded program is not a party to the OCHAMPUS action and may not appeal under this section.

(*2*) A sponsor or parent of a beneficiary under 18 years of age or guardian of an incompetent beneficiary is not a party to the initial determination and may not serve as the appealing party, although such persons may represent the appealing party in an appeal.

(*3*) A third party other than the dental plan contractor, such as an insurance company, is not a party to the initial determination and is not entitled to appeal, even though it may have an indirect interest in the initial determination.

(*4*) A nonparticipating provider is not a party to the initial determination and may not appeal.

(B) *Representative.* Any party to the initial determination may appoint a representative to act on behalf of the party in connection with an appeal. Generally, the parent of a minor beneficiary and the legally appointed guardian of an incompetent beneficiary shall be presumed to have been appointed representative without specific designation by the beneficiary.

(*1*) The representative shall have the same authority as the party to the appeal, and notice given to the representative shall constitute notice required to be given to the party under this part.

(*2*) To avoid possible conflicts of interest, an officer or employee of the United States, such as an employee or member of a Uniformed Service, including an employee or staff member of a Uniformed Service legal office, or a CHAMPUS advisor, subject to the exceptions in 18 U.S.C. 205, is not eligible to serve as a representative. An exception usually is made for an employee or member of Uniformed Service who represents an immediate family member. In addition, the Director, OCHAMPUS, or designee, may appoint an officer or employee of the United States as the OCHAMPUS representative at a hearing.

(iii) *Burden of proof.* The burden of proof is on the appealing party to establish affirmatively by substantial evidence the appealing party's entitlement under law and this part to the authorization of the Active Duty Dependents Dental Plan benefits or approval as an authorized provider. Any cost or fee associated with the production or submission of information in support of an appeal may not be paid by OCHAMPUS.

(iv) *Late filing.* If a request for reconsideration, formal review, or hearing is filed after the time permitted in this section, written notice shall be issued denying the request. Late filing may be permitted only if the appealing party reasonably can demonstrate to the satisfaction of the dental plan

contractor, or the Director, OCHAMPUS, or designee, that timely filing of the request was not feasible due to extraordinary circumstances over which the appealing party had no practical control. Each request for an exception to the filing requirement will be considered on its own merits.

(v) *Appealable issue.* An appealable issue is required in order for an adverse determination to be appealed under the provisions of this section. Examples of issues that are not appealable under this chapter include:

(A) A dispute regarding a requirement of the law or regulation.

(B) The amount of the dental plan contractor-determined allowable charge since the methodology constitutes a limitation no benefits under the provisions of this part.

(C) Certain other issues on the basis that the authority for the initial determination is not vested of OCHAMPUS. Such issues include but are not limited to the following examples:

(*1*) Determination of a person's eligibility as an enrolled beneficiary in the Active Duty Dependents Dental Plan is the responsibility of the appropriate Uniformed Service. Although OCHAMPUS and the dental plan contractor must make determinations concerning a beneficiary's enrollment, ultimate responsibility for resolving a beneficiary's eligibility and enrollment rests with the Uniformed Services. Accordingly, a disputed question of fact concerning a beneficiary's enrollment or eligibility will not be considered an apealable issue under the provisions of this section, but shall be resolved in accordance with paragraph (c) of this section.

(*2*) The decision to disqualify or exclude a provider because of a determination against that provider under another Federal or federally funded program is not an initial determination that is appealable under this part. The provider is limited to exhausting administrative appeal rights offered under the Federal or federally funded program that made the initial determination. However, a determination to disqualify or exclude a provider because of abuse or fraudulent practices or procedures under the Active Duty Dependents Dental Plan is an initial determination that is appealable under this part.

(vi) *Amount in dispute.* An amount in dispute is required for an adverse determination to be appealed under the provisions of this section, except as set forth in the following.

(A) The amount in dispute is calculated as the amount of money the dental plan contractor would pay if the services and supplies involved in dispute were determined to be authorized benefits of the Active Duty Dependents Dental Plan. Examples of amounts of money that are excluded by this part from payments for authorized benefits include, but are not limited to:

(*1*) Amounts in excess of the dental plan contractor-determined allowable charge.

(*2*) The beneficiary's cost-share amounts for restorative services.

(*3*) Amounts that the beneficiary, or parent, guardian, or other responsible person has no legal obligation to pay.

(B) There is no requirement for an amount in dispute when the appealable issue involves a denial of a provider's request for approval as an authorized provider or the determination to disqualify or exclude a provider as an authorized provider.

(C) Individual claims may be combined to meet the required amount in dispute if all of the following exist:

(*1*) The claims involve the same beneficiary.

(*2*) The claims involve the same issue.

(*3*) At least one of the claims so combined has had a reconsideration decision issued by the dental plan contractor.

Note.—A request for administrative review under this appeal process which involves a dispute regarding a requirement of law or regulation (paragraph (h)(1)(v)(A) of this section) or does not involve a sufficient amount in dispute (paragraph (h)(1)(vi) of this section) may not be rejected at the reconsideration level of appeal. However, the appeal shall involve an appealable issue and sufficient amount in dispute under these subsections to be granted a formal review or hearing.

(vii) *Levels of appeal.* The sequence and procedures of an Active Duty Dependents Dental Plan appeal are contained in the following.

(A) Reconsideration by the dental plan contractor.

(B) Formal review of OCHAMPUS.

(C) Hearing.

(2) *Reconsideration.* Any party to the initial determination made by the dental plan contractor may request a reconsideration.

(i) *Requesting a reconsideration*—(A) *Written request required.* The request must be in writing, shall state the specific matter in dispute, and shall include a copy of the notice of initial determination made by the dental plan contractor, such as the explanation of benefits.

(B) *Where to file.* The request shall be submitted to the dental plan contractor's office as designated in the notice of initial determination.

(C) *Allowed time to file.* The request must be mailed within 90 days after the date of the notice of initial determination.

(D) *Official filing date.* A request for a reconsideration shall be deemed filed on the date it is mailed and postmarked. If the request does not have a postmark, it shall be deemed filed on the date received by the dental plan contractor.

(ii) *The reconsideration process.* The purpose of the reconsideration is to determine whether the initial determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested or at the time the provider requested approval as an authorized provider. The reconsideration is performed by a member of the dental plan contractor's staff who was not involved in making the initial determination and is a thorough and independent review of the case. The reconsideration is based on the information submitted that led to the initial determination, plus any additional information that the appealing party may submit or the dental plan contractor may obtain.

(iii) *Timeliness of reconsideration determination.* The dental plan contractor normally shall issue its reconsideration determination no later than 60 days from the datee of its receipt of the request for reconsideration.

(iv) *Notice of reconsideration determination.* The dental plan contractor shall issue a written notice of the reconsideration determination to the appealing party at his or her last known address. The notice of the reconsideration determination must contain the following elements:

(A) A statement of the issue or issues under appeal.

(B) The provisions of law, regulation, policies, and guidelines that apply to the issue or issues under appeal.

(C) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(D) Whether the reconsideration upholds the initial determination or reverses it, in whole or in part, and the rationale for the action.

(E) A statement of the right to appeal further in any case when the reconsideration determination is less than fully favorable to the appealing party and the amount in dispute is $50 or more.

(v) *Effect of reconsideration determination.* The reconsideration determination is final if either of the following exist:

(A) The amount in dispute is less than $50.

(B) Appeal rights have been offered, but a request for formal review is not received by OCHAMPUS within 60 days of the date of the notice of the reconsideration determination.

(3) *Formal review.* Any party to the initial determination may request a formal review by OCHAMPUS if the party is dissatisfied with the reconsideration determination and the reconsideration determination is not final under the provisions of paragraph (b)(5) of this section. Any party to the initial determination made by OCHAMPUS may request a formal review by OCHAMPUS if the party is dissatisfied with the initial determination.

(i) *Requesting a formal review*—(A) *Written request required.* The request must be in writing, shall state the specific matter in dispute, shall include copies of the written determination (notice of reconsideration determination) being appealed, and shall include any additional information or documents not submitted previously.

(B) *Where to file.* The request shall be submitted to the Chief, Appeals and Hearings, OCHAMPUS, Aurora, Colorado 80045–6900.

(C) *Allowed time to file.* The request shall be mailed within 60 days after the date of the notice of the reconsideration determination being appealed.

(D) *Official filing date.* A request for a formal review shall be deemed filed on the date it is mailed and postmarked. If the request does not have a postmark, it shall be deemed filed on the date received by OCHAMPUS.

(ii) *The formal review process.* The purpose of the formal review is to determine whether the initial determination or reconsideration determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested, at the time the provider requested approval as an authorized provider, or at the time of the action by OCHAMPUS to disqualify or exclude a provider. The formal review is performed by the Chief, Appeals and Hearings, OCHAMPUS, or a designee, and is a thorough review of the case. The formal review determination shall be based on the information upon which the initial determination or reconsideration determination was based and any additional information the appealing party or the dental plan contractor may submit or OCHAMPUS may obtain.

(iii) *Timeliness of formal review determination.* The Chief, Appeals and Hearings, OCHAMPUS, or a designee, normally shall issue the formal review determination no later than 90 days from the date of receipt of the request for formal review by the OCHAMPUS.

(iv) *Notice of formal review determination.* The Chief, Appeals and Hearings, OCHAMPUS, or a designee, shall issue a written notice of the formal review determination to the appealing party at his or her last known address. The notice of the formal review determination must contain the following elements:

(A) A statement of the issue or issues under appeal.

(B) The provisions of law, regulation, policies, and guidelines that apply to the issue or issues under appeal.

(C) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(D) Whether the formal review upholds the prior determination or determinations or reverses the prior determination or determinations in whole or in part and the rationale for the action.

(E) A statement of the right to request a hearing in any case when the formal review determination is less than fully favorable, the issue is appealable, and the amount in dispute is $300 or more.

(v) *Effect of formal review determination.* The formal review determination is final if one or more of the following exist:

(A) The issue is not appealable. (See paragraph (h)(1)(v) of this section.)

(B) The amount in dispute is less than $300. (See paragraph (h)(1)(vi) of this section.)

(C) Appeal rights have been offered, but a request for hearing is not received by OCHAMPUS within 60 days of the date of the notice of the formal review determination.

(4) *Hearing.* Any party to the initial determination may request a hearing if the party is dissatisfied with the formal review determination and the formal review determination is not final under the provisions of paragraph (c)(5) of this section.

(i) *Requesting a hearing*—(A) *Written request required.* The request shall be in writing, state the specific matter in dispute, include a copy of the formal review determination, and include any additional information or documents not submitted previously.

(B) *Where to file.* The request shall be submitted to the Chief, Appeals and Hearings, OCHAMPUS, Aurora, Colorado 80045–6900.

(C) *Allowed time to file.* The request shall be mailed within 60 days after the date of the notice of the formal review determination being appealed.

(D) *Official filing date.* A request for hearing shall be deemed filed on the date it is mailed and postmarked. If a request for hearing does not have a postmark, it shall be deemed filed on the date received by OCHAMPUS.

(ii) *The hearing process.* The hearing shall be conducted as a nonadversary, administrative proceeding to determine the facts of the case and to allow the appealing party the opportunity personally to present the case before an impartial hearing officer. The hearing is a forum in which facts relevant to the case are presented and evaluated in relation to applicable law, regulation, policies, and guidelines in effect at the time the care was provided or requested, or at the time the provider requested approval as an authorized provider.

(iii) *Timeliness of hearing*—(A) Except as otherwise provided in this section, within 60 days following receipt of a request for hearing, the Director, OCHAMPUS, or a designee, normally will appoint a hearing officer to hear the appeal. Copies of all records in the possession of OCHAMPUS that are pertinent to the matter to be heard or that formed the basis of the formal review determination shall be provided to the hearing officer and, upon request, to the appealing party.

(B) The hearing officer, except as otherwise provided in this section, normally shall have 60 days from the date of written notice of assignment to review the file, schedule and hold the hearing, and issue a recommended decision to the Director, OCHAMPUS, or designee.

(C) The Director, OCHAMPUS, or designee, may delay the case assignment to the hearing officer if additional information is needed that cannot be obtained and included in the record within the time period specified above. The appealing party will be notified in writing of the delay resulting from the request for additional information. The Director, OCHAMPUS, or a designee, in such circumstances, will assign the case to a hearing officer within 30 days of receipt of all such additional information or within 60 days of receipt of the request for hearing, whichever shall occur last.

(D) The hearing officer may delay submitting the recommended decision if, at the close of the hearing, any party to the hearing requests that the record remain open for submission of additional information. In such circumstances, the hearing officer will have 30 days following receipt of all such additional information including comments from the other parties to the hearing concerning the additional information to submit the recommended

decision to the Director, OCHAMPUS, or a designee.

(iv) *Representation at a hearing.* Any party to the hearing may appoint a representative to act on behalf of the party at the hearing, unless such person currently is disqualified or suspended from acting in another Federal administrative proceeding, or unless otherwise prohibited by law, this part, or any other DoD regulation (see paragraph (a)(2)(ii) of this section). A hearing officer may refuse to allow any person to represent a party at the hearing when such person engages in unethical, disruptive, or contemptuous conduct, or intentionally fails to comply with proper instructions or requests of the hearing officer or the provisions of this part. The representative shall have the same authority as the appealing party, and notice given to the representative shall constitute notice required to be given to the appealing party.

(v) *Consolidation of proceedings.* The Director, OCHAMPUS, or a designee, may consolidate any number of proceedings for hearing when the facts and circumstances are similar and no substantial right of an appealing party will be prejudiced.

(vi) *Authority of the hearing officer.* The hearing officer, in exercising the authority to conduct a hearing under this part, will be bound by 10 U.S.C., Chapter 55 and this part. The hearing officer in addressing substantive, appealable issues shall be bound by the dental benefits brochure, policies, procedures, and other guidelines issued by the ASD(HA), or a designee, or by the Director, OCHAMPUS, or a designee, in effect for the period in which the matter in dispute arose. A hearing officer may not establish or amend the dental benefits brochure, policy, procedures, instructions, or guidelines. However, the hearing officer may recommend reconsideration of the policy, procedures, instructions or guidelines by the ASD(HA), or a designee, when the final decision is issued in the case.

(vii) *Disqualification of hearing officer.* A hearing officer voluntarily shall disqualify himself or herself and withdraw from any proceeding in which the hearing officer cannot give fair or impartial hearing, or in which there is a conflict of interest. A party to the hearing may request the disqualification of a hearing officer by filing a statement detailing the reasons the party believes that a fair and impartial hearing cannot be given or that a conflict of interest exists. Such request immediately shall be sent by the appealing party or the hearing officer to the Director, OCHAMPUS, or a designee, who shall investigate the allegations and advise the complaining party of the decision in writing. A copy of such decision also shall be mailed to all other parties to the hearing. If the Director, OCHAMPUS, or a designee, reassigns the case to another hearing officer, no investigation shall be required.

(viii) *Notice and scheduling of hearing.* The hearing officer shall issue by certified mail, when practicable, a written notice to the parties to the hearing of the time and place for the hearing. Such notice shall be mailed at least 15 days before the scheduled date of the hearing. The notice shall contain sufficient information about the hearing procedure, including the party's right to representation, to allow for effective preparation. The notice also shall advise the appealing party of the right to request a copy of the record before the hearing. Additionally, the notice shall advise the appealing party of his or her responsibility to furnish the hearing officer, no later than 7 days before the scheduled date of the hearing, a list of all witnesses who will testify and a copy of all additional information to be presented at the hearing. The time and place of the hearing shall be determined by the hearing officer, who shall select a reasonable time and location mutually convenient to the appealing party and OCHAMPUS.

(ix) *Dismissal of request for hearing*—(A) *By application of appealing party.* A request for hearing may be dismissed by the Director, OCHAMPUS, or a designee, at any time before the mailing of the final decision, upon the application of the appealing party a request for dismissal must be in writing and filed with the Chief, Appeals and Hearings, OCHAMPUS, or the hearing officer. When dismissal is requested, the formal review determination in the case shall be deemed final, unless the dismissal is vacated in accordance with paragraph (h)(4)(ix)(E) of this section.

(B) *By stipulation of the parties to the hearing.* A request for a hearing may be dismissed by the Director, OCHAMPUS, or a designee, at any time before the mailing of notice of the final decision under a stipulation agreement between the appealing party and OCHAMPUS. When dismissal is entered under a stipulation, the formal review decision shall be deemed final, unless the dismissal is vacated in accordance with paragraph (h) (4) (ix) (E) of this section.

(C) *By abandonment.* The Director, OCHAMPUS, or a designee, may dismiss a request for hearing upon abandonment by the appealing party.

(*1*) An appealing party shall be deemed to have abandoned a request for hearing, other than when personal appearance is waived in accordance with paragraph (h) (4) (xi) (M) of this section, if neither the appealing party nor an appointed representative appears at the time and place fixed for the hearing and if, within 10 days after the mailing of a notice by certified mail to the appealing party by the hearing officer to show cause, such party does not show good and sufficient cause for such failure to appear and failure to notify the hearing officer before the time fixed for hearing that an appearance could not be made.

(*2*) An appealing party shall be deemed to have abandoned a request for hearing if, before assignment of the case to the hearing officer, OCHAMPUS is unable to locate either the appealing party or an appointed representative.

(*3*) An appealing party shall be deemed to have abandoned a request for hearing if the appealing party fails to prosecute the appeal. Failure to prosecute the appeal includes, but is not limited to, an appealing party's failure to provide information reasonably requested by OCHAMPUS or the hearing officer for consideration in the appeal.

(*4*) If the Director, OCHAMPUS, or a designee, dismisses the request for hearing because of abandonment, the formal review determination in the case shall be deemed to be final, unless the dismissal is vacated in accordance with paragraph (h) (4) (ix) (E) of this section.

(D) *For cause.* The Director, OCHAMPUS, or a designee, may dismiss for cause a request for hearing either entirely or as to any stated issue. If the Director, OCHAMPUS, or a designee, dismisses a hearing request for cause, the formal review determination in the case shall be deemed to be final, unless the dismissal is vacated in accordance with paragraph (h) (4) (ix) (E) of this section. A dismissal for cause may be issued under any of the following circumstances:

(*1*) When the appealing party requesting the hearing is not a proper party under paragraph (h) (1) (ii) (A) of this section of does not otherwise have a right to participate in a hearing.

(*2*) When the appealing party who filed the hearing request dies, and there is no information before the Director, OCHAMPUS, or a designee, showing that a party to the initial determination who is not an appealing party may be prejudiced by the formal review determination.

(*3*) When the issue is not appealable (See paragraph (h) (1) (v) of this section.)

(*4*) When the amount in dispute is less than $300 (See paragraph (h) (1) (vi) of this section.)

(*5*) When all appealable issues have been resolved in favor of the appealing party.

(E) *Vacation of dismissal.* Dismissal of a request for hearing may be vacated by the Director, OCHAMPUS, or a designee, upon written request of the appealing party, if the request is received within 6 months of the date of the notice of dismissal mailed to the last known address of the party requesting the hearing.

(x) *Preparation for hearing*—(A) *Prehearing statement of contentions.* The hearing officer may on reasonable notice, require a party to the hearing to submit a written statement of contentions and reasons. The written statement shall be provided to all parties to the hearing before the hearing takes place.

(B) *Agency records*—(*1*) *Hearing officer.* A hearing officer may ask OCHAMPUS to produce, for inspection, any records or relevant portions of records when they are needed to decide the issues in any proceeding before the hearing officer or to assist an appealing party in preparing for the proceeding.

(*2*) *Appealing party.* A request to a hearing officer by an appealing party for disclosure or inspection of OCHAMPUS or the dental plan contractor records shall be in writing and shall state clearly what information and records are required.

(C) *Witnesses and evidence.* All parties to a hearing are responsible for producing, at each party's expense, meaning without reimbursement of payment by OCHAMPUS, witnesses and other evidence in their own behalf, and for furnishing copies of any such documentary evidence to the hearing officer and other party or parties to the hearing. The Department of Defense is not authorized to subpoena witnesses or records. The hearing officer may issue invitations and requests to individuals to appear and testify without cost to the Government, so that the full facts in the case may be presented.

(D) *Interrogatories and depositions.* A hearing officer may arrange to take interrogatories and depositions, recognizing that the Department of Defense does not have subpoena authority. The expense shall be assessed to the requesting party, with copies furnished to the hearing officer and other party or parties to the hearing.

(xi) *Conduct of hearing*—(A) *Right to open hearing.* Because of the personal nature of the matters to be considered, hearings normally shall be closed to the public. However, the appealing party may request an open hearing. If this occurs, the hearing shall be open, except when protection of other legitimate Government purposes dictates closing certain portions of the hearing.

(B) *Right to examine parties to the hearing and their witnesses.* Each party to the hearing shall have the right to produce and examine witnesses, to introduce exhibits, to question opposing witnesses on any matter relevant to the issue even though the matter was not covered in the direct examination, to impeach any witness regardless of which party to the hearing first called the witness to testify, and to rebut any evidence presented. Except for those witnesses employed by OCHAMPUS at the time of the hearing or records in the possession of OCHAMPUS, a party to a hearing shall be responsible, that is to say no payment or reimbursement shall be made by CHAMPUS for the cost or fee associated with producing witinesses or other evidence in the party's own behalf, or for furnishing copies of documentary evidence to the hearing officer and other party or parties to the hearing.

(C) *Burden of proof.* The burden of proof is on the appealing party affirmatively to establish by substantial evidence the appealing party's entitlement under law and this Regulation to the authorization of Active Duty Dependents Dental Plan benefits or approval as an authorized provider. Any part of the cost or fee associated with producing or submitting in support of an appeal may not be paid by OCHAMPUS.

(D) *Taking of evidence.* The hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties to the hearing. Before taking evidence, the hearing officer shall identify and state the issues in dispute on the record and the order in which evidence will be received.

(E) *Questioning and admission of evidence.* A hearing officer may question any witness and shall admit any relevant evidence. Evidence that is irrelevant or unduly repetitious shall be excluded.

(F) *Relevant evidence.* Any relevant evidence shall be admitted, unless unduly repetitious, if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil or criminal actions.

(G) *Active Duty Dependents Dental Plan determination first.* The basis of the Active Duty Dependents Dental Plan determinations shall be presented to the hearing officer first. The appealing party shall then be given the opportunity to establish affirmatively why this determination is held to be in error.

(H) *Testimony.* Testimony shall be taken only on oath, affirmation, or penalty of perjury.

(I) *Oral argument and briefs.* At the request of any party to the hearing made before the close of the hearing, the hearing officer shall grant oral argument. If written argument is requested, it shall be granted, and the parties to the hearing shall be advised as to the time and manner within which such argument is to be filed. The hearing officer may require any party to the hearing to submit written memoranda pertaining to any or all issues raised in the hearing.

(J) *Continuance of hearing.* A hearing officer may continue a hearing to another time or place on his or her own motion or, upon showing of good cause, at the request of any party. Written notice of the time and place of the continued hearing, except as otherwise provided here, shall be in accordance with this part. When a continuance is ordered during a hearing, oral notice of the time and place of the continued hearing may be given to each party to the hearing who is present at the hearing.

(K) *Continuance for additional evidence.* If the hearing officer determines, after a hearing has begun, that additional evidence is necessary for the proper determination of the case, the following procedures may be invoked:

(*1*) *Continue hearing.* The hearing may be continued to a later date in accordance with paragraph (d)(11)(x) of this section.

(*2*) *Closed hearing.* The hearing may be closed, but the record held open in order to permit the introduction of additional evidence. Any evidence submitted after the close of the hearing shall be made available to all parties to the hearing, and all parties to the hearing shall have the opportunity for comment. The hearing officer may reopen the hearing if any portion of the additional evidence makes further hearing desirable. Notice thereof shall be given in accordance with paragraph (d)(8) of this section.

(L) *Transcript of hearing.* A verbatim taped record of the hearing shall be made and shall become a permanent part of the record. Upon request, the appealing party shall be furnished a duplicate copy of the tape. A typed transcript of the testimony will be made only when determined to be necessary by OCHAMPUS. If a typed transcript is made, the appealing party shall be

furnished a copy without charge. Corrections shall be allowed in the typed transcript by the hearing officer solely for the purpose of conforming the transcript to the actual testimony.

(M) *Waiver of right to appear and present evidence.* If all parties waive their right to appear before the hearing officer for presenting evidence and contentions personally or by representation, it will not be necessary for the hearing officer to give notice of, or to conduct a formal hearing. A waiver of the right to appear must be in writing and filed with the hearing officer or the Chief, Appeals and Hearings, OCHAMPUS. Such waiver may be withdrawn by the party by written notice received by the hearing officer or Chief, Appeals and Hearings, no later than 7 days before the scheduled hearing or the mailing of notice of the final decision, whichever occurs first. For purposes of this section, failure of a party to appear personally or by representation after filing written notice of waiver, will not be cause for finding of abandonment and the hearing officer shall make the recommended decision on the basis of all evidence of record.

(N) *Recommended decision.* At the conclusion of the hearing and after the record has been closed, the matter shall be taken under consideration by the hearing officer. Within the time frames previously set forth in this section, the hearing officer shall submit to the Director, OCHAMPUS, or a designee, a written recommended decision containing a statement of findings and a statement of reasons based on the evidence adduced at the hearing and otherwise included in the hearing record.

(*1*) *Statement of findings.* A statement of findings is a clear and concise statement of fact evidenced in the record or conclusions that readily can be deduced from the evidence of record. Each finding must be supported by substantial evidence that is defined as such evidence as a reasonable mind can accept as adequate to support a conclusion.

(*2*) *Statement of reasons.* A reason is a clear and concise statement of law, regulation, policies, or guidelines relating to the statement of findings that provides the basis for the recommended decision.

(5) *Final decision*—(i) *Director, OCHAMPUS.* The recommended decision shall be reviewed by the Director, OCHAMPUS, or a designee, who shall adopt or reject the recommended decision or refer the recommended decision for review by the Assistant Secretary of Defense (Health Affairs). The Director, OCHAMPUS, or designee, normally will take action with regard to the recommended decision within 90 days of receipt of the recommended decision or receipt of the revised recommended decision following a remand order to the Hearing Officer.

(A) *Final action.* If the Director, OCHAMPUS, or a designee, concurs in the recommended decision, no futher agency action is required and the recommended decision, as adopted by the Director, OCHAMPUS, is the final agency decision in the appeal. In the case of rejection, the Director, OCHAMPUS, or a designee, shall state the reason for disagreement with the recommended decision and the underlying facts supporting such disagreement. In these circumstances, the Director, OCHAMPUS, or a designee, may have a final decision prepared based on the record, or may remand the matter to the Hearing Officer for appropriate action. In the latter instance, the Hearing Officer shall take appropriate action and submit a new recommended decision within 60 days of receipt of the remand order. The decision by the Director, OCHAMPUS, or a designee, concerning a case arising under the procedures of this section, shall be the final agency decision and the final decision shall be sent by certified mail to the appealing party or parties. A final agency decision under this paragraph (e)(1) will not be relied on, used, or cited as precedent by the Department of Defense or the dental plan contractor in the administration of the Active Duty Dependents Dental Plan.

(B) *Referral for review by ASD (HA).* The Director, OCHAMPUS, or a designee, may refer a hearing case to the Assistant Secretary of Defense (Health Affairs) when the hearing involves the resolution of policy and issuance of a final decision which may be relied on, used, or cited as precedent in the administration of the Active Duty Dependents Dental Plan. In such a circumstance, the Director, OCHAMPUS, or a designee, shall forward the recommended decision, together with the recommendation of the Director, OCHAMPUS, or a designee, regarding disposition of the hearing case.

(ii) *ASD(HA).* The ASD(HA), or a designee, after reviewing a case arising under the procedures of this section may issue a final decision based on the record in the hearing case or remand the case to the Director, OCHAMPUS, or a designee, for appropriate action. A decision issued by the ASD(HA), or a designee, shall be the final agency decision in the appeal and a copy of the final decision shall be sent by certified mail to the appealing party or parties. A final decision of the ASD(HA), or a designee, issued under this paragraph (e)(2) may be relied on, used, or cited as precedent in the administration of the Active Duty Dependents Dental Plan.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 26, 1987.

[FR Doc. 87-12288 Filed 5-28-87; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CCGD9 87-06]

Safety Zone: Lake Michigan Waters Offshore at Michigan City, the Michigan City Entrance Channel, and Washington Park Marina

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a Safety Zone for the Lake Michigan waters offshore of Michigan City, IN, the Michigan City entrance channel, and Washington Park Marina. Within the Safety Zone, the Commander, Ninth Coast Guard District may restrict or prohibit movement of vessels and control other maritime activities. This rule will promote the safety of Pan American Games competitors, ancillary personnel, and spectators.

DATES: Comments must be received on or before July 13, 1987.

ADDRESS: Comments should be mailed to Commander (m), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199-2060. The comments will be available for inspection and copying at Room 2019, 1240 East Ninth Street, Cleveland, Ohio 44199-2060. Normal officer hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Commander Francis X. Owens or LT(jg) George H. Burns III, Marine Safety Division, 1240 East Ninth Street, Cleveland, Ohio 44199-2060, (216) 522-3919.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or

arguments. Persons submitting comments should include their names and addresses, identify this notice CGD9 87-06 and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafters of this notice are Commander Dallas G. Schmidt, project officer, Marine Safety Office Chicago, and Commander Michael A. Leone, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Michigan City, Indiana area will host the Tenth Pan American Games' Yachting Competition, beginning August 1, 1987 and culminating on August 18, 1987. The yachting races will draw spectator boating crowds, congesting the Michigan City entrance channel and portions of the offshore race courses. The spectator's right of reasonable access to the offshore competition sites, the staging area within the entrance channel, and the associated harbor area must be balanced against the safety requirements of competitors, officials, and spectators.

This temporary regulation is intended to manage the expected increase in traffic congestion in the Michigan City, Indiana entrance channel and a portion of offshore Lake Michigan during the period August 1, 1987 to August 18, 1987, in order to provide a safe area for all members of the maritime community.[1] The Commander, Ninth Coast Guard District may cancel the safety zone at an earlier date if safety considerations. permit it.

The primary objective of this rulemaking is to maintain the safe movement of competition vessels to their designated race courses, the safety of all vessels, the port, and the race areas. The Coast Guard has the responsibility in conjunction with local law enforcement agencies for the on-water safety of the Pan American Games yachting competition and must plan and prepare to meet any situations which could occur.

Accordingly, Coast Guard vessels carrying safety and law enforcement teams will patrol the Safety Zone during the periods that competitors are on the water. The primary mission of these teams will be to prevent or control hazardous boating activities, with an emphasis on facilitating the competition while minimizing the disruption of recreational boating.

The restrictions on recreational craft operating in the Safety Zone are necessary to prevent safety patrols from being overwhelmed by large numbers of recreational boats. While carrying out these port safety operations, every effort will be made to minimize restrictions on vessels and port activities. Unless otherwise directed, the Navigational Rules of the Road will always apply. These regulations will be reprinted in the Local Notice to Mariners.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transprotation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The regulation is of limited duration, limits access to certain areas without denying access to those who require it, and will not adversely affect commercial traffic. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation, Lake Michigan waters offshore Michigan City, Indiana, the Michigan City entrance channel, Washington Park Marina.

Proposed Regulations

PART 165—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to temporarily amend Part 165 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 185 continues to read as follows:

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

2. Section 165.T0906 is added to read as follows:

§ 165.T0906 Lake Michigan waters offshore of Michigan City, IN, the Michigan City Entrance Channel and Washington Park Marina.

(a) *Effective Date.* Unless otherwise indicated in an individual subsection below, this temporary regulation is effective from August 1, 1987 through and including August 18, 1987.

(b) *Regulated Areas.* All waters and waterfront facilities within the following boundaries constitute a Safety Zone:

(1) The water area in Like Michigan beginning at latitude 41°51'00"N, longitude 87°02'00"W; thence east to latitude 41°51'00"N, longitude 86°52'00"W; thence south to the intersection of longitude 86°52'00" and the natural shoreline; thence along the natural shoreline and structures, across the Michigan City, Indiana channel entrance, to the intersection of latitude 41°43'00"N and the natural shoreline; thence west to latitude 41°43'00"N, longitude 87°02'00"W; thence north to the starting point; and

(2) All navigable waters and waterfront facilities within the Michign City channel area bounded on the north by the Michigan City channel entrance and on the east by the western edge of the Franklin Street bridge.

(c) *Regulations.* The regulations listed below apply to all Pan American Games yachting events.

(1) No vessels, other than participants, U.S. Coast Gurad operated or employed small craft, public vessels, state and local law enforcement agency vessels and event committee boats shall remain in or enter those portions of the Pan American Games race areas which lie within Lake Michigan during the periods set forth for each event, unless cleared for such entry by a Coast Guard official.

(i) Pan American Games Race Areas:

(A) Area Alpha: Area Alpha will be bounded by the following coordinates:

Center—latitude 41°45.1'N; longitude 86°55.8'W
North—latitude 41°46.0'N
South—latitude 41°44.4'N
East—longitude 86°54.7'W
West—longitude 86°56.5'W

(b) Area Bravo: Area Bravo will be bounded by the following coordinates:

Center—latitude 41°46.5'N; longitude 86°59.1'W
North—latitude 41°48.1'N
South—latitude 41°44.8'N
East—longitude 86°56.4'W
West—longitude 87°01.5'W

(C) Area Charlie: Area Charlie will be bounded by the following coordinates:

Center—latitude 41°48.5'N; longitude 86°54.8'W
North—latitude 41°50.3'N

[1] The maps designating the traffic areas may be obtained by contacting the person listed under the caption "For Further Information Contact."

South—latitude 41°46.6'N
East—longitude 86°52.6'W
West—longitude 86°57.0'W

(d) Area Delta: Area Delta will be bounded by the following coordinates:

Center—latitude 41°46.0'N; longitude 86°54.0'W
North—latitude 41°46.7'N
South—latitude 41°45.2'N
East—longitude 86°52.8'W
West—longitude 86°55.0'W

(ii) Competition period: Approximately 8:00 A.M. to 4:00 P.M. daily, August 9, 1987 to August 18, 1987, inclusive.

(iii) Buoys, stake boats, and Coast Guard spectator control boats will mark the actual race courses within each designated race area.

(2) Between August 1 and August 18, 1987, no person may set fishing gear, nets, marker buoys or similar obstructions within the area of the defined Safety Zone. Any such obstructions shall be removed by their owners prior to August 1, 1987 and shall not be re-set until after August 18, 1987.

(3) When hailed by Coast Guard or Coast Guard Auxiliary vessels patrolling the Safety Zone, vessels shall come to an immediate stop. Vessels shall comply with all directions of Coast Guard official and local law enforcement authorities.

(4) No vessel may approach within 100 yards of a competition vessel.

(5) No vessel may approach within ¼ mile of the race course within each race area.

(6) No vessel may block, loiter in, or impede the through transit of vessels in the Michigan City channel entrance, channel, and Washington Park marina.

(7) Additional safety and crowd control restrictions during Pan American Games race periods may be imposed as circumstances require. These restrictions will be announced in the Local Notice to Mariners and by Marine Safety Broadcasts.

Dated: May 19, 1987

A. M. Danielsen,

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

[FR Doc. 87-12119 Filed 5-28-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 179

[CGD 77-115]

Defect Notification and First Purchaser Information

AGENCY: Coast Guard, DOT.

ACTION: Supplementary Notice of Proposed Rulemaking.

SUMMARY: This notice proposes amendments to the Defect Notification regulations in Part 179 of Title 33, Code of Federal Regulations. The intended effect of the proposal is to require boat and engine manufacturers to establish and maintain first purchaser lists and to require maine dealers to furnish the manufacturers with the information necessary to establish those lists: the serial numbers of new boats and engines sold and the names and addresses of retail first purchasers of those products. The manufacturers would use the information to locate the purchasers of boats and engines which have been recalled for defects which create a substantial risk of personal injury to the public and for failures to comply with applicable regulations. The proposed amendments are needed because many manufacturers do not maintain sufficient first purchaser lists or cannot obtain the information from dealers. As a result, attempts to notify purchasers during recall campaigns are inadequate. Additional editorial changes would clarify confusing language in the Defect Notification regulations and would reflect changes in the applicability of the part.

DATE: Comments must be received on or before August 27, 1987.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 77-115), U.S. Coast Guard, Washington, DC 20593-0001. Comments will be available for examination at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, between *8* a.m. and *3* p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Project Manager, Office of Boating, Public, and Consumer Affairs (G-BBS/43), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593 (202) 267-0981, between *8* a.m. and *4* p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION

Request for comments:

Interested persons are invited to submit written views, data or arguments. Comments should include the name and address of the person making them and identify this notice (CGD 77-115). Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The proposal may be changed in view of the comments received. All comments received will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons at the Marine Safety Council address noted above. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Background:

The Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** on December 29, 1980 [45 FR 85475]. Because of Coast Guard concern at that time about the impact of the proposed amendments on the Coast Guard information collection budget, consideration of comments and publication of a final rule were delayed. The Coast Guard is seeking OMB approval for the proposed information collection requirements in 33 CFR 179.04.

Because more than six years have elapsed since publication of the Notice of Proposed Rulemaking, the Coast Guard is soliciting additional comments on the proposal. Also, because of confusing wording in the existing Defect Notification regulations, the Coast Guard is proposing editorial changes to the regulatory language in 33 CFR Part 179.

Section 4310(c)(1)(A) of Chapter I of Title 46, U.S. Code—Repair and Replacement of Defects—requires manufacturers of boats and associated equipment (inboard engines, outboard motors and sterndrive units) to notify first purchasers, and subsequent purchasers if they are known, of defects in their products which create a substantial risk of personal injury to the public or which fail to comply with applicable Federal regulations. The manufacturer's responsibility to notify first purchasers (and subsequent purchasers if they are known) lasts for a period of five years from the date of certification for boats and associated equipment to which a standard applies and for a period of five years from the date of manufacture if no standard applies. Part 179 of Title 33, Code of Federal Regulations implements these provisions.

The Defect Notification regulations in Part 179 of Title 33 have been in existence since November 1, 1972. In a number of the recall campaigns for boats and associated equipment monitored by the Coast Guard since 1972, many manufacturers did not know the names and addresses of more than 30 percent of the first purchasers of their products. As a result, the manufacturers could not notify many purchasers whose boats and engines contained defects which created a substantial risk of

personal injury or failed to comply with applicable regulations. This low rate of notification was the result of the failure of manufacturers to establish and maintain adequate first purchaser lists and from the failure of dealers to provide purchaser information to the manufacturers.

Section 4310(g) of Title 46, U.S. Code authorizes the Coast Guard to prescribe regulations that require dealers and distributors to assist manufacturers in obtaining information. Because of the low rate of notifications among recall campaigns monitored by the Coast Guard and the resulting negative effect this low notification rate has upon the safety of boats and associated equipment in the hands of the boating public, the Coast Guard again proposes these amendments to the Defect Notification regulations.

One measure of whether or not a manufacturer has exercised "reasonable diligence" in the notification and repair or replacement of defects in boats and associated equipment which create a substantial risk of personal injury to the public or fail to comply with applicable regulations under 46 U.S.C. 4310(c), is whether or not the manufacturer establishes a list of first purchasers and their addresses and sends the required notice to each person on the list. Since the dealer is the person who physically completes the retail sale of a product to the first purchaser, it is logical that he or she has greater access to information about the first purchaser. As a result, the dealer should be responsible for providing the manufacturer with the purchaser's name and address and an identification of the product: the Hull Identification Number of a boat or the serial number of an item of associated equipment.

These proposed amendments do not specify the method or system a manufacturer must use to collect first purchaser information from dealers. Rather, the proposed amendments require dealers to supply the information within 90 days of the retail sale of the boat or item of associated equipment. The Coast Guard believes that it is in the best interest of both manufacturers of boats and associated equipment and dealers of these products to establish mutually acceptable methods for recording and compiling first purchaser information.

Although the Notice of Proposed Rulemaking [45 FR 85475] included distributors, subsequent manufacturers and other persons in the distribution-manufacturing chain, the Coast Guard revised the proposed amendments to limit the requirement for the provision of first purchaser information to persons engaged in the retail sale of boats and associated equipment. A distributor who sells boats and associated equipment to a dealer would not know the name and address of the eventual retail purchaser of the product. However, if a distributor ever made a retail sale of a boat to a first purchaser, the distributor would be considered a dealer as the term is defined in the proposed amendments.

Discussion of Comments

Twenty-eight comments were received in response to the Notice of Proposed Rulemaking (NPRM) published December 29, 1980 [45 FR 85475].

Three comments supported the proposed amendments.

Five comments misinterpreted the phrase "associated equipment" as it was used in the NPRM. According to 33 CFR 179.03(d), "associated equipment" means an inboard engine, outboard engine or sterndrive unit. Those who misinterpreted the definition thought that "associated equipment" included everything a dealer might sell such as boathooks, flashlights, life preservers, etc. Whenever the term "associated equipment" is used in this Supplementary Notice of Proposed Rulemaking, it refers only to inboard engines, outboard engines and sterndrive units.

Two comments stated that the proposed amendments involved too much paperwork. The Coast Guard considers the forwarding of the Hull Identification Number (HIN) from a boat or the serial number from an engine and the purchaser's name and address to the manufacturer a minimal amount of paperwork. In the Regulatory Evaluation, the Coast Guard estimates that it takes approximately four minutes to write down the HIN of a boat or serial number of an item of associated equipment and a purchaser's name and address. Also, depending upon the method established between a manufacturer and various dealers of the company's products, the length of time required to record and forward the information could be much shorter. The use of computer equipment for inventory control, for example, is becoming more prevalent in many businesses, both large and small, therefore minimizing repetitive paperwork.

Four comments didn't want the Coast Guard to require manufacturers to acknowledge receipt of first purchaser information from a dealer. These comments are accepted. The Coast Guard believes that the proposed requirement for acknowledgement of receipt of first purchaser information would involve unnecessary additional costs and paperwork.

Three comments urged the Coast Guard to exempt private label merchandisers from the proposed amendments requiring the provision of first purchaser information to the manufacturer. One comment, in particular, addressed three different groups involved in private label merchandising that could be adversely affected by the proposed amendments. Some private label merchandisers of high value products, would be reluctant to disclose purchaser information to the original manufacturer because of the potentially adverse effect the disclosure might have on the private label merchandiser's future market. The original manufacturer might attempt to circumvent the private label merchandiser by contacting purchasers directly. Second, mass merchandisers of small boats and outboard motors could be adversely affected. Because of the administrative burden that could be imposed for inexpensive boats and engines under the proposed amendments, some mass merchandisers might refuse to carry such products. As a result, the third group, the manufacturers of these small boats and outboard motors, might also lose their markets and they too could be adversely affected. The comment stated that the Coast Guard should include a provision in the regulations to enable a manufacturer to establish a formal agreement with another party, either the private label merchandiser or a manufacturer's agent, to maintain first purchaser lists and make the lists available for defect notification programs. The Coast Guard has accepted the recommendation presented in the comments. The proposed amendments are revised to allow a manufacturer to establish a formal agreement with a private label merchandiser or another party to assemble, record or maintain first purchaser information. A private label merchandiser or another party with such a formal agreement could also provide the notificaiton required under 46 U.S.C. 4310. However, since a manufacturer's duty to notify purchasers lasts for a period of five years, the failure of any such agreement means that the manufacturer would still be responsible for providing the required notification.

Another comment stated that the proposed regulations should not apply to everyone in the distribution chain. This comment is accepted. Although the NPRM [45 FR 85475] included distributors, subsequent manufacturers and other persons in the distribution-manufacturing chain, the Coast Guard is revising the proposed amendments to

limit the requirement for the provision of first purchaser information to persons engaged in the retail sale of boats and associated equipment. A distributor who sells to dealers would not know the name and address of the eventual purchaser of the products. If a distributor ever made a retail sale of a boat to a first purchaser, the distributor would be considered a dealer as the term is defined in the proposed amendments.

Several comments stated that the "warranty card" system currently required is sufficient. Another comment stated that the regulations should apply to the purchaser and not the dealer. One other comment stated that the proposed amendments should require the manufacturer to provide a return, self-addressed postcard with each boat or item of associated equipment with a note to the purchaser requesting his or her name and address. The Coast Guard did not accept these recommendations. All of these comments require the cooperation of the purchaser; however, the Coast Guard's experience has been that although many manufacturers currently use the system suggested by the comments, in many instances, purchasers have not returned warranty card information. The Coast Guard believes that under the Defect Notification regulations, the dealer is in a better position to provide boat and engine manufacturers with the required information. Also, the other procedures in a defect notification campaign, inspection and/or repair, usually require participation by the dealer who sold the boat or engine to the purchaser.

Two other comments concerning the use of warranty cards stated that their use is objectionable in some instances because most State warranties are more favorable than manufacturer warranties. According to the comments, completion of the warranty card could be construed as a waiver of the State warranty in favor of the less favorable manufacturer's warranty. These comments are not relevant to these proposed amendments which would require dealers, not purchasers, to supply first purchaser information.

Another comment stated that the information already exists; that dealers have sales invoices, title papers, financing contracts and other papers. The Coast Guard does not consider the documents cited in the comment sufficient to meet the intent of the proposed amendments. Not all companies maintain the same practices. One company's sales invoice for a boat, for example, might contain the make, model, model year and color of the boat, but not its HIN. Another company's invoice might contain the HIN of the boat or serial number from the engine, but not the purchaser's name and address. Not all States have laws which require titling and not all purchasers require financing.

Two comments wanted the Coast Guard to exempt inflatable boat manufacturers and dealers from the proposed amendments. The Coast Guard did not accept this recommendation. Any inflatable boat which bears an HIN is a boat as the term is used in 33 CFR Part 179 and would therefore be subject to these proposed amendments.

One comment objected to the proposed requirement for a dealer to provide the information within 90 days of the time of sale. The comment wanted the dealer to be allowed the option of holding the information until it is needed by the Coast Guard or the manufacturer. This recommendation was not adopted. The Coast Guard's experience has been that the typical reason for not submitting first purchaser information to a manufacturer is that the information is lost. The Coast Guard considers 90 days a reasonable period of time and minimizes the length of time a dealer has to store the information.

One comment stated that the Government is attempting to require dealers and manufacturers to perform what is obviously in the best interests of both parties and that the Coast Guard should not interfere with normal market procedures. Unfortunately, the Coast Guard has found that in many recall campaigns dealers have not provided first purchaser information to the manufacturers.

Discussion of the Proposed Amendments

The National Boating Safety Advisory Council was consulted and its opinions and advice have been considered in the formulation of these amendments. The Council concurred with the approach suggested by the Coast Guard. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this rule was discussed are available for examination in Room 4304, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-BBS), U.S. Coast Guard, Washington, DC 20593-0001.

Since the Federal Boat Safety Act of 1971 has been recodified as Chapter 43 of Subtitle II of Title 46 of the United States Code (U.S.C.), the authority citation for Part 179 is being revised to reflect the recodification.

Section 179.03 would be amended to remove and reserve the definition for "the Act" and include two new definitions for "first purchaser" and "dealer." These definitions are needed to clearly identify the retail buyer and seller of a boat or item of associated equipment.

Under the proposal, Part 179 would be amended to include a new Section 179.04, which would specify the first purchaser information requirement for manufacturers and dealers. The manufacturer of new boats or items of associated equipment would be required to establish and maintain a list of first purchasers. Each entry in a first purchase list would include the name and address of the first purchaser and the HIN, if a boat; or the serial number, if an item of associated equipment. The requirement to maintain a list of first purchasers would last for a period of five years from the date of certification or the date of manufacture of a boat or item of associated equipment. The proposed record retention requirement is consistent with 46 U.S.C. 4310(c)(2), because a manufacturer's duty to notify also lasts for a period of five years. Section 179.04 would require a dealer who makes a retail sale of a boat or item of associated equipment to furnish the name and address of the first purchaser and the HIN of the boat or serial number of the engine to the manufacturer of the product within 90 days. A dealer who was a private label merchandiser would have the option of maintaining first purchaser information and/or conducting defect notification provided there was a formal agreement with the boat or associated equipment manufacturer. Also, a manufacturer would be allowed to establish a formal agreement with another party for responsibility of collecting first purchaser information and/or conducting defect notification.

Sections 179.05, 179.07, 179.11 and 179.13 would be amended to clarify confusing language, and reflect the recodification of the Federal Boat Safety Act of 1971 as part of Title 46, of the U.S. Code.

Section 179.17 would be amended to reflect the recodification of the Federal Boat Safety Act of 1971 as part of the U.S. Code and cite the correct penalty provisions. The section would also be amended to clarify the penalties that may be assessed against a dealer who fails to provide first purchaser information.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order No. 12291 and non-significant under the DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). The economic impact of this proposal has been found to be minimal. Therefore, a regulatory evaluation has not been prepared. The proposed amendments do not specify the method a dealer must use to collect first purchaser information and provide the information to the manufacturer. The Coast Guard believes that it is in the best interests of both manufacturers of boats and associated equipment and dealers of these products to establish mutually acceptable methods for recording and compiling first purchaser information. However, the Coast Guard estimates that it takes four minutes (.066 hrs.) to write down a purchaser's name and address and an identification of the product purchased. Preparation time could be even lower for dealers with computerized inventory systems who can log purchasers' names and addresses and the HINs or serial numbers from products purchased using a computer. The Coast Guard further estimates that the hourly wage for a secretary is $8.00. Thus, the estimated cost to gather first purchaser information for a boat or item of associated equipment is $.75 (.066 ×$8.00) per product. The present postage for a first class letter is $.22. The Coast Guard considers a total cost of $.97 a minimal cost when compared to the total profit margin on a boat or item of associated equipment.

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

List of Subjects for 33 CFR Part 179

Defect notification.

In consideration of the foregoing, the Coast Guard proposes to amend Part 179 of Title 33, Code of Federal Regulations as follows:

PART 179—DEFECT NOTIFICATION

1. The authority citation for Part 179 is revised to read as follows:

Authority: 46 U.S.C. 4310; 49 CFR 1.46.

2. Section 179.01 is revised to read as follows:

§ 179.01 Purpose.

This Part prescribes rules to implement section 4310 of Subtitle II of Title 46, U.S. Code governing the notification of defects in boats and associated equipment.

3. Section 179.03 is revised by removing and reserving paragraph (a) and by adding two new paragraphs (e) and (f) to read as follows:

§ 179.03 Definitions.

(a) [Reserved]

* * * * *

(e) "First Purchaser" means any person who buys a new boat or item of associated equipment for their own use and not for the purposes of resale.

(f) "Dealer" means any person engaged in the retail sale of a new boat or item of associated equipment to a first purchaser.

4. Section 179.04 is added to read as follows:

§ 179.04 First purchaser information.

(a) Each manufacturer of new boats or items of associated equipment shall establish a list of first purchasers. Each entry in a first purchaser list shall contain the name and address of the first purchaser and:

(1) The Hull Identification Number, if a boat; or

(2) The serial number, if an item of associated equipment.

(b) Each manufacturer shall maintain the list of first purchasers for a period of five years from the date of certification or the date of manufacture of a boat or item of associated equipment.

(c) Each dealer who sells a new boat or item of associated equipment shall, within 90 days of the sale, furnish the manufacturer of the product or the person designated by the manufacturer with the following:

(1) The name and address of the first purchaser; and

(2) The Hull Identification Number if a boat or serial number if an item of associated equipment.

5. Section 179.05 is revised to read as follows:

§ 179.05 Manufacturer discovered defects.

Each manufacturer of a boat or item of associated equipment who discovers that one of its products fails to comply with a regulation prescribed pursuant to 46 U.S.C. 4302 or contains a defect which creates a substantial risk of personal injury to the public shall provide the notification required by 46 U.S.C. 4310(b) within 30 days.

6. Section 179.07 is revised to read as follows:

§ 179.07 Notification of dealers.

Each notification a manufacturer provides to dealers in accordance with 46 U.S.C. 4310(c)(1)(C) must be by means of a letter, telegram or other written document.

7. The introductory text in § 179.09 is revised to read as follows:

§ 179.09 Contents of notification.

Each notice required by 46 U.S.C. 4310(b) must include the following additional information:

* * * * *

8. Section 179.11 is revised to read as follows:

§ 179.11 Defects determined by the Commandant.

Each manufacturer notified by the Commandant under 46 U.S.C. 4310(f) of a failure to comply with a regulation prescribed pursuant to 46 U.S.C. 4302 or of a defect which creates a substantial risk of personal injury to the public shall within 30 days of receipt of the notification by the Commandant:

(a) Provide the notification required by 46 U.S.C. 4310 (c) and (d); or

(b) Provide evidence to the Commandant by certified mail that there is no failure to comply with a regulation or defect which creates a substantial risk of personal injury.

9. Section 179.13 is amended by revising paragraphs (a)(1), (a)(2) and (b) to read as follows:

§ 179.13 Initial report to the Commandant.

(a) A manufacturer who provides notification under 46 U.S.C. 4310 shall concurrently send to the Commandant by certified mail—

(1) A true or representative copy of each notice, bulletin, and other communication given to persons required to be notified under 46 U.S.C. 4310(c)(1);

(2) The total number of boats or items of associated equipment potentially affected by the defect which creates a substantial risk of personal injury or failure to comply with a regulation; and

(3) * * *

(b) If an item required by paragraph (a) of this section is not available at the time of the initial report to the Commandant, a manufacturer may submit the item when it becomes available.

10. Section 179.17 is revised to read as follows:

§ 179.17 Penalties.

(a) Each manufacturer who fails to provide a notification under 46 U.S.C. 4310(c) or fails to exercise reasonable diligence in fulfilling the undertaking to correct the defect or failure to comply under 46 U.S.C. 4310(d) is subject to the penalties prescribed in 46 U.S.C. 4311.

(b) Each manufacturer who fails to comply with any other provision of 46 U.S.C. 4310 or the regulations in this part

is subject to the penalties prescribed by 46 U.S.C. 4311.

(c) Each dealer who fails to comply with the regulations in this part is subject to the penalties prescribed by 46 U.S.C. 4311(c).

11. Section 179.19 is revised to read as follows:

§ 179.19 Address of the Commandant.

Each manufacturer who submits a report and communication to the Coast Guard required by this part shall send it to: Commandant (G-BBS), U.S. Coast Guard, Washington, DC 20593-0001.

Dated: May 22, 1987.

T.T. Matteson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 87-12118 Filed 5-28-87; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL MARITIME COMMISSION

46 CFR Part 588

[Docket No. 87-11]

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Colombia Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission in response to a petition alleging the existence of conditions unfavorable to shipping in the foreign oceanborne liquid bulk trade between the United States and Colombia proposes rules which would suspend the tariffs of Flota Mercante Grancolombiana in the U.S./Colombia trade unless certification is received assuring that unfavorable conditions do not exist. The rule would adjust or meet apparent unfavorable conditions by imposing burdens on a Colombian carrier which approximate those placed on the Petitioner, O.N.E. Shipping, Ltd., a non-Colombian carrier, by Colombian laws and regulations.

DATE: Comments due on or before June 29, 1987.

ADDRESS: Comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of section 19(1)(b), Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876, as implemented by 46 CFR Part 585, the Federal Maritime Commission ("Commission") is authorized and directed to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States and which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

On May 29, 1986, O.N.E. Shipping, Ltd. ("O.N.E.") filed a petition pursuant to Section 19 requesting the Commission to issue regulations to adjust and meet conditions unfavorable to shipping in the U.S/Colombia trade. *Petition of O.N.E. Shipping Ltd. for Issuance of Regulations to Adjust and Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States* ("Petition"). The Petition alleged that the cargo preference laws of Colombia had damaged O.N.E.'s financial position by excluding O.N.E. from the U.S./Colombia liquid bulk trade. Notice of the Petition was published in the Federal Register on June 20, 1986 (51 FR 22561), and interested persons were invited to submit comments on the Petition no later than July 21, 1986. Subsequently, pursuant to a request by Flota Mercante Grancolombiana, S.A. ("Grancol"), a Colombian carrier, the Commission extended the deadline for comments until August 4, 1986. A comment on the Petition was submitted by Grancol.

On September 22, 1986, O.N.E. filed an amended Section 19 petition, including a discussion of recent Colombian maritime laws, enacted in July and August, 1986. *Amendment to Petition of O.N.E. Shipping, Ltd. for Relief Under Section 19 of the Merchant Marine Act, 1920* ("Amended Petition"). Notice of the Amended Petition was published in the Federal Register on October 15, 1986 (51 FR 36754), with comments invited by November 4, 1986.

On October 24, 1986, Grancol requested a 45-day extension of the November 4 deadline. Grancol advised that O.N.E. had no objection to such an extension. The Commission granted the request. On December 8, 1986, the Commission granted an additional 3-day extension until December 22, 1986, as requested by Grancol, which had advised that O.N.E. had no objection to the grant of such an extension.

Comments on the Amended Petition were submitted by Grancol and the Chemical Manufacturers Association ("CMA").

Colombian Laws and Regulations

Decree [1] No. 994 of April 29, 1966, authorizes the Government of Colombia to establish percentages of Colombian imports and exports to be reserved to Colombian-flag carriers. Decree No. 1208 of July 21, 1969, which implemented Decree No. 994, reserves to Colombian-flag vessels no more than 50% of liquid bulk imports into Colombia.

Resolution No. 0097 of June 8, 1973, gave Grancol trading rights in the U.S. Gulf/Colombia liquid bulk trade, authorizing the carrier to transport the 50% reserved by Colombian law to Colombian-flag vessels, under space-charter agreements with Andino Chemical Shipping Co. ("Andino"), a third-flag carrier.

Colombian cargo reservation laws were further implemented by import licenses issued to Colombian importers by the Institute of Foreign Trade ("INCOMEX"). The reservation requirements applied only where there was Colombian-flag service. When Grancol obtained authority to serve the U.S./Colombia liquid bulk trade in 1973, a 100% cargo reservation stamp was applied in that trade. Subsequently, INCOMEX changed its stamp so that Colombian-flag carriage was required only for the first 50% of the cargo covered by each import license.

Decree No. 2324 of September 18, 1984, provides for accumulation of non-reserved Colombian bulk imports. That decree was not implemented until laws and regulations promulgated in mid-1986 began to apply it. Article 162 of the Decree states that the "free percentage [of cargo] may be accumulated within the [same] calendar year" from the imported bulk shipments of the same user of consignee, statistics to be maintained by Colombia's Maritime and Port Directorate General ("DIMAR"). Decree No. 2324 also includes a penalty provision (Article 83) which authorizes fines for violations of the cargo reservation laws. The fines must be levied against the importer, exporter, and/or carrier, and may be as much as twice the amount of the relevant freight charges.

Article 49 of Decree No. 2451 of July 31, 1986, provides that, when a Colombian carrier charters a vessel which transports both reserved and unreserved bulk cargo, only the percentage of deadweight tonnage which is designated as reserved cargo shall be used as the basis for calculating the maximum charter capacity permitted

[1] The principal laws and regulations discussed herein are appended to O.N.E.'s Petition and Amended Petition.

to the carrier, provided that the user, whether an importer or an exporter, agrees *not* to accumulate free tonnage for the purposes of Article 162 of Decree No. 2324.

Regulation No. 01 of August 8, 1986, issued by DIMAR, requires that, if a waiver of the cargo reservation law is granted, an appropriate seal be fixed to the import license. Regulation No. 01 also provides that DIMAR is to replace INCOMEX in administering the cargo reservation laws, and that the INCOMEX stamps will no longer be affixed to import licenses. However, Regulation No. 01 further states that the INCOMEX cargo reservation stamps will not be eliminated until Regulation No. 01's procedures are implemented and DIMAR issues appropriate communications.

The Impact of Colombian Laws and Regulations on the U.S./Colombia Liquid Bulk Trade

O.N.E. is operated by overseas Enterprises, Inc., which is U.S.-owned and operated, and serves liquid bulk trades using owned and chartered specialized vessels registered in a number of countries. Currently, O.N.E. provides regular service between U.S. (primarily Gulf Coast) ports and ports in Venezuela, Mexico, the Dominican Republic, Trinidad and Tobago, Haiti, Guatemala, Costa Rica, the Netherlands Antilles, Panama, and El Salvador.[2] O.N.E.'s Amended Petition relates exclusively to the U.S./Colombia liquid bulk parcel tanker trade ("the Trade").

According to O.N.E., approximately 1.5% of the liquid bulk parcel tanker cargo in the Trade is currently moved by third-flag carriers not associated with Colombian-flag carriers, whereas prior to the full implementation of Colombia's cargo preference laws such lines carried almost 100% of the Trade. O.N.E. advises that no U.S.-flag operators have participated in the Trade in the past, and none does so at the present time.

O.N.E. argues that the loss of substantial competition from third-flag carriers has raised and will continue to raise shipping costs artificially and will severely diminish the available quantity and quality of service necessary to satisfy the Trade. It contends that the manner in which Colombia implements its waiver procedures makes the potential waiver under Colombian law of 50% of liguid bulk cargoes unrealistic and meaningless. According to O.N.E., it is impractical for shippers to divide the small parcels typical of the trade between two carriers, the first of necessity Colombian-flag, and it is uneconomical for a carrier to participate in the carriage of less-than-parcel loads. Liquid parcel tanker operators allegedly cannot maintain a viable service on the basis that shippers may be willing to split their shipments.

The uncertainties created by the Colombian laws in such areas as waiver requirements, the "accumulation" provisions, the associate status standards, and even in the requirements imposed on Colombian-flag carriers, are said to be such that no shipper or carrier can determine how or in what manner they may be applied. O.N.E. further advises that U.S. shippers are reluctant to risk the penalty of a fine possibly amounting to twice the freight charges involved. O.N.E. allegedly has suffered extensive harm as a result of Colombian laws, attributing a loss of earnings and added operating costs to its inability to serve the Trade.

O.N.E. contends that, due to lack of carrier competition, U.S. liquid bulk exporters are faced with higher prices not only in the U.S./Colombia trade but also in neighboring trades, because carriers cannot offer the volume discounts which would be economical if they could serve the entire range of ports without having to by pass Colombia. O.N.E., citing *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/ Venezuela Trade,* Docket No. 82-58, Interim Report on Current Status of Proceeding, 21 S.R.R. 1627 (February 25, 1983), concludes that the "presence of discriminatory restrictions and the denial of fair and competitive access" constitutes conditions unfavorable to shipping in the foreign trade. O.N.E. therefore urges the Commission to suspend the tariffs of Grancol in the U.S./Colombia trade.

Grancol, on the other hand, urges the Commission to dismiss the Amended Petition. According to Grancol, whatever the difficulties of the past, today Colombian laws reserve no more than 50% of Colombia liquid bulk imports for Colombia-flag carriers, and importers may accumulate the unreserved cargo percentage on an annual basis. Grancol advises that third-flag carriers and Ligracol (a Colombian carrier jointly owned by Grancol and Andino) now compete for at least 50% of the southbound cargo, and all the northbound. Third-flag carriers, including O.N.E., are said to currently transport approximately 50% of the Trade.

Grancol concedes that all imports into Colombia, including liquid bulk, are subject to a licensing regime by the Government of Colombia. Grancol also acknowledges that prior to mid-1986 Colombian authorities did require the half of each licensed shipment be carried on Colombian or associated vessels. Because individual bulk shipments to Colombia are relatively small, Grancol states that there may have been an unintended hardship due to the practical difficulty of splitting small shipments. However, the implementing regulations of mid 1986 are seen by Grancol as strengthening the allegedly new, more open system brought about by the 1984 law (Decree No. 2324) which permits Colombian importers to accumulate the unreserved cargo percentage annually. Grancol explains that a present, for every ton an importer ships on a Colombian-flag or authorized space-chartered vessel, the importer is entitled to ship a ton on a third-flag vessel. This adjustment in the Colombian reservation system is said to give an importer the ability to ship both large and small parcels on third-flag vessels.

Grancol maintains that the procedures to be followed when shipping unreserved cargo on third-flag vessels, as set forth in Regulations No. 01, are simple. It explains that, generally, the importer presents an import license to DIMAR with a copy of a bill of lading for at least an equivalent amount of cargo shipped by the importer on a Colombian-flag or authorized space-charter vessel (import licenses no longer bear INCOMEX stamps); DIMAR will then stamp the license as unreserved, authorizing the importer to ship the entire cargo under any flag.

Grancol maintains that because Colombia's reservation laws have changed significantly since late 1984, O.N.E.'s statistics on third-flag carriage for the 1981-84 period are largely irrelevent. Grancol's statistics for September-November 1986, the three months following the issuance by DIMAR of Regulation No. 01, show Ligracol carrying 46.2% of cargo in the trade, Panamerican Tankers ("Panam"),[3] third-flag carrier, carrying 43.8%, and O.N.E. carrying 10%. Grancol notes that the 44% of the Trade carried by Panam as a third-flag carrier over the

[2] O.N.E. did not indicate that it was serving Colombia at the time its Amended Petition was filed in September, 1986. However, a comment on the Amended petition (discussed herein) filed in December, 1986 indicated that O.N.E. was serving the U.S./Colombia trade in autumn 1986.

[3] Grancol points out that, prior to June, 1986, Panam carried reserved cargo under a space charter agreement with Transpetrol, Ltd., a Colombian carrier, but that that space-charter arrangement is not longer is effect.

three-month period since issuance of the new regulations is significantly better than the average share of the trade it carried from 1981 to 1985 (approximately 19.6%). The new Colombian laws have thus clearly benefited the third-flag carrier, according to Grancol.

The Chemical Manaufacturers Association argures that the Colombian requirement to transport the first 50% of each liquid bulk shipment on Colombian-flag vessels or their designated associates is, in reality, far worse than 50/50 cargo reservation. CMA advises that bulk chemical shipments rarely can be economically split between a Colombian-flag vessel and a vessel of another flag. It explains that parcel tankers generally have about 10 to 30 segregated tanks with varying piping, heathing, cooling, venting and pumping systems designed to handle the specialized chemical cargoes, and that a typical bulk chemical shipment will approximate the size of the specialized tank in which it will be placed. Splitting the shipment between two vessels allegedly would result in unused capacity in the tanks of each vessel.

CMA states that rates are based on maximizing available capacity in each tank and that rates typically will decrease per ton as a shipper's volume increases. CMA thus argues that splitting shipments between two vessels would jeopardize the volume discounts. In addition, customers are said to be typically better served when their shipment is placed on a single vessel, delivered at one time with a single unloading, and with one set of paperwork. CMA claims that splitting shipments of hazardous chemicals increases the number of situations in which a transportation accident releasing toxic chemicals could occur.

Finally, CMA refers to the letters attached to the Amended Petition from Dow Chemical Latin America and PPG Industries, Inc., arguing that Colombian law limits their choices and results in noncompetitive rates. CMA therefore urges the Commission to impose Section 19 sanctions until the Government of Colombia removes its discriminatory and anticompetitive laws.

Diplomatic Activities

On June 16, 1986, shortly after the original O.N.E. Petition was filed, the Commission requested that the Department of State ("Department" or "DOS") review the matter to determine whether it could be resolved through diplomatic channels, and if so, to make whatever efforts appropriate towards reaching such a resolution. The Commission renewed this request following the filing of the Amended Petition.

In response to its requests, the Commission has received three letters from DOS officials, dated July 24, 1986, January 9, 1987, and February 2, 1987, each containing diplomatic notes from the Government of Colombia. The January 9 letter reported that commercial discussions between representatives of O.N.E. and Colombian carriers occurred in Washington in mid-November, 1986. These discussions are said to have led to a visit by O.N.E. officials to Colombia the second week of December to meet with Colombian maritime authorities. The Department reported that an O.N.E. representative had stated that no commercial resolution was achieved as a result of those meetings, and that no further efforts had been discussed. The Commission was further advised that, in continuing discussions with the Government of Colombia, the Department:

> . . . intend[s] to stress to Colombian authorities that the unilateral reservation of significant quantities of commercial cargoes is inconsistent with U.S. maritime policy.

The Colombian note attached to the February 2, 1987 DOS letter contained the most thorough exposition of relevant Colombian laws and regulations of the three Colombian notes. The note was in the form of a letter from Samuel Alberto Yohai ("Yohai Letter"), Director General of INCOMEX, to the U.S. Ambassador to Colombia.

Mr. Yohai advises that Colombian law reserves no more than 50% of bulk cargo (Decree No. 994 of 1966, Decree No. 1208 of 1969, and Decree No. 2324 of 1984), and that nonassociated carriers can compete freely for the carriage of non-reserved cargo.

Mr. Yohai also reviews the procedure for foreign participation in the transport of bulk cargo (liquid or dry) which he reports as follows:

Decree No. 2324, Article 162, calls on the importer to account for, on an annual basis, the "reserved percentage" as well as the free cargo. In the case of the latter, its volume may be accumulated over the course of the year. Although an accounting based on the system of individual import licenses was consistent with the law, this procedure made it difficult for the importers, since dividing the cargo covered by each license into two or more shipments in practice limited their freedom to choose a carrier. Aware of the importers' difficulties, DIMAR issued Regulation No. 01 in August, 1986, establishing the system of choosing a carrier based upon the annual accumulation of cargo volumes. The procedures of Regulation No. 01, Article 6, do not discriminate against foreign carriers. Article 6 has a second objective, the confirmation of the right of entry of foreign vessels carrying free cargo. Information about the vessel and conditions of transport must be submitted by the importer.

According to Mr. Yohai, Article 49 of Decree No. 2415 of 1986 has nothing to do with the transport of cargo by foreign flags. He explains that Article 49 introduces restrictions on Colombian carriers, providing that these carriers can only charter foreign flag vessels up to 50% of the DWT of their own Colombian-flag vessels. Further, Mr. Yohai advises that when the bulk importer assigns part of its free cargo to a Colombian carrier, DIMAR does not count, within the authorized chartering capacity, the portion of free cargo that the importer decides to give the Colombian carrier. Mr. Yohai states that the importer thus waives its option to accumulate the cargo as reserved cargo.

Discussion

Section 19(1)(b) of the Merchant Marine Act, 1920, authorizes and directs the Federal Maritime Commission:

> To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country * * *.

The types of conditions which the Commission has found to be "unfavorable to shipping in the foreign trade" of the United States, within the meaning of Section 19, are set forth in the Commission's rules at 46 CFR 585.3. Among these are conditions which: (1) preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel (46 CFR 585.3(a)); (2) reserve substantial cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States (46 CFR 585.3(b)); and (3) are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors (46 CFR 585.3(d)). The laws and regulations of the Government of Colombia governing transportation of liquid bulk cargoes in the Trade and complained of

by O.N.E. and some of the commenters appear to create the "unfavorable conditions" listed above.

There is no disagreement among those participating in this matter to date as to the fact that the Government of Colombia reserves 50% of liquid bulk imports to Colombian carriers. Decree No. 1208, which implemented Decree No. 994 explicitly reserves for Colombia-flag vessels (as defined by Colombian law) "no more than " 50% of all bulk liquid and refrigerated import and export cargoes. While "no more than" 50% could in theory mean *less* than 50%, from 197 to 1986, INCOMEX required Colombian-flag carriers for the first 50% of *each import shipment.* Neither Decree No. 2324 not its implementing regulation, Regulation No. 01 alters access to the 50% "reserved" portion of Colombia's liquid bulk imports. The change in the system of annual accumulation would only affect (and, according to Grancol and Colombian officials, ease) access to the "free" 50% of liquid bulk cargo.

Given the nature of the Trade, the requirement that the first 50% of each import shipment be carried on a Colombian-flag carrier, made it impractical for importers to choose non-Colombian flag carriers for tranportation of any portion of the shipment. While it is not possible on the present record to determine what O.N.E.'s market share in the Trade would have been in the 1977–86 period in the absence of Colombian cargo reservation requirements, it would appear that O.N.E. would likely have had a greater presence during that period, in the absence of those requirements. Given O.N.E.'s history of activity in the liquid bulk trades in contiguous countries for over twenty years, O.N.E.'s argument that service to Colombia would be a natural complement to its other services seems reasonable. It appears that O.N.E. has been precluded to some degree by the Colombian laws and regulations from competing in the Trade during the 1977–86 period.

Therefore, the Government of Colombia decrees in question not only "reserve substantial cargoes to the national flag" lines of Colombia, and "fail to provide for effective and equal access to such cargo" by non-Colombian-flag carriers within the meaning of 46 CFR 585.3(b), but also "preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel" within the meaning of 46 CFR 585.3(a).

Moreover, the laws and regulations of the Government of Colombia appear to have disadvantaged U.S. exporters. CMA members active in the Trade argue that their service options are extremely limited. The *de facto* reguirement that shippers use Colombian-flag carriers is said to have denied those shippers the freedom to select their preferred carrier and, as a result, led to a lack of competition and higher rates. It is also noted that the Colombian liquid bulk cargo reservation laws have been applied to Colombia's import trade, and not to the export trade. It would appear that, while U.S. chemical exports to Colombia are being adverserly affected, the same cannot be said of Colombian liquid bulk exports to the United States. There is also the possibility here that U.S. exporters are bearing the burden of supporting the Colombian merchant marine.[4] Therefore, the Government of Colombia decrees appear to have a discriminatory or unfair impact upon U.S. exporters within the meaning of 46 CFR 585.3(d).

For reasons stated above, the Commission finds an adequate basis to issue a proposed rule pursuant to Section 19 to adjust or meet apparent conditions unfavorable to shipping in the U.S./Colombia liquid bulk trade. The rule proposed is appropriately directed towards the activities of Grancol, a Colombian-flag carrier operating in the U.S./Colombia trade. Grancol serves both the U.S./Colombia liner and bulk trades, the latter through the corporation Ligracol. The proposed rule would suspend the tariffs and all amendments thereto of Grancol, in the U.S./Colombia trade, unless Grancol secures authorized status from the Commission. Authorized status would be granted to Grancol upon its submission to the Commission of a certificate from the Government of Colombia stating that no law, regulation or practice of the Government of Colombia will preclude or tend to preclude O.N.E. from competing in the U.S./Columbia liquid bulk trade on the same basis as any other vessel.

The proposed rule allows Grancol 25 days from the publication of a final rule in which to act to avoid suspension of its tariffs in the trade, by filing the certificate described above. If Grancol fails to submit the required certificate within 25 days, its tariffs will be suspended 5 days subsequently. Section 13(b)(3) of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(3), subjects a carrier which accepts or handles cargo for carriage under a tariff which has been suspended to a civil penalty of up to $50,000 for each shipment.

While the Section 19 action proposed herein is based primarily on the fact and the impact of the "reserved" 50% of liquid bulk imports, there is considerable dispute over the accessibility of the non-reserved or "free" 50%. The Commission is therefore requesting further information concerning the recent impact of the Colombian laws of mid-1986 on access to the allegedly non-reserved portion.

O.N.E., CMA, and Grancol, as well as the Government of Colombia agree that access to the "free" 50% was seriously hampered prior to the summer of 1986. At the time O.N.E. submitted its Amended Petition, however, there has been very little time to evaluate the impact of the new regulations. If the statistics submitted by Grancol indicating that O.N.E. carried 10% of cargo in the relevant trades in the September-November 1986 period are accurate, then there has been a marked improvement in O.N.E.'s position, at least temporarily. However, O.N.E. has not had the opportunity to submit statistics for the equivalent period. CMA's comments, filed several months later, nevertheless focus on the system in effect prior to July and August of 1986, and do not specifically address the new system.

Another matter related to the issue of access to the "free" 50% of liquid bulk imports is the impact of Article 49 of Decree No. 2451. O.N.E. interprets Article 49 to prevent "accumulation" of non-reserved bulk import cargo by Colombian consignees when both reserved and non-reserved bulk cargoes are carried on the same vessel, and where the vessel is a non-Colombian-flag vessel chartered by a Colombian carrier. Grancol and the Government of Colombia dispute that interpretation. Grancol contends that there is no restriction on a Colombian carrier's ability to spacecharter of unreserved cargo, and the Government of Colombia (through Mr. Yohai's letter) claims that Article 49 ". . . has nothing to do with the transport of cargo by foreign flags."

Comments by Grancol and Colombia suggest a heavy reliance on chartered vessels by Colombian-flag carriers. Article 49 gears the limits placed on Colombian carrier's chartered tonnage to the amount of reserved cargo they transport. This appears to provide them

[4] In Docket No. 83–45, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Republic of the Philippines Trade, Notice of Proposed Rulemaking,* the Commission discussed cargo reservation laws which the Philippines had attempted unilaterally to implement in the U.S./Philippines trade. The Commission stated that:

. . . It is not reasonable to expect the export commerce of the United States to bear the burden of the economic costs of the carrier promotion policies of the Republic of the Philippines . . . United States policy opposes the imposition of such cargo reservation formulas upon its foreign trade. 48 FR 45,802–03.

with an incentive to carry as little cargo designated "reserved" as possible; and conversely, to carry as large a portion as possible of cargo designated "unreserved." This could lead to encouragement of, or even pressure on, Colombian importers to ship their unreserved cargo with Colombian-flag carriers. The extent of any such influence has not been addressed, however.

The Commission is therefore specially requesting current information on trade conditions as they relate to non-Colombian-flage carriers' access to the unreserved 50% of liquid bulk imports into Colombia from the U.S. In particular, the Commission invites interested persons to address the following questions:

1. What impact does the "annual accumulation" procedure have upon the access of non-Colombian-flag carriers to "unreserved" liquid bulk cargo in the Trade?

2. What are the specific administrative requirements involved in the "annual accumulation" procedure, both for Colombian importers and non-Colombian-flag carriers?

3. How much time is involved, both for Colombian importers and non-Colombian-flag carriers, in fulfilling the administrative requirements in order to "accumulate" the right to carry unreserved cargo?

4. Are importers encouraged or pressured to use Colombian-flag carriers for the transportation of "unreserved" cargo, because of Article 49 of Decree No. 2451, or any other reason?

5. Has the implmentation of Decree No. 2451 or Regulation No. 01 by the Government of Colombia discriminated against O.N.E.?

6. Are thse ambiguities in the Government of Colombia's laws and regulations which discourage importers from using the services of non-Columbian-flag carriers, because of the risk of fines or other penalties?

7. Has the INCOMEX cargo reservation stamp been eliminated?

In order to provide proper notice and a fair opportunity to respond to the proposed rule, and in order to afford interested parties the opportunity to address the specific issues raised and any other matters relevant to current conditions in the Trade, the Commission is giving all interested parties 30 days from the date of publication of this Notice in the **Federal Register** to file comments and additional factual submissions. To the extent possible, all factual assertions should be attested to and accompanied by supporting documentation.

List of Subjects in 46 CFR Part 588

Cargo vessels; Exports; Foreign relations; Imports; Maritime carriers; penalties; Rates and fares; Reporting and recordkeeping requirements.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR Part 585, it is proposed to add a Part 588 to Title 46 of the Code of Federal Regulations to read as follows:

PART 588—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE UNITED STATES/COLOMBIA TRADE

Sec.
588.1 Conditions unfavorable to shipping in the United States/Colombia trade.
588.2 Flota Mercante Grancolombiana—suspension of tariffs in the United States/Colombia trade unless authorized status is obtained.

Authority: 46 U.S.C. app. 876(1)(b); 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961.

§ 588.1 Conditions unfavorable to shipping in the United States/Colombia Trade.

(a) The Federal Maritime Commission has determined that the Government of Colombia has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict O.N.E. Shipping, Ltd., a non-Colombian-flag carrier, from competing in the United States/Colombia trade (the Trade) on the same basis as Colombian-flag carriers, reserve a substantial portion, *i.e.*, 50%, of U.S. liquid bulk exports to Colombian-flag carriers, and disadvantage U.S. exporters vis-a-vis Colombian exporters in their application only to Colombia's liquid bulk imports.

(b) The Government of Colombia's laws and regulations reserve at least 50% of U.S. liquid bulk exports to Colombia for Colombian-flag carriers. The implementation of these laws and regulations has denied O.N.E. Shipping, Ltd., effective and equal access to liquid bulk cargoes in the Trade, and has restricted the opportunities of U.S. exporters to Colombia to select a carrier of their own choice, hampering their ability to compete in international markets.

§ 588.2 Flota Mercante Grancolombiana—suspension of tariffs in the United States/Colombia trade unless authorized status is obtained.

(a)(1) On a date 30 calendar days from the date of publication of a final rule in the **Federal Register**, the portions of the following tariffs and all amendments thereto insofar as they relate to the Trade, shall be suspended, unless Flota Mercante Grancolombiana (Grancol) first obtains authorized status pursuant to paragraph (b) of this section:

Flota Mercante Grancolombiana (Grancol)

FMC No. 24—Applicable BETWEEN Puerto Rico AND ports in the Caribbean, South America, Central America, and Italy.

FMC No. 31—Applicable on bananas under refrigeration FROM Santa Maria and Turbo, Colombia, TO U.S. Atlantic and Gulf Ports.

FMC No. 34—Applicable FROM inland U.S. points via Atlantic & Gulf ports TO ports in Peru, Colombia & Chile via the Panama Canal (rules tariff).

FMC No. 36—Applicable FROM U.S. Pacific ports TO Mexico, Central America, Panama & Colombia.

FMC No. 38—Applicable FROM Pacific ports in Colombia TO U.S. Atlantic, Gulf, Puerto Rico & Virgin Island ports.

(2) Other tariffs which may be filed by or on behalf of Grancol in the Trade shall also be suspended if the conditions of paragraph (b) of this section are not met.

(3) The right of Grancol to use the following conference tariffs, or any other conference tariff in the Trade, including intermodal tariffs covering service from U.S. interior points, will, absent compliance with paragraph (b) of this section, be suspended:

United States/Colombia Conference

FMC No. 1—Applicable FROM Ports in Colombia TO U.S. Ports.

FMC No. 3—Applicable FROM Points and Ports in the U.S. TO Points and Ports in Colombia, moving through U.S Ports of Interchange.

FMC No. 4—Applicable FROM Points and Ports in Colombia TO Points and Ports in the U.S., moving through U.S. Ports of Interchange.

FMC No. 5—Applicable FROM U.S Pacific Coast Ports TO Ports in Colombia.

FMC No. 6—Applicable FROM Pacific Coast Ports in Colombia TO U.S. Pacific Coast Ports.

FMC No. 7—Applicable FROM U.S. Atlantic and Gulf Ports TO Ports in Colombia.

(4) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by Grancol under suspended, cancelled or rejected tariffs shall subject Grancol to all

applicable remedies and penalties provided by law.

(b)(1) In order to avoid suspension of its tariffs pursuant to paragraph (a) of this section, or to reinstate tariffs suspended for previous failure to follow the procedures prescribed herein, Grancol must secure authorized status from the Federal Maritime Commission.

(2) Authorized status shall be conferred upon Grancol upon submission to the Commission within 25 calendar days of the date of publication of a final rule in the **Federal Register** of a certificate from the Government of Colombia stating that no law, regulation or policy of the Government of Colombia will:

(i) Preclude O.N.E. Shipping, Ltd. from competing in the Trade on the same basis as any other carrier;

(ii) Impose any administrative burden upon O.N.E. Shipping, Ltd., or upon shippers desiring to use the services of O.N.E., not imposed on Colombian-flag carriers or shippers using such carriers; or otherwise discriminate against O.N.E.

(3) If no such submission is made, the tariffs identified in paragraph (a) of this section shall be suspended effective five calendar days after the expiration of the 25-day period.

(c) If the tariffs of Grancol should be suspended for failure to secure authorized status, Grancol may apply for authorized status by submitting to the Commission the certification described in paragraph b(2) of this section. Reinstatement of the tariffs would occur upon Commission review and approval of the certification.

(d) Upon conferment of authorized status, the Commission may require periodic reports from Grancol and O.N.E. in order to monitor conditions in the Trade.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-12197 Filed 5-28-87; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-07; Notice 02]

Federal Motor Vehicle Safety Standards; Motor Vehicle Brake Fluids; Corrections

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

ACTION: Proposed rule; correction.

SUMMARY: This notice corrects a proposed rule on the container labeling requirements of Standard No. 116 that appeared at page 10775 in the **Federal Register** of Friday, April 3, 1987. The action is necessary to correct the notice number of the document and the address for submission of comments.

DATE: Comments on the proposed rule must be submitted not later than June 2, 1987.

ADDRESSES: All comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours: 8:00 a.m. to 4: p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5277.

SUPPLEMENTARY INFORMATION: The following two errors appeared in a notice of proposed rulemaking published on April 3, 1987 (52 FR 10775) to amend the container labeling requirements of Standard No. 116: (1) the notice was inadvertently listed as Notice 7, instead of Notice 1; and (2) the notice did not include the address of the Docket Section to which comments on the proposal may be submitted.

The following corrections are made in NHTSA Docket No. 87-07 appearing on 10775 in the issue of April 3, 1987:

1. On page 10775 of FR Doc. 87-7316, the corrected NHTSA notice number in the heading of the document is Notice 1. NHTSA is making this correction to avoid any confusion that may arise concerning the number of notices published under docket 87-07. Comments received prior to and after publication of this correction notice will be docketed under Notice 1.

2. On page 10775, the address of NHTSA's docket section was inadvertently excluded. All comments on the proposal should refer to the docket number and corrected notice number of the proposed rule and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington DC 20590. Docket hours: 8:00 a.m. to 4:00 p.m., Monday through Friday.

Issued on: May 22, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-12226 Filed 5-28-87; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1041, 1048, and 1049

[Ex Parte No. MC-37 (Sub-No. 40)]

Motor Carrier Commercial Zones and Terminal Areas; Extension of Time to File Comments

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments.

SUMMARY: By a decision served April 28, 1987, the Commission instituted a proceeding to consider amending its commercial zone and terminal area regulations. Notice of the action was published April 28, 1987, in the **Federal Register**, at 52 FR 15357, and in the *I.C.C. Register*. May 28, 1987, was specified as the due date for comments. Pursuant to the request of the Regional and Distribution Conference of the American Trucking Association, Inc., the time for filing comments has been extended until July 13, 1987.

DATE: Comments must be received by July 13, 1987.

ADDRESS: The original and 10 copies of comments referring to Ex Parte No. MC-37 (Sub-No. 40) should be addressed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Barry, (202) 275-7540

or

Mark Shaffer, (202) 275-7805.

Decided: May 21, 1987.

By the Commission, Chairman Gradison.

Noreta R. McGee,

Secretary.

[FR Doc. 87-12258 Filed 5-28-87; 8:45am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Northeast Multispecies Fishery; Availability of FMP Amendment and Request for Comment

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

ACTION: Notice of availability of an FMP amendment and request for comments.

SUMMARY: NOAA issues this notice that the New England Fishery Management

Council has submitted Amendment 1 to the Fishery Management Plan for the Northeast Multispecies Fishery for review by the Secretary of Commerce. Comments are invited from the public. Copies of the amendment may be obtained from the Council.

DATE: Comments will be accepted until July 24, 1987.

ADDRESSES: Send comments to Richard Schaefer, Acting Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Multispecies Amendment."

Copies of Amendment 1 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Peter Colosi, (Groundfish Management Coordinator). 617-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION: Amendment 1 to the FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act. The Magnuson Act requires that the Secretary of Commerce, upon receiving a plan or amendment, immediately publish a notice of its availability for public review and comment. The Secretary will consider public comments in determining whether to approve the amendment.

This amendment proposes to make several modifications to the management program for northeast multispecies which would enhance its ability to conserve the resource and promote industry compliance. In particular, the amendment would further limits the small-mesh exempted fishery in the regulated mesh area; in the Gulf of Maine; expand the large-mesh protection afforded to yellowtail flounder; exclude scallop dredging from the Southern New England yellowtail closed area; allow a permitted small-mesh, mid-water trawl fishery for herring and mackerel in the Gulf of Maine; redefine the portion of the net that is affected by the minimum mesh requirement; require fishermen to secure small-mesh nets while fishing in or transiting the regulated mesh area; and provide regulatory relief by opening a small portion of haddock spawning closed area I and by allowing hook and line fishing to take place in the Southern New England closed area.

Proposed regulations to implement this amendment will be published within 15 days.

(16 U.S.C. 1801 et seq.)

Dated: May 27, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-12404 Filed 5-27-87; 4:03 pm]

BILLING CODE 3510-22-M

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50 CFR Part 653

Red Drum Fishery of the Gulf of Mexico; Availability of FMP Amendment and Request for Comment

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

ACTION: Notice of availability of an FMP amendment and request for comments.

SUMMARY: NOAA issues notice that the Gulf of Mexico Fishery Management Council has submitted Amendment 1 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP) for review by the Secretary of Commerce. Comments are requested from the public. Copies of the amendment may be obtained from the Council.

DATE: Comments will be accepted until July 23, 1987.

ADDRESSES: Send comments to Craig R. O'Connor, Acting Regional Director, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702. Limited copies of the FMP are available at this address.

Copies of Amendment 1 and its supporting documents are available upon request from the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kentucky Boulevard, Tampa, FL 33609, telephone 813-228-2815.

FOR FURTHER INFORMATION CONTACT: William R. Turner (Plan Coordinator), 813-893-3722.

SUPPLEMENTARY INFORMATION: Amendment 1 to the FMP was prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act. The Magnuson Act requires that the Secretary of Commerce, upon receipt of a plan or amendment, immediately publish notice of its availability for public review and comment. The Secretary will consider public comments in determining whether to approve the plan or amendment.

This amendment proposes new measures and revisions to existing measures in the FMP. The intent of the amendment is to prevent overfishing of the red drum resource while achieving optimum yield from the fishery under cooperative State and Federal management programs. Proposed regulations to implement this amendment will be published within 15 days.

(16 U.S.C. 1801 *et seq.*)

Dated: May 26, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-12300 Filed 5-26-87; 4:09 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 103
Friday, May 29, 1987

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Price Support Grade Loan Rates for the 1987-Crop Tobacco Price Support Loan Program; Request for Comments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Request for comments.

SUMMARY: This notice seeks public comments with respect to the method used to determine grade loan rates for each grade of each kind of tobacco for which marketing quotas are in effect for the 1987 crop or for which marketing quotas for such crop have not been disapproved by producers in a referendum. The following kind and/or types of tobaccos are affected by these determinations: (1) Flue-cured (types 11–14), (2) fire-cured (type 21), (3) fire-cured (types 22 and 23), (4) burley, (5) dark air-cured (types 35 and 36), (6) Virginia sun-cured, (7) cigar filler and binder (types 42–44, 54 and 55), and (8) cigar filler (type 46).

DATES: Comments must be received with respect to flue-cured tobacco by June 15, 1987, and with respect to all other kinds and types of tobaccos by (insert 30 days after publication in the FR).

ADDRESS: Send comments to Director, Tobacco and Peanuts Division, USDA/ASCS, P.O. Box 2415, Washington, DC 20013 or deliver to room 5750, South Building, 14th Street and Independence Avenue, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In accordance with section 385 of the Agricultural Act of 1938, as amended, the Secretary of Agriculture is not required to provide for notice and public participation in establishing the rate of loans offered under a program established in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"). However, in order to obtain the views of interested persons, comments are requested with respect to factors used in establishing grade loan rate for tobacco which is eligible to receive price support.

This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Commodity Loan and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regualtory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of Law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 29, 1983).

FOR FURTHER INFORMATION, CONTACT: Jack S. Forlines, (202) 447-3518.

Background

The national average price support level for each eligible kind of tobacco is determined in accordance with the provisions in section 106 of the 1949 Act. Section 403 of the 1949 Act provides that appropriate adjustments may be made in the support price for differences in grade, quality and other factors. Section 403 further provides that such adjustments shall, so far as practicable, be made in such manner that the average support price will, on the anticipated incidences of such factors, be equal to the level of support determined as provided in the 1949 Act.

A grade is assigned to each lot of tobacco that is: (1) Subject to marketing quotas if such lot of tobacco is offered for sale through an authorized auction system; or (2) delivered for price support at a designated receiving point. The grade of the lot of tobacco is assigned by a grader employed by the Agricultural Marketing Service (AMS). In assigning the grade, the grader applies the grading standards that have been approved for the kind and type of tobacco. The grading standards may be found at 7 CFR Part 29. For price support purposes for each kind and type of tobacco for which price support is available, a grade loan rate is determined for each grade of such tobacco for which a standard is currently in effect as set forth at 7 CFR Part 29.

Determination of Grade Loan Rates

Grade loan rates are determined as follows:

1. A grade distribution, expressed as a percentage, is determined for each grade of the respective kind and/or type of tobacco. The sum of the grade distribution percentages determined for all of the grades of the respective kind and/or type of tobacco must equal 100 percent.
2. A grade loan rate is assigned for each grade of the respective kind and/or type of tobacco.
3. For each respective grade, the grade distribution is multiplied by the assigned grade loan rate and the sum of the resulting products are determined.
4. If the sum of the products from item 3 is greater than, or less than, the national level of price support announced for the respective kind or type of tobacco, adjustments are made for one or more of the assigned grade loan rates so as to cause the sum of the products to equal the announced national price support level.

Determination of Grade Distributions

The grade distribution for all kinds of tobaccos, except cigar tobaccos, are determined as follows:

1. AMS determines the percentage of each respective grade of a kind of tobacco that is marketed from a crop during a marketing year. The percentage

is generally based on data obtained through random samples taken throughout the marketing season. The sum of the percentages for all grades of a kind of tobacco must equal 100 percent. AMS provides the determined percentages to the Agricultural Stabilization and Conservation Service (ASCS).

2. The grade distribution for each respective grade of a kind of tobacco is the result of determining the simple average of not less than 5 nor more than 10 years of the data supplied by AMS with respect to the respective grade of the kind of tobacco. In determining the grade distributions, data from the same crop years are used with respect to the determination for each grade of a kind of tobacco.

The grade distributions that have been used in determining grade loan rates for cigar tobacco have remained constant for several years. Cigar tobaccos are not marketed through an auction system. Thus, the only cigar tobacco that is graded by an AMS grader is that tobacco which is pledged as collateral for a price support loan. As a result, AMS does not gather sufficient data for use in determining meaningful grade distributions.

Impact of Grade Distributions

Continuing changes in market needs, cultural practices, marketing methods, seed varieties and weather conditions have affected the percentages of a crop that is marketed in each of the respective grades of a kind of tobacco. In order for the average price support for a kind of tobacco to be neither greater than nor less than the national support price announced for a kind of tobacco, the grade distributions used in calculating grade loan rates must accurately predict the percentages of the crop that will be marketed in each respective grade. Consider the following illustration of a kind of tobacco having a national average price support level of $1.20 per pound.

Grade	Grade distribution percentage used	Loan rate assigned	Extension
A	20	$.75	.150
B	50	1.23	.615
C	30	1.45	.435
Total			$1.200

With the above loan rates, the following crops were produced:

EXAMPLE 1

Grade	Percentage of crop produced in each grade	Loan rate	Extension
A	40	$.75	.3000
B	45	1.23	.5535
C	15	1.45	.2175
Total			$1.0710

In Example 1, the crop was supported at $1.071 per pound with a national price support level of $1.20 per pound.

EXAMPLE 2

Grade	Percentage of crop produced in each grade	Loan rate	Extension
A	10	$.75	.075
B	30	1.23	.369
C	60	1.45	.870
Total			$1.314

In Example 2, the crop was supported at $1.314 per pound with a national price support level of $1.20 per pound.

Assuming that the crop produced in Example 1 was a normal crop, the crop was undersupported because the grade distributions used in determining the grade loan rates were significantly different from the crop produced. In a similar manner, if the crop produced in Example 2 was a normal crop, the crop was oversupported.

Assignment of Grade Loan Rates

An unlimited combination of grade loan rates may be assigned with a given set of grade distributions in order to establish an average price support at the national price support level. For example, if the crop consists of grades A, B, and C and the grade distributions were the same for each grade, i.e., an average of one-third of the crop has been produced in each of the grades during the years used in determining the grade distributions, if the national price support level were $1.00 per pound, the loan rates assigned to the respective grades could be: Grade A—50 cents per pound, Grade B—$1.00 per pound and Grade C—$1.50 per pound or Grade A—75 cents per pound, Grade B—$1.00 per pound and Grade C—$1.25 per pound.

Request for Comments

Accordingly, CCC requests comments with respect to the determination of grade distributions and the assignment of grade loan rates. All comments are welcomed and will be considered. Most desired, however, are comments which address the following questions:

1. Should grade distributions be used as a part of the process of establishing grade loan rates for a kind of tobacco?

A. If the answer is "yes":

(1) How many years' data should be used in calculating the distributions?

(2) Should a system be designed to eliminate the data for both the "high" and the "low" years from the years used in the calculations? For example, if data for the most recent 7 years were being considered and data from the "high" year and the "low" year were excluded, the average of the 5 remaining years would determine the grade distributions.

(3) What method could be used to obtain data for use in calculating grade distributions for cigar tobaccos?

(4) How may adjustments be made for changing trends that are brought about by rapidly changing conditions in market needs, cultural practices or other related factors when the effects of such trends would not be fully considered by using unadjusted data from the years used in the calculations?

B. If the answer is "no":

(1) What alternatives are available for use in establishing grade loan rates?

(2) What improvements would such alternatives make in establishing grade loan rates?

2. Which of the following factors should be considered when assigning loan rates to the respective grades of a kind of tobacco?

A. Current inventory of loan stocks of the various grades of the kind of tobacco.

B. Percent of the grade that has been placed under loan from recent crops as compared to the percentage of the total crops that were placed under loan. For example, 55 percent of a grade was placed under loan from the two most recent crops, while only 10 percent of the total crops were placed under loan. Should the loan rate for the grade be reduced in an attempt to prevent excessive quantities of the grade in the loan stocks?

C. Relationship of the initial quantities of the grade in loan stocks to the quantities of the grade that have been sold from loan stocks.

D. Prices at which competing tobaccos are being imported.

E. The effect that increases in loan stocks may have on no net cost tobacco program assessments.

F. With respect to burley and flue-cured tobaccos, the effect that increasing loan stocks have on the determination of the respective national marketing quota.

G. The extent to which market prices have exceeded previous loan rates for the respective grades of tobacco.

H. Loan rates for the grade and kind of tobacco relative to the loan rates for other grades and kinds of tobaccos.

I. Prices paid for recent crops at auction for the grade and kind of tobacco (marketability).

J. Quality factors in official grading standards.

3. Should price support be withheld with respect to grades of a kind of tobacco that may not have sufficient marketability to provide reasonable usefulness as loan collateral? If "yes", please specify the grades and kinds of tobacco on which price support should be withheld.

4. Loan stocks of burley and flue-cured tobacco are processed into strip grades. For example, all burley tobacco that was placed under loan from the 1986 crop from grades B3GF, B4GF, B5GF, T4GF, T5GF, C4G, C5G, X4G, and X5G were processed into a strip blend identified as S-B3GF. The tobacco is marketed by the strip grade. Should the same loan rate be assigned to each of the grades that are blended to make the strip grade?

5. Do changing conditions justify the calculation of grade distributions each year? If "no", how often should grade distributions be recalculated?

6. Should the recommendations made by the respective loan associations with respect to grade loan rates be given more consideration than recommendations from other sources?

Data that may be used in calculating grade distributions for each kind of tobacco, except for cigar tobaccos, is available from the Tobacco and Peanuts Division, ASCS. The Tobacco and Peanuts Division has calculated distributions for each kind of tobacco, except cigar tobaccos, on the basis of both the most recent 5-year data and the most recent 10-year data.

Comments will be aided by any explanations, justifications, or supporting data that may be included.

CCC will use the comments in determining the grade loan rates with respect to the 1987 crop of the respective kinds of tobacco. CCC intends to announce the grade loan rates for each kind of tobacco, except cigar kinds of tobacco, by the beginning of the marketing year for the respective kind of tobacco, which is July 1 for flue-cured tobacco and October 1 for other kinds of tobaccos.

Signed at Washington, DC, on May 26, 1987.

Milton J. Hertz

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-12311 Filed 5-28-87; 8:45 am]

BILLING CODE 3410-05-M

Soil Conservation Service

Environmental Impact Statement; Camp Branch Watershed, AL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Camp Branch Watershed, Houston and Dale Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama, 36830, telephone (205) 821-8070.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for reducing excessive erosion on sloping cropland and preventing rapid and serious deterioration of the resource base. The planned works of improvement include land use conversion on 30 acres of marginal cropland, and accelerated conservation land treatment on 3,140 acres of cropland, and installation of 16 grade stabilization structures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: May 21, 1987.

Ernest V. Todd,

State Conservationist.

Finding of No Significant Impact for Camp Branch Watershed Dale and Houston Counties, Alabama

Introduction

The Camp Branch Watershed is a federally assisted action authorized for planning under Public Law 853-566, the Watershed Protection and Flood Prevention Act. An environmental evaluation was undertaken in conjunction with the development of the watershed plan. This evaluation was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the evaluation are presented in the Watershed Plan-Environmental Assessment which is available for public review at the following location:

U.S. Department of Agriculture, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama 36830

Recommended Action

The proposed action includes installation of 16 grade stabilization structures and accelerated conservation land treatment practices on 3,170 acres of cropland. Land treatment practices consist of 300 acres of grasses and legumes in rotation, 2,840 acres of water disposal system, and 30 acres of land use conversion. Cost-sharing arrangements for installing land treatment practices will be carried out through long term contracts entered into between SCS and individual land users. The project will be installed over a 30-year period.

Effect of Recommended Action

Installation of land treatment measures will reduce sheet, rill, and ephemeral gully erosion on cropland from an average of 19 tons per acre per year to 8 tons per acre per year. Soil structure will be improved, water infiltration increased, and inherent fertility conserved.

Grade stabilization structures will reduce erosion by about 95 percent on those gullies that will be treated. Soil loss (tons/year) from the 16 gullies is 17,300 tons without project, 865 tons with project.

Land use in the drainage area of the gullies is as follows:

	Present and future with project (Ac)	Future without project (Ac)
Cropland	740	0
Pasture and hayland	123	411
Forest land	47	335
Other land	5	169
Total	915	915

Seven hundred and forty acres will be lost from crop production over the next 60 years without the proposed grade stabilization structures to control erosion. Landowners have already begun shifting from cropland to pasture/hayland or idle land where they can no longer maintain production or income due to the erosion process. Some landowners may abandon the land, allowing it to revert to forest, or may actually plant to trees. This loss of cropland will cause a loss of farms in the watershed as they become uneconomical units. This will result in the loss of both farms and associated jobs. A loss in production on cropland will also occur as a result of the change in land use.

Grade stabilization structures will provide a safe outlets for water disposal systems on adjacent cropland. A monetary evaluation was made only of the damages caused by the 16 gullies. Annual monetary benefits associated with providing stable outlets on 740 acres of cropland in the drainage area of the gullies (the interdependent area) are $109,200. This leaves a net monetary benefit of $29,200.

Installation of the 16 grade stabilization structures will protect 90 acres from voiding and depreciation damages caused by floodwater. Forty-five acres of this total would have been voided. This area consists of mainly of cropland. Installation of the project will protect 282 acres of cropland with ephemeral gully erosion from being converted to other land uses. The monetary benefit assigned to this reduction in land voiding and depreciation is $2,750 annually.

Sediment deposition will be significantly reduced throughout the watershed. Sediment reaching the outlet of the watershed will be reduced from 89,600 tons to 38,600 tons annually.

Installation of the project will result in the following anticipated land use adjustments:

	Present (Ac)	Future with project (Ac)	Future without project (Ac)
Cropland	7,200	7,170	6,300
Pasture and hayland	4,700	4,720	5,068
Forest land	12,800	12,810	13,168
Other land	300	300	464
Total	25,000	25,000	25,000

Installation of the project will result in 30 acres of marginal cropland being converted to pasture or hayland. Installation of the 16 grade stabilization structures will cause minor land use changes around each structure site. Some forest land will be cleared for construction of grade stabilization structures while other land around some sites will be planted to trees.

No significant changes are expected in the natural plant communities. A reduction of sediment deposition on flood plain areas will reduce damages to the natural restocking rate on forest lands. Productivity on such areas will be increased and timber kills reduced. Control of erosion and sedimentation will allow change through a gradual plant succession to good quality hardwood stands. Likewise, the productivity of cropland will be enhanced by the reduction of infertile sediment deposition.

There will be no adverse impacts on prime or unique farmlands. The project is not expected to result in the conversion of farmland to any nonagricultural use and is in compliance with Farmland Protection Policy Act (FPPA) (7 U.S.C. 4201 et. seq.)

A favorable impact on streams of the watershed is expected to result from the reduction of the present sediment load. Biological productivity of the receiving streams will increase.

Installation of the project will result in a beneficial impact on wetlands by greatly reducing the amount of sediment deposited in the lower elevations of the watershed.

The installation of the land treatment program will have a minor impact on fish and wildlife resources. Existing bottomland wildlife resources will be benefited by sediment reduction in habitat areas. The sediment reduction should result in the return of some fishery resources to the lower reaches of the creeks.

Land treatment will enhance wildlife habitat and food supply. Vegetation planted on the exposed areas of the grade stabilization structures will provide food and cover for wildlife which will be temporarily displaced in the area of project construction.

Installation of the project should have no impact on the listed threatened or endangered species.

An initial field survey of cultural resources was conducted by SCS personnel. The survey indicates that no adverse impacts will occur to cultural resources in the watershed should the plan be implemented.

The various land treatment measures and structural measures aimed at controlling erosion will greatly reduce the volume of soil particles and turbidity which enter the streams in runoff water. The movement of nutrients and pesticides which become attached to soil particles will be controlled to a high degree as erosion control measures are applied to cropland. Reduction of sediment concentration will greatly improve water quality.

Installation of the project will restore beauty to the landscape. The installation of land treatment and the grade stabilization structures will result in lines and forms more harmonious with the natural landscape. The overall visual quality of the land and water resources will be improved.

The project will have a moderate impact on the income and employment of the area's population. Employment opportunities will be provided through the need for unskilled, semiskilled, and skilled labor for project construction and operation and maintenance. During the installation period of the project, approximately four, two, and one person-years of employment will be provided for unskilled, semiskilled, and skilled personnel, respectively. In addition, about one person-year of employment for unskilled personnel will be provided annually through project operation and maintenance.

Family incomes will be increased by the additional jobs created by installation of the project. Income on those farms where resource management systems are applied will be maintained in the short run and increased in the long run over what could be expected without a project. There will also be a slight increase in family income from the reduction in damages to crops.

Impacts on minorities were not quantified; however, they will benefit from project opportunities on farms they own or control and from project-caused increases in job opportunities.

A temporary increase in pollutants, such as dust and equipment exhausts, and an increase in the noise levels will occur during project installation. Exhaust emissions and the dust produced by construction equipment will have a slight detrimental effect on ambient air quality. Noise pollution will increase during construction because of the equipment used in project installation. The effects of noise pollution will be negligible because the areas where construction will be

performed are remote from heavily populated areas.

Installation of the project will have little effect to no affect on mineral and ground water resources since these resources are limited or non-existent in the watershed.

Stabilization of gullies will result in these areas being safer for humans and animals.

Both short term and long term land use trends within the watershed indicate that the area will remain agriculturally oriented.

This project will achieve both short term and long term goals for economic development and environmental quality by protecting the resource base through a reduction on flood damages and watershed protection. Commitments of the land resource base can be reversed as the nation's needs changes.

Implementation of the proposed project will help to maintain and to enhance the long term quality of the human environment in the area.

Irreversible and irretrievable commitments of resources consist of labor, material, and energy needed for installing and maintaining project measures. The planned action is the most practical and cost effective the resource base in the watershed.

Conclusion

The Watershed Plan-Environmental Assessment summarized above indicates that this Federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Harrison Mill-Panther Creeks Watershed Plan is not required.

Dated: May 21, 1987.

Ernest V. Todd,

State Conservationist.

[FR Doc. 87-12198 Filed 5-28-87; 8:45 am]

BILLING CODE 3410-16-M

Environmental Impact Statement; Roy's Creek Watershed, KS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Roy's Creek Watershed, Brown County, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. James N. Habiger, State Conservationist, Soil Conservation Service, 760 South Broadway, Salina, Kansas 67401, telephone 913-823-4565.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. James N. Habiger, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. This land treatment plan includes 4,018 acres of conservation tillage, 4,018 acres of terraces, 5 miles of diversions, 91 acres of grassed waterways, 93 water and sediment control basins, 4,018 acres of contour farming, 23 interdependent grade stabilization structures, and stable outlets for 3,635 acres of terraced cropland. Approximately 1,370 acres of grassland and forestland will be managed for fire control.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. James N. Habiger.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901. Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation and State and local officials)

Dated: May 22, 1987.

James N. Habiger,

State Conservationist.

[FR Doc. 87-12199 Filed 5-29-87; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

New York State Advisory Committee; 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 New York State Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:00 p.m. on June 25, 1987 at the Jacob K. Javits Federal Building, 26 Federal Plaza, Room 2200, New York, New York. The purpose of the meeting is to discuss the status of the agency, plan activities for the coming year, and collect information on aspects of racially- and religiously-motivated violence and intimidation in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Archer C. Puddington (212/397-5328) or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division 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, May 19, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-12200 Filed 5-28-87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part

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

ACTION: Notice of preliminary results of antidumping duty administrative review and tentative determination to revoke in part.

SUMMARY: In response to requests by the petitioners, another domestic interested party, an importer, and respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan. The review covers eleven manufacturers/exporters of this merchandise to the United States and the period April 1, 1985 through March 31, 1986. The review indicates the existence of dumping margins for some of the firms during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value and tentatively to revoke the antidumping duty order with regard to Capetronic.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 29, 1987.

FOR FURTHER INFORMATION CONTACT: Elizabeth P. Klages or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1986, the Department of Commerce ("the Department") published in the **Federal Register** the final results of its administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan (51 FR 46895). In accordance with § 353.53a(a) of the Commerce Regulations, we received requests for review from the petitioners, another domestic interested party, an importer, and eight respondents. We published a notice of initiation of the antidumping duty administrative review on May 20, 1986 (51 FR 18475).

Scope of the Review

Imports covered by the review are shipments of color television receivers, except for video monitors, complete or incomplete, regardless of tariff classification. The merchandise is currently classifiable under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255,684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, and 984.9663 of the Tariff Schedules of the United States Annotated.

The review covers eleven manufacturers/exporters of Taiwanese color television receivers, except for video monitors, to the United States, and the period April 1, 1985 through March 31, 1986.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), as appropriate. Purchase price and exporter's sales price were based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States.

For sales which were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the more appropriate indicator for United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling function of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, he commonly incurs substantial storage and financial carrying costs and has added flexibility in his marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to the Department's questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

Where applicable, we made adjustments for ocean freight, marine insurance, U.S. and foreign inland freight and insurance, U.S. and foreign brokerage fees, bank charges, U.S. customs duties, export charges and stamp taxes, discounts, rebates, credit expenses, warranty, advertising and sales promotion, royalties, commissions to unrelated parties, and the U.S. subsidiaries' indirect selling expenses. Where applicable, we made an addition for import duties not collected on imported raw materials used to produce subsequently exported merchandise, in accordance with section 772(d)(1)(B) of the Tariff Act. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, third-country price, or constructed value, all as defined in section 773 of the Tariff Act, as appropriate. When insufficient quantities of such or similar merchandise were sold in the home market during the period to provide a basis for comparison, we used third-country price. When insufficient quantities of such or similar merchandise were sold in either the home market or to third countries, we used constructed value.

Home market price was based on the packed delivered price to unrelated purchasers in the home market, with adjustments, where applicable, for inland freight, insurance, commissions to unrelated parties, rebates, credit expenses, bank charges, discounts, warranty, advertising and sales promotion, royalties, differences in the physical characteristics of the merchandise, and packing. We made further adjustments, where applicable, for indirect selling expenses to offset commissions and U.S. selling expenses for ESP calculations. We accounted for taxes imposed in Taiwan, but rebated or not collected by reason of the exportation of the merchandise to the United States, by subtraction from home market price.

Third-county price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in various third countries. We made adjustments, where applicable, for ocean freight, marine insurance, bank charges, Taiwanese inland freight, Taiwanese brokerage, stamp taxes and export charges, royalties, differences in the physical characteristics of the merchandise, and packing.

Constructed value consisted of the sum of the costs of materials, fabrication, general expenses, profit, and the cost of packing. The amount added for general expenses was 10 percent of the sum of materials and fabrication costs or actual general expenses, whichever was higher. The amount added for profit was 8 percent of the sum of the costs of materials, fabrication, and general expenses, or actual profit, whichever was higher.

For Sampo we disallowed claimed adjustments for bad debt incurred on

home market sales because they were not directly related to sales. For AOC we disallowed a portion of claimed home market inland freight expenses because the company did not demonstrate that the transportation charges were incurred only after a sale was made. For AOC, Fulet, Hitachi, Sampo, and Tatung, we disallowed portions of the claimed warranty expenses because the amounts attributable to salaries are not directly related to sales. However, we allowed all of the above claimed expenses as indirectly related selling expenses. No other adjustments were claimed or allowed.

We conducted cost of production tests for third-country sales to Canada in our analysis of Shin-Shirasuna and Capetronic. We found all sales to be above the cost of production. For Nettek, we did not use certain sales to Chile in our analysis because we found these sales to be below the cost of production.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin percent
AOC International, Inc	4/1/85-3/31/86	.06
Capetronic (BSR) Ltd	4/1/85-3/31/86	.29
Fulet Electronic Industrial Co., Ltd	4/1/85-3/31/86	.24
Hitachi Television (Taiwan) Ltd	4/1/85-3/31/86	2.78
Nettek Corp., Ltd	4/1/85-3/31/86	1.48
RCA Taiwan Ltd	4/1/85-3/31/86	1.37
Sampo Corp	4/1/85-3/31/86	.6
Sanyo Corp	4/1/85-3/31/86	4.66
Shinlee Corp	4/1/85-3/31/86	10.14
Shin-Shirasuna Electric Corp	4/1/85-3/31/86	.36
Tatung Co	4/1/85-3/31/86	2.66

Based on the final results of our last administrative review for the period October 19, 1983 through March 31, 1985 and these preliminary results, the Department has concluded that Capetronic has sold this merchandise to the United States at not less than fair value for at least two years. As provided for in § 353.54(e) of the Commerce Regulations, Capetronic has agreed in writing to an immediate suspension of liquidation and reinstatement of the order under circumstances specified in the written agreement.

Therefore, we tentatively determine to revoke in part the order on color television receivers, except for video monitors, from Taiwan. If this revocation is made final, it will apply to all unliquidated entries of this merchandise by Capetronic entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the margins for AOC, Capetronic, Fulet, and Shin-Shirasuna are less than 0.5 percent and, therefore, *de minimus* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for these firms. For any further entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1986 and who is unrelated to any reviewed firm, a cash deposit of 2.78 shall be required.

These deposit requirements and waivers are effective for all shipments of Taiwanese color television receivers, except for video monitors, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a and 353.54; 50 FR 32556, August 13, 1985).

Dated May 19, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-12303 Filed 5-28-87; 8:45 am]

BILLING CODE 3510-DS-M

[Application 87-00005]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Crann Corporation. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct:

Export Trade

Products

Lumber and lumber products, including logs, pilings, poles, timbers, veneer, plywood and wooden building components.

Related Services (facilitating the export of Products)

Consulting; international market research; advertising and sales promotion; marketing; insurance; product research and design; legal assistance; transportation, providing trade documentation and freight forwarding; communication and processing of foreign orders to and for exporters and foreign purchasers; warehousing; foreign exchange; financing; and taking title to goods for ultimate exportation.

Export Markets

All parts of the world except the United States (the fifty states of the

United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Member (in addition to applicant)

Taylor Lumber & Treating, Inc., Beaverton, Oregon.

Export Trade Activities and Methods of Operation

Crann may: 1. Enter into an agreement with its Member, whereby Crann agrees to act as its exclusive Export Intermediary for the export of Products and Related Services. These agreements may include the following provisions:

a. The Member may agree not to sell directly or indirectly through any other Export Intermediary, and/or

b. Crann will have the exclusive right to choose whether to respond to bids, invitations or requests for bids, or other sales opportunities, on a joint or individual basis.

2. Enter into exclusive agreements with other Export Intermediaries, whereby:

a. The Export Intermediary agrees not to represent competitors of Crann in the sale of Products and Related Services in any Export Market, and/or

b. The Export Intermediary agrees not to buy Products and Related Services from Crann's competitors.

3. Enter into exclusive agreements with foreign customers of the Products and Related Services, whereby the customer agrees not to purchase the Products and Related Services from Crann's competitors.

4. Maintain the exclusive right to specify the following for agreements outlined in paragraphs 1, 2, and 3 above:

a. The price at which Products will be sold and Related Services provided, and/or

b. The terms for any export sale, including the quantities, territories, and customers, regardless of whether a jont or individual bidding process is used.

5. Meet with its Member to negotiate and agree on the terms of their participation in each bid, invitation or request to bid, or other sales opportunity in any Export Market. During the course of these negotiations, the following may be exchanged:

a. Information that is already generally available to the trade or public,

b. Information that is specific to a particular Export Market, including, but not limited to, reports and forecasts of sales, prices, terms, customer needs, selling strategies, and product specifications by geographic area and by individual customers within the Export Market.

c. Information on expenses specific to exporting to a particular Export Market (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentations and service, and export sales financing),

d. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market, and

e. Information on Crann's activities in the Export Markets, including, but not limited to, customer complaints and quality problems, visits by customers located in the Export Markets, reports by foreign sales representatives, and matters concerning the contract(s) between Crann and its Member.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Streeet and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 22, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87-12286 Filed 5-28-87; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Training Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-00008". A summary of the application follows:

Applicant: Mr. Roger E. Holtman d/b/a Rocky Mountain Export Trading Company, 521 Hartman No. 1, Missoula, Montana 59801, Telephone: (406) 543-3424

Application No. 87-00008

Date Deemed Submitted: May 15, 1987

Members (in addition to applicant): none

Summary of the Application

A. Export Trade

Products: All.

Services: Architectural and engineering services; product research; market research; marketing; consulting and arranging for financing.

Export Trade Facilitation Services (as they relate to the export of products)

Overseas freight transportation; inland freight transportation to U.S. export terminals, ports or gateways; packing and crating; warehousing; freight forwarding including consolidation of shipments; and other services directly related to the movement of goods being exported or in the course of being exported; consulting; international market research; advertising; marketing; insurance; product research and design; trade documentation; communications and processing of foreign orders to and for exporters and foreign purchasers;

foreign exchange; financing and taking title to goods.

B. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

C. Definitions

"Export Intermediary" means a person who acts as a broker, distributor, sales representative, or sales or marketing agent, or who performs similar functions including providing or arranging for the provision of Export Trade Facilitation Services for sales in the Export Markets.

D. Export Trade Activities and Methods of Operation

The Applicant seeks certification to:

(1) Enter into exclusive and nonexclusive contracts with

(a) Suppliers of Products and Services to act as an Export Intermediary;

(b) Individual Export Intermediaries for the sale of Products and/or Services in the Export Markets;

(c) Foreign customers of Products and Services, including governmental entities; and

(d) Providers of Export Trade Facilitation Services for the sale of Products and Services in the Export Markets.

(2) Negotiate charges and other terms and enter into contracts with carriers for the transportation of Products.

Dated: May 26, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87-12285 Filed 5-28-87; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit to Walt Disney Company (P27C)

On April 8, 1987, notice was published in the **Federal Register** (52 FR 11304) that an application had been filed by the Walt Disney Company, P.O. Box 10,000, Lake Buena Vista, Florida 32830-1000, to take Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display.

Notice is hereby given that on May 22, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: May 22, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-12301 Filed 5-28-87; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Open Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequancy of the shipbuilding mobilization base to supoprt naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pulb. L. 92-463, as amended, the Commission announces the following meeting:

Dates and Times: Monday, June 22, 1987; Beginning 2:00 p.m.

Place: Center for Naval Analyses auditorium, first Floor, 4401 Ford Avenue, Alexandria, Virginia.

Type of meeting: Open.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301-0268, Telephone (202) 7656-0411.

Purpose of Meeting: To receive and consider statements on the perspective of shippers of goods, *i.e.* the users or maritime transportation, on the need for and possible measures to provide a merchant marine adequate to the defense needs of the United States. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing by June 12, 1987, and must provide 40 copies of written testimony no later than June 18. Witnesses will be allowed a maximum of 15 minutes to summarize the written testimony, and will be asked to respond to questions from the Commissioners. Questions about the nature and content of testimony, scheduling, due dates, and related matters should be directed to Mr. Robert Nevel, Technical Director, at the Commission's office in writing or by telephone.

SUPPLEMENTARY INFORMATION: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be received by the close of business on June 18, 1987. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. All submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 87-12278 Filed 5-28-87; 8:45 am]

BILLING CODE 3820-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa System for Certain Textiles and Textile Articles Produced or Manufactured in the Republic of Indonesia

May 19, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 1, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212.

Background

A CITA directive dated February 1, 1980 (45 FR 8084), as amended, announced an export visa system for certain cotton, wool and man-made fiber apparel, produced or manufactured in the Republic of Indonesia and exported on and after March 15, 1980.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25, 1985 and October 3, 1985, as amended, the

Governments of the United States and the Republic of Indonesia exchanged letters dated March 25, 1987 establishing a new export visa system.

Effective on July 1, 1987, all commercial shipments of textiles and textile articles of cotton, wool, man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and blends containing silk, but not apparel which contains 70 percent or silk by weight, or products other than apparel which contain 85 percent of more silk by weight, in Categories 300–369, 400–469, 600–670 and 800–899, but not Categories 353–356, 455 and 653–656, exported on or after July 1, 1987 must be accompanied by a valid visa that includes the correct category(s), part category(s), merged categories, quantity(s) and unit(s) of quantity as described in the letter published below to the Commissioner of Customs. Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less do not require a visa for entry and shall not be charged to the restraint limits.

A facsimile of the visa stamp is published as an enclosure to the letter to the Commissioner of Customs which follows this notice.[1] Any change to the stamped marking must be provided to, the Government of the United States of America prior to its use, to be effective sixty days after approval.

The Government of Indonesia shall notify the Government of the United States of America of any changes of authorized officials and shall provide two original signatures or stamps, as appropriate.

Interested persons are advised to take all necessary steps to ensure that textiles and textile articles, as described above, produced or manufactured in Indonesia and exported on and after July 1, 1987, which are to be entered or withdrawn from warehouse for consumption into the United States will meet the requirements set forth in this notice.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Editorial Note.—A copy of the facsimile of the visa stamp may be obtained from the Office of Textiles and Apparel, U.S. Department of Commerce, 14th and Constitution Ave., NW., Room H3100, Washington, DC 20230.

[1] A copy of the facsimile of the visa stamp may be obtained from the Office of Textiles and Apparel, U.S. Department of Commerce, 14th and Constitution Ave. NW., Room H3100, Washington, DC, 20230.

May 19, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directive of February 1, 1980, as amended, issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for the consumption of certain cotton, wool and man-made fiber apparel products, produced or manufactured in Indonesia in the designated categories for which the Government of the Republic of Indonesia had not issued an appropriate export visa.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Agreement of September 25, 1985 and October 3, 1985 between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1987, entry into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of textiles and textile articles of cotton, wool, man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and blends containing silk, but not apparel which contains 70 percent or more silk by weight, or products other than apparel which contain 85 percent or more silk by weight, in Categories 300–369, 400–469, 600–670 and 800–899, including part Categories 317–S (shall be visaed as 317–S),[1] 317–O (shall be visaed as 317–O),[2] 320–P,[3] 320–O,[4] 369–D,[5] 369–S,[6] 369–O,[7] 604–A,[8] 604–O,[9] 631–W [10] and 631–O [11] and merged Categories 347/348, 445/446 and 645/646, but not Categories 353–356, 455 and 653–656, produced or manufactured in Indonesia and exported on and after July 1, 1987 from Indonesia for which the Government of the Republic of Indonesia has not issued an appropriate visa fully described below.

An export visa must accompany each commercial shipment of the aforementioned textiles and textile articles. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on the duplicate copies of the invoice. The original of the invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

The visa stamp will include the following information:

1. The visa number and date of issuance. The visa number shall be the standard nine digit and letter format, beginning with one numerical digit for the last digit of the year of export, two character alpha country code specified by the International Organization (ISO), and a six digit numerical serial number identifying the shipment, e.g., 7ID123456.

2. The signature of the authorized issuing official of the Indonesian Government.

3. The correct category(s), part category(s), merged categories, quantity(s) and unit(s) of quantity. The correct category(s), part category(s) or merged category(s), quantity(s), and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the U.S. Tariff Schedules of the United States Annotated (TSUSA); i.e., Cat. 340–510 DZ. Customs is directed to deny entry of shipments arriving with an incorrect category visa (e.g., Category 347/348 may be visaed as "Category 347/348" or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Category 347" but *not* as "Category 348."

U.S. Customs shall not accept a visa and entry will not be permitted if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

If the visa is not acceptable to U.S. Customs, a new visa must be obtained from the Indonesian Government or a visa waiver issued by the U.S. Department of Commerce at the request of the Indonesian Government and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry or attempted entry, but will provide a certified copy of that visaed

[1] In Category 317, sateens in TSUS items 320.— through 331.—, with statistical suffixes 50, 87 and 93.

[2] In Category 317, all TSUS items except 320.— through 331.—, with statistical suffixes 50, 87 and 93.

[3] In Category 320, printcloth in TSUS items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.—, with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

[4] In Category 320, all TSUS items except 320.—, 321.—, 322.—, 326.—, 327.— and 328.—, with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

[5] In Category 369, dishtowels in TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[6] In Category 369, shop towels in TSUSA number 366.2840.

[7] In Category 369, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440, 366.2840 and 366.2860.

[8] In Category 604, plied acrylic yarn in TSUSA number 310.5049.

[9] In Category 604, all TSUSA numbers except 310.5049.

[10] In Category 631, work gloves in TSUSA numbers 704.3215, 704.8525, 704.8550 and 704.9000.

[11] In Category 631, all TSUSA numbers except 704.3215, 704.8525, 704.8550 and 704.9000.

invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If import quotas are in force, U.S. Customs shall charge only the actual quantity in the shipment and the correct category will be charged to the restraint level. If a shipment from Indonesia has been allowed entry into the commerce of the United States with either an incorrect visa or no visa and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or visa waiver is provided.

U.S. Customs shall not require a visa for entry and shall not charge to quota merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less.

Any shipment which requires a visa but which is not accompanied by a valid and correct visa in accordance with the foregoing provisions, shall be denied entry by the U.S. Customs Service unless the Government of the Republic of Indonesia authorizes the entry and any charges to the agreement levels through the visa waiver process.

A facsimile of the visa stamp is enclosed with this letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The actions taken with respect to the Government of the Republic of Indonesia and with respect to imports of textiles and textile articles of cotton, wool, man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and blends containing silk, as specified above, from Indonesia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 533. This letter will be published in the **Federal Register**.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-11787 Filed 5-28-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Merchantile Exchange and Chicago Board of Trade; Proposed Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The Chicago Merchantile Exchange ("CME") has applied for designation as a futures contract market in the Nikkei Stock Average. In addition, the Chicago Board of Trade ("CBT") has applied for designation as contract markets in 5,000-ounce silver futures and in 100-ounce gold futures. The Deputy Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before July 28, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Reference should be made to the CME Nikkei Stock Average futures contract or to the CBT 5,000-ounce silver or CBT 100-ounce gold futures contract.

FOR FURTHER INFORMATION CONTACT: For the Nikkei Stock Average contract, contact Naomi Jaffe, Division of Economic Analysis, Commodity futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227. For the CBT's silver and gold contracts, contact Richard Shilts, Division of Economic Analysis, at the same address, (202) 254-7303.

Copies of the terms and conditions of the proposed futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained thorugh the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other meterials submitted by the CME or CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 154.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to other materials submitted by the CME or CBT in support of their applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by July 28, 1987.

Issued in Washington, DC, on May 26, 1987.

Blake Imel,

Deputy Director, Division of Economic Analysis.

[FR Doc. 87-12283 Filed 5-28-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Ad Hoc Committee on Air Base Performance; Meeting

May 19, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Air Base Performance will meet at Sandia National Laboratory, Albuquerque, NM, on June 22 and June 23, 1987.

The purpose of this meeting is to formulate a report of findings and recommendations on the enhancement of air base operability.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-12202 Filed 5-28-87; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Galena Resort Project, NV

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a DEIS.

SUMMARY: The Galena Resort Company applied for a Department of the Army permit under section 404 of the Clean Water Act (Public Notice No. 9261A) to place fill material in Galena Creek, tributaries of Galena Creek, and in wetland during construction of the Galena Resort.

The applicant proposes to construct a year-round destination resort in the upper Galena Creek watershed on Mount Rose, approximately 17 miles southeast of the City of Reno on Nevada State Highway, Washoe County, Nevada. Recreational programs would include downhill and cross-country skiing, ice skating, golf, hiking, fishing horseback riding, and tennis. The development plan includes three village areas, Galena, Tamarack, and Hidden Lake surrounded by ski area, golf course, and open space. The project would be constructed in phases. Completion of the project is estimated at approximately 12–15 years.

Galena Creek and several of its tributaries flow through the project area. Tamarack Lake and Hidden Lake are also located within the proposed development area. A series of on-site detention ponds would be constructed to detain runoff from the development. Much of the detention would occur in ponds along the golf course or behind dams constructed below development areas. Tamarack Lake and Hidden Lake would be deepened. There are approximately 252 acres of wetlands within the project area. Approximately 43 acres of wetlands would be directly impacted by construction activities. The applicant has proposed several measures to mitigate for impacts to stream channels and wetland area.

The Corps' EIS analyze project need, alternatives, and environmental consequences in accordance with present regulations. The following is a preliminary list of alternatives and issues that will be discussed in the EIS.

Alternatives

The alternatives being considered at this time are:

1. No Action. In this alternative, a permit would not be issued. No disturbance of wetlands would be permitted.
2. Issue a permit for Application 9261A. (Applicant's proposal)
3. Issue a permit for USACE Application No. 9261. In this alternative a permit would be issued for a destination resort, including four village areas with downhill and cross country skiing, golf, ice skating, fishing, tennis, and equestrian activities. The development would consist of 4261 unit equivalents, 466 acres of development and 741 acres of developed skiing. Skiing would include 83 acres of bowl skiing served by 15 lifts for 11.740 SAOT. Approximately 143 acres of wetlands would be impacted.
4. Day use ski area. In this alternative, a day ski area of 6700 SAOT would be developed along with a base lodge and parking sufficient to serve the area. The ski area would consist of 522 acres with six lifts. Approximately twenty acres of wetlands would be impacted.
5. Further reduction in development. Modification of permit No. 9261A (Alternative No. 2) to reduce development density by approximately 40 percent, or 920 development units, by reconfiguration of the plan to further reduce wetlands impact.

Other feasible alternatives identified during the scoping process will also be considered.

Significant Issues

The significant issues identified to date which will be analyzed in the EIS are listed below.

1. Impacts on downstream flows due to groundwater and surface water modifications.
2. Air quality impacts to the Tahoe Basin and Truckee Meadows Basin.
3. Increase in flooding potential downstream.
4. Relationship of project facilities to avalanche zones.
5. Water quality impacts to Galena Creek and the lower Truckee River.
6. Effects of increased traffic on Mt. Rose Highway and through the Tahoe Basin.
7. Effect on wetlands and effectiveness of mitigation.
8. Viability of golf course due to climatic and other physical conditions.
9. Impacts to fish and wildlife resources.
10. Socio-Economic impacts.
11. Cumulative impacts.
12. Other significant issues identified during the scoping process.

Scoping

Concurrently with this notice, the Sacramento District is issuing a public notice to initiate the scoping process. The public notice will be sent to all known interested parties, and will request that the reviewers provide comments on the topical scope, alternatives, and significant issues to be covered in the EIS. We intend to accomplish the scoping process in this manner; however, if it is perceived that this method is not adequate, the need for public scoping meetings will be considered.

Other Environmental Review and Consultation

Required review and consultation to be conducted during the EIS process include Section 404 of the Clean Water Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, and Executive Order 11988 (Flood Plain Management). Other statues and regulations, as applicable, will also be complied with during the EIS process.

Availability of DEIS

We estimate that the DEIS will be made available to the public in October, 1987.

Questions concerning the proposed action and EIS should be directed to Mr. Jim Gibson, Regulatory Section, U.S. Army Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814, telephone (916) 551–2261 (FTS 460–2261).

Walter L. Cloyd III,

Lt. Colonel, Corps of Engineers Deputy District Engineer.

[FR Doc. 87–12203 Filed 5–28–87; 8:45 am]

BILLING CODE 3710-EN-M

Notice of Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) on the Santa Ana River Flood Control Project, Orange, Riverside and San Bernardino Counties, CA

AGENCY: U.S. Army Crops of Engineers, Department of Defense.

ACTION: Notice of Intent to Prepare a Draft Supplemental Environmental Impact Statement (DSEIS).

SUMMARY: a. *Proposed action.* In 1980 the Phase I General Design Memorandum (GDM) and Supplemental EIS, Santa Ana River Main Stem, presented the All River Plan as the preferred alternative for flood control on the main stem of the river. In 1985, the Upper Santa Ana River Phase I Supplemental GDM and EIS was prepared after Congress directed that alternatives to Mentone Dam be studied. Seven Oaks Dam was the recommended alternative to Mentone Dam. The Corps of Engineers is currently preparing the Phase II GDM and Supplemental EIS to cover: (1) Project changes from the 1980 and 1985 documents; (2) changed environmental conditions; and (3) new project elements that have been added since the 1980 and 1985 documents.

b. *Scoping process.* Public workship

activities will be held for five specific elements of the overall project: (1) Upper Santa Ana River (Mill Creek and Seven Oaks Dam); (2) Prado Dam basin; (3) Santa Ana Canyon (below Prado) to Victoria Street; (4) Santiago Creek; and (5) Mouth of the Lower Santa Ana River (the Marsh). These scoping meetings will assist the Corps of Engineers in further defining and identifying significant resources for consideration in the DSEIS. Federal, State, local agencies, local organizations, and members of the public will be invited to the workshop process, including U.S. Fish and Wildlife Service; U.S. Forest Service; California Department of Fish and Game; California Department of Parks and Recreation; Orange, Riverside and San Bernardino counties; California Coastal Commission; Huntington Beach Coastal Conservancy; San Bernardino County Museum; and local chapters of the Audubon Society, Sierra Club, Tricounties Conservation League, and the Wildlife Society. The Corps is also currently coordinating formally with appropriate agencies to identify and resolve potential environmental problems. A broad range of concerns has been identified thus far, and includes: (1) Impacts to biological resources (including threatened and endangered species); (2) impacts to historical and archeological resources; (3) impacts to existing development and potential relocations; (4) impacts to current and projected recreation use; (5) impacts of operation and management of water storage; (6) impacts to water quality; (7) assessment of air, noise, and traffic impacts due to project construction activities; and (8) capabilities for mitigation of impacts and losses.

c. *Future public meetings.* Scoping meetings will be held in late June and July 1987. Specific information on the meetings will be sent to the public two weeks prior to the meetings.

d. *Availability of DSEIS.* The DSEIS is anticipated to be circulated for public review in May 1988.

e. *Address.* Questions about the proposed action and DSEIS can be answered by: Warren Hagstrom, Project Manager, SPLED-DM, U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 2711, Los Angeles, California 90053-2325.

D. Fred Butler,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 87-12291 Filed 5-28-87; 8:45 am]

BILLING CODE 3710-KF-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee will meet July 13-17, 1987 and July 20-24, 1987, at the Naval War College, Newport, Rhode Island. Sessions of the meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on all days. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to discuss basic and advanced research. The agenda for the meeting will include briefings and presentations pertaining to Outer ASW Battle (AAW-ASW Anthology); Role of Space Based Activities in Support of Naval Warfare; The Navy's Role in the Air Defense Initiative; and Affordability and Availability of New Technology. These briefings and presentations contain information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: May 26, 1987.

Harold L. Stoller, Jr.

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87-12225 Filed 5-28-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before June 29, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and, (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 26, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Elementary and Secondary Education

Type of Review: Reinstatement
Title: Performance Status Report for the Magnet Schools Assistance Program
Agency Form Number: A10-8P
Frequency: Annually

Affected Public: State or local government
Reporting Burden:
Responses: 44
Burden Hours: 132
Recordkeeping Burden:
Recordkeepers: 44
Burden Hours: 88

Abstract: This report form is used by institutions, organizations and individuals who sponsor projects and receive grants under the Magnet Schools Assistance Program. The Department uses the information collected to monitor the performance of the grantees.

Office of Postsecondary Education

Type of Review: Revision
Title: Application for Federal Assistance For the Strengthening Institutions Program
Agency Form Number: ED 851a
Frequency: Annually
Affected Public: Non-Profit institutions
Reporting Burden:
Responses: 500
Burden Hours: 190,000
Recordkeeping Burden:
Recordkeepers: 300
Burden Hours: 156,000

Abstract: This form will be used by institutions of higher education to apply for grants under the Strengthening Institutions Program. The Department uses this information to make grant awards to those institutions that are eligible.

Office of Postsecondary Education

Type of Review: Revision
Title: Application for the Strengthening Program for Historically Black Colleges and Universities Program
Agency Form Number: ED 852-b
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 120
Burden Hours: 3,600
Recordkeeping Burden:
Recordkeepers: 100
Burden Hours: 17,300

Abstract: This application will be used by institutions of higher education to apply for grants under the Strengthening Historically Black Colleges and Universities Program. The Department uses this information to make grant awards to those institutions that are eligible.

Office of Postsecondary Education

Type of Review: Revision
Title: Request for Designation as an Eligible Institution
Agency Form Number: ED 1059-6
Frequency: Once only
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 1200
Burden Hours: 19,200
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: The collection of information on this form is necessary in order for the Department to designate institutions of higher education as eligible to apply for grant funds under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

[FR Doc. 87-12305 Filed 5-28-87; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center, Financial Assistance Award to the University of Alaska

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: The DOE, Mortantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to award a grant continuation to the University of Alaska for an additional 12 month effort under existing Grant No. DE-FG21-86FE61114 in the amount of $930,000 on a 50/50 cost-shared basis. The total grant with inclusion of this continuation is $1,370,000 for a three-year period.

The DOE has determined that restriction to the University of Alaska is appropriate based upon the following information:

The DOE and the State of Alaska have entered into an agreement relating to fossil energy resource characterization, research and technology development, and technology transfer to advance the application of new technologies to the Alaskan reserves of crude oil, natural gas, heavy oil, tar sand oil, coal, shale oil, methane hydrates, and peat, and may include scientific activities and investigations of underlying environmental concerns. The University of Alaska has been designated in the agreement as a unit of the State for purposes of activities that may be conducted under this agreement.

Under this grant continuation, the University of Alaska has proposed to focus on two specific tasks related to the development of Alaskan fossil energy resources with annual funding on a 50/50 cost-shared basis. Those activities specific to this continuation are (1) development of effective gas solvents including CO_2 for the improved recovery of West Sak Oil by stream flooding, and (2) development of Alaskan tar sand and gas hydrate resources.

These activities to research the application of new technologies to the arctic fossil energy reserves are in furtherance of the DOE mission and the Alaskan objectives to ensure a continued supply of fossil fuels to the consumer in a safe, economic and environmentally acceptable manner. Since the University of Alaska has been charged with research in support of Alaska resource development, has an ongoing program (facilities, equipment and personnel), and is an integral part of the Alaskan infrastructure involved in resources recovery issues, it is uniquely qualified to carry out the work under this grant. Therefore, it has been determined that, in cooperation with the State of Alaska, it is appropriate to award this grant to the University of Alaska on a restricted eligibility basis.

FOR FURTHER INFORMATION CONTACT: Brenda L. Summers, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4340, Procurement Request No. 21-87FE61114.501.

Dated: May 20, 1987.

Louie L. Calaway,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 87-12275 Filed 5-28-87; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA C&E-87-19; OFP Case No. 52371-1572-21, 22, 23, 23-22]

Order Granting an Exemption Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 to Potomac Electric Power Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting Exemption.

SUMMARY: On December 31, 1987, Potomac Electric Company (PEPCO or petitioner) filed a petition with the Electric Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for four proposed new peakload powerplants to be located at

PEPCO's Dickerson site in Montgomery County, Maryland. PEPCO intends to add two heat recovery steam generators and steam turbines that will result in two combined cycle facilities to be baseloaded after 1997. The expanded facility is the subject of an independent contemporaneous order granted to PEPCO.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant, and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on peakload use. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found at 10 CFR 503.41.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplant at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on July 28, 1987.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available on request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION:

FUA prohibits the use of natural gas or petroleum in certain new powerplant unless an exemption for such use has been granted by ERA. The petitioner has filed a petition for a permanent exemption to use natural gas or oil as a primary energy source in its facility located in Montgomery County, Maryland.

Procedural Requirements

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on March 9, 1987 (52 FR 7196) commencing a 45-day public comment period pursuant to section 701(c) of FUA. Copies of the petition were provided to the Environmental Protection Agency as required by section 701(f). During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on April 23, 1987; no adverse comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants the petitioner's permanent exemption for the powerplant to be installed at its facility in Montgomery County, Maryland permitting the use of natural gas or oil as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on May 20, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-12231 Filed 5-28-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E-87-25; OFP Case No. 52371-1572-25, 26-22]

Order Granting an Exemption Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 to Potomac Electric Power Company

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting Exemption.

SUMMARY: On December 31, 1986, Potomac Electric Power Company (PEPCO) or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for two combined cycle facilities to be located at its Dickerson Station in Montgomery County, Maryland.

The gas-fired turbines to be used in these combined cycle facilities are the subject of an independent contemporaneous petition submitted by PEPCO. PEPCO proposes to construct and operate four gas-fired turbines as peaking units in 1994, 1995, 1996 and 1997, respectively, and has requested a peakload exemption (see companion order). After 1977, PEPCO intends to add heat recovery system generators and steam turbines that will result in the two combined cycle facilities that are the subject of this order.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant, and prohibits the construction of any such facility without the capabilities to use an alternate fuel as a primary energy source. The exemption petition was based on a lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioners for petitioning for this type exemption are found at 10 CFR 503.32.

Pursuant to section 212(a) of the Act and 10 CFR 503.32, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplant at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on July 28, 1987.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington DC 20585 Telephone (202) 586-4708

Steven E. Ferguson, Esq., Office of General Council, Department of Energy, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947.

The public file containing a copy of this order and other documents and

supporting materials on this proceeding is available on request for DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. The petitioner has filed a petition for a permanent exemption to use natural gas or oil as a primary energy source in its facilities located in Montgomery County, Maryland.

NEPA Compliance

After a review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Procedural Requirements

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on March 9, 1987 (52 FR 7195), commencing a 45-day public comment period pursuant to section 701(c) of FUA.

A copy of the petition was provided to the Environmental Protection Agency and the Federal Energy Regulatory Commission as required by sections 213(c)(2) and 701(f) of the Act, respectively. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on April 23, 1987; no adverse comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.32, and pursuant to section 212(a) of FUA, ERA hereby grants the petitioner's permanent exemption for the unit to be installed at its facility in Montgomery County, Maryland permitting the use of natural gas or oil as a primary energy source in each unit identified in this order.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on May 20, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-12232 Filed 5-28-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[P-3473-008]

Application Filed With the Commission

May 22, 1987.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Transfer of License.

b. Project No.: 3473-008.

c. Date Filed: May 5, 1987.

d. Applicant: Jack M. Fuls and HydroPool.

e. Name of Project: North Canal Dam.

f. Location: On the Deschutes River, in the City of Bend, in Deschutes County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact:
Mr. Jack M. Fuls, 6324 NE. Glisan, Portland, OR 97231, (503) 233-1083
Mr. Ivan L. Gold, HydroPool, 3 Embarcadero Center, Suite 1670, San Francisco, CA 94111, (415) 362-4290.

i. FERC Contact: Mr. William Roy-Harrison, (202) 376-9773.

j. Comment Date: July 6, 1987.

k. Proposed Action: Jack M. Fuls proposes to transfer his license for Project No. 3473 to HydroPool to facilitate completion of the project. Transferee has proposed to construct, operate, and utilize the full output of the project in accordance with the license.

l. This notice also consists of the following standard paragraphs: B and C.

B. *Comments, Protests or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each respresentative of the Applicant specified in the particular application.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-12299 Filed 5-28-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3210-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 11, 1987 through May 15, 1987 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act (CAA) and Section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. DS-FAA-B51008-NH, Rating LO, Lebanon Municipal Airport Runway

18 Extension, Outer Marker With Compass Locator Facility, Installation, Approval, NH. SUMMARY: EPA believes that the project as currently proposed is satisfactory from the standpoint of environmental quality, health and welfare, within EPA's areas of jurisdiction and expertise. This finding is based in part on the prior commitment to mitigation measures in the 1982 final EIS for the runway extension and industrial park development at Lebanon Municipal Airport.

ERP No. D-SCS-J31019-WY, Rating EO2, Big Sandy River Unit, Onfarm Irrigation Improvements, Colorado River Salinity Control Program, WY. SUMMARY: EPA's major concerns included the potential elimination of an existing fishery and the implementation procedure for wetland mitigation. Soil Conservation Service has committed to attempt to resolve these issues prior to the final EIS.

Final EISs

ERP No. F-FHW-D40212-VA, VA-600 Improvement, VA-603 to VA-762, 404 Permit, VA. SUMMARY: EPA reviewed the final EIS and noted that all of the previous concerns regarding the draft EIS were addressed. There are no regional objections to the implementation of the project.

ERP No. F-FHW-J40069-CO, CO-7/ Forest Highway 26 Reconstruction, Meeker Park to US 36 in Estes Park, 404 Permit, CO. SUMMARY: The final EIS responded to EPA's concerns on the draft EIS.

Amended Notice

The following review should have appeared in the FR Notice published on May 22, 1987.

ERP No. D-FHW-D40224-MD, Rating EC1, MD-22 Improvements, Bel Air to I-95, 404 Permit, MD. SUMMARY: To avoid environmental impacts, EPA recommends the selection of an existing alignment alternative. Major areas identified as needing further explanation in the final EIS are: (1) Wetlands definition and mitigation, (2) determination of impacts to endangered species in the affected area, (3) impacts to surface and ground waters, and (4) long-term noise impacts.

Dated: May 26, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-12289 Filed 5-28-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3210-4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed May 18, 1987 Through May 22, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870179, Final, SCS, WV, Howard Creek Watershed Flood Control and Watershed Protection, Greenbrier County, Due: June 29, 1987, Contact: Rollin Swank, (304) 291-4151

EIS No. 870180, Final, COE, CO, Parachute Creek Shale Oil Program, Phase II, Expansion, Garfield County, Due: June 29, 1987, Contact: Tom Coe, (916) 551-2270

EIS No. 870181, Draft, EPA, REG, Wet-Coal Charged By-Product Coke Oven Batteries, Coke Oven Emission Standards, Due: July 13, 1987, Contact: James Crowder, (919) 541-5596

EIS No. 870182, Draft, EPA, REG, Petroleum Refinery Wastewater Systems, Volatile Organic Compounds (VOC) Emissions, Performance Standards, Due: July 20, 1987, Contact: James Durham, (919) 541-5671

EIS No. 870183, Final, Adoption, CGD, MS, Gulf Coast Strategic Homeporting, Pascagoula Bay/ Mississippi Sound Bridge, Pascagoula to Singing River Island, Permit Approval, Due: June 29, 1987, Contact: Rose Payne, (504) 589-2965

EIS No. 870184, Draft, DOE, CO, Old and New Rifle Uranium Mill Sites Remedial Actions, Contaminated Material Cleanup, Garfield County, Due: July 13, 1987, Contact: James Anderson, (505) 844-3941

EIS No. 870185, Draft, NOA, NH, Great Bay National Estuarine Research Reserve Designation and Management Plan Preparation, Due: July 13, 1987, Contact: Vickie Allin, (202) 673-5122

EIS No. 870186, Draft, EPA, REG, Polymeric Coating of Supporting Substrates Volatile Organic Compounds (VOC) Emissions, Performance Standards, Due: July 14, 1987, Contact: James Berry, (919) 541-5671

EIS No. 870187, Draft, FHW, IL, Elgin-O'Hare Highway/FAP Route 426 Improvement, US 20/Lake Street and Lovell Road Intersection to IL-19/ Irving Park Road and US 12/45/ Mannheim Road Intersection, Cook and DuPage Counties, Due: July 30, 1987, Contact: Jay Miller, (217) 492-4600

EIS No. 870189, Final, UAF, MN, ND, SD, Central Radar Systems, Over-the-Horizon Backscatter Radar System, Construction and Operation, Due: June 29, 1987, Contact: James Lee, (617) 271-5387

Amended Notices

EIS No. 870144, Draft, FHW, CA, CA-52 East Construction, Santo Road to CA-67, San Diego County, Due: June 17, 1987, Published FR 5-1-87—Review period extended

EIS No. 870176, Final, FWS, NJ, Great Swamp National Wildlife Refuge Master Plan, Morris County, Due: June 29, 1987, Published FR 5-22-87—Review period reestablished

EIS No. 870166, Draft, FHW, WI, WI-TH-83 Improvement, I-94 to Cardinal Lane/WI-TH-16, Waukesha County, Published FR 5-22-87—Officially retracted due to nondistribution

Dated: May 26, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-12290 Filed 5-28-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-400005; FRL-3187-8]

Emergency Planning and Community Right-To-Know Programs; Denial of Toxic Chemical List Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is denying a petition to add the category of inorganic fluorides to the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986. Section 313(e) allows any person to petition the Agency to modify the list of toxic chemicals for which toxic chemical release reporting is required.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1411.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The response to the petition is issued under section 313 (e)(1) of Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, "SARA" or "the Act"). Title III of SARA is also referred to as the Emergency Planning and Community Right-to-Know Act of 1986.

B. Background

Title III of SARA is intended to encourage and support emergency planning efforts at the State and local level and provide the public and local governments with information concerning potential chemical hazards present in their communities.

Section 313 of Title III requires owners and operators of certain facilities that manufacture, process, or otherwise use a listed toxic chemcial to report annually their releases of such chemicals to the environment. Such reports are to be sent to both EPA and the State in which the facility is located. The basic purpose of this provision is to make available to the public information about total annual releases of toxic chemicals from industrial facilities in their community. In particular, EPA is required to develop a computer data base containing this toxic chemical release information and to make it accessible by telecommunications on a cost reimbursable basis.

For reporting purposes, section 313 establishes an initial list of "toxic chemicals" that is composed of 329 entries, including 20 categories of chemicals. This list is a combination of lists of chemicals used by the States of Maryland and New Jersey for emissions reporting under their individuals right-to-know laws. Section 313(d) authorizes EPA to modify by rulemaking the list of chemicals covered either as a result of EPA's self-initiated review or in response to petitions under section 313(e).

Section 313(e) (1) provides that any person may petition the Agency to add chemicals to or delete chemicals from the list of "toxic chemicals." EPA issued a statement of policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479). This statement provided guidance to potential petitioners regarding the recommended contents and format for submitting petitions. The Agency must respond to petitions within 180 days either by initiating a rulemaking or publishing an explanation of why the petition is denied. If EPA fails to respond within 180 days, it is subject to citizen suits. In the event to a petition from a state governor to add a chemical, under section 313(e) (2), if EPA fails to act within 180 days, EPA must issue a final rule adding the chemical to the list. Therefore, EPA is under specific constraints to evaluate petitions and to issue a timely response.

State governors may petition the Agency to add chemicals on the basis of any one of the three toxicity criteria (acute human health effects, chronic health effects, or environmental toxicity). Other persons may petition only on the basis of acute or chronic human health effects.

Chemicals are evaluated for inclusion on the list based on the criteria in section 313(d) and using generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to EPA.

II. Description of Petition

The Safe Water Foundation of Texas submitted a petition to EPA to add the category of inorganic fluoride chemicals to the list of toxic chemicals. The Agency received the petition on November 28, 1986 and, under the statutory deadline, must respond by May 27, 1987. The petitioner submitted several citations of studies and copies of other studies to support its petition.

The petitioner based its petition on the contention that inorganic fluorides cause adverse human health effects, and therefore meet the statutory criteria in section 313(d)(2)(B).

III. EPA's Review of Inorganic Fluorides

A. Chemistry Profile

1. *Focus of the review.* Eight inorganic flurides are specifically listed in the petition. However, the petition states that other inorganic fluorides should not be excluded from the Agency's review. EPA reviewed the inventory of chemical substances developed under section 8(b) of the Toxic Substance Control Act (TSCA) (i.e., the TSCA Inventory) to identify commercially significant inorganic fluorides (Ref. 9). The 1977 TSCA Inventory data base was used to provide a sample set of chemicals on which the review of the petition could focus, although the reporting requirement in section 313 is not limited to substances on the TSCA Inventory. Of the 193 inorganic fluorides found in the TSCA Inventory data base, the Agency's review found 46 inorganic fluorides with upper bound production volumes greater than 10,000 lbs per year. (Under section 313, reporting for 1989 and thereafter is only for facilties which manufacture or process greater than 25,000 lbs per year, or otherwise use toxic chemicals in volumes greater than 10,000 lbs per year). Of the 8 inorganic fluorides cited in the petition, only 1 was not included in the list of 46 (potassium difluoride-KF_2). This chemical did not appear in the 1977 TSCA Inventory data base.

2. *Categorization by chemical type.* The health review of inorganic fluorides as a category was focused on effects associated with the fluoride anion (F^-). The principal health effect (i.e., skeletal fluorosis) does not appear to have any direct correlation with the ease of dissociation of the fluoride anion. Hence, subclassification by chemical type did not facilitate the review.

B. Toxicity Evaluation

The data base available for review of the toxicity associated with inorganic fluorides is extensive. In addition to animal studies, several human epidemiological studies with large populations have been conducted over the last 40 years. EPA's review focused on the following effects: acute toxicity; carcinogenicity; mutagenicity (i.e.; heritable gene and chromosome mutations); developmental dysfunction (including teratogenicity); reproductive toxicity; neurotoxicity; and other chronic health effects, which include dental fluorosis/osteosclerosis/crippling skeletal fluorosis hepatoxicity, renal toxicity, thyroid toxicity, cardiovascular toxicity, and allergic reactions.

1. *Acute toxicity.* Fluoride ion consumed in large quantities can cause severe poisoning and death. The human acute lethal dose for inorganic fluoride ranges from 50 to 225 mg/kg body weight or 3 to 18 grams for an average human male (Ref. 8). Hodge and Smith tabulated numerous reports of accidental and intentional poisonings with fluoride and concluded that a dose range of 5 to 10 grams of sodium fluoride would be a lethal dose for an average human male (70 to 140 mg/kg body weight) (Ref. 6). Similar lethal doses have been observed in animal studies. Exposures of such magnitude are not likely to occur off-site.

2. *Dental fluorosis/osteosclerosis/crippling skeletal fluorosis.* Dental fluorosis is characterized by mottling of the teeth. While an undesirable effect, the Agency does not consider it a serious health effect under SARA section 313 because it is not associated either with a loss of bodily function or tooth mortality (Ref. 3).

Skeletal fluorosis, which increases in severity with both dose of fluoride and duration of exposure, is characterized in its mildest form by a slight increase in bone density (asymptomatic osteosclerosis) which is detectable only by x-ray examination. Osteosclerosis is not viewed by the EPA as an adverse health effect under SARA section 313 because it does not appear to cause clinically significant effects (Ref. 3). In its most severe form, skeletal fluorosis is characterized by the deposition of irregular bone deposits which, in the case of joints, results in arthralgia and crippling (Ref. 3). This condition is

known as crippling skeletal fluorosis and is readily recognized by physicians. The EPA has concluded that crippling skeletal fluorosis is an adverse health effect.

Skeletal fluorosis in the U.S. was investigated by Leone et al. [(Ref. 12), as discussed in the draft report for EPA (Ref. 3)], who compared the effects of exposure to fluoride in drinking water in a high fluoride area (Bartlett, Texas; 8 mg/L) and in a low fluoride area (Cameron, Texas; 0.4 mg/L). In the groups studied, there were 116 participants from Bartlett and 121 from Cameron, a total of 237 persons. The average length of exposure was 37 years in the Bartlett area and 38 years in the Cameron area. The authors concluded that fluoride-induced bone changes (osteosclerosis): (a) occur in approximately 10 to 15 percent of those exposed to high levels of fluoride and (b) are not associated with other physical finding (including crippling skeletal fluorosis) except for dental mottling in persons who resided in Bartlett during the tooth formative period. Independently of the Leone et al. survey (Ref. 12), Stevenson and Watson, as discussed in the draft report for EPA (Ref. 3), reviewed the medical records on file at the Scott and White Clinic for the 11-year period from 1943 through 1953. These patients included individuals whose drinking water contained levels of fluoride that ranged from low levels to relatively high levels. The authors noted 23 cases of osteosclerosis from a total of approximately 170,000 x-ray examinations in patients living in Texas and Oklahoma. In all cases, bone changes were found only in individuals where drinking water contained fluoride levels of 4 to 8 mg/L. No cases of crippling skeletal fluorosis were observed.

All available evidence indicates that the incidence of crippling skeletal fluorosis in the U.S. associated with fluoride intake through drinking water is extremely small. Only two cases of crippling skeletal fluorosis associated with non-occupational exposure have been reported in the U.S. (Refs. 5 and 15) over the decades that scientists have examined the effects of fluoride upon bone (Refs. 2, 7, 11, 12, 13, and 17), as discussed in the draft report for EPA (Ref. 3). In both cases, the individuals had both higher levels of water intake and possibly, significant levels of fluoride from the diet in that both drank large quantities of tea which contains high amounts of fluoride compared to other foods (97 parts per million dry basis) (Ref. 14).

Crippling skeletal fluorosis has been observed in individuals in other countries chronically exposed to fluoride in drinking water at levels of 20 mg/day to 80 mg/day (based on 2 liters of water consumption per day) and in workers who, due to occupation, were chronically exposed to high levels of fluoride (e.g., cryolite mining).

From the cases of skeletal fluorosis caused by occupational exposures, it is estimated that the development of crippling skeletal fluorosis requires the daily consumption of 20 mg or more of fluoride from all sources for 20 or more years (Ref. 16), as discussed in the draft report for EPA (Ref. 3).

3. *Other health effects.* The health review concluded the data are insufficient to establish that the fluoride ion causes or can reasonably be anticipated to cause cancer or heritable gene or chromosome mutations in humans. Other effects (e.g., reproductive dysfunction, developmental toxicity, and cardiovascular toxicity) have only been seen in animal studies at levels significantly higher than those of concern for crippling skeletal fluorosis.

C. Release and Exposure Analysis

EPA's assessment of industrial releases of fluorides was based on readily available data primarily from the industries whose activities fall within the Standard Industrial Classification Codes 20 through 39 (covered by section 313 reporting). Some of these industries are currently subject to various air and water environmental regulations.

EPA identified the applications, number of facilities involved, and the specific fluoride compounds used and released by each industry, as well as quantitative air and water release estimates where possible (Ref. 4) The data represent releases mostly from industries whose fluoride emissions are currently regulated by EPA. These releases are considered to be the more significant industrial sources of fluorides.

The exposure analysis derived from these off-site release estimates indicates that industrial sources of fluorides do not appear to make a significant contribution to the total human exposure to inorganic fluorides (Ref. 1). Industrial releases of fluorides to surface waters do not typically contribute more than a few tens of micrograms per day (μg/day) to fluoride exposure (20 μg/day would be one percent of the estimated average human exposure to fluoride from drinking water in the U.S.). The highest exposure, 1.3 mg/day, was estimated for hydrogen fluoride plants discharging directly to surface water. Hydrogen fluoride is already on the section 313 list; therefore, these releases would be reported without modifying the list. Air releases in the vicinity of certain industrial sites reflect levels of exposure higher than that typical of ambient air in the U.S. (generally below the limit of detection of 0.05 $\mu g/m^3$, equivalent to 1.3 μg/day), but still in the low hundreds of micrograms per day (a level of 150 μg/day resulted from the well-characterized dispersion modeling of primary aluminum plants) (Ref. 1). Once again the highest exposure from air releases, 260 μg/day, was calculated for a hydrogen fluoride factory.

Drinking water is the major source of exposure to fluorides for the average person. Approximately 90 percent of the public drinking water supplies in the U.S. contain fluoride at levels no greater than 1.0 ppm (2 mg/day) either through natural occurrence or more commonly through intentional addition. Most of the other public water supplies contain no more than 2.0 ppm (4 mg/day) (Ref. 1). Diet is the second most important source of fluoride exposure for most people (0.2 to 0.8 mg/day) (Ref. 1).

In the time available, the Agency was not able to find data to evaluate potential releases to groundwater from land disposal of fluoride-bearing wastes.

D. Summary of Technical Review

The hazard evaluation shows that the primary effect of concern, crippling skeletal fluorosis, is unique and is only seen at doses of at least 20 mg per day over an estimated 20-year exposure period. This effect has been well studied and the adverse effect levels for skeletal fluorosis have been confirmed by epidemiological studies.

Drinking water, the major source of exposure to fluorides, generally exposes populations to doses of 2 mg/day. The maximum regulated exposure from U.S. public drinking water supplies is 8 mg/day (4 ppm fluoride concentration). Industrial sources evaluated show that air emissions are the largest contributor, with typical levels resulting in exposures of less than 0.15 mg/day. Therefore, the contribution to human exposure from industrial sources is typically an order of magnitude lower than that from drinking water. Thus, the Agency has found no cases where the total fluoride exposure would result in crippling skeletal fluorosis.

The results of the exposure analysis of industrial sources is contrasted with other sources of fluoride exposure and the adverse health effect level in Table 1 below.

TABLE 1.—ADVERSE HEALTH EFFECT LEVEL VS. EXPOSURE LEVELS FROM VARIOUS SOURCES OF FLUORIDES

LOAEL [1] for crippling skeletal fluorosis	20 mg/day [2]
Maximum drinking water exposure [3].	8 mg/day.
Typical drinking water exposure.	2 mg/day.
Typical dietary exposure..	0.2–0.8 mg/day.
Ambient Air exposure [4]....	0.0013 mg/day.
Potential drinking water exposure level from typical industrial sources.	<0.001–0.5 mag/day (typical level 0.01 mg/day.
Potential air exposure level in vicinity of major industrial sources.	0.05–0.15 mg/day.

[1] Lowest observable adverse effects level.
[2] For a 20-year exposure period.
[3] Based on the Maximum Contaminant Level (MCL) of 4 mg/L for U.S. public drinking water supplies and a 2 liter per day consumption.
[4] Based on the limit of detection for fluoride of 0.05 ug/m^3
[5] Range of estimated exposure levels (not including hydrogen fluoride; a chemical already on the section 313 emissions inventory.)

IV. Explanation of Denial

A. General Policy

EPA has broad discretion in determining whether to grant or deny petitions under section 313. Section 313(d)(2)(B)(ii)(IV) gives EPA the discretion to add a chemical to the list of toxic chemicals if there is sufficient evidence to establish that it is known to cause or can reasonably be anticipated to cause in humans a serious or irreversible chronic health effect. In the Joint Conference Committee Report, the conferees made clear that EPA may conduct risk assessments or site-specific analyses in making listing determinations under section 313(d). EPA has concluded that potential exposure must be a consideration in making decisions to add chemicals to the list. It would not be consistent with the purpose behind section 313 to add chemicals that are toxic only at high exposures that are not likely to occur off site during normal operations. EPA has discretion to consider a variety of factors to determine whether it is appropriate to add chemicals to the list, albeit limited in the case of petitions under section 313(e) by the 180-day period.

B. Reasons for Denial

The EPA is denying the petition submitted by the Safe Water Foundation of Texas to add the category of inorganic fluorides to the list of chemicals subject to toxic release inventory reporting.

The category of inorganic fluorides is unusual in the degree to which both the unique adverse health effect—crippling skeletal fluorosis—and the human exposure are well characterized.

Thus, this decision to deny the petition is based on a number of factors. While recognizing that dental fluorosis is a cosmetically objectionable effect, the Agency does not believe there is adequate evidence to show that dental fluorosis is an adverse health effect. The fluoride anion is known to cause a serious chronic health effect (crippling skeletal fluorosis); however, the dosage levels at which crippling skeletal fluorosis is seen (20 mg/day for 20 years) are much higher than the exposures that the Agency believes are likely. The fluorosis effect is unique to exposure to fluoride and is easily identified. Various epidemiological studies (cited above) have confirmed the dose at which effects are seen, leading to a high confidence in the adverse effect level. Furthermore, the Agency believes that industrial releases of inorganic fluorides (the only releases that would be reported under section 313) contribute only a small proportion to the total exposure of humans to inorganic fluorides, which is primarily from drinking water containing florides from natural sources and intentional addition to promote dental health. Although the Agency could not conduct a comprehensive analysis of all potential sources of fluoride releases given the available data and time allowed by the statutory deadline for review, this conclusion is further supported by several epidemiological studies of U.S. populations which indicate that there have been very few reported cases of crippling skeletal fluorosis due to non-occupational exposures. Therefore, EPA believes that any additional risk posed by the releases of inorganic fluorides from industrial sources is insignificant.

Accordingly, the purposes of section 313 would not be served by requiring covered facilities to report releases of such fluorides.

V. Public Record

The record supporting this decision is contained in docket control number OPTS-400001. All documents, including the index of the docket, are available to the public in the OTS Reading Room from 8 a.m. to 4 p.m., Monday thru Friday, excluding legal holidays. The OTS Reading Room is located at EPA Headquarters, Room NE-G004, 401 M St., SW., Washington, DC 20460.

VI. References

(1) Delpire L., SARA Title III, Section 313: Petition on Inorganic Fluorides—Exposure Assessment, U.S. EPA. 1987.

(2) Dinman, B. D., Elder, M. J., Booney, T.B., Bovard, P. G., and Colwell, M. O. A 15-year retrospective study of fluoride excretion and bony radiopacity among aluminum smelter workers, Pt. 4. J. Occup. Med., 18, 21- 25. 1976.

(3) USEPA, Final Draft for the Drinking Water Criteria Document on Fluoride. Criteria and Standards Division, Office of Drinking Water. 1985.

(4) Franklin, K., Environmental Releases of Inorganic Fluorides from Industrial Sources. USEPA. 1987.

(5) Goldman, S. M., Sievers, M. L., and Templin, D. W. Radiculomyopathy in a southwestern Indian due to skeletal fluorosis. Arizona Medicine, 675–677. 1971.

(6) Hodge, H. C., and Smith, F. A. Biological properties of inorganic fluorides. In Simmons, J. H., ed., Fluorine Chemistry Academic Press, New York, Vol. IV, pp. 3–7, 10–13, 29–33, 89–113, 518. 1965.

(7) Hodges, P. C., Fareed, O. J., Ruggy, G., and Chudnoff, J. S. Skeletal Sclerosis in Chronic Sodium Fluoride poisoning. JAMA, 117 1938. 1941.

(8) IARC. International Agency for Research on Cancer (IARC). IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans, Vol. 27 Lyon, France. 1982.

(9) Israel, R. Title III, Section 313: Petition to Add Inorganic Fluorides—Chemistry Report USEPA. 1987.

(10) Koop, C. E. Letter to William Ruckelshaus, January 23, 1984.

(11) Leone, N. C., Shimkin, M. B., Arnold, F. A., et al. Medical aspects of excessive fluoride in a water supply public health rep., 69, 925–936. 1954.

(12) Leone, N. C., Stevenson, C. A., Hibish, T. and F., Sosman, M. C. A roentgenologic study of a human population exposed to high fluoride domestic water (a 10-year study). Am. J. Roentg. Radium Ther. Nucl. Med., 74, 874–885. 1955.

(13) Leone, N. C., Stevenson, C. A., Besse, B., Hawer, L. E., and Dawber T. R. The effects of the absorption of fluoride, III, A radiological investigation of five hundred forty-six human residents of an area in which the drinking water contained only a minimum trace of fluoride. Am. Med. Assoc. Arch. Ind. Health, 21, 326–327. 1960.

(14) Letkiewicz F. Occurrence of fluoride in drinking water, food, and air. McLean, VA: JRB Associates. EPA contract no. 68-01-6388. 1984.

(15) Sauerbrunn, B. J. L., Rayan, C. M., and Shaw, J. F. Chronic fluoride intoxication with fluorotic radiculomyelopathy. Ann. Intern. Med., 1074–1078. 1965.

(16) Shapiro, J. R. Report to the Surgeon General: By the Ad Hoc Committee on the Nondental Health Effects of Fluoride in Drinking Water. September 26, 1983.

(17) Stevenson, C. A., and Watson, A. R., Fluoride Osteosclerosis. Amer. J. Roentgenol., 78, 13–18. 1957.

Dated: May 22, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87-12348 Filed 5-28-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; David G. Perry et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station.

Applicant, City and State	File No.	MM Docket No.
A. David G. Perry, Windsor, NC.	BPH-860424MP	87-146
B. Franklin Broadcasting, Windsor, NC.	BPH-860507QA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading Applicant(s)

1. Air Hazard, B
2. Comparative, A, B
3. Ultimate, A, B,

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-12239 Filed 5-28-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. CF-6]

Window Notice for the Filing of FM Broadcast Applications

Released: May 20, 1987.

Notice is hereby given that applications for vacant FM Broadcast allotments listed below may be submitted for filing during the period beginning on the date of release of this public notice and ending June 30, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel	City	State
233C	Eager	Arizona.
243C	Soldotna	Alaska.
249C	Granbury	Texas.
265A	McConnelsville.	Ohio.
272A	Camden	Alabama.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-12237 Filed 5-28-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. FM86-1]

Window Notice for the Filing of FM Broadcast Applications

Released: May 20, 1987.

Notice is hereby given that applications for vacant FM Broadcast allotments listed below may be submitted for filing during the period beginning May 20, 1987 and ending June 30, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel	City	State
233A	Waco [1]	Texas.
238A	Silver Springs.	Florida.
247C2	South Pittsburgh.	Tennessee.
269A	Franklin	Virginia.

[1] Site restriction no longer necessary.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-12238 Filed 5-28-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0100

Title: Emergency Management Training State Work Plan

Abstract: The attached FEMA Form 95-5 is used to submit the annual projection as well as collect quarterly data.

Type of Respondents: State or local governments

Number of Respondents: 58

Burden Hours: 145

Frequency of Recordkeeping or Reporting: Semi-annually; Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Wesley C. Moore, *Director, Office of Administrative Support.*

[FR Doc. 87-12240 Filed 5-28-87; 8:45am]

BILLING CODE 6718-05-M

[FEMA-788-DR]

Amendment to Notice of a Major-Disaster Declaration for Maine

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maine (FEMA-788-DR), dated April 9, 1987, and related determinations.

DATED: May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Maine, dated April 9, 1987, is hereby amended to include the following areas among those areas

determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 9, 1987:

The Town of Harrison in Cumberland County, the Town of Bucksport in Hancock County, and the Town of Appleton in Knox County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 87-12241 Filed 5-28-87; 8:45 am]

BILLING CODE 6718-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86P-0369]

Canned Pacific Salmon Deviating From Identity Standard; Amendment of Temporary Marketing Permit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit to market test canned skinless and boneless chunk salmon packed in water is being amended to increase the quality of test product to be distributed and the area of distribution. This amendment will provide the permit holder with a broader base for the collection of data on consumer acceptance of the test product.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0110.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to Bumble Bee Seafoods, Inc., San Diego, CA 92123, to market test canned skinless and boneless chunk salmon packed in water to test consumer acceptance of the new store pack. The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standard of indentity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Bumble Bee Seafoods, Inc., was published in the **Federal Register** of September 16, 1986 (51 FR 32844).

Bumble Bee Seafoods, Inc., is requesting tha' the permit be amended to (1) increase the quantity of test product to 400,000 cases containing twenty-four 6 ½-ounce cans and (2) expand the area of distribution to include Alaska and Hawaii. The company states that these changes are necessary to collect adequate data to complete the market test. Accordingly, FDA, under provisions of 21 CFR 130.17(f) is amending the temporary permit to increase the quantity of test produce to 400,000 cases and to include Alaska and Hawaii in the test market area.

Therefore, FDA is amending the permit to change the quantity of product to be market tested and the area of distribution. All other conditions and terms of this permit remain the same.

Dated: May 11, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-12229 Filed 5-28-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[ORD-054-N]

Medicare Program; Health Care Financing Research and Demonstration Special Solicitation; Availability of Funds for Cooperative Agreements or Grants for Preventive Services Demonstrations for Medicare Beneficiaries

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice announces the availability of HCFA funds for conducting cooperative agreements or grants in Federal fiscal year 1987 for demonstration projects that are designed to reduce disability and dependency by providing preventive health services to Medicare beneficiaries. Under these awards, HCFA will provide reimbursement for preventive services that are not usually covered by Medicare. This notice contains information about demonstration requirements, application procedures, criteria HCFA will use for reviewing applications, and the amount and duration of awards.

DATE: Closing date for submission of applications will be August 27, 1987, 4:30 p.m. eastern standard time.

ADDRESSES: Application kits. Standard application forms and guidance for the completion of the forms are available from: Paul McKeown, Health Care Financing Administration, Office of Management and Budget, Administrative Contracts and Grants Branch, Room 364, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207-5187, (301) 594-3333.

FOR FURTHER INFORMATION CONTACT: John F. Meitl, Health Care Financing Administration, Office of Research and Demonstrations, Office of Demonstrations and Evaluations, Room 2306, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187, (301) 594-1719.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice solicits cooperative agreement or grant applications for HCFA demonstration projects designed to reduce disability and dependency through the provision of preventive health services to individuals entitled to benefits under Title XVIII of the Social Security Act. Projects must be conducted under the direction of accredited public or private non-profit schools of public health, or preventive medicine departments accredited by the Council on Education for Public Health.

This notice also specifies a total amount of funds to be available. This solicitation is separate and distinct from, is not related to, and does not supplement or otherwise change, the beneficiary awareness and prevention priority area statement contained in our earlier grants solicitation notice published in the **Federal Register** on January 30, 1985 (50 FR 4460) and amended on October 16, 1986 (51 FR 36856).

This notice describes the application procedures, general policy considerations, criteria to be used in reviewing applications, and selection criteria for HCFA cooperative agreements or grants.

II. Availability of Funds for Cooperative Agreements or Grants for Preventive Health Services for Medicare Beneficiaries

A. General

Section 9314 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99-272, mandates that the Secretary establish a 4-year demonstration program designed to reduce disability and dependency by providing preventive health services to Medicare beneficiaries. Section 9344(d) of the Omnibus Budget Reconciliation Act of 1986 (OBRA), Pub. L. 99-509, amended section 9314 of COBRA and authorized up to $5.9 million to fund new cooperative agreements or grants for demonstration projects for preventive

health services for Medicare beneficiaries.

B. Authorities

Our authority for making these awards is based on the following—

1. The Social Security Act, Title XVIII—section 1875, Studies and Recommendations (42 U.S.C. 139511);

2. Section 9314 of Pub. L. 99–272, the Consolidated Omibus Budget Reconciliation Act of 1985 (COBRA) (42 U.S.C. 1395b–1 note), as amended by section 9344(d) of Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986 (OBRA).

In the discussion below, we refer to the Social Security Act simply as "the Act".

C. New Legislation

1. *Demonstration program.* Section 9314(a) of Pub. L. 99–272 requires the Secretary to establish a 4-year demonstration program designed to reduce disability and dependency through the provision of preventive health services to Medicare beneficiaries.

2. *Preventive health services under demonstration program.* Section 9314(b) of Pub. L. 99–272 provides that the preventive health services to be made available under the demonstration program will include—

(i) Health screenings;

(ii) Health risk appraisals;

(iii) Immunization; and

(iv) Counseling on and instruction in—

- Diet and nutrition;
- Reduction of stress;
- Exercise and exercise programs;
- Sleep regulation;
- Injury prevention;
- Prevention of alcohol and drug abuse;
- Prevention of mental health disorders;
- Self-care, including use of medication; and
- Reduction or cessation of smoking.

The Conference Report for Pub. L. 99–272 indicates that at least one project be funded that includes cancer screening (including breast cancer screening). (H.R. Rep. No. 453, 99th Cong., 1st Sess., page 514)

3. Section 9314(c) of Pub. L. 99–272, as amended by section 9344(d)(1) of 99–509, provides that the demonstration program will—

- Be conducted under the direction of accredited public or private nonprofit schools of public health, or preventive medicine departments accredited by the council on Education for Public Health;
- Be conducted in no fewer than five sites (at least one of which will be a rural area), which will be chosen so as to be geographically diverse and which will be readily accessible to a significant number of Medicare beneficiaries;
- Involve community outreach efforts at each site to enroll the maximum number of Medicare beneficiaries in the program; and
- Be designed—

(i) To test alternative methods of payment for preventive health services, including payment on a prepayment basis as well as payment on a fee-for-service basis;

(ii) to permit a variety of appropriate health care providers to furnish preventive health services, including physicians, health educators, nurses, allied health personnel, dietitians, and clinical psychologists, and

(iii) to facilitate evaluation as discussed below.

4. *Evaluation.* Section 9314(d) of Pub. L. 99–272 provides that the Secretary shall evaluate the demonstration project in order to determine—

- The short-term and long-term costs and benefits of providing preventive health services for Medicare beneficiaries, including any reduction in inpatient services resulting from providing the services; and
- What practical mechanisms exist to finance preventive health services under Title XVIII of the Act.

D. Number and Size of Projects

The legislation specifies that the Secretary of Health and Human Services must establish a 4-year demonstration program to be conducted in no fewer than five sites with funding for administrative costs (for example, the research and evaluation costs of each project) not to exceed $5,900,000 over the duration of the program. The portion of funds necessary to reimburse for the cost of the preventive services will be paid during the demonstration through a carrier, and will be in addition to the cooperative agreement award. Therefore, the awards for administrative costs are expected to average about $295,000 per year for the 4-year period.

E. Duration of Funding

HCFA will normally fund these projects for 1 year at a time and will continue funding on a noncompetitive basis, for up to 4 years. Continuation funding is contingent on the applicant's ability to meet prior year project objectives, as well as the availability of such funding.

III. Preventive Services

A. General

Preventive services are categorized into three levels of prevention (*Maxcy-Rosenau Public Health and Preventive Medicine* (12th edition); John M. Last, editor). Primary prevention reduces the likelihood of the development of a disease or disorder. Secondary prevention interrupts, prevents, or minimizes progression of disease or irreversible damage from a disease at an early stage; it comprises the early detection and treatment of disease before irreversible damage has occurred. Tertiary prevention focuses on the progression of damage in a disease where such damage has already occurred irreversibly; the emphasis is on measures to alleviate disability and to slow progression of established diseases or disorders.

Medicare reimbursement is limited to covered services that are reasonable and necessary for the treatment of an illness or injury. With the exception of a specific statutory authorization to cover pneumoccocal pneumonia and hepatitis B immunization, Medicare does not cover primary preventive services.

As a result of the congressional mandate, demonstration projects under this special solicitation will be initiated to reduce disability and dependency through the provision of preventive health services to Medicare beneficiaries. We are especially interested in projects that are designed to: test alternative methods of payment for prevetive health service, including payment on a prepayment basis, as well as, payment on a fee-for-service basis; and permit a variety of appropriate health care providers to furnish preventive health services including: physicians, health educators, nurses, allied health personnel, dietitians, and clinical psychologists.

On August 12, 1983, HCFA issued a special grant solicitation in the **Federal Register** (48 FR 36660) for proposals to demonstrate the effects of Medicare reimbursement for primary prevention in clinical screening and health education/promotion services. The objectives of these demonstrations were to offer an expanded benefit package of preventive services to a selected group of Medicaire beneficiaries and to assess the impact of these services upon subsequent utilization and costs of medical services and measures of health status. Reimbursement for the preventive package was capped at $100 per beneficiary per year. The Background section in the August 12, 1983, solicitation contains relevent background information on Medicare coverage of preventive services. The following material provides updated information for the material that was presented in the earlier solicitation.

B. Related Activities and Studies

The continued national focus on prevention initiatives has been supported by several related activities and studies that have pointed out the need to encourage medically efficacious preventive measures.

1. *Public health service preventive services activities*—a. *Health risk appraisal (HRA).* Follow-up has been done to several of the studies that indicated that annual physician examinations are not cost-effective methods to reduce health care costs and improve the quality of life. Based on the work of Breslow and Somers and others, the Centers for Disease Control (CDC), in cooperation with Health and Welfare, Canada, and other public and private sector organizations, has been developing HRA as a health promotion tool. The CDC has established a technical assistance HRA network that consists of 31 participating State Health Departments and 2 Schools of Public Health. CDC will complete a collaboration with Emory University in July 1987 that will revise and strengthen the risk estimation equations in the adult HRA. This instrument will be released in the public domain so it can be used in developing future HRA/health promotion programs.

b. *The Surgeon General's report.* The goals for 1990, as stated in *Healthy People, the Surgeon General's Report on Health Promotion and Disease Prevention* (1979), are in the process of a midpoint review. More than one quarter of the 227 goals address problems of the elderly. It is anticipated that a midpoint review document will be published during 1986. Preliminary data indicated tht 8 of the goals have been met, and enough progress has been made on 43 of the goals so that it is projected that they will be met by 1990. Work has begun to establish the goals for the year 2000.

c. *Healthy Older People.* In response to the 1979 Surgeon General's report, a national commitment to provide older persons with important health information has been made by this Department. A formal program has been jointly developed by the Public Health Service and the Administration on Aging. One part of this commitment, a national public education program entitled Healthy Older People, seeks to educate older persons about health practices which can reduce risks of disabling illness and increase prospects for more productive and active lives. Healthy Older People is also designed to stimulate the growth of health promotion programs for the special needs of older people.

Healthy Older People is a partnership among Federal; State and local governments; professional organizations; voluntary groups; businesses; and the media. Sponsored by the Office of Disease Prevention and Health Promotion (ODPHP), DHHS, Healthy Older People will provide public education materials and technical assistance to States and other interested groups. In each State, the Governor has appointed an individual to coordinate statewide activities.

Materials provided under the program for consumers include posters, skill sheets, television and radio public service announcements/modules, and the brief sheet called "Age Pages." Topics touch on the areas of exercise, nutrition, medications, injury prevention, smoking cessation, and use of preventive services. Materials for professionals include articles, technical briefs, and a teleconference convened December 12, 1985, which was jointly sponsored by ODPHP and the American Hospital Association.

Funding for implementing this initiative is $1.1 million for 2 years. The evaluation of the program is funded at $450,000 and will be process-oriented with 10 detailed community studies.

d. *U.S. Preventive Services Task Force.* In 1984, the DHHS convened the U.S. Preventive Services Task Force, composed of researchers, clinicians, and scholars to review the scientific basis of over 100 clinical preventive interventions and to develop a set of recommendations for the use of preventive services in clinical settings.

The U.S. Preventive Services Task Force will work collaboratively with the Canadian Task Force on the Periodic Health Examination. The combined Task Forces will consider issues of mutual interest related to the use of preventive services in clinical settings. The U.S. Preventive Services Task Force will build upon the work of the Canadians in the field of preventive services and work with them to develop joint recommendations, where appropriate. Each Task Force will have representation on the other in order to enhance the collaborative effort and prevent duplication of tasks.

Recommendations will be made concerning appropriate packages of preventive interventions for particular age and sex groups, risks, and conditions. These recommendations will be based on evaluations of the exsisting literature using the rigorously defined rules of evidence developed by the Canadian Task Force. Depending on the strength of the scientific evidence, recommendations for inclusion of a given preventive service will be further defined by three criteria: effectiveness (the sum of efficacy plus compliance); burden of suffering (the determined impact upon the individual and society); and detection (levels of sensitivity, specificity, and predictive value). Smoking, immunization, inappropriate use of alcohol, breast cancer screening, dietary fat, motor vehicle injury, and functional dependence in the elderly are among the topics which the Task Force has considered at their initial meetings.

The Task Force's final report is to be issued in 1987 and will contain all of its recommendations together with an implementation guide discussing the behavioral and structural issues that influence the integration of preventive services into clinical settings.

2. *HCFA funded preventive services activities.* HCFA has continued to fund projects that involve preventive services. Although these projects differ from the demonstrations we are soliciting under this notice, they may be helpful to applicants designing preventive services demonstrations. The major projects are described below:

a. *Cooperative health education project (CHEP).* This Medicare study was a random, controlled, prospective trial of self-care interventions offered for 1 year to the Medicare population of a health maintenance organization, the Rhode Island Group Health Association (RIGHA). The 1,009 eligible Medicare households in RIGHA were randomly assigned to an experimental or a control group. The project was conducted by the Center for Consumer Health Education.

This project involved a written communications program in which experimental households received newsletters, reference books, and brochures on medical problems amenable to self-care techniques developed for use with populations of all age groups. The experimental households also received four newsletters and two self-care packages aimed at the specific health concerns of older Americans (such as foot problems and bowel function in the elderly). A telephone information system was availabe to the experimental group.

Utilization data was obtained by using a chart abstract for 654 (64.8 percent) of the random households. The remaining households were excluded from analysis primarily because they were not members of RIGHA for 6 months prior to and 6 months following their entry into the study. Post-test questionnaire data were obtained to provide information on demographic, socioeconomic, and health characteristics of participants.

After adjustment by covariance for pretest utilization, total medical visits declined by 15.2 percent in the experimental group, compared with the control group. This decrease was statistically significant. After adjustment by covariance for pretest utilization, visits for minor illnesses decreased by 15.9 percent in the experimental group, compared with the control group. This difference was not statistically significant. It was estimated that the decrease in utilization could result in a savings of more than $2 for every $1 spent on the educational interventions.

These findings suggest that Medicare beneficiaries respond to self-care interventions with a reduction in ambulatory utilization, that this response is appropriate, and that it does not involve increased risks to the beneficiaries. Together with other results of the project, these interventions appear to have a consistent and generalized effect of reducing ambulatory care utilization that is not limited to particular groups by age, minor illnesses, particular diagnostic category, or visits to a specific type of health care provider.

b. *Preventive medical care in the Rand health insurance study (HIS).* This ongoing study focuses on the effect of preventive care on various categories of medical expenditure and any losses attributed to sickness. Issues and questions to be addressed include:

- The effects of preventive care on health status, medical care use, and work time available.
- The responsiveness of consumer demand to changes in the price of preventive care.
- The amounts of preventive care used in prepaid systems versus fee-for-service practice settings, both with no out-of-pocket charges.
- Whether or not people choosing the prepaid plan are fundamentally different in their desires to obtain preventive care.

The study uses data from the Rand HIS, a social experiment in which families are assigned to several different health insurance plans. Approximately 8,000 individuals have been enrolled at six sites across the country: Dayton, Ohio; Seattle, Washington; Fitchburg, Massachusetts; Franklin County, Massachusetts; Charleston, South Carolina; and Georgetown County, South Carolina. To date, this project has produced analyses of the frequency and cost of medical visits involving nonpreventive care and hospitalizations. Findings from the analyses indicate no significant effect of aggregate preventive activities on aggregate nonpreventive care, hospital visits, and costs.

c. *Municipal health services program (MHSP).* MHSP was a collaborative effort of five major cities in five States, the U.S. Conference of Mayors, the Robert Wood Johnson Foundation (RWJF), and HCFA. It was initiated by RWJF through grants of $3 million awarded in June 1978 to each of the following five cities: Baltimore, Cincinnati, Milwaukee, St. Louis, and San Jose. HCFA joined in the project by providing Medicare waivers to all cities and Medicaid waivers to four of the five States to test the effects of increased utilization of municipal health centers by:

- Eliminating coinsurance and deductibles.
- Expanding the range of covered services.
- Paying the reasonable cost of delivering services at the clinics.

The intent of the waivers was to shift fragmented utilization away from costly hospital emergency rooms and outpatient departments toward lower cost MHSP clinics, which would provide beneficiaries with comprehensive primary and preventive health care.

The first city began billing under the Medicare waiver in August 1979. Four of the five cities (all except Cincinnati) requested Medicaid waivers as well, and this resulted in the participation of the State governments in 1981. St. Louis withdrew from the program on December 31, 1984 and the Medicaid waivers expired on December 31, 1985 for all sites in the program. As of November 1986, the 4 MHSP cities had a total of 15 clinics operating, bringing together both public and private health-related organizations. A wide variety of services are offered, including medical, social, mental, preventive, dental, pharmacy, optometry, podiatry, and rehabilitation. Clinic utilization ranges widely from 700 visits per year to 40,000 visits per year. Average provider productivity ranges from 3,200 to 4,500 annual visits per full-time equivalent provider. As a result of section 126 of Pub. L. 99–190 and section 9215 of Pub. L. 99–272, Medicare waivers will be extended in four cities (St. Louis chose not to request an extension) through December 1989.

The evaluation conducted by the University of Chicago focused on costs and utilization. The report indicates that health care expenditures for MHSP users were less than for other health care users in the clinics service areas. Savings to Medicare were $354 per user per year, and to Medicaid, $43 per user per year.

d. *August 12, 1983, special grant solicitation for primary prevention services.* On September 30, 1985, HCFA's Office of Research and Demonstrations awarded two cooperative agreements for research on the cost effectiveness of Medicare prevention services.

The University of North Carolina. In this project Medicare-eligible patients, identified from the registers of cooperating clinics, will be invited to participate. Letters, including a stamped, self-addressed postcard inviting participation will be sent from the patients primary care physicians to prospective participants inviting them to make an appointment for an annual health interview. Those patients willing to participate will be randomly allocated to one of four groups: (A) clinical-screening only; (B) health-promotion only; (A plus B) clinical-screening plus health-promotion; and (C) usual care controls.

The total sample size will be approximately 4,000 (1,000 patients randomly allocated, within age and sex strata, to each group). The strata are 65–74 and 75 and over for both males and females.

The type and extent of preventive services offered to project participants will differ according to the experimental treatment group to which patients are allocated randomly. The "usual care" (control) group will receive the preventive services that are currently available at prevailing cost or as coverd under Medicare reimbursement (for example, pneumoccal vaccine), with exact preventive practices and charges varying among the different practice sites. No reduction in the quality of care is contemplated for this group and no expansion of services will be offered to its members.

A nominal fee will be given for participation in the control group to defray expenses associated with the annual health assessment. The two groups receiving clinical screening services, (A) and (A plus B), will be offered expanded Medicare coverage for the scheduled clinical screening services. The two groups receiving health promotion services, (B) and (A plus B), will be enrolled in a health promotion program consisting of individual counselling and self-help or peer learning groups. The clinical-screening-only group (A) will be enrolled only in the clinical screening program and will receive the health-promotion services they are currently offered. The health-promotion-only group (B) will be enrolled only in the health promotion program and will

receive the clinical screening services they are curently offered. The group receiving both service packages (A plus B) will be offered expanded Medicare coverage for clinical screening services and individual counselling. The counselling and self-help groups will be conducted by a nurse trained in health promotion techniques. Reimbursement for these preventive services will last for five years. Clinical screening and health promotion services will be reimbursed separately at an annual rate of $57 for screening and $43 for health promotion services.

Blue Cross of Massachusetts Inc. This project will offer an annual health education/promotion appraisal and clinical screening, both deliverd by a geriatric nurse practitioner to beneficiaries aged 65 and over. Those beneficiaries identified as high risk by a functional assessment questionnaire will be seen on a quarterly basis and will receive medication monitoring.

The eligible population of 10,000 Medicare beneficiaries living in ZIP codes that surround the Boston service delivery sites will be randomly placed in the experimental and control groups, with 5,000 eligibles in each group. They will be invited to participate by HCFA, and 3,000 in the experimental group are expected to respond positively. They will receive services at facilities which are not their usual sources of care. Of those 3,000 twenty (20) percent (600) are projected to be at high risk and will be seen four times a year. However, data will be collected on all 5,000 in the experimental group and compared to all 5,000 in the control group.

Data will be collected from four sources: (1) State data from vital statistics records on death certificates; (2) HCFA payment record files; (3) Blue Cross and Blue Shield claim files, and (4) a telephone survey to determine functional levels of a 30 percent random sample of experimental and control groups administered by the subcontractor, Brown University.

IV. Demonstration Application Requirements

A. General

The objective of these demonstrations is to provide preventive health services to Medicare beneficiaries that are designed to reduce disability and dependency and to measure the cost effectiveness of these services to the population served, as mandated under section 9314 of Pub. L. 99–272, as amended by section 9344(d)(1) of Pub. L. 99–509.

The project sites will be geographically diverse and each site shall have access to a high concentration of Medicare beneficiaries. In addition, one of the sites must serve a rural area. The results of the demonstration will be reported to Congress. The report will present options to be considered by Congress in preparing possible legislation concerning preventive health services under Medicare. It is, therefore, essential that beneficiaries be randomly assigned to both experimental and control groups to assure valid measurement of the prevention efforts.

Because the legislation mandates a four-year demonstration program, we plan to award cooperative agreements (subject to availability of funds) for up to 4 years. The awardee will be responsible for an evaluation of the demonstration effort. It is especially important that a rigorous research design be guided by the evaluation objectives. Because the demonstration will result in an overall evaluation effort, it is important that uniform approaches to available data be attempted. In addition to collecting all of the utilization and cost data associated with delivering the preventive services to be included in the demonstration, it will be necessary to have access to all utilization and billing/reimbursement data for the Medicare experimental and control participants.

B. Eligible Applicants

The demonstration must be conducted under the direction of accredited public or private nonprofit schools of public health, or preventive medicine departments accredited by the Council on Education for Public Health. It is not required that all the Medicare beneficiaries be seen by the awardee; agreements for the provision of services can be developed with a wide variety of providers such as: private individual or group practices, hospitals, local health departments, and Health Maintenance Organizations.

C. Preventive Services Demonstrations

HCFA is interested in funding and providing waivers for demonstrations involving primary preventive services. Primary preventive services include clinical screening and health promotion services specifically designed for prevention of illness and reduction of the likelihood of a disease developing. This is a departure from Medicare's traditional position of not covering preventive services. The preventive services HFCA wishes to include for these demonstrations are the following four components:

1. *Health screening services.* Information collected over several years from studies by researchers indicates that a specific group of clinical services can be arranged in a manner that is both potentially cost-effective and medically efficacious.

Several task forces (including the Advisory Committee on Immunization Practices, the Ad Hoc Committee of the Institute of Medicine, the Consensus Development Conferences of the National Institutes of Health, the American Cancer Society Report on the Cancer-Related Health Checkup, and the Canadian Task Force on the Periodic Health Examination) have recommended periodic clinical screening services for older adults. Generally, these groups base their recommendations on expert opinion rather than scientific evidence. Most third party payors do not cover these services because of the lack of convincing scientific studies that attest to the cost-effectiveness of preventive services.

The applicant must design a clinical services package, using HCFA's suggested package as a model, that includes at least: hearing, vision, blood pressure screening, height and weight. The proposed package of clinical services proposed by the applicant should contain a list of clinical services with appropriate frequency. Other clinical preventive services may be suggested (for example, dental referral) for inclusion in the package. If additional services are suggested, the applicant must be provided convincing evidence that coverage of these other additional preventive services probably will result in medical efficacy and potential cost savings. Also, justification must be provided if a suggested clinical service is not included in the proposed package.

The table below shows the suggested frequency for each individual service and the groups recommending each preventive service.

SUGGESTED HEALTH SCREENING SERVICES

Procedure	Recommending Group [1]	Periodicity
Breast exam (Physical exam including mammography).	ACS (1985)	Annual, women over 50.
	IOM (1979)	Every 2 years, over 40; Annual, over 75.
	Canadian (1985)	Annual, women over 50.
Digital rectal exam	ACS (1980)	Annual over 40.
	IOM (1979)	Every 5 years, 40 to 59; Every 2 years, 60 to 74; Annual, over 75.
	Canadian (1979)	Insufficient evidence.
Hearing	IOM (1979)	Every 2 years, 60 to 74; Annual, over 75.
Height and weight	IOM (1979)	Every 2 years, 60 to 74; Annual over 75.
Hematocrit	IOM (1979)	Every 2 years, 60 to 74; Annual, over 75.
	Canadian (1979)	As indicated for high risk groups of persons of low socioeconomic status.
High blood pressure screening	IOM (1979)	Screens every 2 years, over 40; Annual screens, over 75.
	Canadian	Annual screens, 45 and older.
Complete history and physical to include a pelvic examination and Papanicolaou smear.	IOM (1979)	When necessary.
	Canadian (1979)	Individually tailored patient examinations.
	ACP (1981)	Individually tailored patient examination.
Immunization	ACP (1980)	As needed, chronically ill; Annual, over 65.
	IOM (1979)	As needed, chronically ill; Annual, over 60.
	Canadian (1979)	As needed, cronically ill; Annual, over 65.
Tetanus-Diphtheria	ACP (1985)	All persons should have completed a primary series and booster shot every 10 years.
	CTF (1979)	Booster shots every 10 years
Stool occult blood test	ACS (1980)	Annual, over 50.
	IOM (1979)	Every 2 years, over 40; Annual, over 75.
	Canadian (1979)	Annual, over 46.
	NIH (1978)	Insufficent evidence.
Vision	IOM (1979)	Every 2 years, 60 to 74; Annual, over 75.

[1] ACIP—Advisory Committee on Immunization Practices (1980); ACS—American Cancer Society Report on the Cancer-Related Health Checkup; Canadian—Canadian Task Force on the Periodic Health Examination (1979); IOM—Ad Hoc Committee on the Institute of Medicine (1979); NIH—Consensus Development Conferences of the National Institutes of Health; ACP—American College of Physicians (1981). Influenza.

HCFA intends to fund one project that includes cancer screening, including breast cancer screening. Therefore, each project that is interested in including cancer screening should develop a cancer screening section and based on the cost and soundness of the screening proposal, HCFA will select the single project that includes the cancer screening component. Due to the cost of mammography, there will be higher service costs and there could be additional administrative costs related to the cancer screening component. Therefore, the budget must include a separate section labeled "cancer screening" so that if this component is not funded, the medical service reimbursement limit per year as well as the administrative budget can be reduced by the specific amount.

2. *Health risk appraisal (HRA).* HRA is a method that describes an individual's chance of becoming ill or dying from a particular cause over a period of time. The purpose in using the HRA instrument is to stimulate, encourage, and support individuals in the adoption of behavior conducive to health promotion through the reduction of risk behaviors which are precursors to premature death and disability. The HRA personalizes the importance of health habits as determinants of preventive health problems and provides a rating, thus giving individuals an indication of how their overall health risk compares with that of a peer group. The HRA is a valuable tool to collect aggregate data for a population and can be used for evaluation purposes as well. It is a tool that can be used in the initial planning phase of a health promotion program or it may be offered when the activity program begins. It is recognized that the majority of HRA instruments use only mortality data from mostly middle class, middle aged white males. Therefore, health status interview or health assessment that is specifically tailored to the elderly and addresses such items as social functioning, physical health status, functional abilities, cognitive abilities, mental health status and health behaviors, may be utilized. The applicant must describe what instrument will be used, the degree to which it has been subjected to formal evaluation and when and how it will be implemented.

3. *Immunization.* Medicare coverage for innoculations is restricted to pneumococcal and hepatitis B vaccines. However, the ACIP has recommended that influenza vaccine be provided on an as needed basis to the chronically ill and annually for the over-60 population. The applicant should list the

immunizations along with the proposed schedules and the basis for which they were included on the list of services to be provided.

4. *Counseling on and instruction in—*

- Diet and nutrition,
- Reduction of stress,
- Exercise and exercise programs,
- Sleep regulation,
- Injury prevention,
- Prevention of alcohol and drug abuse,
- Prevention of mental health disorders,
- Self-care, including use of medication, and
- Reduction of smoking.

This project will reimburse for these patient education/health promotion services that are included in the benefit package of preventive services through the waivers that will be required.

In the 1980s heart disease, cancer, stroke, pulmonary diseases and pneumonia, and influenza are the leading causes of morbidity and mortaility for the 65 and over age group.[1]

Three out of four elderly persons die from heart disease, cancer, or stroke. Over 80 percent of persons 65 and over have at least one chronic condition, and many have multiple chronic conditions. Prevention of the leading causes of death involves the reduction of the individual's risk factors, such as modification in diety (reduction of salt and saturated fat intake and an increase in fiber intake), changes in the life style (exercise and stress reduction programs), and smoking cessation. Even for older people, smoking cessation has been shown to reduce major health problems such as heart attacks.

Accidents, primarily motor vehicle accidents and falls, are also a leading cause of death among the elderly. It is estimated that only about 10 percent of the elderly regularly use their seat belts while driving. In preventing accidents and falls, the expenditures for health care are reduced and the chance for life-long disability is diminished. Alcohol and drug abuse in the elderly are at times related to the loss of a spouse, family member, or friend, but there are also life-long abusers. The use of alcohol and drugs contributes to falls and serious injuries and can interact with prescribed medications, with adverse side effects. A survey of twelve studies found a median value of 40 percent reduction in either medical care utilization or surrogate measures of such utilization subsequent to treatment for alcohol abuse.[2]

Depression among the elderly is common but often difficult to diagnose. Beneficiaries who are at high risk for depression can be identified and encouraged to enroll in preventive counseling or therapy sessions. Such risk factors include recent retirement, death of a spouse and recent admittance to a nursing home. This preventive activity is importnat because this stress can lead to a physical illness or delay recovery from an existing condition. In the literature search mentioned above, Jones and Vicchi found in twelve of thirteen studies, persons receiving mental health services used fewer physician services and had lower hospital utilization rates after initiating mental health treatment.

Estimates of the average number of prescription drugs being used by elderly persons range from 1.6 to 2.3 prescriptions per person; this is 1.5 to 3 times higher than that of younger persons.

Due to these high prescription rates, the chance of an adverse drug to drug reaction is increased. Several strategies have been suggested for reducing the incidence of these iatrogenic illnesses due to medications.[3] These include: case management plans wherein elderly patients are encouraged to coordinate their medication through a primary care physician or family pharmacist, patient education provided at the time the medication is prescribed, and careful monitoring of drug therapy to ensure that dosages are kept to the minimum level necessary to produce the desired therapeutic effect.

Although we are interested in all of the Counseling and Instructions topics, we will consider applications that exclude some topics as long as there is an adequate justification for why the service is not offered. As with the Health Screening Services, other topics for Counseling and Instructions (for example, bereavement counseling, retirement planning, instructions on breast and skin self-examination, and instructions on oral hygiene) can be suggested for inclusion in the package; however, the applicant must provide convincing evidence that coverage of

[1] The facts and figures in this section are taken from a background paper entitled, "Health Promotion and Disease Prevention for the Elderly," prepared for the use of the members of the Senate Committee on Finance in June 1985.

[2] Jones, K. R., and T. R. Vischi, "Impact of Alcohol, Drug Abuse and Mental Health Treatment of Medical Care Utilization, A Review of the Research Literature," *Medical Care*, v. 17, No. 12, Supplement, Decmeber 1979, pp. 1–26.

[3] Kane, R.L.; Kane, R.A.; and Arnold, S.B.; "Prevention and the Elderly: Risk-Factors," *Health Services Research*, V.19, No. 6, Part II, February, 1985.

these additional Counseling and Instructions topics will be cost-effective. The applicant must discuss: why topics were included, the type of provider who will be providing the services, the content of the services, and their frequency. No application will be approved that does not justify the exclusions from or additions to the list of Counseling and Instructions topics.

5. *Preventive services program.* The applicant's preventive health services application must include: 1) A package of Health Screening Services, 2) the use of some type of Health Risk Appraisal instrument, 3) appropriate immunizations, and 4) selected or all topics of Counseling and Instructions listed in this section (see #4 above). No application will be considered that does not include the four components listed above. Prior to award of these demonstrations, HCFA may coordinate a uniform Health Risk Appraisal instrument to ensure uniformity and comparability among the projects.

6. *Periodicity.* The applicant must present an optimum schedule for delivery of the package of covered services, based on supporting evidence. If different frequencies are included for various services (for example, annual influenza immunization; every 2 years for hearing exam), a method for documentation of services and follow-up must be presented.

The applicant must describe the administrative method used by the providers and carriers to track the varying frequencies of covered procedures and reimbursements for them. Innovative techniques for tracking services rendered at varying intervals are encouraged.

7. *Community outreach.* The applicant must include a program of community outreach to enroll the maximum number of Medicare beneficiaries in the demonstration. The community outreach program can consist of a range of activities including: TV and radio spots and reports, newspaper articles, presentations in health provider sites, and presentations to church, civic, retiree groups and at neighborhood senior citizens centers, and rest homes.

8. *Excluded services.* Although an important issue in preventive services research is the overall assessment of the effectiveness of the treatment given after the detection of an illness, HCFA does not intend for applicants to evaluate treatment modes. For example, if high blood pressure screening identifies a Medicare beneficiary with hypertension, we assume that adequate and appropriate treatment will be covered by the program. In this demonstration, HCFA does not intend to evaluate the cost-effectiveness of currently covered treatments or innovative treatments not presently covered.

Reimbursement for treating conditions identified under this project will not be provided under this demonstration project. However, the applicant must describe the method whereby treatment for a condition identified at the screening will be reimbursed as a service separate from the visit for the experimental preventive service package. It is assumed that treatment for conditions which are diagnosed as illness or injury will be covered under Medicare's present reimbursement guidelines.

Because of limited funding for these demonstrations, HCFA recommends that applicants not propose development of educational materials. Funding should be obtained elsewhere for development of educational materials, or existing materials should be utilized.

D. Alternative Payment Methods

HCFA is interested in testing alternative methods of payment for preventive health services. These alternative methods include prepayment as well as payment on fee-for-service basis. HCFA plans to fund applications with the payment based on a fee-for-service basis and applications with payment based on a prepayment basis.

Prepayment under this demonstration is defined as payment to providers of preventive services as a package prior to the delivery of services, while fee-for-service is the payment of preventive services as each service or group of services is delivered by providers. The applicant has the option of conducting the demonstration totally under one payment method or combining the prepayment method with fee-for-service. One possible way to test the prepayment method would be to contract with local HMO/CMPs.

If HMO/CMPs are involved in the project, HCFA would recommend that applicants utilize HMO/CMPs that have a current TEFRA contract with Medicare, since preventive services may already be covered in these HMO/CMPs. For these HMO/CMPs, HCFA would make a supplemental capitated payment to pay for preventive services not covered by the HMO/CMPs. The applicant must include a detailed description of how the payment method will operate, and how the payment will be made, as well as the documentation procedures the providers must follow.

HCFA would prefer and may mandate that the applicants use the HCFA, Office of Research and Demonstrations, Division of Research and Demonstrations System Support (DRDSS) to pay for services under the application and act as the fiscal agent for Medicare reimbursement. If the DRDSS Office is not utilized, the applicant must develop an agreement with the existing HCFA payment agent for claims processing. Regardless of the fiscal agent, the applicant must develop coverage and reimbursement guidelines for use in processing claims for Medicare preventive health services.

1. *Payment rate.* For fee-for-service, we would suggest a single rate per service or group of services that would be provided during a single visit (for example, the amount reimbursed to a provider of service each time the service or group of services is provided to a Medicare beneficiary). For prepayment, a payment rate for the complete package of services is required and a detailed payment rate methodology on how the rate was developed. We realize that some services within the package are not required on an annual basis, and that certain allowances for inflation over the demonstration period are reasonable. In general, the package should not be given to a Medicare beneficiary more than once during a year. Although there is no dollar limit on the payment rate for either prepayment or fee-for-service, the applicant must establish and HCFA must approve a rate or a maximum dollar amount that HCFA will reimburse for preventive services during a specified time period.

HCFA reserves the right to establish a uniform annual maximum rate it will pay for the package of services provided.

2. *Cost sharing.* HCFA recognizes that the collection of deductibles and coinsurance for preventive services may be a barrier to participation in this demonstration; however, there are a variety of options. For HMO/CMP participation, we will not require the imposition of deductible and coinsurance for preventive services because cost sharing is accounted for in the calculation of premiums for Medicare beneficiaries. We plan to find at least one project that is designed with approximately one-half the beneficiaries responsible for cost sharing (both deductible and coinsurance) and one-half with the cost sharing responsibility for preventive services waived. We would prefer that all the fee-for-service projects utilize this half and half design. Another option could be to waive the Part B deductible for preventive services but collect the coinsurance amounts.

Every fee-for-service project should include some test of cost sharing for

preventive services and additional priority will be given to projects that incorporate cost sharing to the fullest extent possible. HCFA reserves the right to impose cost sharing requirements for preventive services on programs.

E. Health Care Practitioners

1. *Practitioner types.* The demonstration must be designed to permit a variety of health care practitioners to furnish the preventive health services, including: physicians, health educators, nurses, allied health personnel (physician assistant or nurse practitioner), dieticians, and clinical psychologists. Each applicant must document how they will utilize the different types of practitioners in a cost-effective manner.

2. *Eligible practitioners.* Before an applicant contracts with a health practitioner that is not normally recognized by Medicare (for example, a physician assistant, nurse practitioner, or health educator), the applicant must offer proof that the health practitioner is competent to furnish preventive health services and satisfies the requirements of State and local law related to the practice of Medicine and Nursing. Where possible, existing methods for establishing proficiency, such as State licensing and accreditation, should be used. In the absence of State standards, the applicant will be responsible for developing such standards.

V. Research Design

The demonstration design for applications should state the measurable project goals and objectives, including hypotheses to be tested. The experimental design should be a random design with two levels (experimental vs. control). Strict random assignment to experimental and control groups should be employed since it is unlikely that any other design can detect the necessary effects. The applicant should explain to what extent the results can be generalized to the entire Medicare population. Applicants should include methods for maintaining the random design over the life of the demonstration project, or present analytic plans which include statistical techniques for adjustment due to the effects of nonrandom attrition.

If the applicant proposes any design other than a random design, a detailed justification must be presented which assures that valid and reliable conclusions can be drawn. We recognize that randomization in the HMO/CMP setting will be very difficult and that it may take some creativity to design a project that will lend itself to valid and reliable conclusions. Because the evaluation of this demonstration will require extensive analysis of data, the research design should also include a discussion of existing and proposed data sets to be used in the analysis.

HCFA will require each awardee to implement the demonstration on a scale broad enough to insure valid statistical testing of significant effects; for example, the awardee needs to account for individuals in the control group who may be receiving some of these expanded services outside of the demonstration. To offset the effects of this problem, the number of participants in the experimental group must be sufficiently large to show an impact attributable to experimental coverage. The applicant should develop a research design that addresses the appropriate sampling strategy to study the demonstration participants. Careful attention should be given in this design to the desired population estimates and power of statistical tests that are planned.

HCFA will allow each project up to 6 months for a developmental phase prior to becoming operational, to be followed by a 2-year demonstration period during which services are provided, followed by a 18-month period to analyze the findings and submit an evaluation report.

In addressing the research design, the respondent should be sensitive to the need for stratification of the sample according to levels of risk for specific diseases, age, etc. If there is a significant minority population in the target area where the demonstration is to be conducted, the respondent should fully describe how this factor will impact on the overall design of the demonstration and evaluation. Respondents should present data on the range of risk in the demonstration population to assess whether a stratified sample should be used.

HCFA reserves the right to participate in the development of the individual research designs to assure that the evaluation is common and consistent across the 5 different projects.

IV. Evaluation

Because each awardee will evaluate its demonstration project, the evaluation design and the research design must be compatible and complementary. The demonstration design, including the data collection activities, should support the analyses of all questions and hypotheses developed in the evaluation.

It is expected that the evaluation effort will be completed and a report submitted to HCFA within 18 months after the completion of the 2-year demonstration phase. HCFA expects to receive a draft final report within 6 months after the delivery of service is completed.

Since the results of the evaluation will be included in a report to Congress and there will be five different sites involved in the demonstration, to the extent possible each site must utilize the same evaluation questions. The report to Congress will address the following issues: (1) The short-term and long-term costs and benefits of providing preventive health services for Medicare beneficiaries, including a reduction in inpatient services resulting from providing the services, and (2) what practical financing mechanisms can be developed which may be used to provide payment for preventive health services under Title XVIII of the Act. Therefore, the applicant must design an evaluation that will provide the following information:

1. Short-term (1 year from start of service) savings or costs to the Government attributable to the expanded coverage of preventive services.

2. Long-term (that is, 2 years from start of service) savings or costs to the Government attributable to the expanded coverage of preventive services.

3. Any change in inpatient hospital days or other provider-related services (for example, skilled nursing facilities) for conditions that the preventive package is targeted to prevent.

4. Any change in utilization of preventive services caused by the experimental coverage.

5. Significant changes in the experimental group's health status and functional independence that can be attributed to the inclusion of preventive services.

6. Any change in in the experimental group's incidence of conditions for which screening procedures are given (for example, influenza, accidents caused by vision or hearing problems, morbidity and mortality for colon-rectal cancer or hypertension) and associated costs.

7. Any change in smoking, diet, or exercise that impacts on health status, or measured by number of days confined; and other morbidity and mortality data.

8. The impact of health promotion education upon changing risk behaviors and lifestyle practices (specifically, smoking, exercise and diet) in the experimental and control groups, as measured by scores on knowledge, attitude and behavior assessments.

9. Any change in awareness and understanding by the Medicare

beneficiaries of the benefits of preventive services.

10. Any impact of utilizing nonphysician providers for these preventive health services.

11. The impact of false negative and false positive results in the clinical screening procedures.

HCFA reserves the right to contract with an independent organization to synthesize the results of the demonstration and make cross-site analyses. The awardee will be required to cooperate with this organization, and make all data files and tapes available for this independent analysis.

VII. General Application Requirements Applicable to Cooperative Agreement and Grants

The principal purpose of HCFA's cooperative agreements and grants program is to stimulate and support statutorily authorized research and demonstration projects. HCFA will award successful applicants from this solicitation as cooperative agreements. Cooperative agreements are generally awarded when *substantial involvement* is anticipated between HCFA and the awardee during performance of the contemplated activity.

1. Cooperative agreements are subject to at least the following provisions if appropriate—

a. HCFA's review and approval of one project stage before another can begin;

b. HCFA's approval in the selection of subcontracts;

c. HCFA's involvement in the selection of key awardee personnel;

d. HCFA's monitoring to permit specified kinds of direction or redirection of the work.

e. HCFA's stringent pre-award requirements limiting recipient discretion with respect to scope of work and services offered;

f. HCFA's operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with the regulations in 45 CFR Part 74.

g. Inclusion in the cooperative agreements of an explicit statement of the nature, character, and intent of anticipated Federal programmatic involvement to ensure that the responsibilities of both parties are understood. Each cooperative agreement will incorporate 45 CFR Part 74 among its terms and conditions for fiscal and administrative requirements.

2. *General.* HCFA may suspend or terminate any cooperative agreement, in whole or in part, at any time before the date of expiration, whenever it determines that the awardee has materially failed to comply with the terms of the cooperative agreement or grant. HCFA will promptly notify the awardee in writing of the determination and the reasons for the suspension or termination together with the effective date. In addition, HCFA reserves the right to withdraw waivers at any time if it determines that continuing the waivers would no longer be in the public interest. If a waiver is withdrawn, HCFA will be liable only for normal close-out costs.

The HCFA Project Officer must be consulted prior to presentation of any reports or statistical or analytical material based on information obtained through a cooperative agreement or grant. Presentation includes, but is not limited to, papers, articles, professional publications, speeches, testimonies, or interviews with the print or broadcast media. The presentation will include a disclaimer that the opinions are those of the awardee and do not necessarily reflect the opinions of HCFA. Since the information developed or obtained under the cooperative agreements resulting from this solicitation may serve as input to a report that the Secretary of DHHS is mandated to submit to Congress, such information may not be released, published, or presented without permission from the HCFA Project Officer within the first 6 months following the receipt of the final report by the HCFA Project Officer, unless the Report to Congress has been transmitted officially by the Secretary.

VIII. Waivers

Waivers of the requirements of Title XVIII of the Act, and of corresponding HCFA regulations, may be required in order to implement this demonstration. All requirements of the Act, the Code of Federal Regulations and other issuances that pertain to the Medicare program are applicable to a project approved under this demonstration unless specificially waived under section 9314(g) of Pub. L. 99-272.

The waivers requested must relate to the demonstration project changes in the benefit package and method of payment. Thus, applicants must request waivers of all statutory or regulatory requirements that prohibit payment of any noncovered services offered. For example, an applicant offering certain clinical services suggested in this notice, such as physical examinations, eye examinations, hearing examinations, and immunizations, would request waivers of 42 CFR 405.301(a)-(e) as applicable. Also, the request of a waiver of section 1861(s)(2)(A) of the Act would permit reimbursement to participating clinics for various services without regard to the "incident to" provisions.

Projects requesting waivers must list the waivers that are required, and discuss the impact of the waivers on program and administrative expenditures (for example, estimated service costs with and without each waiver), Federal, State, and local laws, and the beneficiaries.

In applying for these waivers or changes in reimbursement, the applicant must provide sufficient budgeting information to permit estimates of the likely cost or savings of the project compared to the normal Federal program costs. HCFA has defined the methodology to be used in estimating gross and net waiver costs in the preparation of a demonstration project application in "Waiver Cost Estimates" OMB-0938-0402. This publication will be included in the material contained in the application kit. "Waiver Cost Estimates" methodology will be required for the Preventive Health Services Applications. Waiver Cost Estimates must accompany your application. The application will generally be considered incomplete and returned to applicant if the Waiver Cost Estimates are not included with the application.

If the application is approved, the awardee must furnish quarterly expenditures as designated by ORD in the special terms and conditions of the cooperative agreement. The reporting form is HCFA-472. (OMB-0938-0402, expiration date April 30, 1988.)

IX. Selection Criteria

A. General Criteria for Funding New Projects

HCFA determines which projects will be funded based on the recommendations of a technical review panel and the comments of other Departmental components. More specifically, the criteria employed in arriving at the award decision include—

1. The adequacy and creativity of the research or demonstration design and hypotheses, the validity and appropriateness of the methods and data base(s) proposed, and the experience and competence of the proposed staff;

2. whether there is a realistic expectation that the project can be carried out within the timeframes specified;

3. Whether the proposed project methodology is precise and consistent with what is generally agreed to be the state-of-the art in project design and analytical methods;

4. Whether the overall budget, the personnel resources to be used, and the

facilities and equipment are appropriate for the proposed project;

5. Whether there is documentation of a commitment of the parties other than the awardee's staff that are necessary to carry out the project;

6. Whether anticipated results are of general applicability and would be of value in other settings, or are of national importance;

7. The cost of the research project and the annual per patient cost of services provided. Priority will be given to applications that indicate there will be savings to Medicare in the first three years; and

8. Adherence and responsibilities to the requirements outlined in the research design and application guidance of this solicitation (for example, that include a full test of cost sharing).

B. Specific Project Requirements

In addition to meeting the general criteria described above, we require applicants for cooperative agreements to include the following specific information about the proposed project in the application:

1. A clear, quantifiable statement of the project goals and objectives.

2. An explicit description of the research design, including the questions to be addressed and the methods and data to be used. The methodology must be well defined and scientifically valid.

3. A clear description and schedule of the tasks and milestones, which must also include a schedule of reports to be submitted to HCFA (Progress and Financial Reports as required by 45 CFR Part 74).

4. A specification of and availability of the data to be used. The discussion must describe the nature of the data sought, the sample design and size, controls and comparisons, and the problems that might be encountered in collection. Data that are collected under a HCFA cooperative agreement must be available to HCFA or its agency. However, the applicant must ensure the confidentiality of information which identifies individuals collected under the auspices of any HCFA cooperative agreement. (See item 10 below for more information about confidentiality.)

5. A description of the qualifications and experience of the personnel and a demonstration that the personnel are capable of performing the tasks in the project. Specific information must also be provided concerning how the personnel are to be organized in the project, to whom they will report, and how they will be used to accomplish specific objectives or portions of the project.

6. A specification of the availability of adequate facilities and equipment for the project, or a clear statement on how these are to be obtained.

7. A budget, which must be developed in detail with justifications and explanations for the amounts requested. The estimated costs must be reasonable considering the anticipated results. The budget must include a separate section for the cancer screening component showing both the administrative and service costs of the project so that, if this component is not funded, the budget can be reduced by the specific amount. Applicants must directly share in the costs of the projects (see section IV.C., below). The budget may not include costs for construction or remodeling, or for project activities that take place before the applicant has received official notification of HCFA approval of the project.

8. Projects that require waivers must define the services, list the waivers, discuss the implications if such waivers are granted, and state the effect on Federal, State, and local laws as well as the effect (beneficial or adverse) on individuals enrolled in the project. Budget estimates for the administrative and service costs must be prepared in accordance with the Guidelines for the Preparation of Demonstration Project "Waiver Cost Estimates" (OMB #938-0408) we will give priority to those applications that show savings to Medicare in the first three years. If an application is approved, the awardee must ensure that expenditures are reported to ORD as specified in the special terms and conditions to the award document, on HCFA-472, (OMB 0938-0402, expires April 30, 1988).

9. Plans for utilization of the project's results must be discussed.

10. A detailed plan to protect the confidentiality of all information that identifies individuals under the project. The plan must specify that such information is confidential, that it may not be disclosed directly or indirectly except for pruposes directly connected with the conduct of the project without the informed written consent of the individual.

11. A statement that if the project is awarded, the awardee will furnish on a quarterly basis quarterly expenditures for administrative and project costs for the project within the approved budget, to be specified under special terms and conditions in the cooperative agreement. The form to be used is HCFA-472 (OMB #938-0402, expiration date April 30, 1988).

12. A brief literature review of the medical and economic aspects of offering preventive services to the Medicare population. Ongoing demonstrations or research studies which cover preventive services and measure the effect should be discussed.

13. While HCFA does not require review under Executive Order 12372, Intergovernmental Review of Federal Programs (47 FR 30959), all applicants must, nevertheless, determine whether review by the appropriate State and area-wide clearinghouse is required.

C. Other Requirements

1. Quarterly and annual reports summarizing the progress to date must be submitted to the Project Grants Branch of HCFA's Office of Management and Budget. The quarterly reports must contain—

a. A description of progress made in achieving the specific objectives stated in the workplan. Once the demonstration is implemented, the report should include a table showing current levels of utilization of preventive services and outcome measures for the experimental and the control groups (for example, inpatient hospitalization, Medicare reimbursements). Throughout the project, these tables should also contain cumulative measures.

b. Annual reports HCFA-269 for each provider and the awardee.

c. Quarterly reports HCFA-472.

2. When a project is completed, the awardee must submit a final report. As a minimum, the report must contain the following:

a. Identification of the project director, principal investigator, cooperative agreement, awardee, and title of the project.

b. Acknowledgment of the support received from HCFA, and a disclaimer to the effect that the findings do not necessarily reflect policies of HCFA.

c. An executive summary (one or two pages) that provides an overview of the project and highlights significant findings.

d. A description of the initial hypotheses, objectives, and scope of the project.

e. An explanation of the study methodology.

f. A discussion of significant findings and demonstrations or research results (and the implications of these results, if any).

3. On a semi-annual basis during the course of the project, the awardee must provide a list and copies of all papers presented, and of all articles, reports, and other types of publications that result from the project. It is further required that the awardee continue to provide the updated information for 2 years after the project's completion.

4. The ORD Author's Guidelines for Cooperative Agreements, Grants, and Contracts should be consulted in preparing the final report. This document is available on request from the ORD Publications Coordinator, Room 1-A-9, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, (301) 594-8771.

5. A draft of the final report should be submitted to the HCFA Project Officer for comment at least 30 days before the report is due, which is 90 days after the project terminates.

X. Application Procedures

A. Letter of Intent

To assist us in planning for this process, potential applicants are urged to submit a letter stating their intent to file an application. The letter of intent is not binding; it will not enter into the review of any proposal subsequently submitted, nor is it a necessary requirement for application. This letter is due 60 days prior to the closing date. At a minimum this letter should contain the following:

1. The name of the accredited school of public health or preventive medicine department that will be directing the demonstration;
2. Title of the project;
3. Brief abstract (discription of project); and
4. Estimated cost (by project year).

The letter should be submitted to the address listed below (section X.B.) attention: Paul McKeown.

B. Application Kits

A standard application form is available for the HCFA research and demonstration cooperative agreement and grants program. The application form has been approved under OMB #938-0078 for use through May 31, 1988. Application kits and guidance for the completion of the forms are available from: Health Care Financing Administration, Office of Management and Budget, Administrative Contracts and Grants Branch, Room 389, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207-5187, (301) 594-3333.

The application must include, in the project title block, the phrase "Preventive Health Services for Medicare Beneficiaries," as well as the word "WAIVER," which must also be clearly marked on the outside of the package or envelope in which the application is delivered to HCFA.

C. Multiple Applications

The applicant must indicate when the same or a similar application is submitted to another HHS agency; for example, the Social Security Administration, the Office of Human Development Services, or to one of the Public Health Service programs.

D. Cooperative Agreement and Grant Policies

Projects are funded through a competitive process and chosen from among the applications submitted in response to this notice. All demonstration project awardees are expected to share directly in the costs of the projects. This sharing must be at least 5 percent of the total project cost (cash or in kind).

If, following review of a proposed research activity, HCFA determines that the demonstration project presents a danger to the physical, mental or emotional well-being of a participant of the project, then Federal funds will not be made available for that project without the written, informed consent of each participant.

General policies and procedures that govern the administration of all DHHS cooperative agreements and grants are located in Title 45 of the Code of Federal Regulations (CFR), Part 74, "Administration of Grants." All applicants are urged to review the uniform requirements established in those regulations.

Policies including responsibilities, awarding and payment procedures, special provisions, and assurances may be found in 45 CFR Part 74, Administration of Grants, a copy of which is included in the application kit.

It is national policy to place a fair share of purchases with small, minority-owned, and woman-owned business firms (45 CFR Part 74, appendices G and H). DHHS is strongly committed to the objectives of this policy and encourages all recipients of its cooperative agreements and grants to take affirmative steps to ensure such fairness. In particular, recipients should—

1. Place small, minority-owned, and woman-owned business firms on bidders' mailing lists;
2. Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services;
3. Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms; and
4. Use the assistance of the Minority Business Development Agency of the Department of Commerce, the Office of Small and Disadvantaged Business Utilization, DHHS, and similar available State and local governmental agencies.

XI. Review of Applications

An independent review will be conducted by a panel of not less than three experts (who are not staff members of ORD). The panel will include experts from both DHHS and the private sector.

An ORD chairperson will coordinate the panel's review but will not vote. The chairperson will also prepare the panel's recommendation (summary statement) and submit it to the Director, ORD. The panel's recommendations will contain numerical ratings, ranking of all applications, and a written assessment of each application. These will be summarized in a ranking and approval list. A complete scores matrix will be prepared for each application.

Applicants may request in writing a copy of the summary statement on the review of their application after they have received the letter from HCFA announcing approval or disapproval. Summary statements will be made available subject to the applicable limitations of the Freedom of Information Act (5 U.S.C. 552), the Federal Advisory Committee Act (5 U.S.C. App. I.), the Privacy Act of 1974 (5 U.S.C. 552a), 45 CFR Parts 5, 5b, and 11, and 42 CFR Part 401, Subpart B.

XII. Closing Date and Time

We will process cooperative agreement applications received for this announcement and make award announcements approximately 3 months after the closing date. The closing date for cooperative agreement applications for this announcement is August 27, 1987.

Applications mailed through the U.S. Postal Service (first class or express mail only due to time constraints) or a commercial delivery service will be "on time" if they are received on or before the closing date, or sent on or before the closing date and received in time for submission to the independent review panel (see section XI., Review of Applications). Applicants are cautioned to request a legible U.S. Postal Service postmark or to obtain a legible dated receipt from the commercial carrier or the U.S. Postal Service. Privately metered postmarks will not be acceptable as proof of timely mailing.

Applications that do not meet the above criteria will be considered later applications. Those submitting late applications will be notified that the

applications were not considered in the current competition.

Sections 1875, of the Social Security Act (42 U.S.C. 139511), Section 9314 of Pub. L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985, (42 U.S.C. 1395b-1 note), Section 9344 of Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986. (Catalog of Federal Domestic Assistance Progrm No. 13.766 Health Care Financing Research, Demonstrations and Experiments)

Dated: March 16, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-12302 Filed 5-28-87; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Sickle Cell Disease Advisory Committee Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, June 12, 1987. The meeting will be held at the National Institutes of Health, Bethesda, Maryland 20892, Building 31, Conference Room 4, A-Wing.

The entire meeting will be open to the public from 9 a.m. to 5 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 20, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-12271 Filed 5-28-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-07-4410-08]

Availability of the Draft West Hi-Line Resource Management Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Draft West Hi-Line Resource Management Plan/Environmental Impact Statement.

SUMMARY: In accordance with section 202 of the Federal Land Policy and Management Act of 1976 and section 102(c) of the National Environmental Policy Act of 1969, draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) has been prepared for the West Hi-Line planning area. The RMP/EIS describes and analyzes future options for managing approximately 626,000 acres of public land and 1.3 million acres of Federal mineral estate in Glacier, Toole, Liberty, Hill, Chouteau, and Blaine Counties in north-central Montana. It also addresses the recreational management of public lands within the Upper Missouri National Wild and Scenic River Corridor in Fergus and Phillips Counties.

Decisions generated during this planning process will supersede land use planning guidance presented in the Triangle, South Bearpaw, and Blaine Management Framework Plans (MFPs) and land use guidance pertaining to the Upper Missouri National Wild and Scenic River in the Phillips and Judith MFPs. The RMP/EIS incorporates land use decisions presented in the Prairie Potholes Vegetation Allocation EIS (1981), Missouri Breaks Grazing EIS (1979), the Missouri Breaks Wilderness Suitability Study/EIS (1982), and the Lewistown District Oil and Gas Environmental Assessment of Bureau of Land Management (BLM) Leasing Program.

Public Participation: Copies will be available at each public library located in Glacier, Liberty, Toole, Hill, Chouteau, and Blaine Counties. In addition, copies will be available at libraries in Malta, Lewistown, and Great Falls. Copies will be available from the Lewistown District Office, Airport Rd., Lewistown, Montana 59457; phone (406) 538-7461. Public reading copies will be available for review at the following BLM locations:

Office of Public Affairs, Main Interior Building, Room 5600, 18th and C Streets NW., Washington, DC 20240

Public Affairs Office, Montana State Office, 222 North 32nd St., Billings, Montana 59107

Lewistown District Office, Airport Rd., Lewistown, Montana 59457

Havre Resource Area, West Second St., Havre, Montana 59501

Great Falls Resource Area, 215 1st Ave., N., Great Falls, Montana 59403

Phillips Resource Area, 501 South Second St., E., Malta, Montana 59538.

Background information and maps used in developing the RMP/EIS are available at the Lewistown District Office and the Great Falls, Havre, Phillips, and Judith Resource Area Offices.

Written comments on the draft RMP/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the notice of filing of the draft in the **Federal Register.** Oral and/or written comments may also be presented at six public meetings to be held:

July 13, 1987—7 p.m.—Olympic Room, Duck Inn, 300 First St., Havre, Montana

July 14, 1987—7 p.m.—Great Falls Public Library, 301 2nd Ave. North, Great Falls, Montana

July 15, 1987—7 p.m.—Marias River Coop, 910 Roosevelt Hwy., Shelby, Montana

July 16, 1987—7 p.m.—Liberty County Courthouse, Chester, Montana

July 20, 1987—7 p.m.—BLM, Lewistown District Office, Airport Rd., Lewistown, Montana

July 21, 1987—7 p.m.—Emergency Operations Center, 2610 N. Main Ave., Fort Benton, Montana.

ADDRESSES: Written comments on the document should be addressed to: Wayne Zinne, District Manager, Bureau of Land Management, Lewistown District Office, Lewistown, Montana 59457.

FOR FURTHER INFORMATION CONTACT: Ann Aldrich, Project Manager, Lewistown District Office, Airport Rd., Lewistown, Montana 59457; phone (406) 538-7461.

SUPPLEMENTARY INFORMATION: The draft RMP/EIS analyzes four alternatives to resolve these five issues: land tenure adjustment; off-road vehicle management; right-of-way location; emphasis area management; and recreational management of the Upper Missouri National Wild and Scenic River. Each alternative represents a complete management plan for the area. The alternatives can be summarized as: A) No action or continuation of current practices; B) resource production; C) resource protection; and D) the preferred

alternative, which is a balance of the previous three.

The RMP/EIS examines the designation of three areas as Areas of Critical Environmental Concern (ACEC). Management prescriptions for the areas vary by alternative and are described in the Emphasis Area sections of the RMP/EIS.

The preferred alternative would designate the Kevin Rim as an ACEC in order to protect historic peregrine habitat, habitat for other State and Federal special interest raptor species, and cultural resources. A management zone would be established on surrounding Federal mineral estate. Oil and gas exploration and development and other surface disturbance would continue under more restrictive stipulations to protect the raptor and cultural resources. Off-road vehicle and right-of-way location restrictions would also be applied in the area.

The preferred alternative would also designate the Sweet Grass Hills as an ACEC, with a management zone on surrounding Federal mineral estate, in order to preserve resource values important for Native American religious and cultural practices, peregrine falcon and other sensitive raptor habitat, public recreation, and winter elk habitat. Management in this area would include limitations on off-road vehicles; right-of-way location, including communication site location; more restrictive raptor stipulations for surface disturbing activities; and possible restrictions on surface developments to reduce conflicts with Native American religious and cultural practices. A protective withdrawal from mineral entry would be pursued under Alternative C, the resource protection alternative.

The preferred alternative would also designate the Cow Creek area as an ACEC in order to protect and preserve the scenic, interpretive, recreational, and paleontological resources associated with the Nez Perce National Historic Trail, the Cow Island Trail. Such a designation would also protect the values associated with the overlapping Upper Missouri National Wild and Scenic River, the Lewis and Clark National Historic Trail, and the Cow Creek WSA. Management in this area would include limitations on off-road vehicles, right-of-way location, surface disturbance, and the use of riparian areas.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the **Federal Register** in December 1983. Since that time several open houses, public meetings, and mailouts were conducted to solicit comments and ideas. Any comments presented throughout the process have been considered.

This notice meets the requirements of 43 CFR 1610.7-2 for designation of ACECs.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

May 5, 1987.

[FR Doc. 87-10970 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-DN-M

[WY920 07 4121-10]

Availability; Data Adequacy Standards; Powder River Coal Region

ACTION: Public Notice.

SUMMARY: Data Adequacy Standards for the Powder River Coal Region are available to the public.

FOR FURTHER INFORMATION CONTACT: Don Brabson, Branch of Solid Minerals, Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001; telephone number (307) 772-2571 or (FTS) 328-2571.

SUPPLEMENTARY INFORMATION: On June 5, 1985, the Powder River Regional Coal Team (RCT) endorsed a Federal/State task force with resource specialists from Montana and Wyoming to prepare data adequacy standards for the Powder River Coal Region. On November 7, 1986, Proposed Data Adequacy Standards were made available for public review and comment. On December 4, 1986, the RCT recommended, among other things, that these regional data adequacy standards be finalized by June 1, 1987. By **Federal Register** notice on February 12, 1987, the Director of the Bureau of Land Management adopted this RCT recommendation.

The Federal/State task force completed a review of all public comments and finalized the standards during March and April, 1987. A summary of public comments and task force responses thereto is contained in the data of adequacy standards document. This document is now available to the public. A copy may be obtained by contacting Don Barbson at the above-specified address or telephone numbers.

This document constitutes the task force's finalized regional data adequacy standards by June 1, 1987, in accordance with the RCT recommendations of December 4, 1987. Final RCT approval of these standards will be solicited at the next Powder River RCT meeting, which is yet to be scheduled.

These Data Adequacy Standards contain recommended levels of data to be acquired prior to the leasing of delineated coal trucks. The document contains data standards for geology, soils/reclamation, hydrology, wildlife, air, cultural resources, socioeconomics, and vegetation and land use.

Hillary A. Oden,

State Director, Wyoming.

[FR Doc. 87-12269 Filed 5-28-87; 8:45am]

BILLING CODE 4310-84-M

[AK-932-07-4220-10; F-82011]

Transfer of Jurisdiction; Tin City, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides official publication of the transfer of administrative jurisdiction of certain land in Tin City, Alaska, from the Department of the Air Force to the Department of the Navy.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

SUPPLEMENTARY INFORMATION:

Subject to valid existing rights, the administrative jurisdiction of the land withdrawn by Public Land Order (PLO) No. 1876, dated June 10, 1959, was transferred on August 25, 1980, from the Department of the Air Force to the Department of the Navy pursuant to 10 U.S.C. 2571(a) (1970). The terms and conditions of PLO No. 1876 remain the same and the land described as follows remains withdrawn from all forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws, but excepting disposals of materials under the act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604 (1982)), as amended:

Kateel River Meridian

A tract of land located on the Seward Peninsula, 3rd Judicial District, State of Alaska, more specifically described as follows:

Beginning at a point, from which the point of intersection of latitude 65°35'01.579" N., longitude 167°56'25.790" W., bears North 220 feet, thence West, 175 feet;
North, 482 feet to a point on the south boundary of the Champion Lode Claim;
S. 82°12' E., 372 feet along the claim boundary to a point identical with the southeast corner of said claim;
N. 29°40' E., 78 feet along the claim boundary;
East, 193 feet;
South, 500 feet;
West, 425 feet to the point of beginning.

The area described contains approximately 6.31 acres.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 87-12207 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-JA-M

[UT-040-07-4322-02]

Cedar City District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 992-463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Thursday, July 9, 1987. The meeting will begin at 9:30 a.m. in the Beaver County Courthouse located at 105 East Center Street, Beaver, Utah.

The meeting will consist of a short discussion at the Courthouse followed by a field tour of the Mineral Range Allotment. The purpose of the tour is to discuss revisions in the allotment Management Plan and proposed use adjustments needed following an evaluation of monitoring data. Those planning on going on the tour should provide their own transportation and a lunch.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be received at 9:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, UT 84720, phone 801-586-2401, by July 6, 1987. Depending on the number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meetings will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: May 22, 1987.

Morgan S. Jensen,

District Manager.

[FR Doc. 87-12208 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-040-07-4830-12]

Cedar City, UT; District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Cedar City District Advisory Council will be held June 30, 1987.

The meeting will begin at 9:30 a.m. in the BLM office at 318 North 100 East, Kanab, Utah. The agenda will include: A report on the Bureau's Graphic Information System (GIS), cultural resources in the Kanab Resource Area, range and wildlife project work in the Resource Area, and the Alton Coal field. The meeting will be held as a field tour. Those wishing to participate must provide their own transportation and lunch.

All Advisory Council meetings, are open to the public. Interested persons may make oral statements at 9:45 a.m. or submit written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, 176 East D. L. Sargent Drive, Cedar City, Utah 84720 by June 26, 1987. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or Council Chairman.

Dated: May 18, 1987.

Dennis Curtis,

Acting District Manager.

[FR Doc. 87-12292 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-DQ-M

[UT 080-07-4830-12]

Vernal District Advisory Council; Tour and Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: Notice is heregy given than on Thursday, July 2, beginning at 8:30 a.m. at the Vernal District Office, the Vernal District Advisory Council will: Depart to tour Taylor Flat wildlife habitat management projects; at about noon they will have lunch at the John Jarvie Historical Site, then drive to Little Hole and float the section of the Green River from Little Hole to the Jarvie Ranch where they will have supper and at approximately 6:00 p.m. they will begin the regular business meeting. Business meeting agenda items will include:

—Election of Chairperson and Vice Chairperson
—Management of the Historic Jarvie Ranch
—Proposed road from Brown's Park to Dutch John
—Status of Utah Wilderness Environmental Impact Statement
—Joint concerns of Ute Tribe and BLM concerning management of boating use on the White River.
—Cooperative Management (BLM-FS-State) of Green River Corridor from Flaming Gorge to Colorado Border
—Proposed land exchanges to remove state inholdings within National Parks and Monuments
—Items at large from Advisory Council
—Reading of public comments or statements, if any.

The day's activities, including the business meeting, is open to the public, but the public is advised that they must furnish their own land and river transportation and food. Written statements the public may wish to have read to the Advisory Council must be submitted to the District Manager no later than close of day July 1, or, if to be presented in person, must not exceed ten minutes duration.

Summary minutes of the advisory council's business meeting will be maintained in the District Office and will be made available for public inspection during regular business hours.

In case of severe inclimate weather, all activities of July 2, will be canceled and rescheduled by the District Manager.

Date: May 21, 1987.

David E. Little,

Vernal District Manager.

[FR Doc. 87-12267 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-920-07-4111-15; W-74190]

Proposed Reinstatement of Terminated Oil and Gas Lease; Campbell County, WY

May 21, 1987.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-74190 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-74190 effective January 1, 1987, subject to the original terms and conditions of the lease and the

increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-12210 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-22-M

[AZ-040-07-4212-13; A21585]

Realty Action; Exchange of Public Surface Estate; Cochise County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange; Public surface estate in Cochise County, Arizona.

SUMMARY: The surface estate of the following described land is suitable for transfer by exchange to the Marvin and Judy Barnes Trust under the provisions of section 206 of the Federal Land Policy and Management Act of 1976:

Gila and Salt River Meridian, Arizona

T. 14 S., R. 32 E.,
Sec. 11, lot 10.

The land described above comprises 40.43 acres, more or less, in Cochise County.

The above-described land will be segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register.** The segregative effect will terminate upon issuance of patent to the Marvin and Judy Barnes Trust or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

The Marvin and Judy Barnes Trust has offered the surface estate of the following described lands to the United States:

Gila and Salt River Meridian, Arizona

T. 14 S., R. 32 E.,
Sec. 27, SW¼SW¼;
Sec. 34, W½NW¼, NW¼SW¼.

The lands described above comprise 160.00 acres, more or less, in Cochise County.

The surface estate of the above-identified non-federal lands will be acquired to consolidate ownership and enhance resource management.

DATE: For a period of 45 days from date of publication in the **Federal Register,** interested parties may submit comments ot the Safford District Manager, 425 E. 4th Street, Safford, Arinona 85546. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Interior.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the land use plan supporting this exchange and the environmental considerations reviewed in making this decision to exchange, are available for review at the Safford District Office.

Dated: May 21, 1987

Vernon L. Saline,

Acting District Manager.

[FR Doc. 87-12211 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-32-M

[ES-030-07-4212-11; ES-00157-009; ES-31817]

Realty Action; Recreation and Public Purposes Classification—Land Classification for Recreation and Public Purposes, Crow Wing County, MN

SUMMARY: The following described parcel has been classified as suitable for disposal to the State of Minnesota by conveyance pursuant to the provisions of the Recreation and Public Purposes Act of 1926 (44 Stat. 741) as amended (43 U.S.C. 869):

Fifth Principal Meridian, Minnesota

1. ES-31817, Crow Wing County: T.137N., R. 25W.,
Sec. 31, Lot 6, total of 1.21 acres.

The purpose of the conveyance is the preservation of a Wildlife Management Area.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title of the land shall revert to the United States.

Classification of this land segregates it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. This segregation will terminate upon issuance of a patent, or eighteen (18) months from the date of this Notice, or upon publication of a notice of termination.

Comments: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631.

FOR FURTHER INFORMATION: Detailed information concerning this application is available for review at the Milwaukee District Office, Suite 225, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, or by calling Larry Johnson at (414) 291-4413.

Bert Rodgers,

District Manager.

[FR Doc. 87-12212 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-GJ-M

[MT-070-07-4212-13; M66052]

Realty Action: Exchange; Beaverhead County, MT

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of Realty Action M66052, Exchange of public and private lands in Beaverhead County.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian, Montana

T. 1 S., R. 11 W.,
Sec. 1, Lots 5 and 9=9.77 acres.
T. 1 N., R. 12 W.,
Sec. 4, SW¼NE¼=40 acres.

In exchange for these lands, the United States will acquire the following described lands:

Principal Meridian, Montana

T. 1 S., R. 11 W.,
Sec. 1, Meets and Bounds Tract in Lot 4=6.95 acres.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report, is available for review at the Butte District Office, P.O. Box 3388, Butte, Montana 59702.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire a public access site on the Big Hole River at Jerry Creek Road Bridge. The tract, located just downriver from the bridge, between the river and highway 43 will replace the site above the bridge which is now closed to public use. The exchange will meet the increasing needs of floaters and non-floaters alike for access to the Big Hole River. It will provide a safer launching and landing site, along with adequate parking. BLM

plans for the site include a boat ramp, parking area, and picnicking facilities. The two parcels of public land to be traded for this tract have low to moderate resource values and low public values. Access on Bryant Creek Road will be protected by a reservation in the patent.

The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The Exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. The reservation to the United States of any identified mineral values on the Federal lands being transferred.
3. All valid existing rights (e.g., rights-of-way, easements and leases of record).
4. Value equalization by cash payments or acreage adjustments.
5. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The public interest will be served by completion of this exchange.

James A. Moorhouse,

District Manager.

May 20, 1987.

[FR Doc. 87-12270 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-DN-M

[NM-030-07-4212-14; NM64778]

Realty Action; Direct Sale of Public Land in Dona Ana County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described parcel of public land has been examined and identified as suitable for direct sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713):

T. 23 S., R. 1 W., NMPM,
Sec. 31: Lots 14 to 18, inclusive, and 21, 22, 25 and 26.

The subject lands, comprising approximately 140 acreas, will be offered to the Dona Ana County Commissioners at the appraised fair market value of $140,000.00. The land would become a part of the Dona Ana County Fairgrounds.

This sale is consistent with the Bureau of Land Management's planning system and is compatible with County plans. The land has been used by Dona Ana County as part of the County Fairgrounds for approximately 15 years under land use permits issued by the Bureau of Land Management. The public interest will be served by offering this land for sale.

DATE: Comments must be submitted on or before July 13, 1987.

ADDRESSES: Comments should be sent to Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Madeline Dzielak at the address above or at 505-525-8228, (FTS 571-8350).

SUPPLEMENTARY INFORMATION: The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).
2. All mineral deposits in the land so patented. Such minerals shall be subject to the right to explore, prospect for, mine and remove under applicable law and such regulations as the Secretary may prescribe (Federal Land Policy and Management Act of 1976, 90 Stat. 2757; 43 U.S.C. 1719).
3. All the geothermal steam and associated geothermal resources as to land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits upon compliance with the conditions and subject to the provisions and limitations of the Act of December 24, 1970 (84 Stat. 1566).

Publication of this notice will segregate the public land from all appropriations under the public lands laws, including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or 2 years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Tim Salt,

Acting District Manager

[FR Doc. 87-12213 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-FB-M

[ID-943-07-4220-10; I-22990]

Proposed Withdrawal and Opportunity for Public Meeting; Crooked River Near Orogrande, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Corps of Engineers, Department of the Army, proposes to withdraw 12.28 acres of national forest land for construction of anadromous fish trapping and related facilities on the Crooked River near Orogrande, Idaho. This notice closes the land for up to two years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting should be received by August 27, 1987.

ADDRESS: Comments and meeting requests should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM Idaho State Office, 208-334-1597.

On May 7, 1987, the Corps of Engineers filed an application to withdraw the following-described public land from settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights:

Boise Meridian, Nezperce National Forest

Parcel 1—Adult Facility

A parcel of land lying in unsurveyed section 25, Township 29 North, Range 7 East of the Boise Meridian Idaho County, State of Idaho, being more particularly described as follows:

Commencing at the northwest corner of Section 30, Township 29 North, Range 8 East of the Boise Meridian;
thence South 0°16'39" West, a distance of 2,879.37 feet to the point of beginning; thence South 3°14'35" East, a distance of 370.26 feet;
thence West, a distance of 215 feet;
thence South, a distance of 460 feet;
thence North 67°14'57" West, a distance of 168.08 feet;
thence North 51°50'34" West, a distance of 89.02 feet;
thence North 9°27'44" West, a distance of 91.24 feet;
thence North 30°15'23" East, a distance of 138.92 feet;
thence North 52°25'53" East, a distance of 82.01 feet;
thence North 3°34'35" West, a distance of 80.16 feet;
thence North 23°44'58" West, a distance of 136.56 feet;

thence North 4°45'49' West, a distance of 120.42 feet;
thence North 71°20'08" East, a distance of 389.54 feet to the point of beginning.

The parcel of land above described contains 4.34 acres, more or less.

Parcel 2—Freezer Site

A parcel of land located on the left (west) bank of the Crooked River, westerly of County Road No. 121, in the projected northeast quarter of unsurveyed section 36, Township 28 North, Range 7 East of the Boise Meridian, Idaho County, State of Idaho, more particularly described as follows:

Commencing at a U.S. Army Corps of Engineers Survey Monument marked "85-95-1", the local grid coordinates of said monument being y, North 13,096.82 feet and x, East 12,311.12 feet; thence South 89°34'04" distance of 189.13 feet to the point of beginning;
thence East, a distance of 80 feet;
thence South, a distance of 50 feet;
thence West, a distance of 80 feet;
thence North, a distance of 50 feet to the point of beginning.

There is EXCEPTED therefrom all that part of the above described parcel 2 lying within the right-of-way of said County Road No. 121.

The parcel of land above described contains 0.09 of an acre, more or less.

Parcel 3—Acclimation Facility

A parcel of land located on the left (west) bank of the Crooked River, easterly of Forest Road No. 233 (County Road No. 121), north of the Orogrande Landing Strip, in the projected northwest quarter of unsurveyed section 30, Township 28 North, Range 8 east of the Boise Meridian, Idaho County, State of Idaho, more particularly described as follows:

Beginning at a point, which is located on north (downstream) end of the Orogrande Landing Strip. Said point is a U.S. Army Corps of Engineers monument marked "86-26-3", the local grid coordinates of said monument being Y, North 16,131.327 feet and X, East 14,137.709 feet;
thence South 61°31'33" East, a distance of 139.12 feet to a point lying on the thread ot the stream on the Crooked River;
thence North 1°19'56" East, a distance of 86.02 feet to a point lying on the thread of the stream of said river;
thence North 24°26'38" East, a distance of 24.17 feet to a point lying on the thread of the stream of said river;
thence North 44°01'04" East, a distance of 495.05 feet to a point lying on the thread of the stream of said river;
thence North 22°46'57" East, a distance of 54.23 feet to a point lying on the thread of the stream of said river;
thence North 0°47'45" West, a distance of 72.01 feet to a point lying on the thread of the stream of said river;
thence North 16°27'36" West, a distance of 91.76 feet to a point lying on the thread of the stream of said river;
thence North 3°54'02" East, a distance of 44.10 feet to a point lying on the thread of the stream of said river;
thence North 7°55'58" East, a distance of 123.18 feet to a point lying on the thread of the stream of said river;
thence South 90°00'00" West, a distance of 455.00 feet to a point lying on the Easterly edge of Forest Road No. 233 (County Road No. 122);
thence South 35°40'07" West, a distance of 152.63 feet to a point lying on the Easterly edge of said road;
thence South 20°22'35" West, a distance of 37.34 feet to a point lying on the Easterly edge of said road;
thence South 1°35'28" West, a distance of 36.01 feet to a point lying on the Easterly edge of said road;
thence South 11°40'25" East, a distance of 123.56 feet to a point lying on the Easterly edge of said road;
thence South 8°07'48" East, a distance of 77.78 feet to a point lying on the Easterly edge of said road;
thence South 2°07'16" West, a distance of 81.06 feet to a point lying on the Easterly edge of said road;
thence South 4°14'11" West, a distance of 54.15 feet to a point lying on the Easterly edge of said road;
thence South 17°02'16" West, a distance of 64.85 feet to a point lying on the Easterly edge of said road;
thence South 30°06'49" West, a distance of 57.60 feet to a point lying on the Easterly edge of said road;
thence South 40°21'52" West, a distance of 26.25 feet to a point lying on the Easterly edge of said road;
thence South 24°28'11" West, a distance of 51.56 feet to a point lying on the Easterly edge of said road;
thence South 61°31'33" East, a distance of 140.00 feet to a point of beginning.

There is EXCEPTED therefrom all that part of the above described Parcel 3 lying within the right-of-way of said Forest Road No. 233 (County Road No. 122).

The parcel of land above described contains 7.85 acres, more or less.

The area described aggregates 12.28 acres in Idaho County.

The purpose of the proposed withdrawal is to protect the land for construction of facilities for an anadromous fish trapping site to be run in conjunction with the Clearwater Fish Hatchery.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal, may present their virews in writing to the undersigned authorized officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the schedule date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

Dated: May 18, 1987.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 87-12214 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-GG-M

[OR-22197-C(WASH) OR-22197-D(WASH), OR-22197-E(WASH); OR-943-07-4220-11: GP-07-195]

Proposed Continuation of Withdrawals; San Juan County, WA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard proposes that portions of a land withdrawal continue for an additional 25 years and requests that the lands involved remain closed to surface entry and mining.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

The Coast Guard proposes that the following identified land withdrawal be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

1. OR 22197-C(WASH), Executive Order of July 15, 1875. North Peapond Rocks Light Station, 2.75 acres. Located on North Peapod Rock.

T. 36 N., R. 1 E.,
Sec. 6, W.M., San Juan County, Washington.

2. OR 22197-D(WASH), Executive Order of July 15, 1875. Belle Rock Light Station, less than 1 acre. Located on Belle Rock.

T. 35 N., R. 1 W.,
Sec. 25, W.M., San Juan County, Washington.

3. OR 22197-E(WASH), Executive Order of July 15, 1875. Davidson Rock Light Station, less than 1 acre. Located on Davidson Rock.

T. 34 N., R. 1 W.,
Sec. 28, W.M., San Juan County, Washington.

The withdrawal currently segregates the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. The Coast Guard requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the propsoed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential dmand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: May 19, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-12215 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Royalty Management Advisory Committee, Systems Improvement Working Panel, Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Meeting.

SUMMARY: The Minerals Management Service (MMS), Royalty Management Program (RMP), hereby gives notice that the Systems Improvement Working Panel, established by the Royalty Management Advisory Committee, will be meeting in Golden, Colorado, at the location and on the dates identified below.

The Systems Improvement Working Panel was established to analyze and provide recommendations to the Advisory Committee regarding improvements to make RMP financial and production accounting systems operate more effectively. The purpose of the meetings is to identify and/or analyze specific issues such as potential software improvements to the MMS Auditing and Financial System (AFS) which is to be transferred to a mainframe computer later in 1987.

Location and Dates: The Systems Improvement Working Panel will meet at the Marriott Hotel, 1717 Denver West Marriott Blvd., Golden, Colorado, June 4-5, and June 8-12, 1987, at the following times:

Date	Convene	Adjourn
June 4, 1987	8:00 a.m	5:00 p.m.
June 5, 1987	8:00 a.m	2:00 p.m.
June 8, 1987	1:00 p.m	5:00 p.m.
June 9-11, 1987	8:00 a.m	5:00 p.m.
June 12, 1987	8:00 a.m	12:00 noon.

The public is invited to attend these meetings and to provide comments. A time will be set aside by the Panel Chairperson during the meetings when the public will be invited to make oral comments. Written comments should be submitted by June 12, 1987, to Mr. Vernon B. Ingraham at the address shown 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 651, Denver, Colorado 80225, telephone number (303) 231-3360, (FTS) 326-3360.

SUPPLEMENTARY INFORMATION: This Working Panel is composed of both Advisory Committee members and non-Committee members. The Panel was established to provide the Advisory Committee with analysis of specific issues and proposed recommendations. After its review, the Advisory Committee will then decide on the advice and recommendations to be made to the Department of the Interior and MMS. Although the Panel may meet with the Department of the Interior or MMS staff to obtain information it requires in conducting its business, the Panel's advice and recommendations will be made to the Advisory Committee and not to the Department of the Interior or MMS.

Dated: May 22, 1987.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 87-12272 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination; Elf Aquitaine Petroleum

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Elf Aquitaine Petroleum has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5316, Block 391, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on May 20, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 19th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana

Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date May 21, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-12216 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination, ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0317, Block 47, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on May 21, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 21, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-12217 Filed 6-28-87; 8:45 am]

BILLING CODE 4310-MR-M

Request for Information on Oil and Gas Industry Interest in Mid-Atlantic Lease Sale 121

Purpose

The Mid-Atlantic proposed Outer Continetal Shelf (OCS) oil and gas lease sale has been designated as a Frontier Exploration sale in the Proposed Final 5-Year Leasing Program for Mid-1987 to Mid-1992, dated April 1987. Sale 121 is being reviewed by the Secretary of the Interior to determine whether the OCS presale process should be initiated for this sale. The oil and gas industry is asked to assist in this process by providing up-to-date information on its interest in leasing and exploring within the Mid-Atlantic planning area.

If a decision is made to begin the OCS presale process for this sale, a Call for Information and Nominations would be issued in September 1987 with a sale proposed for October 1989. If interest is determined to be insufficient to justify proceeding with the presale process, the sale can be cancelled, or delayed and a Request for Interest reissued on an annual or less frequent basis until interest is determined to be sufficient to hold the sale or the sale is cancelled.

Use of Information from Request

The responses will assist the Secretary of the Interior to determine if the presale process for the proposal should be started, cancelled, or deferred for consideration in a future 5-year schedule. This approach is designed to add flexibility to the program by providing for the reasonable possibility that changes in geologic data or economic or other conditions could create bidding interest in the future in areas which now appear unattractive. For example, a substantial oil price increase (such as might result from an oil supply disruption), if anticipated to be relatively long term, could make an area now unattractive to potential bidders into one which could be of interest to them. Other information of interest would include new geophysical data, new geological data, new interpretations of existing data, and new estimates of costs of production. By receiving information on industry interest prior to the issuance of the Call, the Federal Government and other parties can avoid unnecessary expenditures on the lengthy and costly presale process.

The presale process includes the following steps: Call for Information and Nominations and Notice of Intent to Prepare an Environmental Impact Statement (EIS), Area Identification, draft EIS, Public Hearings, final EIS, proposed Notice of Sale, Governors' Comments, and final Notice of Sale. For Atlantic sales, the entire process takes just over 2 years.

Description of the Area

In general, the Mid-Atlantic planning area extends east from the juncture of the Submerged Lands Act (SLA) limit at approximately 35° N. latitude to 70° W. longitude, thence north to approximately 37° N. latitude, thence east to 68° W. longitude, thence north to approximately 38° N. latitude, thence east to 66° W. longitude, thence north to 39° N. latitude, thence west to 71° W. longitude, thence north to the SLA limit and thence along the SLA line to the point of origin. The planning area includes 14,731 blocks covering approximately 82.2 million acres. The attached map depicts the planning area and also the subarea deferrals identified in the Proposed Final 5-Year Leasing Program.

Mid-Atlantic areas deferred in the Proposed Final 5-Year Leasing Program include the U.S.S. Monitor National Marine Sanctuary and buffer zone; the National Aeronautics and Space Administration (NASA) Wallops Island Flight Center operating area (except 19 blocks of interest highlighted for special presale consideration); and nearshore areas of low potential (a minimum of 15 nautical miles offshore). Therefore, the area open for comment at this time consists of 12,687 blocks (approximately 71.5 million areas).

Previous Sale-Related Activities

Mid-Atlantic acreage has been proposed for lease sale on seven occasions. Of these, four were Mid-Atlantic OCS lease sales, two South Atlantic lease sales, and one a reoffering sale. The areas included in the two South Atlantic sales and the reoffering sale have been reconfigured and are now part of the Mid-Atlantic planning area. As a result of those lease

sales almost $2 billion in revenues has been deposted in the U.S. Treasury for the 272 leases issued. A total of 187 leases have been relinquished or expired, leaving 85 leases in effect.

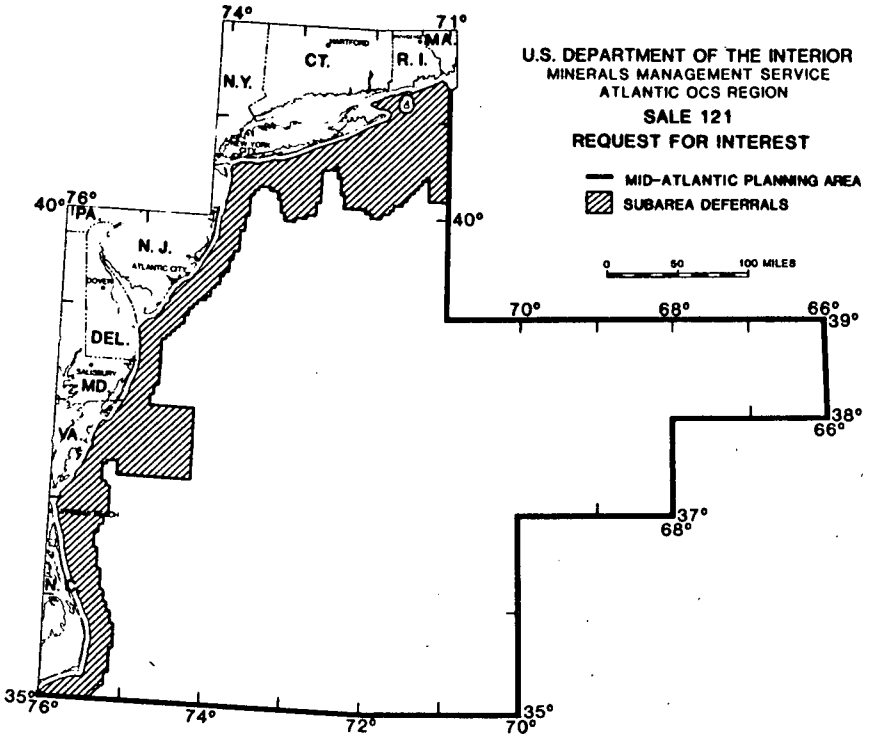
The last proposed lease sale in this area, Sale 111, was cancelled on June 13, 1986, following a determination that industry had little interest in a sale at that time.

Two Continental Offshore Stratigraphic Test (COST) wells have been drilled in this area. In addition, 32 exploratory wells were drilled without commercial discover of oil and gas. All 34 wells have been plugged and abandoned.

Instructions on Request for Interest

Information regarding leasing and exploring in the Mid-Atlantic planning area may be provided by mail, telephone, or, alternatively, by informal meeting with the Regional Director or a designated representative. General or detailed information may be submitted. Specific responses are requested on the advisability of selecting one of the following options for the planning area: proceed with the OCS presale process; cancel the OCS presale process; or delay the sale process for no less than 1 year, at which time another Request for Interest would be published.

In order to be included in the review process, information must be submitted no later than 45 days following publication of this document in the **Federal Register.** Receipt of information will be facilitated if the envelope is marked "Request for Interest on Proposed Lease Sale 121 in the Mid-Atlantic."



Letters should be mailed or hand delivered to the Regional Supervisor for Leasing and Environment, Atlantic Region, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180. Telephone inquiries may be made to (703) 285-2165. A copy of the response should be sent to the Chief, Offshore Leasing Management Division, Department of the Interior, Minerals Management Service, Room 4230 (Mail Stop 645), Washington, DC. 20240. Hand deliveries to the headquarters office may be made at 18th and C Streets, NW., Room 2523, Washington, DC.

Date: May 26, 1987.

Wm. D. Bettenberg,

Director, Minerals Management Service.

Approved:

James E. Cason,

Deputy Assistant Secretary—Land and Minerals Management.

[FR Doc. 87-12261 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Senior Executive Service; Addition of Members to Performance Review Board

May 11, 1987.

On or about May 11, 1987, the following persons will be added as members to the Performance Review Board:

Laurence W. Bond
Norman Cohen
Kenneth E. Fries
W. Wayne McKeel
James L. Sullivan

Jan Barrow,

Executive Secretary, Performance Review Board, Agency for International Development.

[FR Doc. 87-12206 Filed 5-28-87; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-167 (Sub-No. 1083X)]

Conrail Abandonment in Bartholomew County, IN; Exemption

AGENCY: Interstate Commerce Commisison.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts the abandonment by Consolidated Rail Corporation (Conrail) of its 1.1-mile North Columbus Running Track between the Louisville Running Track (milepost 0.2) and the end of the line on the east side of Ruddick Avenue (milepost 1.1) in Columbus, Bartholomew County, IN, subject to the employee protective conditions in *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

DATES: The exemption will be effective on June 29, 1987. Petitions to stay are due on June 15, 1987, and petitions to reconsider are due on June 23, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-167 (Sub-No. 1083X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Conrail's representative: Charles E. Mecham, 1138 Six Penn Center, Philadelphia, PA 19103-2959.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write or call T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Bldg., Washington, DC 20423, 289-4357.

Decided: May 19, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-12264 Filed 5-28-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31031]

Merchants Grain & Transportation, Inc.; Continuance in Control Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of correction of effective date.

SUMMARY: This notice corrects the effective date of the notice of exemption previously published in the **Federal Register**, May 21, 1987, which exempts Merchants Grain & Transportation, Inc. (Merchants) from the requirements of 49 U.S.C. ¶11343 to continue in control of Poseyville and Owensville Railroad Company, Inc. (P&O), subject to employee protective conditions; and which exempts P&O from the requirements of 49 U.S.C. ¶10746 with regard to the transportation of traffic which Merchants may have an interest. The correct effective date for the exemption is May 24, 1987. The due date for filing petitions to reopen remains June 10, 1987. All other information in the notice remains the same.

Dated: May 22, 1987.

Noreta R. McGee

Secretary.

[FR Doc. 87-12260 Filed 5-28-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31022]

W. Norris Lightsey, et al. Control Exemption; Hampton & Branchville Railroad Co., Inc. and Collection County Railroad Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission under 49 U.S.C. 10505 exempts from prior approval under 49 U.S.C. 11343, *et seq.*, the common control by W. Norris Lightsey and the South Carolina National Bank, Trustee of the Estate of E. Oswald Lightsey, of the Hampton & Branchville Railroad Company, Inc. and the Collection County Railroad Company, Inc. subject to standard labor protective conditions.

DATES: This decision is effective on June 29, 1987. Petitions to stay must be filed by June 8, 1987, and petitions for reconsideration must be filed by June 18, 1987.

ADDRESSES: Send petitions referring to Finance Docket No. 31022 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioners' representative: Kimberly A. Madigan, Suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245.

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.

Decided: May 19, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary

[FR Doc. 87-12262 Filed 5-28-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-283X]

Ware Shoals Railroad Co. Abandonment in Greenwood County, SC; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Ware Shoals Railroad Company from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon its entire line of railroad, a 5.17 mile line in Greenwood County, SC.

DATES: This exemption will be effective on June 29, 1987. Petitions to stay must be filed by June 8, 1987, and petitions for reconsideration must be filed by June 18, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-283X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: E.G. Cochrane, 1 Shelter Place, P.O. Box 3478, Greenville, SC 29602.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

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).

Decided: May 20, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-12263 Filed 5-28-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Community Relations Service; Availability of Funding for Special Placement Programs (SPP) for Mariel Cubans Paroled from Immigration and Naturalization Service (INS) Detention Facilities

AGENCY: Community Relations Service (CRS), U.S. Department of Justice.

ACTION: Notice of Availability of Funding for Cooperative Agreements to provide community-based Special Placement Programs for Mariel Cuban detainees paroled by the Immigration and Naturalization Service from various federal detention centers.

SUMMARY: This announcement governs the award of Cooperative Agreements to public or private non-profit organizations or agencies, and, under certain conditions, to for-profit organizations or agencies, to provide eligible Mariel Cubans paroled or reparoled from Immigration and Naturalization Service (INS) detention facilities with intensive, structured, and comprehensive residential and community-based follow-up support services. Programs providing such

services shall hereafter be referred to as Special Placement Programs (SPPs).

Special Placement Programs have the specific goal of assisting eligible clients to attain self-sufficiency and integration into the community through a comprehensive system of support services, delivered first in a residential setting (4 months) and subsequently in a community setting (14 months).

DATE: Closing Date: 5:00 p.m. Eastern Daylight Time; July 31, 1987.

SUPPLEMENTARY INFORMATION

Purpose and Scope

The purpose of the Special Placement Program is the re-integration of certain detained Mariel Cubans into society through a structured program of residential and community-based follow-up support services.

The client population consists of Mariel Cubans who have been returned to the custody of the United States Department of Justice, Immigration and Naturalization Service, from state and local criminal justice systems. Currently, those detainees who are deemed eligible for parole or reparole by the INS are primarily detained at the Federal Bureau of Prisons, Oakdale, Louisiana facility. Potential clients are referred to the Community Relations Service (CRS), Cuban Haitian Entrant Program (CHEP), which screens referrals for suitability of placement in the CRS Special Placement Programs. Cooperative Agreement Recipients (hereafter referred to as Recipients) then review individual case files; and interview and select clients from the available pool of detainees who have been approved for parole or reparole by the INS.

During a four month residential period, Recipients provide clients with basic physical care and maintenance, as well as counseling, employment services, English language training, life skills instruction, and other programmatic assistance. Upon resettlement into the community, Recipients provide strong follow-up support services and continued case management for a minimum period of eight months. Clients are eligible for an additional six months of follow-up services, if required. Services are rendered within the context of a highly structured, accountable program environment.

Authorization: Authority for the Community Relations Service Special Placement Program is contained in Title V, Section 501 (c) of Pub. L. 96–422 (the Refugee Education Assistance Act of 1980).

Award Instrument: Awards to support Special Placement Program services will be in the form of Cooperative Agreements issued by the Community Relations Service. The administration of these awards will require the substantial involvement of the Federal Government. The level and scope of Federal involvement is delineated in the CRS document entitled, "Special Placement Program—Program Description and Requirements." This document is included as part of the Proposal Application Package available from the Community Relations Service.

The Community Relations Service will negotiate Cooperative Agreements with those applicants approved by the Director, CRS. During these negotiations, the CRS will also conduct a site visit to the proposed program facility.

Available Funds: Approximately $1.5 million will be available on a Fiscal Year basis to support a maximum of three Cooperative Agreements. The funding level for each award is anticipated to be between $450,000 and $630,000, depending upon such factors as the geographic area of resettlement and the specific program design.

Awards normally will not exceed a 36 month program performance period. Funding will be for 12 month budget periods.

The estimated amount of available funds and the anticipated ranges of funding contained in this Notice are intended to serve as bench marks only. These estimates and ranges do not bind the Community Relations Service to any specific number of Cooperative Agreements or to any specific level of funding.

Future fiscal year funding for the Special Placement Program will be contingent upon Federal appropriations. If adequate funds are available, the Director, CRS, anticipates continuation of this program.

Proposal Review: Proposals will be reviewed, evaluated, and competively ranked by an independent review panel on the basis of weighted criteria listed in this Notice. All funding decisions are at the discretion of the Director, Community Relations Service. Awards will be subject to the availability of funds.

Technical Assistance Conference: The Community Relations Service will hold a technical assistance conference(s) in regard to this Notice. Information regarding the time, date, and location of the conference(s) will be included in the Proposal Application Package.

Eligible Applicants

Non-profit organizations incorporated under State law, which have demonstrated experience in: (1) The resettlement of or provision of services to Cuban Entrants, or similar populations; (2) the administration of residential, community-based correctional treatment programs for ex-offenders, or; (3) the administration of other types of residential, community-based rehabilitative programs are eligible to apply.

For-profit organizations, incorporated under State law, which have demonstrated experience in: (1) The resettlement of or provision of services to Cuban Entrants, or similar populations; (2) the administration of residential, community-based correctional treatment programs for ex-offenders, or; (3) the administration of other types of residential, community-based rehabilitative programs, and which can clearly demonstrated that only costs and not profits, fees, or other elements above costs have been budgeted, are also eligible to apply.

Subcontractual arrangements for the administration of a Special Placement Program will only be acceptable in the cases of national-level organizations through local-level agencies which have a demonstrable affiliation with or membership in the national-level organization and which have an institutional presence in the proposed area of resettlement.

Consortiums or joint ventures between or among unrelated agencies or organizations, i.e., those where no formal affiliation or membership relationship exists, will not be considered for funding under the terms of this Notice.

Present CRS grantees are not precluded from submitting new proposals under the terms and conditions of this Notice.

Eligible Client Population

Under the terms of this announcement, the eligible client population consists of Cuban nationals who have been approved for parole or reparole from Federal detention by the Immigration and Naturalization Service and who meet the definition of "Cuban/Haitian Entrant" as specified in Title V, sectionj 501(e) of Pub. L. 96–422:

(1) Any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the Immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(2) Any other national of Cuba or Haiti

(A) Who—

(i) Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) Has an application for asylum pending with the Immigration and Naturalization Service; and

(B) With respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.

Further detailed information concerning other characteristics of this population is contained in the "Special Placement Program-Program Requirements and Description" Document.

Areas of Resettlement

Funding cannot be considered for applicants who propose resettlement in States or areas heavily impacted by Cuban/Haitian Entrants, refugees, or CRS Special Placement Programs, unless the applicant can assure permanent, full-time employment, service delivery, and community support in such areas. These impacted areas include the States of California, Illinois, Michigan, Missouri, New Jersey, New York, Ohio, and Washington.

Resettlement within the State of Florida is not permissible under this Notice.

Applicants need not be located in the proposed city of resettlement; however, it is strongly suggested that they have a strong institutional presence or broad support base in this location. Local-level affiliates of national-level organizations, however, must be located in the proposed city of resettlement.

Application Contents

Applicants are required to set forth in detail a proposal that meets the program requirements described in this Notice and as supplemented by the "Special Placement Program—Program Description and Requirements" Document. Applicants are required to set forth in detail the following:

1. Program Abstract

The Program Abstract is intended to be a brief summary of the proposal, which includes names and locations of relevant agencies, the proposed resettlement city and proposed location of the residential facility, the total number of clients and cycles to be served during the entire program performance period, the proposed program periods and phases, and the services to be offered to clients during these periods and phases.

2. Organization/Agency Background

Applicants must include a detailed discussion of:

a. The applicant's history, philosophy and goals;

b. Its particular demonstrated experience with respect to: (1) The resettlement of or provision of services to Cuban Entrants, or similar populations; (2) the administration of residential, community-based correctional treatment programs for ex-offenders; or (3) the administration of other types of residential, community-based rehabilitative programs; and

c. The applicant's history of service delivery and institutional presence in the proposed city of resettlement.

If the applicant is a national-level organization which proposes to deliver services through a local-level affiliate, the proposed affiliate must be identified. Within the context of the topics outlined above, the application must address the local-level affiliate's qualifications and provide a rationale for its particular selection as the service provider and for the use of such a subsconstractual arrangement.

3. Characteristics of Program Site

a. Characteristics of the Proposed Resettlement City Applications must contain a detailed qualitative and quantitative rationale for the selection of the proposed resettlement city with particular regard to:

1. A description of the city's racial, enthnic and sociocultural composition, including a description of existing Cuban populations and Cuban organizations;

2. A description of the political and law enforcement structures of the resettlement city and their potential recaptivity regarding the program;

3. Current level of employment and unemployment in various relevant local job markets, by race and ethnicity, if possible;

4. Availability of immediate or imminent prospects for full-time permanent employment consistent with the skills levels of the program participants;

5. Availability of housing which is safe, sanitary, and affordable to the clients;

6. A description of the local social service network, including any services targeted primarily to Hispanic populations; and

7. A brief discussion of the probable impact of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) on community tension and upon receptivity to the proposed program.

b. Characteristics of the Proposed Resettlement Community

The proposed resettlement community refers to the immediate geographical area in which the proposed residential facility is located. This area may be a defined, named neighborhood/area which is recognized as a political unit, or it may be a less formally designated area. In either case, the applicant must describe the relevant area in terms of the following characteristics:

1. Address of the proposed residential facility;

2. A description of the racial, ethnic and sociocultural composition of the community, including the presence of a Cuban community;

3. Identification of important local community groups, such as neighborhood watch associations, tenant organizations, neighborhood task forces;

4. Identification of political representatives who represent the constituency of that area, such as City Council members, Congressional representatives, or local Community Board members;

5. Identification of the local social service and educational network, such as local churches, schools, the Salvation Army, YMCAs;

6. Location of nearest police precinct or responsible law enforcement agency;

7. Crime rate of the area; and

8. Availability of public transportation.

c. Residential/Office Facility

Applicants are required to set forth in detail comprehensive information regarding:

1. A physical description of the proposed facility including the proposed allocation of residential and office space; and

2. Documentation that the facility meets all relevant zoning, licensing, fire, safety and health codes required to operate a residentially-based social service program.

Copies of relevant documents must be submitted at the time of application.

If a properly zoned, licensed, or inspected facility is not available at the time of application, the applicant must submit a report on the progress made in obtaining the appropriate documentation, as noted above. This report consists of a description of the required documents, copies of correspondence to relevant local officials or offices from which they will be obtained, and the means and time-lines for obtaining the documentation.

d. Community Support

Applicants are required to detail those measures which have and will be taken to develop and maintain:

(1) Community receptivity and support and/or reduce community opposition to the program and its clientele;

(2) On-going communication with the relevant INS office and with the relevant law enforcement agency; and

(3) An Advisory Committee for the Special Placement Program.

Such measures must be supported by appropriate documentation, as outlined in the Application Addenda Material.

4. General Program Design

Applicants are required to set forth in detail a comprehensive narrative which includes:

a. Client Population

1. A description of the client population to be served and the client selection criteria proposed by the applicant;

2. Total number of clients to be resettled during the entire proposed Program Performance Period (up to 36 months); and

3. The number of clients to be served during each cycle and the number of cycles to be accepted during each budget year (A cycle is comprised of 20 clients; programs normally serve a total of 60 clients or three cycles of clients in a budget year).

b. Program Periods

1. An estimate of program start-up time; that is, the period during which the program operations will begin and staff hiring and training will occur, and a description of the activities which will occur during this time;

2. A description of the program periods, including period length and services to be rendered in each period;

3. A description of the criteria for clients to enter the community follow-up period; and

4. A flow chart or time-line which identifies significant milestones during each period.

c. Program Phases

1. A description of the phases within the residential and community follow-up periods, including the length of each phase and the services to be rendered during each phase;

2. A description of the criteria for clients to pass from one phrase to another; and

3. A flow chart or time-line which identifies significant milestones during each phase.

d. Applicant Organization/Agency Management Plan Applicants are required to submit a comprehensive plan which outlines the proposed management of the program. The plan must include the following:

1. A comprehensive organizational chart of the applicant organization or agency, which:

a. Show the overall lines of authority and responsibility in the organization or agency as a whole;

b. Shows the relationship of the proposed program to other organization or agency programs; and

c. Shows the relationship of the local level affiliate to the national-level organization, if applicable.

2. Identification of the staff member who will assume overall supervision of the program at the applicant organization or agency level.

3. A description of the methods for the administration and supervision of the program by the applicant organization or agency.

4. A description of the means of communication among the various levels of program administration.

5. For national-level organizations whose local-level affiliates will administer the program, the following material must also be included in the applicant management plan:

A description of the specific services to be rendered by the national level organization to its local-level affiliate; the specific services to be rendered by the affiliate; and a monitoring plan.

e. Local-Level Affiliate Management Plan

For national-level organizations whose local-level affiliate will be responsible for the administration and operation of the program, a management plan must also be included which contains the following:

1. A comprehensive organizational chart of the local-level affiliate which:

a. Shows overall lines of authority and responsibility within the local-level affiliate; and

b. Shows the relationship of the proposed program to other agency programs.

2. Identification of the local-level affiliate staff member who will assume overall responsibility for the program.

3. A description of the methods for the administration and supervision of the program which identifies all responsible staff members.

f. Special Placement Program Management and Staffing Model.

This plan refers to the administration, management and staff of the actual Special Placement Program.

For both the residential and community-based follow-up periods, identify or discuss:

1. The staff member responsible for the overall program management and staff supervision;

2. A plan to ensure intraprogram coordination and communication;

3. The staffing pattern, including a comprehensive organizational chart of the proposed program showing lines of authority, responsibility and supervision;

4. A proposed staff schedule;

5. Proposed staff training;

6. The roles of consultants and rationale for their use;

7. The role of volunteers, if applicable.

5. Basic Services—Residential Period

Applicants are required to provide a detailed narrative description of the following services to be rendered and the method of service delivery:

a. Housing;

b. Food Service;

c. Clothing;

d. Arrival Package;

e. Stipends;

f. Medical Services;

g. Transportation, and;

h. Resettlement Package.

6. Residential Program Services (4 months)

Applicants are required to provide a detailed narrative description of the following services and the method of service delivery, including identification of community resources which will be accessed to provide or to enhance such services.

a. Orientation to the Program and to the Local Community.

b. Counseling Services, including:

1. Individual Counseling;

2. Group Counseling; and

3. Substance Abuse Counseling.

c. Employment Development, Placement and Maintenance Services.

d. English Language Training and Assistance with Higher Education or Vocational Training.

e. Life Skills Instruction.

f. Assistance in Obtaining Documents, i.e., Social Security Cards and new I-94 cards.

g. Recreational Services.

h. Resettlement Transition Plan.

7. Community-Based Follow-Up Services (14 months)

Applicants are required to provide a detailed narrative description of the services to be rendered and the method of service delivery, including the frequency with which services will be rendered:

a. Basic Services

1. Emergency Assistance, and;

2. Medical Coverage.

b. Program Services.

1. Individual Counseling;

2. Information and Referral Services;

3. Job Development, Placement, and Counseling Services;

4. Comprehensive Crisis Intervention Services; and
5. A Comprehensive Discharge Plan.

8. Program Records and Accountability

Applicants are required to set forth a detailed narrative describing the following:

a. Internal administrative controls, such as daily logs, weekly staff meetings, in-house client meetings, program policies and procedures;

b. Administrative program records such as cash disbursement records, inventory lists, medication dispensing records, food allocation, and similar files;

c. Methods for ensuring 24 hour monitoring of the program and its clients, such as sign-in/sign-out sheets and a pass system;

d. The reward/sanction system;

e. Disciplinary and grievance procedures;

f. Room search and pat-down procedures and frequency; and

g. A plan for testing for substance abuse.

9. Case Management System and Client Records, including:

a. A description of the case management system for tracking and monitoring client progress;

b. A description of individual client service plans, including time lines for routine review and revision of plans; and

c. A description of the client case files, i.e., types of records to be maintained.

10. Program Evaluation

Applicants must set forth a plan for program evaluation which includes, at minimum, data pertaining to and an assessment of:

1. Achievement of overall stated goals and objectives of the program;
2. Client statistics, including number completing program, parole revocations, AWOL cases, serious incidents, and arrests;
3. Major program components, particularly employment;
4. Factors contributing to or inhibiting successful delivery of services; and
5. The program relationship with the local community.

11. Budget and Budget Narrative

a. A Proposed Budget

More detailed information concerning budget categories is contained in the "Special Placement Program—Program Description and Requirements" Document. The following budget structure should be used to provide appropriate costs breakdowns:

1. Personnel;
2. Fringe Benefits;
3. Travel Costs;
4. Equipment;
5. Supplies;
6. Contractual Obligations;
7. Renovation Costs (if applicable);
8. Direct Client Costs;
9. Other; and
10. Indirect Costs.

b. Budget Narrative

A narrative explanation for each line item in each budget category must accompany the proposed budget.

12. Application Addenda Material

Applicants are required to submit the following material as an addendum to the program proposal. This material is required for all participating agencies, i.e., applicant organizations as well as local-level affiliates, as applicable:

a. Organization/Agency Administration

1. A copy of the Organization/Agency's Articles of Incorporation;
2. A copy of the document verifying IRS status as a non-profit organization/agency, if applicable;
3. A list of officers and board members, if applicable; and
4. A list of professional affiliations and certifications.

b. Organizational/Agency Standards and Policies

1. Personnel handbook and statement of standards of conduct;
2. Statement regarding professional and agency liability; and
3. Copy of policy regarding confidentiality of client information and records.

c. Staff

1. Position descriptions and resumes, if individuals have been identified for certain positions, for all personnel to be hired for both the residential and community-based follow-up periods, and of individuals responsible for administering the program from the applicant organization and local-level affiliate, as applicable; and
2. Resumes of program consultants.

d. Community Support

1. A proposed list of Advisory Committee members; and
2. Letters of program support. Sources must be located in, or representative of the proposed resettlement community, i.e., the immediate geographic area in which the proposed facility is located. Appropriate sources include, but are not limited to, local political representatives, law enforcement officials, community leaders, social service agencies representatives, merchants, and potential employers.

Applicants may also submit letters from other sources as supplemental material to the site-specific letters of support;

3. Letters showing that the relevant INS District Office and the relevant law enforcement agency have been notified of the program's purpose and intent; and
4. A list of voluntary or donated resources, including letters of intent from agencies or entities providing the resources.

e. Finance and Budget

1. A description of the financial management system of the applicant and local-level affiliate, as applicable;
2. A copy of the latest financial audit of the applicant and local-level affiliate, as applicable; and
3. A listing of other Federal, State, local or foundation grants or contracts administered by the applicant and local-level affiliate, as applicable.

The material should include information regarding the funding source, grant or contract number, level of financial support, purpose of grant or contract, grant or contract performance period, and name, address, and telephone number of the grant or contract officer from the relevant agency.

f. Subcontracts

Subcontracts refer to those procurement arrangements which will be entered into by the Special Placement Program for the delivery of certain goods or services, such as food catering or renovations, which will not be provided directly by the program.

1. Identify all proposed services which are to be provided through subcontractors;
2. Provide relevant background material regarding the proposed subcontractors;
3. Provide letters from the proposed subcontractors indicating their commitment and the specific goods and services to be provided.

Application Screening Criteria

The Community Relations Service will screen all applications submitted pursuant to this Notice. Screening shall be done to determine whether an application is sufficiently complete to warrant consideration and review by the independent CRS Review Panel.

An application may be rejected if:

1. The application is from an ineligible applicant or, in the case of national-level organizations, the applicant or its local-level affiliate does not meet the eligibility criteria contained in this notice.
2. The application is received after the stated closing time and date.
3. The application omits:

a. Relevant documentation regarding the proposed residential/office facility;

b. Documented written evidence of community support for the program;

c. A comprehensive line item budget with appropriate narrative description; and

d. A copy of the latest financial audit of the applicant and of the local-level affiliate, if the applicant is a national-level organization.

Criteria for Evaluation of SPP Applications

SPP applications will be competitively reviewed, evaluated and ranked by an independent review panel, according to the following weighted criteria:

1. The qualifications of the applicant organization or agency, and the local-level affiliate, if applicable, with respect to:

• Demonstrated experience in : (1) The resettlement of or provision of services to Cuban entrants or similar populations; (2) the administration of residential, community-based programs for ex-offenders; or, (3) the administration of other types of residential, community-based rehabilitative programs, and;

• Demonstrated capacity for effective programmatic and fiscal management and accountability. (10 points)

2. The rationale for the proposed program location as evidenced by:

• The quantitative and qualitative descriptions of the characteristics of the proposed resettlement city and proposed resettlement community;

• The institutional presence or broad support base of the applicant agency, or, the presence of a local-level affiliate in the proposed resettlement city, and;

• Documentation of community support. (10 points)

3. The availability of a suitable residential/office facility and submission of required documentation regarding facility compliance with applicable health, safety, licensing, and zoning regulations or requirements. (15 points)

4. The adequacy of the overall general program design in terms of:

• Proposed client load and selection criteria;

• Proposed period and phase activities, time-lines, and services, and criteria for entering various program periods and phases;

• Proposed plans for overall agency management and program management, including clear organizational charts reflecting lines of authority and responsibility, and;

• Staff qualifications, staffing patterns, and proposed staff training. (15 points)

5. The capacity for providing required program services, as demonstrated by:

• The program plan to provide basic services during all phases and periods of the program;

• An integrated program plan to provide all program services during the residential and community follow-up periods, particularly with regard to providing full-time, permanent employment for clients, and;

• Sensitivity to the issues of culture, race, ethnicity and native language and use of resources which promote and foster cultural identification and mutual support. (15 points)

6. The degree to which the applicant provides for effective program structure and accountability as demonstrated by administrative and programmatic controls, as well as program and client records and reports. (10 points)

7. The reasonableness of the proposed budget and budget narrative. (10 points)

8. The adequacy of the program evaluation plan. (5 points)

9. The submission of the requested Application Addenda Material. (10 points)

Application Requests and Submissions

Eligible applicants may request Proposal Application Packages from the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attention: Cynthia Bowie, Senior Grants Management Specialist.

Proposal Application Packages may also be obtained by contacting the Community Relations Service at 301-492-5818, or, 1-800-424-9304.

Applicants must submit a signed original and two (2) copies of the proposal and supporting documentation to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attention: Cynthia Bowie, Senior Grants Management Specialist.

Applications Delivered by Mail

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

1. A legible 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.

If an application is sent through the U.S. Postal Service, the Director 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.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with its local Post Office.

Applicants are encouraged to use registered or at least First Class mail. Each late applicant will be notified that the application will not be considered.

Applications postmarked on or before 5 p.m. (Eastern Daylight Time), July 31, 1987, shall be considered as timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

The Grants Management Office will accept hand delivered applications between 9:00 a.m. and 5:00 p.m., Eastern Daylight Time, daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 5:00 p.m., Eastern Daylight Time, on the closing date.

Catalogue of Federal Domestic Assistance Number: 16.201.

Dated: May 26, 1987.

Bertram Levine,

Associate Director, Office of Policy Development.

Intergovernmental Review

Application Requirements

Pursuant to Executive Order, 12372, *Intergovernmental Review of Federal Programs,* all States have the option of designing procedures for the review and comment on Federally assisted programs.

Each applicant is required to notify each State in which it is proposing activities under this Announcement and to comply with the States established review procedures. This may be done by contacting the applicable State Single Point of Contact (SPOC).

State Requirements

Comments and recommendations relative to applications submitted under this solicitation should be mailed no later than 60 days after the day of publication, addressed to: Richard Gutierrez, Coordinator, Immigration and Refugee Affairs, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

[FR Doc. 87-12308 filed 5-28-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; North Hampton Developers, Inc., et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Northampton Developers, Inc., et al.*, Civil Action No. 86-0019-F, was lodged with the United States District Court for the District of Massachusetts on May 19, 1987.

The proposed consent decree concerns violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, codified at 40 CFR § 61.20, *et seq.*, (1983) and the Clean Air Act, 42 U.S.C. 7401, *et seq.* during the renovation and conversion of a dormitory into a condominium in Northampton, Massachusetts. The proposed decree requires Northampton to comply with the Clean Air Act and the asbestos NESHAP regulations. The proposed decree also requires payment of a $40,000 civil penalty.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Northampton Developers, Inc., et al.*, D.J. Ref. No. 90-5-2-1-891.

The consent decree may be examined at the office of the United States Attorney, District of Massachusetts, 1550 Main St., Rm. 533, Springfield, Mass. 01103; at the Region I office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Mass. 02003; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-12218 Filed 5-28-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-19, 104]

Lakeview Manufacturing Co.; Lakeview, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Lakeview Manufacturing Company, Lakeview, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-19,104;
Lakeview Manufacturing Company, Lakeview, Ohio (May 18, 1987).

Signed at Washington, DC, this 21st day of May 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-12293 Filed 5-28-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,487]

Philips ECG, Inc.; Seneca Falls, NY; Negative Determination Regarding Application for Reconsideration

By an application dated March 26, 1987, the United Steelworkers of America requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Philips ECG, Inc., Seneca Falls, New York. The denial notice was signed on February 10, 1987 and published in the **Federal Register** on March 2, 1987 (52 FR 6238).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union cites testimony from a company official that the production shutdown of data display units is an extension of an earlier shutdown of color TV production where workers were certified eligible to apply for adjustment assistance. Also, the union presents evidence that the presence of foreign competition in color data display units was a strong reason in the company's decision not to invest more heavily in data display manufacturing.

Certification under the Trade Act of 1974 is based upon increased imports of articles which are like or directly competitive with the articles produced by the workers' firm or appropriate subdivision and which contributed importantly to declines in sales and/or production and employment. During the period applicable to the petition, the workers at Seneca Falls produced data display tubes for computer monitors, a different product from color television tubes. Granted, earlier on reconsideration, workers at Seneca Falls who produced picture tubes for color television sets were certified for adjustment assistance from March 8, 1985 until October 1, 1985 (TA-W-15,844). However, this would not form a basis for certifying workers laid off during the period applicable to this petition. The claim that the Seneca Falls plant could not be operated in a cost effective manner after the production shutdown of a different article cannot be used as a basis for certification under the worker adjustment assistance provisions of the Trade Act.

Further, not to invest in a market where foreign competition is strong would not, in itself, form a basis for certification. In order for a worker group to become certified and be eligible to apply for adjustment assistance, it must meet all three group eligibility criteria of the Group Eligibility Requirements of the Trade Act.

Findings in the investigation show that the "contributed importantly" test of the increased import criterion was not met. The "contributed importantly" test is generally demonstrated through a survey of the subject firm's customers. The Department's survey of Philips ECG's customers who accounted for a major share of the Philips' 1985 and 1986 sales declines of data display tubes shows that none of the respondents had import purchases of data display tubes for computer monitors.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of May 1987.

Barbara Ann Farmer,

Acting Director, Office of Program Management, UIS.

[FR Doc. 87-12294 Filed 5-28-87; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the pubic interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC87-1 (January 2, 1987)..... pp. 86-95.
Maryland:
MD87-2 (January 2, 1987)..... pp. 418-422.
MD87-15 (January 2, 1987 .... pp. 450-451.

Volume II

Illinois:
IL87-3 (January 2, 1987)..... p. 114.
IL87-12 (January 2, 1987)..... p. 165.
IL87-13 (January 2, 1987)..... p. 176.
IL87-14 (January 2, 1987)..... pp. 186-188.
Indiana:
IN87-6 (January 2, 1987)..... p. 305.
Michigan:
MI87-2 (January 2, 1987)..... pp. 426-438a.
Ohio:
OH87-1 (January 2, 1987)..... pp. 720-721, p.723.
OH87-2 (January 2, 1987)..... pp. 734-735.
OH87-3 (January 2, 1987)..... p. 753.
OH87-28 (January 2, 1987)... pp. 812-813
OH87-29 (January 2, 1987)... pp. 818-819, pp. 821-828, pp. 830,835, and p. 838.
Texas:
TX87-7 (January 2, 1987)..... p. 938.

Volume III

California:
CA87-1 (January 2, 1987)..... pp. 36-38.
Idaho:
ID87-4 (January 2, 1987)..... pp. 162-163.
Oregon:
OR87-1 (January 2, 1987)..... p.277, pp. 283-284.
Washington:
WA87-1 (January 2, 1987).... pp. 347-348.
WA87-2 (January 2, 1987).... p. 354.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 2nd Day of May 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-12268 Filed 5-28-87; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[87-47]

Government-owned Inventions; Availability for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly foreign licensing.

Copies of patent application cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.00 each ($10.00 outside North American Continent.) Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: May 29, 1987.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Dennis Marchant, Director of Patent Licensing, Code GP, Washington, DC 20546, telephone (202) 453-2420.

Patent Application 904,128: Moving Wall, Continuous Flow Electrophoresis Apparatus; filed September 5, 1986.

Patent Application 911,851: Space Ultra-Vacuum Facility and Method of Operation; filed September 26, 1986.

Patent Application 924,472: Method and Apparatus Measuring Frequency and Phase Difference; filed October 29, 1986.

Patent Application 921,575: Thin Element Riblet Surface; filed October 21, 1986.

Patent Application 924,400: Scalloped Geometry Solar Concentrator; filed October 29, 1986.

Patent Application 924,397: Locking Hinge; filed October 29, 1986.

Patent Application 925,189: Method and Apparatus for Growing Crystals; filed October 31, 1986.

Patent Application 929,862: Method for Laminer Boundary Layer Transition Visualization in Flight; November 13, 1986.

Patent Application 933,962: Method and Device for Determining Heats of Combustion of Gaseous Hydrocarbons; filed November 24, 1986.

Patent Application 933,941: Frequency Domain Laser Velocimeter Signal Processor; filed November 24, 1986.

Patent Application 927,987: Local Area Network With Fault-Checking Priorities and Redundant Backup; filed November 7, 1986.

Patent Application 929,876: Trellis Coded Modulation for Transmission Over Fading Mobile-Satellite Channel; filed November 13, 1986.

Patent Application 927,972: Remotely Controllable Real-Time Optical Processor; filed November 7, 1986.

Patent Application 930, 217: Isotope Separation Using Tuned Laser and Electron Beam; filed November 13, 1986.

Patent Application 933,963: High Performance Forward Swept Wing Aircraft; filed November 24, 1986.

Patent Application 933,961: Procedure To Prepare Transparent Silicon Gels; filed November 24, 1986.

Patent Application 927,992: Multi-Path Peristaltic Pump; filed November 7, 1986.

Patent Application 928,875: Expandable Pallet For Space Station Interface Attachments; filed November 13, 1986.

Patent Application 929,865: Space Station Erectable Manipulator Placement System; filed November 13, 1986.

Patent Application 942,159: Orbital Maneuvering and End Effectors; filed December 16, 1986.

Patent Application 943,346: High Effectiveness Contour Matching Contact Heat Exchanger; filed December 19, 1986.

Dated: May 20, 1987.

Edward A. Frankle,

Deputy General Counsel.

[FR Doc. 87-12274 Filed 5-28-87; 8:45 am]

BILLING CODE 7510-01-M

[Notice 87-46]

NASA Wage Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Wage Committee.

DATE AND TIME: June 26, 1987, 1:30 p.m. to 3:00 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 5092, Federal Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah C. Green, Code NPC, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2622.

SUPPLEMENTARY INFORMATION: The Committee's primary responsibility is to consider and make recommendations to the NASA Director, Personnel Programs Division, on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area, pursuant to Pub. L. 92-392. The Committee, chaired by Ms. Deborah Green, consists of six members. During this meeting, the Committee will consider wage data, local reports, recommendations, and statistical analyses and proposed wage schedules previewed therefrom. Discussions of these matters in a public session would constitute release of confidential commercial and financial information obtained from private industry. Since the session will be concerned with matters listed in 5 U.S.C. 552b(c)(4), it has been determined that this meeting will be entirely closed to the public. However, members of the public who may wish to do so, are invited to submit material in writing to the Chairperson concerning matters believed to be deserving of the Committee's attention.

Type of Meeting: Closed.

Purpose of Meeting: The NASA Wage Committee will recommend to the NASA Wage Fixing Authority the proposed wage schedule to be adopted.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

May 21, 1987.

[FR Doc. 87-12273 Filed 5-28-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel (Services to the Field Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on June 12, 1987, from 9:15 a.m.-6:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 12, 1987 from 9:15 a.m.-10.30 a.m. and 4:45 p.m.-6:00 p.m. The topics for discussion will include geneal program overview and policy issues.

The remaining sessions of this meeting on June 12, 1987 from 10:30 a.m.-4:45 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682 5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 21, 1987.

[FR Doc. 87-12219 Filed 5-28-87; 8:45 am]

BILLING CODE 7537-01-M

Literature Advisory Panel (Translators Fellowships Section), Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Translators Fellowships Section) to the National Council on the Arts will be held on June 12, 1987, from 9:00 a.m.-5:30 p.m. and June 13, 1987 from 9:00 a.m.-2:00 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 13, 1987 from 12:00 p.m.-1:00 p.m. The topics for discussion will be policy issues.

The remaining sessions of this meeting on June 12, 1987 from 9:00 a.m.-5:30 p.m. and on June 13, 1987 from 9:00 a.m.-12:00 p.m. and 1:00 p.m.-2:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 21, 1987.

[FR Doc. 87-12220 Filed 5-28-87; 8:45 am]

BILLING CODE 7537-01-M

Partnership Advisory Panel (Locals Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office for Partnership Advisory Panel (Locals Section) to the National Council on the Arts will be held on June 15-16, 1987, from 9:00 a.m.-5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 16, 1987 from 2:00 p.m.-5:30 p.m. The topics for discussion will be policy issues.

The remaining sessions of this meeting on June 15, 1987 from 9:00 a.m.-5:30 p.m. and on June 16, 1987 from 9:00 a.m.-2:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 22, 1987.

[FR Doc. 87-12221 Filed 5-28-87; 8:45 am]

BILLING CODE 7537-01-M

Plenary Meeting XV of the President's Committee on the Arts and the Humanities; Meeting

Tuesday, June 16, 1987 at nine o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Plenary Meeting XV. This meeting has been scheduled in the Trustees Room, The Art Institute of Chicago, Chicago, Illinois. This is a regularly scheduled meeting at which committee activities will be reviewed and progress reported.

Agenda items on June 16 will include:

- Briefings by the Chairman of the National Endowment for the Arts and the National Endowment for the Humanities on the highlights of their activities.
- The Honorable Daniel J. Terra, Ambassador at Large for Cultural Affairs will describe the development of his own new Terra Museum of American Art.
- Co-Vice Chairman Barnabas McHenry will report progress of the Fund for *New American Plays.*
- The Honorable Lois Burke Shepard, Director of the Institute of Museum Services will discuss *Conservation, The Critical Need: Perspective, Purpose and Plans.*

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment their operational costs and support projects and programs which have been initiated by the President's Committee.

For further information individuals may call (202) 682-5409.

John H. Clark,

Director, Council and Panel Operation, National Endowment For The Arts.

May 21, 1987.

[FR Doc. 87-12222 Filed 5-28-87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-549 (ASLBP No. 76-315-07CP]

Power Authority of the State of New York (Greene County Nuclear Power Plant); Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Power Authority of the State of New York* (Green County Nuclear Power Plant), Docket No. 50-549, is hereby reconstituted by appointing Administrative Judge Charles Bechhoefer in place of Administrative Judge Andrew C. Goodhope, who has resigned.

As reconstituted, the Board is comprised of the following Administrative Judges: Charles

Bechhoefer, Chairman; Dr. George A. Ferguson, and Dr. Richard F. Cole.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 19th day of May 1987.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 87-12306 Filed 5-28-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Review of Circular A-102, "Uniformed Administrative Requirements for Assistance to State and Local Governments"; Availability of Proposed Application and Financial Reporting Forms

AGENCY: Financial Management Division, Associate Director for Management, Office of Management and Budget.

ACTION: Notice of proposed, revised grant application and financial reporting forms.

SUMMARY: A 20-agency task force under the President's Council on Management Improvement (PCMI), chaired by OMB, was established to explore streamlining grants management and review OMB Circular A-102, "Uniformed Administrative Requirements for Grants to State and Local Governments." As part of that effort, agencies reviewed the standard application and financial reporting forms prescribed in the Circular, as well as the need for new, standardized financial reporting formats for the open-ended entitlement programs.

A copy of the proposed, revised application and financial reporting forms, as well as the proposed new standardized financial reporting formats for the entitlement programs, is available at the address below for public comment.

SUPPLEMENTARY INFORMATION:

Background

OMB Circular A-102, "Uniformed Administrative Requirements for Assistance to State and Local Governments," promulgates standards for establishing consistency and uniformity among Federal agencies in the administration of grants and other types of financial assistance to State, local, and federally-recognized Indian tribal governments. The Circular standardizes and simplifies grants administration requirements and limits Federal agencies' imposition of "excessive" requirements on grantees.

A notice announcing review of the Circular was published in the **Federal Register** on June 18, 1984 (49 FR 24958). The notice explained the purpose and process of the review, and made available a document setting forth over 50 potential policy issues and options.

As a part of that effort, agency teams reviewed the existing sets of standard froms presented in the Circular as well as the need of new, standard financial reporting formats for the open-ended entitlement programs. This notice presents the results of the review of the forms. Public comment on all aspects of the forms is welcome, including whether these forms should be "Standard Forms." Following review of public comment, we will formally submit the revision to OMB's Office of Information and Regulatory Affairs.

On March 12, 1987, the President signed a memorandum to the 23 grant-making agencies directing them to simultaneously propose and issue a common rule that adopts government-wide grants management terms and conditions for grantees. A proposed common rule will be published on June 9, 1987; a final common rule will be published on March 11, 1988. The common rule will require use of the revised standard forms and new formats for the open-ended entitlement programs.

Application Forms

Circular A-102 currently prescribes four standard application forms and the SF-424 facesheet. Based on recommendations and suggestions following the June 18, 1984 notice, agencies have drafted two proposed forms as a replacement:

- Application/Preapplication for nonconstruction assistance.
- Application/Preapplication for construction assistance.

Each includes a revised SF-424 facesheet followed by appropriate budget detail and standard assurances.

Financial Reporting Forms

Circular A-102 now requires grantees to report expenditures on the SF-269, "Financial Status Report."

The General Accounting Office, as well as several Inspectors General, have called for more complete reporting of grantee matching or cost sharing contribution, and better reporting on the use of program income according to the three alternatives offered in Attachment K of the Circular. Accordingly, two financial reporting forms are proposed:

- SF-269, Financial Status Report (short form).
- SF-269, Financial Status Report (long form).

The short form is a simplified version of the current SF-269 for grants with no program income or matching share. The long form provides a complete reporting and calculation of the Federal share for grants where the grantee has a matching requirement or where program income is attributable to grant activities.

Entitlement Programs

A number of the largest grant programs to States are entitlement programs with an open-ended claim on Federal funds. Among these programs are a number operated by the Department of Health and Human Services (HHS), such as:

—Aid to Families with Dependent Children (AFDC)
—Medicaid
—Child Support Enforcement
—Foster Care

and others by the Department of Agriculture (USDA)

—the state administrative costs portion of Food Stamps.

These programs differ from traditional grants in that they provide benefits to all qualified persons or families that apply, so that spending levels depend on the number of qualified individuals rather than an agency's grant award decision.

In the past and currently, each of these programs has used its own tailored financial reporting forms instead of the SF-269, "Financial Status Report," prescribed in Circular A-102.

New standardized financial reporting formats are proposed to introduce complete, consistent and logical reporting among the open-ended entitlement programs.

Paperwork Clearance

In the meantime, we have re-submitted the existing standard forms to OMB's Office of Information and Regulatory Affairs (OIRA) for clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) with a request to extend the expiration date to July 1989.

Titles and form numbers:

—Preapplication for Federal Assistance, SF-424
—Application for Federal Assistance—Short Form, SF-424
—Application for Federal Assistance—Nonconstruction, SF-424

—Application for Federal Assistance—Construction, SF-424
—Financial Status Report, SF-269
—Request for Advance or Reimbursement, SF-270
—Outlay Report and Request for Reimbursement for Construction Programs, SF-271
—Federal Cash Transaction Report SF-272, SF-272a

Type of Request: Extension of the expiration date.

Need and use: The application forms are used to qualify and select grant applicants; the financial reporting forms are used to monitor and pay grantees.

Affected public: State, local and Indian tribal governments which apply for and administer Federal grants.

Frequency: Application forms are submitted on occasion; financial reports no more frequently than quarterly.

Respondent's obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ed Springer, (202) 395-4814.

A copy of the existing forms can also be obtained from the Financial Management Division/Grants Management (see address below). Written comments should be sent to the OMB Desk Officer.

Address for Information and Comments

A copy of each or all three (3) sets of draft forms is available by calling (202) 395-3050 or writing to the Financial Management Division/Grants Management, Office of Management and Budget, Room 10215 New Executive Office Building, Washington, DC 20503. All written comments should be submitted to the same address by July 28, 1987.

Gerald R. Riso,

Associate Director for Management.

[FR Doc. 87-12287 Filed 5-28-87; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549

Extension: Rule 15c3-3; File No. 270-87

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval a revision of a currently approved collection under Rule 15c3-3 (17 CFR 240.15c3-3) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which requires brokers or dealers to prepare computations with respect to the amount of customer funds they must deposit in Reserve Bank Accounts. The potential affected persons are approximately 1,000 registered broker-dealers per year.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395-7340, Office of Information and Regulatory Affairs, Room 3228, NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

May 21, 1987.

[FR Doc. 87-12244 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24480; File No. SR-ODD-87-2]

Self-Regulatory Organizations; Trans Canada Options, Inc.; Order Granting Approval to Proposed Amendments to Option Disclosure Document

On April 10, 1987, Trans Canada Options, Inc. ("TCO"), submitted amended copies of an options disclosure document to the Commission pursuant to Rule 9b-1 of the Securities Exchange Act of 1934 ("Act"). The amended disclosure document discusses the characteristics and risks of Canadian exchange-traded put and call options available to United States investors. Previously, on October 2, 1984, the Commission approved the use and distribution of a TCO disclosure document which discussed the risks and uses of options on equity securities.[1] In addition, on August 21, 1985, the Commission approved an amended TCO disclosure document that incorporated discussion of the risks and uses of Canadian exchange-traded index and bond options.[2] TCO has now further amended its disclosure document by deleting sections describing the uses of option products and focusing on the characteristics and risks of standardized options.[3] TCO also is expanding the document to include a discussion on the characteristics and risks of options on the Government of Canada Treasury Bill Price Index.

Rule 9b-1 provides that an options market must file five preliminary copies of an amended options disclosure document with the Commission at least 30 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise, having due regard to the adequacy of the information disclosed and the protection of investors. The Commission has reviewed the amended disclosure document, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the disclosure document as of the date of this order.[4]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 19, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12245 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities Exchange Act Release No. 21365 (October 2, 1984), 49 FR 39400 (October 5, 1984).

[2] Securities Exchange Act Release No. 22349 (August 21, 1985).

[3] On April 10, 1986, the Commission approved amendments to Rule 9b-1 that deleted from the Rule the requirement that the options disclsure document contain information regarding the uses of the options classes covered by the document. The Rule was amended because investors and market participants had become more knowledgeable about the uses of options and the discussion of uses and trading strategies had become largely redundant. Discussion of the uses of listed options products has been retained in options disclosure documents to the extent that it facilitates explanation of the characteristics and risks of options products. *See* Securities Exchange Act Release No. 34-23115 (April 10, 1986), 51 FR 14982 (April 22, 1986).

[4] Rule 9b-1 provides that the use of an options disclosure document shall not be permitted unless the options class to which the document relates is the subject of an effective registration statement on form S-20 under the Securities Act of 1933. On May 12, 1987, the Commission, pursuant to delegated authority, declared effective Post-Effective Amendment No. 7 to TCO's Form S-20 registration statement which added index options and interest rate options. *See* File No. 2-69458.

[Release N. 34-24489; File No. SR-NYSE-86-24]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc.

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted on August 22, 1986 and January 7, 1987, copies of a proposed rule change and an amendment pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder to reposition three Exchange Constitutional provisions regarding arbitration, revise its schedule of arbitration fees, and adopt a new rule, on a one year experimental basis, requiring contesting parties to an arbitration hearing to exchange documents ten days prior to the scheduled hearing date.[1]

[1] The NYSE filed Amendment No. 1 to its proposed rule change January 7, 1987.

Proposed Rule 635 would authorize the Chairman of the Board of Directors ("Chairman") to appoint present or former Exchange members and officers of member corporations to a Board of Arbitration. Proposed Rule 636 would authorize the Chairman to appoint retirees of the securities business to one of two panels or arbitrators. Proposed Rule 637 would authorize the Chairman to appoint a Director of Arbitration without the approval of the Exchange Board or Directors.[2]

The Exchange is also proposing to revise its schedule of arbitration fees set forth in NBYSE Rules 630 and 632. The proposed amendments would increase the required deposit by claimants in non-member controversies from $300 to $400 where the amount in controversy is between $10,000 and $20,000.[3] Where the amount in controversy is between $20,000 and $50,000, the deposit fee would be reduced from the current $500 fee to $400. The current $500 fee would remain unchanged for amounts in controversy between $50,000 and $100,000. The deposit fee for claims where the amount in controversy is between $100,000 and $500,000 would be $750. The Exchange would impose a new $1,000 deposit fee for all cases exceeding $500,000.[4] Finally, the proposed amendments to Rule 630(c) would increase the maximum fee allowable in disputes which do not involve or disclose a money claim from $750 to $1000.

The proposed amendments to NYSE Rule 632 would increase the required deposit per hearing in cases involving member controversies from $100 to $200 where the amount in controversy is $5,000 or less;[5] and from $500 to $750 where the amount in controversy is $10,000 or more. In addition, where the controversy does not involve a money claim the Exchange will determine the required deposit, although the maximum deposit fee allowable in these cases is $1000.

The Exchange also proposes to adopt new Rule 638 that would require contesting parties to an arbitration to exchange documents in their possession that are intended to be introduced at the arbitration hearing at least 10 days prior to the scheduled hearing date. Under the proposed rule, the arbitrators can exclude from the arbitration any document not so exchanged. The NYSE has indicated that it intends to implement the new rule on a one year experimental basis.

Notice of the proposed rule change together with its terms of substance was given by issuance of a Commission release (Securities Exchange Act Release No. 24182, March 5, 1987) and by publication in the **Federal Register** (52 FR 7722, March 12, 1987). The Commission received one comment letter concerning the section of the proposed rule change relating to the proposal to require a 10-day pre hearing exchange of documents.[6] In addition to noting several concerns about the practical application of the rule, the letter questions the need for such a rule, giving current arbitration rules given arbitrators flexibility to exclude certain documents from evidence and to direct the production of other documents by a particular party.[7]

With regard to the repositioning of the NYSE Constitutional provisions, the Commission recognizes that an Exchange may need to revise and update portions of its Constitution to reflect trends within the securities industry, to respond to regulatory developments, or to implement managerial, financial, or administrative decisions of its Board of Directors. For the most part, the repositioning of certain constitutional provisions into the NYSE rule section do not involve any substantive changes and therefore should be approved. Rule 637 would, however, alter the former constitutional provision (Article VIII, Section 3) by allowing the Chairman, without Board approval, to appoint a Director of Arbitration. After reviewing this change, the Commission concludes that, from a managerial standpoint, it is reasonable and appropriate not to require full Board approval to appoint the Director of Arbitration.

Regarding the revised schedule of arbitration fees, section 6(b)(4) of the Act requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities. The Commission believes that the proposed revisions to the NYSE's schedule of fees is also reasonable. In those situations where the proposal would result in a fee increase, the Commission believes that the increase will help the NYSE defray a greater portion of the costs it incurs in providing an arbitration facility to its members and the public.[8]

Finally, with regard to proposed Rule 638 requiring a pre-hearing exchange of documents, the NYSE has indicated in its filing that it objective is to save arbitrator time by reducing the number of session hours required per hearing as well as avoid unnecessary hearing delays and recesses often associated with the introduction of unexpected evidence at an arbitration hearing. The NYSE believes that the proposed rule will result in more efficient and expeditious arbitration hearings. After careful review, the Commission has concluded that the proposed rule is a reasonable effort by the NYSE to improve its arbitration process by making arbitration hearings more cost-efficient and less time consuming. Although some of the practical concerns expressed by the commentator may be legitimate, we note that the rule simply gives the arbitrator the power to exclude evidence from the arbitration not exchanged at least ten days prior to the hearing rather than requiring, in all cases, that violations of the rule result in an exclusion of documents. In addition, it is clear that the rule would not be applicable in cases where the arbitration hearing has been set within 10 days on an expedited basis.

The Commission nevertheless believes that because of certain concerns over the practical applications of the rule and its effect on the arbitration process, the proposed rule

[2] Formerly, under Article VIII § 3 of the Exchange Constitution such appointment by the Chairman required the appoval of the Exchange Board of Directors. In Securities Exchange Act Release No. 22959, the NYSE eliminated this provision from its Constitution.

[3] Currently, NYSE Rule 630 provides that a $300 deposit is required where the amount in controversy is between $10,000 and $20,000; $500 where the amount in controversy is between $20,000 and $100,000; and $750 for all cases exceeding $100,000.

[4] We note that under the current rules, $750 is the maximum fee required.

[5] The Exchange indicates that this shall also be the fee for non-member claimants who are not public customers.

[6] See, letter from Thomas M. Campbell, Attorney, Cahill Gordon & Reindel to Johnathan G. Katz, Secretary, Securities and Exchange Commission, dated September 29, 1986.

[7] Specifically, the commentator noted that the proposed rule fails to account for practical difficulties associated with NYSE arbitrations, such as expedited arbitrations which are usually heard within 10 days as a result of a court order or by consent of the parties. In addition, in many complex cases (*e.g.*, where the documents intended to be introduced at the hearing are in the possession of a third party), documents which are intended to be introduced at the arbitration hearing are not available or cannot be identified before ten days prior to the hearing. The commentator also noted other practical difficulties encountered in NYSE arbitrations. He also observed that parties to an arbitration do not often subpoena or request documentary evidence from each other and to require them to do so would prove costly and unfair.

[8] We note that the revised arbitration fee schedule will conform it to the fee schedule adopted by the Uniform Code of Arbitration. The Commission recently approved a similar proposed rule change submitted by the American Stock Exchange, Inc. that made the same conforming amendments to its schedule of arbitration fees. *See*, Securities Exchange Act Release No. 24379, April 22, 1987, 52 FR 15577, April 29, 1987.

should be approved on a one year pilot basis. As a pilot program the Commission and Exchange will be able to analyze the rule to determine its effectiveness and discover any problems encountered in implementing the rule. In this regard, the Exchange has indicated it will evaluate the rule by utilizing both objective and subjective criteria.[9] The NYSE has agreed to submit to the Commission its evaluation results prior to the pilot's conclusion if it decides to propose adoption of the pilot on a permanent basis.

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: May 20, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12246 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24474; File No. SR-NYSE-86-21]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Revision of List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A "Imposition of Fines for Minor Violation(s) of Rules"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1986, the New York Stock Exchange, Inc., ("NYSE" or "Exchange") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to revise the list of Exchange rule violations and fines applicable thereto pursuant to Rule 476A, "Imposition of Fines for Minor Violation(s) of Rules," (the "Rule 476A Violations List") by adding to the list various rules administered by the Exchange's Member Firm Regulation/Enforcement and Regulatory Standards Divisions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizaton has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 476A [1] provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules. The purpose of the Rule 476A procedure is to provide for a response to a rule violation when a meaningful sanction is appropriate but when the initiation of a full disciplinary proceeding would be more costly and time consuming than would be warranted given the minor nature of the violation. Rule 476A provides for such an appropriate response to minor violations of certain Exchange rules while, through its specified required procedures, preserving the due process rights of the party accused. The Rule 476A Violations List specifies those rule violations that may be the subject of fines under the rule and also includes a schedule of fines. The purpose of this proposed rule change is to add certain rules to the Rule 476A Violations List. The types of rules covered generally include reporting and record retention requirements, Exchange approval requirements, and other rules for which, in the opinion of the Exchange, determinations of violations can be made objectively.[2]

The proposed rule change will advance the objectives of section 6(b)(6) of the Securities Exchange Act of 1934 (the "Act") in that it will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7) and 6(d)(1) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that this proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change from members, participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

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[9] According to the Exchange, the objective criteria will consist of statistics enumeriating the average number of sessions per matter for closed matters as well as the number of adjournments per matter on a per year basis. These statistics will be compared with past years' statistics to determine whether the experiment has been a success as indicated by a leveling off or decrease in the number of sessions per matter. The Exchange will also solicit the opinions of the arbitrators to ascertain whether actual session time has decreased.

[10] 17 CFR 200-30.3.

[1] Rule 476A was approved by the Commission on January 25, 1985 (see Release No. 34-21688). Subsequent additions of rules to the Rule 476A Violations List were approved on May 14, 1985 (See Release No. 34-22037), October 2, 1985 (see Release No. 34-22496) and April 11, 1986 (see Release No. 34-23104).

[2] NYSE Rule 476A likewise serves as the basis for the NYSE minor rule violation plan, which was approved by the Commission pursuant to Rule 19d-1(c)(2) of the Act. The plan, which permits quarterly reporting of certain Exchange violations to the Commission, extends only to those disciplinary proceedings under Rule 476A which result in fines of $2,500 or less. *See* Securities Exchange Act Release No. 22415 (September 15, 1985).

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. The Commission also solicits comments on the appropriateness of the inclusion of certain NYSE Rules within the NYSE minor rule violations plan. Specifically, the Commission invites comment on the NYSE's plan to include its Rules 408(a) (requirement that written authorization be obtained for discretionary power in a customer's account); 432(a) (daily record of required margin); 451 and 452 (requirements relating to transmission of proxy material and authorizing the giving of proxies); and 726 (option disclosure document and prospectus delivery requirements). Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted by June 19, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 19, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12247 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24483; File No. 4-284]

Self-Regulatory Organizations; Notice of Filing of Proposed Plan by the New York Stock Exchange, Inc., Relating to the Quarterly Reporting of Minor Disciplinary Rule Violations

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19d-1(c)(2) thereunder,[1] notice is hereby given that on July 10, 1986, the New York Stock Exchange ("NYSE") submitted copies of a proposed amendment to its minor rule violation plan. The Commission previously approved a minor rule violation plan filed by the NYSE.[2] The plan relieves the NYSE of the current reporting requirement imposed by Section 19(d)(1) of the Act, for final disciplinary actions, with respect to violations listed under the NYSE plan.[3]

The proposed amendment would add a variety of rule violations to the NSYE plan. Specifically, the NYSE proposal would incorporate the following rules within the minor rule violation plan: Rules 312(a), 312(b), 312(c), 313, 345.13, 346(c), 351, 421, 440F, 440G, 440H, and 706 (rules concerning violations of Exchange reporting requirements); Rules 312(h), 312(i), 342(c), 342.10, 382(a) and 791(c) rules concerning violations of Exchange approval requirements); (Rules 345.18, 410, 432(a) and 440 (rules concerning violations of record retention requirements); Rule 343 (violations of requirement relating to member organization office sharing arrangements); Rule 387 (violations of COD/POD transaction requirements); Rule 407 (violations of requirement for transactions of employees of the Exchange, member organizations, and certain non-member organizations); Rule 408(a) (violations of requirement that written authorization be obtained for discretionary power over a customer account); Rules 451 and 452 (violations of requirements relating to transmission of proxy material and authorizing the giving of proxies); Rule 726 (violations of option disclosure document and prospectus delivery requirements); and Rule 781 (violations of allocation of exercise assignment notices). These violations would be reported to the Commission in a manner identical to all other violations subject to the minor rule violation plan: A quarterly report listing the NSYE internal file number for the case, the SEC file number, name of individual or member organization, nature of the violation, specific rule provision violated, date of violation, fine imposed, an indication of whether the fine is joint or several, the number of times the rule violation has occurred and the date of disposition.[4]

In order to assist the Commission in determining whether to approve the proposed amendments to the plan or institute proceedings to determine whether the proposed amendments should be disapproved, interested persons are invited to submit written data, views and argumetns concerning the submission by June 19, 1987. In particular, the Commission solicits comments concerning the proposal by the NYSE to include its Rules 408(a), 432(a), 451, 452, and 726 within their minor rule violation plan. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. 4-284. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment to the plan which are filed with the Commission, and all written communications relating to the proposed amendments 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 at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing will be available also at the principal office of the NYSE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[1] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838. The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations. Under the Amendments, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

[2] *See* Securities Exchange Act Release No. 22300 (August 8, 1985) and 22415 (September 15, 1985).

[3] *See* NYSE Rule 476A ("Imposition of Fines for Minor Violations of Rules"); Securities Exchange Act Release No. 21688 (January 25, 1985) 50 FR 5025 (approving NYSE Rule 476A).

[4] The fine schedule for Rule 476A is as follows: (1) first offense, a fine of $500 for an individual and $1,000 for a member organization; (2) second offense, a fine of $1,000 for an individual and $2,500 for a member organization; (3) subsequent fines are $2,500 for an individual and $5,000 for a member organization. Fines in excess of $2,500 are not covered by the minor rule violation plan.

Dated: May 19, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12248 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24490; File No. SR-PSE-87-04]

Self-Regulatory Organizations; Pacific Stock Exchange Incorporated; Order Approving Proposed Rule Change

The Pacific Stock Exchange, Incorporated ("PSE" or "Exchange") submitted on February 5, 1987, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder to require members and member firms to notify the PSE of any change to their addresses where notices may be served within sixty days of such change.

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 24164, March 3, 1987) and by publication in the **Federal Register** (52 FR 7725, March 12, 1987). No comments were received regarding the proposal.

In its filing, the Exchange indicated that the purpose of the new rule is to ensure that the Exchange has on file the current addresses of its members and member firms for the purpose of sending important correspondence including disciplinary related correspondence. The Exchange believes that such a rule is necessary to ensure that it meets its investigatory and disciplinary obligations imposed by Section 6 of the Act.[1]

The Commission believes that the proposed rule change is a necessary part of the Exchange's efforts to oversee and regulate the activities of its members. By requiring members and member firms to notify the Exchange of any address changes within sixty days of such change, the Exchange will ensure that it will continually have on record the proper addresses to forward both disciplinary and non-disciplinary correspondence. For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

[1] We note, for example, that section 6(b)(7) of the Act requires that the rules of an exchange provide a fair procedures for disciplining members.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: May 20, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12249 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24491; File No. SR-Phlx-87-8]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On February 24, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to modify the Exchange's procedures regarding the position and exercise limit exemption process.

The proposed rule change was noticed in Securities Exchange Act Release No. 24304 (April 6, 1987). No comments were received on the proposed rule change.

The purpose of this rule change is to modify the Exchange's procedures regarding the position and exercise limit exemption process. Position and exercise limit exemptions, which are sparingly granted, require concurrence of two option floor officials. These decisions are normally made in consultation with Phlx staff. The primary factor in granting position limit exemption is the need to accommodate increased public customer order flow, which could not otherwise be filled by market-makers without placing them over current position limits.[3] The proposed rule change adopts several specific factors to be considered in making this determination: the size and character of prior trading in the option by the applicant; the size of the applicant's current positions in relation to the position limit; and the willingness of other market participants to make size markets. The exemptive process has adequate operational safeguards, as floor officials may rely upon the Exchange's audit trail system to ascertain the intra-day positions of a party seeking such an exemption while determining whether there is an immediate need to handle large public orders in the market place.

The Exchange's rules currently do not contain specific factors to be evaluated by floor officials in considering position and exercise limit requests. The proposed guidelines should be helpful in determining whether the applicant for an exemption has a legitimate need for an exemption in filling customer, orders. Hence, the proposal should provide increased guidance to floor officials, assure consistency in granting exemption requests, and facilitate greater responsiveness to market needs in acting upon exemption requests.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6,[4] and the rules and regulations thereunder, in that it will improve the exemption process.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: May 21, 1987.

Jonathan Katz,

Secretary.

[FR Doc. 87-12250 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

[2] 17 CFR 200.30-3.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] Telephone conversation between Robert Mooney, Division of Market Regulation, and Gerry O'Connell, Director of Surveillance, Phlx, on May 18, 1987.

[4] 15 U.S.C. 78f, (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1985).

[Release No. 34-24496; File No. SR-Phlx-86-41]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of New Specialist Evaluation and Allocation Rules Until November 30, 1987

I. Introduction

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted on December 8, 1986, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder [1] to adopt new rules governing the allocation, reallocation, and transfer of securities listed on the Exchange and to amend the Exchange's Option Floor

[1] 17 CFR 240.19b-4 (1986).

Procedure Advices ("Options Advices"). The amendment to the Advices would fine floor brokers who fail to complete the Option Specialist Performance Evaluation Questionnaire.[2] The new rules are intended to replace the existing Specialist Evaluation and Allocation rules which have been effective on a continuing pilot basis since the inception of the pilot program in 1982.[3]

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 24045, February 2, 1987) and by publication in the **Federal Register** (52 FR 4549, February 12, 1987). No comments were received regarding the proposal.

The Phlx has requested that the Commission approve the proposed rules on a permanent basis. After careful review of the rules, the Commission has determined to approve the rules for an eight month period, to be effective as of March 31, 1987.

II. Description of the Proposal

In its filing, the Exchange has indicated that the purpose of the proposed rule change is to establish new rules to govern specialist evaluations and the allocation, reallocation and transfer of equity books and option classes to Phlx specialists. The proposed rules contain several significant provisions.

First, the proposed rules establish objective criteria by which the Allocation Evaluation and Securities Committee ("Committee") can evaluate the performance of equity specialists.[4] In this context, the Phlx has developed a new equity specialist statistical evaluation questionnaire.[5] Such routine reviews will continue to be conducted regularly on a quarterly basis.[6]

The new equity specialist questionnaire will be divided into four sections—PACE, ITS, General, and Primary Issues—with each section containing one or more evaluation questions. Specialist units will be ranked from worst to best in each of the rating categories based upon their performance in the category. Any specialist unit ranking in the bottom 15% in overall ratings for two consecutive quarters or in the bottom 15% on the PACE, ITS, or General sections of the questionnaire for three consecutive quarters will be judged to have performed below minimum standards.[7] As a result, a special review of the specialist and the specialist unit will be undertaken by the Committee within the following 60 days to determine whether the specialist unit's performance has improved.

If the Committee concludes that the equity specialist unit's performance has not improved, it may institute reallocation proceedings, although reallocation of the unit's registered securities is discretionary. If a specialist unit deemed to have performed below minimum standards on a previous occasion subsequently performs below minimum standards (i.e., ranking in the bottom 15% in overall ratings for two consecutive quarters or in the bottom 15% in the PACE, ITS, or General sections of the survey for three consecutive quarters) the Committee immediately will commence reallocation proceedings.

The Phlx rules also provide for review of those units that have fallen below minimum standards (but did not have their stocks reallocated) and continue over the next year to demonstrate questionable performance. If a specialist unit deemed to have performed below minimum standards overall (*i.e.*, ranking in the bottom 15% in overall ratings for two consecutive quarters) ranks in the bottom 15% overall in one of the next four quarters, the Committee will review the specialist unit's performance and may institute reallocation proceedings. Similarly, if a specialist unit deemed to have performed below minimum standards in the PACE, ITS, or General sections of the survey for three consecutive quarters subsequently ranks in the bottom 15% in any two of the next four quarters, the Committee will review the specialist's performance and may institute reallocation proceedings.

The new rules would broaden considerably the Committee's discretionary authority in various areas. For example, the Committee will be able to institute special reviews for reallocation purposes at anytime it deems necessary. In addition, under the proposed new rules, the Committee could require a specailist unit to hire additional employees in order to be approved as a specialist in a stock or to retain its status.[8] Moreover, the new rules will premit the Committee to establish any additional criteria it considers appropriate in making its allocation and reallocation decisions.[9]

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[2] The Phlx submitted to the Commission, on January 27, 1987, the complete text of the proposed amendment to the Exchange's Option Floor Procedure Advice. Copies of the text are available from the Commission and from the Phlx.

[3] On August 17, 1982, the Commission approved, as a two year pilot, Rules 500–506 that authorized the Phlx's Allocation, Evaluation and Securities Committee to appoint specialists and alternate specialists in equity securities and to appoint specialists and registered options traders in listed options. In addition, the rules established procedures for the periodic review and evaluation of specialist performance. The rules became effective October 1, 1982 for a two year period. Securities Exchange Act Release No. 18975 (August 17, 1982), 47 FR 37019. The pilot subsequently was extended until March 31, 1987. *See*, Securities Exchange Act Release Nos. 21460 (November 2, 1984), 49 FR 44969; 22191 (June 28, 1985) 50 FR 27882; 22856 (February 4, 1986), 51 FR 5435; 23464 (July 24, 1986) 51 FR 27299; and 23925 (November 23, 1986), 52 FR 190.

[4] Questionnaires completed by Floor brokers will continue to be used to evaluate the performance of specialists trading options. As noted above, the proposed rule would amend the Phlx's Options Advices so that floor brokers would be fined for failing to complete the options specialist performance evaluation questionnaire ("SPEQ"). We also note, that the proposed rules provide flexibility for the Phlx to adopt objective criteria in evaluating otions specialists performance in the future. Of course, any changes to move to an objective standard of evaluation for options would have to be submitted to the Commission for its review under section 19(b) of the Act.

[5] The Phlx questionnaire currently used to evaluate equity specialist performance consists of 13 questions covering various functions of the equity specialist. The questionnaire, completed by floor brokers, provides for a numerical rating of 1 through 9 (poor to excellent). A specialist and/or specialist unit is deemed to have performed unsatisfactorily if it receives an overall quarterly grade below 5.00 for the preceding quarter; an average quarterly grade below 5.00 on three or more individual questions for the preceding quarter; or an average quarterly grade below 5.00 for the same question for three consecutive quarters. An unsatisfactory performance evaluation will lead to an informal meeting with the Committee. A formal meeting with the Committee (which may result in reallocation) is required if a specialist or specialist unit receives (1) an overall quarterly grade below 5.00 in any two out of four preceding quarters, (2) an average quarterly grade below 5.00 on three or more individual questions for any two out of four preceding quarters, or (3) an average quarterly grade below 5.00 for the same question for four or more consecutive quarters. In addition, if reallocation proceedings have been commenced and concluded against a specialist unit, any single quarter of substandard performance will again result in the commencement of reallocation proceedings.

[6] As discussed below, the Committee also has the authority to conduct special reviews covering such time periods as it deems appropriate.

[7] The new equity specialist questionnaire will consist of 17 weighted questions covering a wide spectrum of specialist functions and activities. Each specialist unit will be ranked from 1 to 17 according to their total scores on the questionnaire. Phlx officials will then compute a mean and a standard deviation which will be the mechanism by which the 15% threshold will be determined. According to these officials, 15% of its target population (20 specialist units) is 3 specialist units.

[8] The new rules would, however, require the Committee to first consult the Floor Procedure Committee (in the case of equity specialists) and the Options Committee, in addition to considering the number of asigned equity issues and/or options classes and associated order flow, before making any decision on additional employees. We note that Phlx rules permit the affected specialist unit to appeal the Committee's decision to the Exchange's Board of Directors. *See*, Phlx By-Laws, Article XI, § 11–1(a).

[9] Proposed Rule 511(b) lists six factors that the Committee may consider in its allocation and reallocation deliberations: (1) the number and type

Continued

In addition, proposed Rule 525 would permit the Committee to grant any exemption or impose any condition on any specialist or specialist unit that it deems necessary or appropriate in the "administration" of the new rules.

Second, the proposed rules alter the Phlx's allocation procedures.[10] For example, floor members will be notified of the identity of applicants for new equity books and options classes so that they can submit written comments thereon to the Committee. Moreover, rather than limit its review to the specialist's demonstrated ability, experience, and financial responsibility as provided in the current rules, the Committee considers, in addition to results of the SPEO, the factors enumerated in proposed Rule 511(b)[11] and any other factors it deems appropriate. When allocating (or reallocating) equity books, the Committee also may consider the specialist unit's primary issues and the number of issues the unit has registered on the PACE system and the level of commitment made thereto. In addition, the Committee also considers the number of securities the specialist unit recently requested to remove from PACE or in which the applicant has resigned as specialist.[12] All allocations will be initially made on a temporary basis for up to 60 days.

Third, once allocated and registered to a particular specialist, securities may be transferred by their specialist to another specialist subject to review and rejection of such transfer by the Committee. Any such proposal to transfer securities must be submitted in writing to the Committee and either the Floor Procedure Committee (in the case of equity books) or Options Committee (in the case of option classes).

Fourth, the proposed rule allows for a special review by the Committee to determine whether securities should be reallocated due to a material change in the specialist unit. Accordingly, the proposed rule obligates specialist units to notify promptly the Phlx of any change in registration information and any material changes in the unit's staffing and capital structure.

Fifth, the new rules will require specialists who register securities on the PACE system for the first time to trade the securities on PACE for a minimum of one year. In addition, voluntary removal of a PACE traded security from PACE will result in automatic reallocation proceedings against the incumbent specialist unit for the PACE traded security. The Committee will institute reallocation proceedings for any non-PACE traded security should any specialist unit commit to trading that security on PACE.

Sixth, the proposed rule change would amend the Exchange's By-Laws to permit specialists to appeal decisions of the Committee to a special three-member panel of the Board of Governors. The decisions of the special panel are non-reviewable.

Finally, the Exchange proposes to amend its Option Floor Procedure Advices to fine those floor brokers who fail to complete the Exchange's Options SPEQ. The fine would be $25 for the first violation of the Advice, $50 for the second violation, and, $300 for the third violation. The fine for subsequent violations would be discretionary with the Phlx's Business Conduct Committee.

III. Discussion

The Commission supports the Phlx's efforts to monitor the performance of its registered specialist units to ensure that these units provide the best possible markets for their registered securities. In this regard, the Commission believes that the development of objective evaluation criteria for reviewing specialist performance in equities will serve as an important tool in monitoring specialists' levels of performance. Furthermore, the Commission believes that the Exchange's specialist evaluation, allocation, and reallocation procedures can serve as an effective incentive for specialist units to maintain high levels of performance and market quality in order to be considered, and, ultimately awarded, additional listings. This in turn can benefit the execution of public orders and encourage more listings on the Phlx. Accordingly, the Commission fully supports the Phlx's efforts to develop meaningful and effective specialist evaluation allocation and reallocation procedures.

Nevertheless, the new rules have certain provisions which the Commission believes should be monitored very closely. For this reason, as more fully discussed below, the Commission is limiting its approval of this filing to an eight month pilot period. First, the new rules appear to delegate a large amount of discretion to the Committee in conducitng evaluations and making allocation and reallocation determinations. While the Commission believes that the Committee, to a certain extent, needs to exercise discretion in administering the proposed new rules, the Commission is nevertheless concerned that excessive discretionary authority could dilute the purpose and effectiveness of the new rules.

Second, as discussed above, proposed Rule 501(c) allows the Committee to require a specialist unit to hire additional staff to retain an allocation. As noted above, the Committee will render a decision only after consultation with several Phlx committees. Although the Commission is concerned that such a decision could, in certain instances, impose financial burdens on the affected specialist unit, the Commission believes that the specialist unit's right to appeal the decision to the Phlx's Board of Governors will provide the unit with an adequate forum to address its grievance.

Third, the new rules provide the Committee the ability to establish additional criteria to consider in its allocation proceedings.[13] As drafted it appears that the Committee could at anytime adopt new criteria to utilize in its allocation and reallocation deliberations. In response to inquiries from the Commission staff, the Phlx indicted that such criteria would only be applied to the beginning of a quarter after notification to specialists to avoid due process concerns. The Commission believes that such disclosure would provide specialist units with concrete standards whereby they can evaluate their performance and make necessary improvements to enhance their opportunities to obtain new allocations, in addition to avoiding the possibility of reallocation proceedings. In this regard,

of securities which the applicant specialist units ("applicant") are currently registered; (2) the personnel, capital, and other resources of the applicant; (3) recent allocation decisions; (4) the desirability of encouraging the entry of new specialists into the Exchange's market; (5) the overall best interest of the Exchange; and, (6) such other policies as the Board of Directors instructs the Committee to follow in allocating and reallocating securities.

[10] Currently, in allocating securities to a specialist, under Rule 501.03, the Committee, in addition to evaluating the qualifications of the specialist unit on whose behalf the specialist acts, considers the specialist's demonstrated ability, experience, and financial responsibility. In evaluting demonstrated ability, the Committee reviews the results of the evaluation questionnaires, statistical data, as well as previous action taken against the specialist for unsatisfactory performance and any other relevant information. In evaluating experience, the Committee considers the length of time the specialist has been in the securities business, any disciplinary action or justifiable complaints taken or made against the specialist. The current rules do not disclose what factors are considered when the Committee assesses the financial responsibility of a specialist.

[11] *See* note 9, *supra*.

[12] In regard to new specialist units or recently reorganized units that apply for allocation of securities, the Committee is permitted to establish separate or additional criteria for evaluating the suitability of the such specialist units for allocation awards.

[13] One of the six factors the Committee will consider is recent allocation decisions. The Commission is particularly interested in how this provision will be applied during the pilot period.

the Commission believes that any factors that would differ significantly from the type of criteria that is specifically enumerated in the rule must be submitted to the Commission for its review pursuant to Rule 19b–4.

We also note that the new procedure allows the Committee to conduct a special review of a specialist unit at anytime. Although the Commission believes a certain amount of authority is needed in this area, we believe it may be useful, in the operation of this procedure over the next eight months, for the Phlx to identify some of the special situations that may involve an evaluation and possible reallocation at any time.

A primary concern of the Commission in reviewing the Phlx's new rules has been that the reallocation procedures serve as a meaningful incentive to improve specialist performance. While the Commission believes that reallocation proceedings are necessary to, among other things, remove securities from an underperforming specialist unit to another unit capable of providing better markets in those securities, the Commission also believes that it is essential that evaluation procedures be useful to motivate specialists to improve their performance.[14] The Commission believes that, for the most part, the new Phlx rules are useful to achieve these goals. In particular, the use of objective performance criteria to evaluate equity specialists ensure that the rules and reallocation procedures cannot be applied in a disciplinary manner. Accordingly, the Commission continues to believe that the new rules and procedures being adopted by the Phlx are not disciplinary.

In summary, the Commission believes that the Phlx has developed reasonable guidelines to monitor specialist performance. As mentioned above, however, the Commission has determined to approve the new rules on a temporary eight month pilot basis.[15] Temporary approval of the new rules will permit the Exchange to utilize its specialist evaluation and allocation rules throughout November 30, 1987. This will allow the Commission to fully analyze all aspects of the proposal in addition to reviewing the results of routine reviews for the preceding quarters. In this regard, the Commission will have an opportunity to examine the effects of the new equity specialist performance standards, the Committee's exercise of its discretionary authority, and any allocation or reallocation decisions made by the Committee during the preceding eight months.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved for eight months, effective nunc pro tunc, March 31, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Dated: May 21, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–12251 Filed 5–28–87; 8:45 am]

BILLING CODE 8010-01-M

[14] We note that in its initial filing, the Phlx indicated that the purpose of its Specialist Evaluation and Allocation rules is to improve the quality of the Phlx marketplace through non-disciplinary reallocations. *See*, Securities Exchange Act Release No. 18875, August 17, 1982, 47 FR 37019.

[15] In this regard, we note that five other exchanges have adopted similar allocation and reallocation pilot programs. The American Stock Exchange, Inc.'s ("Amex") pilot program has expired. The Amex has submitted new allocation and reallocation rules to the Commission for approval. The Boston Stock Exchange Incorporated's ("BSE") pilot program expired on March 10, 1987; the BSE has not, however, submitted a proposed rule change requesting permanent approval of its allocation and reallocation program. The Commission recently approved a proposal submitted by the Midwest Stock Exchange, Inc. suspending the application of its Mandatory Posting Rule for the six month periods June 30, 1986 and December 31, 1987. *See*, Securities Exchange Release No. 24444, May 12, 1987. Similarly, the Commission extended the effectiveness of the New York Stock Exchange's Rule 103A until July 31, 1987. *See*, Securities Exchange Release No. 24413, April 30, 1987, 52 FR 17346, May 7, 1987. Finally, the Pacific Stock Exchange Incorporated's ("PSE") pilot program is scheduled to expire on June 30, 1987. The Commission anticipates that the PSE will file for an extension of its pilot at that time.

[16] 17 CFR 200.30–3.

[File Nos. 7-0126 et al]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

May 22, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Advanced Systems, Inc.
  Common Stock, $.10 Par Value (File No. 7–0126)
Avemco Corp.
  Common Stock, $.10 Par Value (File No. 7–0127)
BDM International, Inc.
  Class A Common Stock, $.02½ Par Value (File No. 7–0128)
BRT Realty Trust
  Shares of Beneficial Interest, $1.00 Par Value (File No. 7–0129)
Beverly Investment Properties, Inc.
  Common Stock, $.10 Par Value (File No. 7–0130)
Brooklyn Union Gas Co.
  Common Stock, $1.00 Par Value (File No. 7–0131)
Calton, Inc.
  Common Stock, $.01 Par Value (File No. 7–0132)
Central Vermont Public Service Corp.
  Common Stock, $6.00 Par Value (File No. 7–0133)
Chesapeake Corp.
  Common Stock, $1.00 Par Value (File No. 7–0134)
Cooper Tier & Rubber Co.
  Common Stock, $1.00 Par Value (File No. 7–0135)
Eldon Industries, Inc.
  Common Stock, $1.00 Par Value (File No. 7–0136)
Electrospace Systems, Inc.
  Common Stock, $.10 Par Value (File No. 7–0137)
Ensearch Exploration Partners, Ltd.
  Depository Receipts (File No. 7–0138)
Federal Realty Investment Trust
  Shares of Beneficial Interest, No Par Value (File No. 7–0139)
First Union Real Estate Equity & Mortgage Investments
  Shares of Beneficial Interest, $1.00 Par Value (File No. 7–0140)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 12, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the

maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12296 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

[File Nos. 7-0116 et al]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

May 22, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Anchor Glass Container Corp.
Common Stock, $.01 Par Value (File No. 7-0116)
Asia Pacific Fund
Common Stock, $.01 Par Value (File No. 7-0117)
Chemical N.Y.
Adjustable Rate Cumulative Preferred Series C, No Par Value (File No. 7-0118)
Harper & Row Publishers, Inc.
Common Stock, $.10 Par Value (File No. 7-0119)
Hard Rock Cafe PLC
American Depository (File No. 7-0120)
Par Pharmaceutical, Inc.
Common Stock, $.01 Par Value (File No. 7-0121)
Roper Corp.
Common Stock, $.50 Par Value (File No. 7-0122)
Shearson Lehman Brothers Holdings, Inc.
Common Stock, $.10 Par Value (File No. 7-0123)
Tiffany & Co.
Common Stock, $.01 Par Value (File No. 7-0124)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 12, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12297 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

[File Nos. 7-0112 et al]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 22, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Americus Trust for G.E.Shares
Units, Primes, Scores (File No. 7-0112)
Asia Pacific Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-0113)
Shearson Lehman Brothers Holding, Inc.
Common Stock, $.10 Par Value (File No. 7-0114)
Tiffany & Co.
Common Stock, $.01 Par Value (File No. 7-0115)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 12, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G Katz,

Secretary.

[FR Doc. 87-12298 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24395]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); General Public Utilities Corp. et al.

May 21, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 15, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation, et al. (70-7397)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its wholly owned subsidiaries, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Energy Initiatives, Incorporated ("EII"), 95 Madison Avenue, Morristown, New Jersey 07960, GPU Nuclear Corporation ("GPU Nuclear"), One Upper Pond Road, Parsippany, New

Jersey 07054 (collectively, "subsidiaries"), have filed a declaration pursuant to sections 6(a)(2), 7, 12(f) and 12(g) of the Act.

The subsidiaries are corporations organized under the laws of New Jersey, or doing business in New Jersey. They presently propose to amend their respective bylaws and certificates of incorporation pursuant to New Jersey law to limit the liability of their officers and directors for money damages and to broaden the indemnification of their officers, directors and employees. New Jersey law provides that directors and officers shall not be personally liable to a corporation or its stockholders for money damages arising from a breach of fiduciary duty except for acts or omissions made (a) in breach of the duty of loyalty owed to the corporation or its stockholders, (b) not in good faith or involving a knowing violation of law or (c) resulting in receipt by such person of an improper personal benefit.

The subsidiaries also propose to amend their respective bylaws to provide, as permited by New Jersey law, for mandatory indemnification of directors, officers and employees and for voluntary indemnification of persons serving at the request of the corporation, if such person acted on good faith in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation; and with respect to any criminal proceeding, such person had no reason to believe his conduct was unlawful.

General Public Utilities Corporation, et al. (70-7398)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07154, a registered holding company, and its wholly owned subsidiaries, GPU Service Corporation ("GPU Service"), 100 Interpace Parkway, Parsippany, New Jersey 07054, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Pennsylvania Electric Company ("Penelec") and Nineveh Water Company ("Nineveh"), both at 1001 Broad Street, Johnstown, Pennsylvania 15907, Metropolitan Edison Company ("Met-Ed"), the York Haven Company ("York Hven") and Saxton Nuclear Experimental Corporation ("SNEC"), all at P.O. Box 16001, Reading, Pennsylvania 19640 (collectively, "subsidiaries"), have filed a declaration pursuant to sections 6(a)(2), 7, 12(f), and 12(g) of the Act.

The subsidiaries are corporations organized under the law of Pennsylvania, or doing business in Pennsylvania. They propose to amend their respective bylaws and certificates of incorporation to limit the liability of their directors for money damages and to broaden the indemnification of their officers, directors and employees. Pennsylvania law provides that directors will not be liable for monetary damages unless they have breached or failed to perform the duties of their office under section 8363 of the Pennsylvania Directors' Liability Act, and the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

The subsidiaries also propose, as permitted by Pennsylvania law, to amend their bylaws to provide for mandatory indemnification of their respective officers, directors and employees and for the advancement of expenses to indemnified persons. The amendments would also pemit the subsidiaries, for purposes of indemnification, to maintain insurance, obtain a letter of credit, act as self-insurers, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties, or use any other mechanism for indemnification that their boards of directors find appropriate.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12252 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15748; 812-6623]

The Travelers Insurance Company and The Travelers Fund UL for Variable Life Insurance

May 20, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Travelers Insurance Company ("The Travelers"), and the Travelers Fund UL for Variable Life Insurance (the "Separate Account").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) and Rules 6e-3(T)(b)(12), 6e-3(T)(b)(13), 6e-3(T)(c)(2) and 22c-1.

Summary of Application: Applicants seek an order to permit, in connection with the issuance of flexible premium variable life insurance contracts (the "Contract"): (1) The deduction of the administrative expense portion of a deferred administration charge upon surrender of the contract during the first 10 contract years or the 10 years following an increase in stated amount; and (2) the Contract's premium waiver rider to be considered an "incidental insurance benefit" for purposes of Rule 6e-3(T).

Filing Date: February 12, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 15, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notifications of the date of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. The Travelers and the Separate Account, One Tower Square, Hartford, Connecticut 06183.

FOR FURTHER INFORMATION CONTACT: Staff Attorney, Clifford E. Kirsch (202) 272-3032 or Special Counsel, Lewis B. Reich (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations and Statements of Facts

1. The Separate Account was established on November 10, 1983, by Travelers as a separate investment account under the insurance laws of Connecticut. The Separate Account is registered with the SEC as a unit investment trust and, as presently contemplated, will be used only to support benefits payable under the Contract.

2. The application states that Travelers will deduct from the cash value of the Contract an amount on the first day of each Contract month to cover the administrative costs associated with the issuance of the Contracts. The monthly administrative

charge is intended to cover the costs associated with issuance of a Contract and increases in the stated amount. The charge varies by issue age and initial stated amount and is made for the first three years of the Contract, and for any increases in stated amount for three years from the date of increase. Applicants represent that the administrative charge is "at cost" in that The Travelers believes that the charge does not exceed the cost of services to be provided.

3. The application states that, in addition, a daily charge is deducted for the Separate Account for administrative expenses incured by the Travelers for the ongoing administration of the Contract. This charge will be deducted daily at the annual rate of .10% of the average daily net assets.

4. The application, through incorporation by reference of the registration statement for the Contract, states that during the first 10 Contract Years or the 10 years following an increase in Stated Amount (other than an increase due to Cost of Living Adjustment or a change in Death Benefit Option) the Travelers will impose an additional charge ("Charge") on a full surrender. The charge will apply to that portion of the Stated Amount (except for increases excluded above) which has been in effect for less than 10 years. The charge is based on the original issue age, and it decreases by 10 percent each year over the 10 year period. The charge will consist of two components: an administrative component and a sales load component. The administrative component, which will equal 80% of the amount of the charge, will compensate The Travelers for the expenses of issuing the Contract, and for ongoing administrative expenses, not covered by the monthly deduction or the daily administrative charge.

5. Applicants request exemption from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), and 27(d) of the 1940 Act and Rules 6e-3(T)(b)(12), 6e-3(T)(b)(13), and 22c-1 thereunder to the extent necessary to permit the deduction of the administrative component of the charge in the manner described above.

6. Applicants do not concede that the charge violates any of the provisions of the 1940 Act with respect to which exemptive relief is requested in the application. However, Applicants request exemptions from these provisions in order to eliminate any doubt as to full compliance with the 1940 Act.

7. Applicants submit that imposition of an administrative charge for issuance and administrative expenses in the form of a deferred charge is more favorable than a charge that is deducted entirely from premiums or from cash value in the first contract year, which are more conventional ways of imposing this charge.

8. Applicants represent that the total amount of administrative charges is the same as it would have been if the administrative charge were designed solely as a front-end or periodic charge, and that the monthly and daily administrative charges, in conjunction with the administrative component of the Charge, were designed so that The Travelers covers only its actual administrative costs.

9. The Application states that a Contractowner may purchase supplemental benefits by Rider including a premium waiver rider (the "Rider"). The Rider provides that the monthly deduction will not be made against the Contract's cash value if the insured becomes totally disabled and the disability continues for six months. The disability must occur after the Contract anniversary on which the insured was age 5 and before the Contract anniversary in which the insured is age 65.

10. Applicants states that the Rider may be deemed not to meet the definition of "incidental insurance benefits" as defined in Rule 6e-3(T)(c)(2). If the premium waiver benefit falls within the meaning of "incidental insurance benefits," the charge for the Rider falls outside the definition of sales load in Rule 6e-3(T)(c)(4)(vii). If the Rider falls outside the definition of "incidental insurance benefits", the charge for the Rider may be deemed to be "sales load".

11. Applicants submit that the Rider's benefit, *i.e.*, the waiver of the monthly deduction, is a fixed benefit in its most significant respects. The application states that the benefit waives the entire monthly deduction, and therefore the benefit to the owner is fixed to the extent that the owner pays no charge, regardless of how much the cash value and the net amount at risk vary. Applicants further state that the Rider possesses no cash value of its own separate and distinguishable from the cash value for the Contract as a whole. Applicants also represent the Rule 6e-3(T)(c)(2) provides that incidental insurance benefits "include, but are not limited to . . . disability income benefits." In economic reality, the Rider's benefit is a type of disability income benefit specified by rule 6e-3(T)(c)(2).

12. Applicants further submit that it is not reasonable to assume that the SEC, in adopting Rule 6e-3(T), intended that the charge for the type of Rider at issue here to be deemed "sales load". Applicants assert that the benefit of a waiver of charges upon disability serves as a bona fied insurance objective that is integrally related to, and an incidental part of, the insurance aspects of a flexible premium variable life insurance policy.

13. Applicants also note that the SEC has issued several orders granting the identical relief requests in the Application.

14. On the basis of the foregoing, Applicants request an exemption form the definition of "incidental insurance benefits" in Rule 6e-3(T)(c)(2) to the extent necessary to permit the charge for the Rider not to be deemed "sales load".

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12253 Filed 5-28-87; 8:45]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Applicability of the Buy America Provisions of the Federal Mass Transportation Act of 1987

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: Section 327 of the Federal Mass Trnasportation Act of 1987, Title III of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17), effective April 2, 1987, amends section 165 of the Surface Transportation Assistance Act of 1982. Section 165 provides a preference for domestically produced items that are utilized in projects that are funded by the Urban Mass Transportation Administration (UMTA). Section 327(c) provides that the rolling stock price differential waiver set forth in section 165(b)(4) be increased from its current 10 percent to 25 percent. Section 327(b) amends section 165(b)(3) governing rolling stock procurement by adding the term "subcomponents." Section 327(d) provides that the amendments made in sections 327(b) and (c) shall not apply to any contract awarded pursuant to bids which were outstanding on the date of enactment of Pub. L. 100-17. The purpose of this Notice is to set forth UMTA's position that the provisions of sections 327(b) and (c) do not apply to

any procurement which was initiated by an UMTA grantee prior to April 2, 1987, but that the provisions do apply to any procurement which was initiated by an UMTA grantee subsequent to April 2, 1987, regardless of the date that the Federal funds used for the procurement were obligated by UMTA. UMTA will be revising its Buy America regulations set forth in 49 CFR Part 661 to reflect these changes.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel (202) 366-1662, Room 9228, 400 Seventh Street, SW., Washington, DC 20590.

Issued on: May 22, 1987.

Ralph L. Stanley,

Administrator.

[FR Doc. 87-12309 Filed 5-28-87; 8:45 am]

BILLING CODE 4910-57-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 103
Friday, May 29, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

DATE AND TIME: Tuesday June 2, 1987, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Closed to the Public

MATTERS TO BE CONSIDERED:

Enforcement Matter OS #4435

The Commission will consider issues related to Enforcement Matter OS #4435.

For a recorded message containing the latest agenda information, call: 301-492-5709.

CONTRACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
May 26, 1987.

[FR Doc. 87-12353 Filed 5-27-87; 11:27 am]
BILLING CODE 6355-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., June 3, 1987.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Agreement No. 212-010286—South Europe/ U.S.A. Pool Agreement.
2. Policy Regarding Civil Penalty Compromise Procedures.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.
[FR Doc. 87-12320 Filed 5-27-87; 9:19 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, June 3, 1987.

PLACE: Marriner S. Eccles Federal Reserve Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

Matters to be Considered

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 26, 1987.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 87-12342 Filed 5-27-87; 10:44 am]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 19229, May 21, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Wednesday, May 27, 1987.

CHANGES IN THE MEETING:

One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Proposed Board comments on legislation regarding funds availability (H.R. 28 and S. 79). (This item was originally announced for a closed meeting on May 26, 1987.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: May 27, 1987.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 87-12395 Filed 5-27-87; 3:22 pm]
BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, June 3, 1987.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Presentation by the Association of National Advertisers, the American Association of Advertising Agencies, and the American Advertising Federation concerning "The Role of Marketing in a Marketing Plan."

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179; Recorded Message: (202) 326-2711.

Emily H. Rock,
Secretary.
[FR Doc. 87-12323 Filed 5-27-87; 10:14 am]
BILLING CODE 6750-01-M

UNITED STATES INSTITUTE OF PEACE

TIMES AND DATES: 9:00 a.m.-5:00 p.m., Thursday, June 4, 1987; 9:00 a.m.-5:00 p.m., Friday, June 5, 1987.

PLACE: The Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98-525).

AGENDA (TENTATIVE): Meeting of the Board of Directors convened. President's Report. Committee Reports. Discussion of the Jennings Randolph Program for International Peace. Consideration of Grant Applications and Presidential Search.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789-5700.

Dated: May 26, 1987.

Robert F. Turner,
President, United States Institute of Peace.
[FR Doc. 87-12372 Filed 5-27-87; 1:02 pm]
BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 52, No. 103
Friday, May 29, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

Onions Grown in South Texas; Amendment No. 5 to Handling Regulation; Vegetable Import Regulations; Onions

Correction

In rule document 87-11796 beginning on page 19278 in the issue of Friday, May 22, 1987, make the following correction:

§ 959.322 [Corrected]

On page 19281, in § 959.322(f)(4)(i), in the second column, in the sixth line, "of" should read "for".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 157 and 284

[Docket No. 87-16-000]

Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts

Correction

In proposed rule document 87-10884 beginning on page 18703 in the issue of Tuesday, May 19, 1987, make the following correction:

On page 18722, a statement by Commissioner Trabandt was inadverently omitted. It should have appeared following the third complete paragraph in the third column as follows:

Statement of Commissioner Charles A. Trabandt, Concurring in Part and Dissenting in Part:

Issued May 7, 1987.

(1) I concur in part with the issuance of an NOPR on abandonment for two reasons:

(a) The NOPR will provide the basis for a broadened public debate about the Commission's continued retreat and eventual withdrawal from dedication, which should serve to ensure that the Commission and all interested parties will have the benefit of the fullest possible policy, legal and technical analysis in making judgments about the dedication and abandonment concept under subsection 7(b) of the NGA.

(b) The natural gas markets for many pipelines and producers are in a state of great change and potential temporary disarray as a direct result of the continued and dramatic transition from traditional sales by pipelines to transportation services provided to shippers. As envisioned by the Commission, one regulatory and management tool for dealing in part with that transition is some form of abandonment and release of natural gas deliverability. Such abandonment and release under certain conditions and for a specific duration can provide significant additional market flexibility and potential cash flow for producer-sellers and substantial contract and potential financial relief for pipeline-purchasers. Consequently, it is important that the Commission develop a general approach and policy to abandonment and release, as an extension of the series of individual cases in this area decided by the Commission since Order No. 436 issued. This NOPR will provide the opportunity to develop a general approach and policy to guide the Commission and all interested parties.

(2) I dissent in part with regard to the specific concept included in the proposed rule in the NOPR for several reasons.

(a) I am not persuaded on the basis of the staff analysis to date that the Commission, as a matter of law, has the authority to adopt this approach to generic self-executing action tantamount to national permanent abandonment on the basis of the procedural approach in the proposed rule. For example, the majority's reliance on *FPC v. Moss*, 424 U.S. 494 (1976) is potentially overreaching since that case is probably distinguishable in the context of the nationwide permanent abandonment obviously contemplated by the proposed rule. Rather, the proposed rule could be construed as a matter of law to institute *de facto* administrative deregulation of dedication under the NGA.

(b) I am not persuaded on the basis of the staff analysis and the OPPR study that the Commission has met the judicially-mandated standards for the substitution of reliance on competitive forces and the natural gas market for the traditional regulatory concept of dedication and abandonment. For example, the majority's reliance on *FCC v. WNCN Listeners Guild*, 450 U.S. 482 (1981) is unapposite because of the subject matter (promotion of diversity in entertainment programming vs. adequate supply of natural gas for American consumers). Rather, the proposed rule *de facto* would appear over time to effectively emasculate section 7(b) of the NGA as a substantive matter.

(c) I am not satisfied at this point that the marketplace of significance in the context of the concept of dedication is sufficiently workably competitive to replace the regulatory concept, particularly in the context of transportation services for captive customers and possibly other customers under the current state of implementation of Order No. 436. The market at the city gate is not yet workably competitive on any permanent basis.

(d) I am not persuaded at this point that competitive forces and the general market will provide captive customers and captive consumers of various customers with the same level of security of supply and reliability of service as continued dedication and flexible, but limited term abandonment. I also find it somewhat astonishing that the majority, at page 23 of the slip opinion, argues that the Commission and the nation should depend ultimately in a supply emergency on nationwide Federal allocation by the President under Title III of the NGPA, rather than the Commission trying to anticipate the emergency in the context of dedication and abandonment. Notwithstanding the arguments in the staff analysis and the conclusions in the OPPR study, I am persuaded at this point that continued dedication with flexible but limited term abandonment does provide such customers and consumers with substantial security of supply and reliability of service, which otherwise

today in all likelihood would not be available by reliance solely on competitive forces under the proposed rule. I do believe that dedicated gas supplies today provide enough volumes to largely meet the current demand requirements of the residential and consumer market, despite the staff and OPPR arguments to the contrary, and to that extent the Commission probably is obligated as a matter of law and a matter of policy to continue to implement the dedication concept unless and until it can be shown that competitive forces would suffice.

(e) I do not believe that the OPPR study provides a completely comprehensive and objective analysis of the dedication issue and certain of the assumptions and conclusions, in my judgment, are flawed. Consequently, the Commission should not base its own conclusions solely on that study.

(f) The dependence of the discussion on Order No. 451 as support for the proposed rule is badly misplaced. Order No. 451 implements a specific statutory provision of the NGPA and the abandonment aspects of the final rule are a supporting element of the GFN process adopted by the Commission to achieve the objectives of that specific section, as opposed to the permanent nationwide abandonment under section 7(b) contemplated by the proposed rule. Order No. 451 also was adopted by the Commission in part to provide the necessary pricing incentive to bring about the substantial increase in natural gas supplies through the supply response. In Order No. 451, as reiterated and reinforced in Order No. 451–A, the Commission affirmatively assured that *any* dedicated reserves which are abandoned and released by operation of the GFN are directly accessible and available to firm customers of the pipeline-purchaser. If the pipeline has a permanent Order No. 436 certificate, the firm customer has non-discriminatory access to transportation services and the competitive opportunity to bid for any released gas. If the pipeline does not have an Order No. 436 certificate, Order No. 451–A provides a right of first refusal to all firm customers, provides the transportation services by the pipeline for delivery of any released gas resold to firm customers, and requires continued sales under the existing contract until firm customers have had the opportunity to exercise the right of first refusal. The proposed rule simply does not contemplate any assured protection of the existing reserves for firm customers and their consumers, other than a limited transportation right vested in producers with released gas.

(g) The dependence of the discussion on existing Commission precedent under *Felmont* and its LTA progeny also is badly misplaced. The Commission thus far has never approved an individual abandonment with (1) permanent duration *and* (2) volumes substantial enough to threaten assured supplies for sales to current customers, even on a limited term basis. Commission decisions under *Felmont* and subsequent LTA cases simply have not crossed the regulatory Rubicon of permanent abandonment of a single pipeline's supplies in excess of short term over-deliverability, let alone *de facto* nationwide permanent abandonment of any gas supplies on all pipelines without any opportunity for prior notice and comment by customers. In that regard, the record in Docket No. CI86–293–000, the Transcontinental Gas Pipeline Corporation (Transco) request for blanket permanent abandonment by its producer-suppliers, is most instructive. Transco in that case contemplated the possible permanent abandonment and release of all its jurisdictional gas, which constitutes approximately 58% or 2.5 Bcf of its daily gas deliverability. Forty-eight interventions were filed in response to the public notice and 11 parties protested the application or raised specific issues, including Atlanta Gas Light Co., Elizabethtown Gas Co., Long Island Lighting Co., Maryland People's Counsel, Philadelphia Electric Co., Public Service Electric and Gas Co., South Jersey Gas Co., Virginia Natural Gas, and Washington Gas Light Co. Generally, the intervenors are concerned with the following: (1) That indirect customers along with Transco's distributor customers should have access to information concerning released quantities of gas in order to compete on an equal basis for such supplies; (2) that Transco be required to provide nondiscriminatory transportation services to all of its customers pursuant to NGPA section 311 or section 7(c) of the NGA; (3) that the permanent release of reserves may hamper Transco's ability to meet the service needs of its customers on a reliable basis; (4) that the Commission should monitor the releases of gas in order to prevent an increase in Transco's WACOG or the unwarranted depletion of lowercost reserves, and in order to be able to effect a halt to further release of gas when it becomes apparent that Transco's program is not assuring Transco's ability to maintain reliable firm service; (5) that producer-suppliers should be granted conversion rights for firm transportation capacity with respect to released gas in a manner similar to the conversion rights Transco has granted its customers under the S&A; and (6) that any authorization does not prejudice any parties' rights to challenge Transco's prudence or reasonableness in releasing any gas supplies. Two parties, the Maryland People's Counsel (Maryland) and the Public Advocate of New Jersey (Public Advocate) protest Transco's applications. Maryland states that since it opposes the S&A and the instant applications are dependent upon Commission approval of the S&A, Maryland also opposes the application. Public Advocate states that it protests the granting of the requested authorizations because allowing Transco complete discretionary authority to determine which gas supplies it abandons raises serious questions concerning the impact of the release of lower-cost gas under sections 104, 106 and 109 of the NGPA on Transco's overall cost of purchased gas, not to mention on the continued reliability of supply necessary to meet Transco's seasonal and peak day, high priority firm sales requirements.

While the Commission has deferred action on Transco's request for other reasons, these issues in the context of an individual pipeline-specific request for permanent abandonment and the intervening parties' procedural opportunity to raise them prior to a Commission decision, coupled with the opportunity for rehearing and judicial review, provide a stark, realworld example of permanent abandonment problems under the proposed rule. This example also highlights the unprecedented procedural nature of the nationwide permanent abandonment contemplated by the proposed rule, where there would be *no* prior notice, *no* opportunity for comment, *no* Commission order, *no* rehearing and *no* judicial review for any party or any issue. In my view, *Felmont* and its progeny never contemplated that procedural or substantive result and consequently to rely on those cases as precedent for the proposed rule is strained and overreaching.

(h) I also find the proposed rule to be potentially very objectionable, when it is coupled with the rate design concept of auctioning which has been described publicly in recent speeches by Chairman Hesse. The auctioning concept apparently would establish an auction procedure for bidders seeking transmission services for system supply gas on individual pipelines with price ultimately allocating the transmission services. That concept would

conceivably place captive customers and their consumers at jeopardy with regard to the predictable availability of the transmission services necessary to delivery contracted system supply gas, as a function of the capability of the customer to match the highest bid. While I do not wish to prejudge the auction concept since it has not yet been presented to the Commission, it appears obvious that any such approach could threaten the predictable availability of such transmission services and therefore such supplies. Consequently, the combination of permanent nationwide abandonment under this proposed rule, the possible auctioning of transmission services, and the absence at this point of the permanent Order No. 436 certificates on the majority of pipelines necessary to assure non-discriminatory access to spot market supplies could leave captive customers in a weakened and potentially vulnerable position in terms of both price and supply. And, of course, these same captive customers, under the Proposed Take-or-Pay Billing Policy, would bear a share of the take-or-pay costs for restructuring system supply contracts.

(i) Again, these factors raise obvious questions relevant to the proposed rule which commenters should address, such as—

(a) What is the nature today of the security of supply concept and the reliability of service concept?

(b) What is the future role of the pipeline merchant function?

(c) What party has the responsibility for assured supply and reliable service?

(d) What is the Commission's statutory responsibility under section 7(b) of the Natural Gas Act?

(e) Are the pipeline's responsibilities for an adequate supply required pursuant to Federal certification under the NGA or are they merely contractual in nature?

(f) Is the pipeline required pursuant to Federal certification under the NGA to be a supplier of last resort?

(g) Does the historical regulatory requirement for sufficient dedicated reserves and deliverability to serve firm customers have any current or future relevance as a matter of law or a matter of policy?

(h) Does the Natural Gas Act, when considered in the context of the Natural Gas Policy Act and Commission Order Nos. 380, 436 and 451, provide for permanent nationwide abandonment and virtually total reliance on market forces, whether or not workably competitive at the city gate?

(i) Does the proposed rule satisfy applicable judicial precedent for the substitution of reliance on market forces for traditional regulatory concepts in achieving the statutory objectives of the Natural Gas Act and Congressional intent in the Natural Gas Policy Act?

I look forward to the opportunity to consider further these issues and questions in the context of comments received in this docket. I want to emphasize again that I remain committed to the proposition that the Commission whenever possible should place maximum *responsible* and *fully legal* reliance on competitive forces and the free market in its regulatory programs, including with regard to dedication and abandonment under section 7(b) of the NGA. In my view, the real challenge for the Commission in addressing this NOPR is to fashion a final generic abandonment rule, which will be fully legal in its procedure and substance and which will be fully responsible in providing the best possible natural gas service to American consumers--an assured and reliable supply at the lowest reasonable cost.

Charles A. Trabandt,
Commissioner.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-942-07-4220-10; U 57025]

Utah; Proposed Withdrawal and Opportunity for Public Meeting

Correction

In notice document 87-11207 appearing on page 18617, in the issue of Monday, May 18, 1987, make the following corrections:

In the second column, in the land description for Salt Lake Meridian, in the third line, "SW½" should read "SW¼"; and in the 15th line, "SE½" should read "SE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ASW-4]

Amendment of Transition Area; Winters, TX

Correction

In rule document 87-10603 beginning on page 17552 in the issue of Monday, May 11, 1987, make the following correction:

On page 17553, in the first column, in the first paragraph, in the fourth line, "21" should read "31".

BILLING CODE 1505-01-D

federal register

Friday
May 29, 1987

Part II

Environmental Protection Agency

40 CFR Parts 260, 264, 265, 270, and 271

Liners and Leak Detection for Hazardous Waste Land Disposal Units; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, 265, 270, and 271

[FRL-3187-9]

Liners and Leak Detection for Hazardous Waste Land Disposal Units

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under the authority of sections 3004(a) and 3004(o)(4) of the Resource Conservation and Recovery Act (RCRA), EPA is proposing rules requiring new landfills, surface impoundments, waste piles, and land treatment units for the treatment, storage, or disposal of hazardous waste to utilize an approved leak detection system. EPA is also proposing that certain existing land disposal units utilize an approved leak detection system. In today's proposed rule, the Agency is also proposing double liners and leachate collection and removal systems above and between the liners for new waste piles, and replacements and lateral expansions of existing waste piles in parallel with minimum technology requirements for landfills and surface impoundments.

Today's proposal also requires the installation of double liners and leachate collection and removal systems for significant unused portions of existing units at hazardous waste landfills, waste piles, and surface impoundments. In addition, double liners and leachate collection and removal systems are being proposed for certain new units, and lateral expansions and replacements of existing units at landfills, waste piles, and surface impoundments at facilities permitted before November 8, 1984. Under today's proposal, owners or operators would be required to develop a construction quality assurance program for certain landfills, surface impoundments, and waste piles, as well as for construction of final covers at land treatment units.

DATES: The Agency will consider all comments received on or before July 28, 1987, before taking final action on the proposed rule. A public hearing will be held beginning at 9:30 a.m., June 19, 1987 in Washington, DC. Proposed effective dates for the various provisions are listed in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: (1) *Hearings*—The public hearing will be held at the North Conference Area, Room 3, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC to receive public comments on the proposed rule. Anyone wishing to make a statement at this hearing should write to Bill Richardson, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The hearing will begin at 9:30 a.m. with registration at 9:00 a.m. The hearing will end at 4:30 p.m. unless concluded earlier. Oral and written statements may be submitted at the public hearing. Persons wishing to make oral presentations must restrict them to 15 minutes and are encouraged to submit written copies of their complete comments for inclusion in the official record.

(2) *Written Comments*—The public must send one original and two copies of their comments to the following address: EPA RCRA Docket (WH-562), 401 M Street SW., Washington, DC 20460. Comments should be identified by regulatory docket reference code F-87-CCDP-FFFF. 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 and should call Michelle Lee at (202) 475-9327 for appointments. The public may copy at no cost a maximum of 50 pages of material from any one regulatory docket. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION: For general information, call the RCRA/Superfund Hotline, (800) 424-9346 toll-free or 382-3112 in Washington, DC.

For information on the technical aspects of this proposed rule, contact Walter DeRieux, Disposal Technology Section, Waste Management Division, Office of Solid Waste (WH-565E), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4654.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
III. Overview of Today's Proposed Rule
A. Authority
B. Liquids Management Strategy
C. Summary of Today's Proposed Rule for Landfills, Surface Impoundments, and Waste Piles
D. Summary of Today's Proposed Rule for Land Treatment Units
E. Integration with Double Liner and Leachate Collection and Removal System Requirements
IV. Systems Approach
V. Section-by-Section Analysis of Proposed Rule
A. Leak Detection System
1. Background
a. Introduction
b. Objectives of the Leak Detection System
c. Rationale of the Proposed Leak Detection Standards for Surface Impoundments, Landfills and Waste Piles
2. Proposed Rule for Surface Impoundments, Waste Piles, and Landfill Units
a. Detection Capability
b. Action Leakage Rate
c. Response Action Plan
3. Proposed Rule for Land Treatment Units
a. Permitted Facilities
b. Interim Status Facilities
c. Demonstrations
B. Extension of Double Liner Requirements
1. Waste Piles
a. Background
b. Proposed Rule
2. Significant Portions
a. Background
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3. New Units, Replacement Units, and Lateral Expansions of Units at Facilities Permitted Before November 8, 1984
a. Background
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C. Construction Quality Assurance (CQA) Program
1. Background
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a. The Construction Quality Assurance (CQA) Program
b. The Construction Quality Assurance (CQA) Plan
c. Construction Quality Assurance Documentation
d. Managing of the Construction Quality Assurance Program
D. Permit Application
E. Applicability to Hazardous Waste Tank Systems
VI. State Authority
A. Applicability of Rules in Authorized States
B. Effect of State Authorizations
VII. Regulatory Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
VIII. Supporting Documents
IX. List of Subjects

Proposed Effective Dates for Today's Proposal

Provision	Proposed effective date
Leak detection requirements	6 months after promulgation.
Double liner and a leachate collection and removal system above (for landfills and waste piles) and between the liners for:	
—New waste piles, lateral expansions and replacements of waste piles.	6 months after promulgation.
—Significant unused portions of units at existing landfills, waste piles, and surface impoundments.	24 months after promulgation.

Provision	Proposed effective date
—New landfills, surface impoundments, and waste piles and lateral expansions and replacements of landfills, waste piles, and surface impoundments at facilities permitted before November 8, 1984.	6 months after promulgation.
Construction quality assurance program for certain land disposal units.	12 months after promulgation.

I. Authority

The regulations established under this rulemaking will be issued under authority of sections 3004, 3005, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6924, 6925, and 6936.

II. Background

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.

Under Section 3004 of RCRA, owners and operators of treatment, storage, and disposal facilities (TSDFs) are required to comply with standards "necessary to protect human health and the environment." Since enactment of RCRA, EPA has promulgated interim status and permitting standards governing the design, operation, and maintenance of landfill, surface impoundment, waste pile, and land treatment facilities used to treat, store, or dispose of hazardous wastes. Regulations that established the major components of these standards were issued on May 19, 1980 (45 FR 33221); these were the first national standards that defined acceptable management practices for hazardous waste. These standards included Part 265 requirements applicable during the interim status period and Part 264 requirements applicable to permitted units.

On July 26, 1982 (47 FR 32274), EPA promulgated technical and permitting standards under Part 264 for landfills, waste piles, surface impoundments, and land treatment units. These regulations consisted of a set of design and operating standards separately tailored for each type of unit. The design and operating standards required landfills, surface impoundments, and waste piles to have a liner and leachate collection system to prevent migration of wastes to the subsurface soil or to ground water or surface water during the active life of the unit. The standards required unsaturated zone monitoring and a treatment demonstration for land treatment units.

On November 8, 1984, amendments to RCRA entitled the Hazardous and Solid Waste Amendments (HSWA) were signed into law. HSWA adds additional technological requirements to the design standards for land disposal units. The new Section 3004(o)(1)(A) of RCRA added by HSWA requires new landfills and surface impoundments, each new landfill and surface impoundment unit at existing facilities, and each replacement or lateral expansion of a landfill or surface impoundment at existing facilities for which a permit is issued after November 8, 1984, to install two or more liners and a leachate collection system above (for landfills) and between the liners. Under Section 3004(o)(2), the minimum technology requirements set forth in Section 3004(o)(1)(A) will not apply if the owner or operator successfully demonstrates that alternative design and operating practices together with location characteristics will prevent the migration of any hazardous constituents to ground water or surface water at least as effectively as such liners and leachate collection systems. Section 3004(o)(3) sets forth a variance from the minimum technology requirements for certain monofills.

Section 3004(o)(4)(A) of RCRA requires EPA to issue standards by May 8, 1987 requiring new landfills, surface impoundments, waste piles, land treatment units, and underground tanks to use approved leak detection systems. The statute defines an approved leak detection system as a system or technology that is capable of detecting leaks of hazardous constituents at the earliest practicable time. For the purpose of implementing the leak detection provision, Section 3004(o)(4)(B)(ii) defines new units as units on which construction begins after the date of promulgation of the final rule.

On July 15, 1985, EPA issued a final rule (50 FR 28702) to amend the existing hazardous waste regulations to reflect those statutory provisions of HSWA that took effect immediately or shortly after enactment. This rule incorporated into the existing hazardous waste regulations the Section 3004(o)(1)(A) regulations, requiring certain permitted and interim landfills and surface impoundments to have double liners and leachate collection systems. The July 15, 1985 regulations set top liner standards that could be met by a flexible membrane liner (FML), and bottom liner standards that could be met by three feet of compacted soil or other natural materials with a permeability of no more than 1×10^{-7} cm/sec. In the Proposed Codification Rule of March 28, 1986, EPA proposed amendments to these double liner and leachate collection system requirements. The March 28, 1986 proposal sets forth two designs for double liner systems. One design consists of FML top liner and a composite bottom liner consisting of a FML underlain by a low permeability soil layer, such as clay. The alternative design entails using a FML top liner and a clay bottom liner.

On July 14, 1986 (51 FR 25422), EPA promulgated regulations under RCRA Sections 3004(o)(4) and 3004(w) for tank systems storing or treating hazardous waste. Since that rule contains leak detection requirements for underground tanks, today's proposal will not address underground tanks. However, relevant issues to tank regulations (i.e., leak detection design standards, and construction quality assurance (CQA)) are discussed in Section V.E.

III. Overview of Today's Proposed Rule

A. Authority

The requirements in today's rule are being proposed under the authority of different sections of RCRA. In accordance with Section 3004(o)(4) of HSWA the Agency is today proposing leak detection requirements. That section requires the Agency to promulgate standards requiring new landfill units, surface impoundment units, waste piles, and land treatment units that treat, store or dispose of hazardous wastes to have approved leak detection systems or "a system or technology which the Administrator determines to be capable of detecting leaks of hazardous constituents at the earliest practicable time."

In order to meet this statutory mandate, the Agency is proposing to require new landfills, surface impoundments, and waste piles to design, construct, and implement a leak detection system capable of detecting leakage of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period of the unit. As discussed more fully below, the Agency believes that for these units, the existing leachate collection and removal system between the liners (LCRS) with some additional modifications in the terms of

design and performance criteria best satisfies the statutory criteria for leak detection. By relying on the LCRS between the liners as the primary mechanism for detecting, the Agency is assured that the owner or operator will detect leaks through the top liner before hazardous constituents migrate out of the unit. The Agency believes that this is the earliest practicable time to detect such leaks.

For new land treatment units, the leak detection system being proposed today expands upon the existing Part 264 unsaturated zone monitoring requirements. These provisions currently require the owner or operator of a land treatment unit to conduct monitoring activities at specified intervals for hazardous constituents below the treatment zone. As discussed more fully below, the Agency is proposing to modify these provisions to further increase the capability of the existing unsaturated zone monitoring program to detect migration of hazardous constituents from the land treatment zone. By requiring an improved unsaturated zone monitoring program at specified intervals, the Agency believes that any leakage from a land treatment unit will be detected at the earliest practicable time in accordance with the Section 3004(o)(4) mandate.

All other requirements in today's rule are proposed under EPA's general authority to promulgate regulations for hazardous waste management facilities under Section 3004(a) of RCRA. Section 3004(a) requires EPA to promulgate regulations "as may be necessary to protect human health and the environment." Specifically, the requirements proposed under Section 3004(a) of RCRA are:

1. Response activities (action leakage rate and response action plan) for new landfills, surface impoundments, waste piles, and land treatment units and for replacements and lateral expansions of existing landfills and surface impoundments which received a RCRA permit after November 8, 1984.

2. Double liners and leachate collection and removal systems for new surface impoundments and landfills, and replacements and lateral expansions of existing surface impoundments and landfills at facilities which received a RCRA permit prior to November 8, 1984.

3. Double liner and leachate collection and removal systems for new waste piles and replacements and lateral expansions of waste piles at RCRA permitted facilities.

4. Double liners and leachate collection and removal systems for new interim status waste piles, and with respect to wastes received after the effective date of today's rule, replacements and lateral expansions of existing interim status waste piles that are within the waste management area identified in the Part B permit application.

5. Double liners and leachate collection and removal systems for significant portions of existing surface impoundments, waste piles, and landfills.

6. Leak detection and response activities for existing land treatment units.

7. Construction quality assurance requirements.

Essentially, today's proposal increases the level of technological control at land disposal units by requiring double liners and leachate collection and removal systems, a construction quality assurance program, and owner or operator initiated response activities. These increased levels of technological control are necessary to adequately protect ground water.

Double Liner Requirements

The Agency's ground-water protection strategy is based on two components—the imposition of sufficient technological controls (i.e., liner and leachate collection and removal systems) and monitoring and corrective action responsibilities. The ultimate goal of such a strategy is to prevent hazardous constituent migration from the land disposal unit into the environment. Originally, the Agency thought that a single liner and a leachate collection and removal system along with corrective action would provide sufficient protection of the environment. Accordingly, in 1982 in Agency promulgated single liner and leachate collection and removal systems for land disposal units. (See 47 FR 32274, July 26, 1982) for a complete discussion of how these requirements adequately protect groundwater).

In 1984, Congress required new landfills and surface impoundments and lateral expansions and replacements of existing landfills and surface impoundments at facilities permitted after November 8, 1984 to install double liners and a LDCRS. (Section 3004(o)(1) of HSWA). By requiring double liner systems for these landfills and surface impoundments, Congress obviously voiced dissatisfaction with the application of the single liner requirements to these units.

Although Congress did not apply the double liner requirements to other land disposal units, the Agency has subsequently collected data which shows that double liner systems are warranted for other new land disposal units replacements and lateral expansions.

As discussed more fully in the background document, the Agency has developed models assessing hazardous constituents migration into the environment from land disposal units. As a result of these models, it is evident to the agency that single-lined units allow substantially greater migration into the environment of hazardous constituents than would double-lined units. While the Agency could rely on corrective action to clean up releases of hazardous constituents into the environment from single lined units, it is less costly and more effective to prevent ground-water contamination by imposing adequate technological controls rather than to rely on cleaning up such contamination after the fact.

The technologies for detecting and remedying ground-water contamination are not completely reliable in all cases. Unique and heterogeneous hydrogeologic settings can make it difficult to site monitoring wells and detect releases. Cleanup technologies are new and have not been tested for all wastes in all settings. Moreover, the expense of these cleanup activities raises the possibility that owners or operators may not be able to pay for corrective actions, forcing the Agency to consider spending Superfund monies to accomplish the cleanup. Because of these uncertainties, the Agency believes it is more effective to prevent constituents from migrating into ground water in the first place. Therefore, the Agency believes that the imposing double liner and leachate collection removal systems for certain new units, replacements, and lateral expansions, the Agency is assuring protection of human health and the environment by protecting ground water from the migration of hazardous constituents. The Agency is not proposing to require other existing land disposal units to adopt such double-liner requirements because in order to meet these requirements, an existing unit would need to excavate or remove all hazardous wastes. Besides being impractical, the removal of hazardous wastes could also pose a substantial environmental threat.

Response Activities

Under today's program, the Agency is requiring the owner or operator of certain disposal units to conduct response activities (e.g., closing the units, repairing the leak) when leakage above a certain rate is discovered.

Although under Section 3004(o)(1) of HSWA, Congress mandated that EPA promulgate leak detection requirements for certain land disposal units, Congress was silent with regard to the appropriate response activities when leakage is detected at these units. EPA believes that it is critical that the owner or operator promptly initiate response activities when leakage above a certain rate is detected, therefore, the Agency is promulgating these response requirements under our general Section 3004(a) authority.

The goal of the response action program is to prevent the migration of hazardous constituents at levels exceeding health based standards for ground-water protection. Under today's proposal, the owner or operator will develop, and the Regional Administrator will approve, a RAP that effectuates this goal. Once the RAP has been approved, the owner or operator is expected to implement the RAP when leakage above a designated rate occurs. The Agency believes that it is necessary to require the owner or operator to initiate a response when certain levels of leakage occur because by requiring response actions promptly, the owner or operator is better able to minimize any environmental damage that may occur from migration of hazardous constituents out of the unit. We believe that since we are requiring owners or operators to detect leaks at the earliest practicable time, it makes sense to require early responses to those leaks. The prevention of leachate migration from the unit in levels exceeding health based standards for ground-water protection will obviate the need for corrective action because corrective action is tied to releases exceeding these standards. Since, it is less burdensome and more effective to prevent ground water contamination rather than to rely on corrective action, the Agency believes today's proposed response activity plan is necessary to protect human health and the environment.

Construction Quality Assurance Program

The Agency is today proposing to require owners and operators of certain treatment, storage, and disposal units to construct these units in accordance with design specifications and criteria. The purpose of the construction quality assurance program is to prevent hazardous constituent migration into the environment from hazardous waste management units. As discussed more fully below, studies conducted by the Agency demonstrate that construction related problems during liner system installation constitutes one of the major sources of liner system failure. Therefore, the Agency believes that in order to ensure that liners operate as a barrier to prevent hazardous constituent migration from the unit, it is necessary that the Agency require owners and operators of hazardous waste disposal units to conduct a construction quality assurance program.

B. Liquids Management Strategy

The fundamental goal of EPA's hazardous waste management regulations is the protection of human health and the environment. To fully understand the relationship of today's proposal to the hazardous waste land disposal regulatory program promulgated on July 26, 1982, the "liquids management strategy" must be considered. This strategy as it pertains to landfills, surface impoundments, and waste piles, will be discussed herein. Land treatment units will be discussed in Section D below.

EPA believes that in order to protect human health and the environment, a fundamental goal of RCRA regulations must be to minimize, to the extent achievable, the migration into the environment of hazardous constituents placed in land disposal facilities. One element of EPA's strategy for achieving this goal is the liquids management strategy for land disposal facilities. There are two aspects of the liquids management strategy: the minimization of leachate generation in the unit and the removal of leachate from the unit. First, the generation of leachate is minimized through the use of design controls and operational practices such as a run-on control system capable of preventing the flow of liquid onto the active portion of the unit, the placement of a cap on the unit at closure, and the restriction of liquid waste in landfills. Second, the removal of leachate is maximized by requiring leachate collection and removal systems above (for landfills and waste piles) and between the liners. Today's proposal focuses on leachate removal.

The Agency views leachate collection and removal systems as the principal means of removing liquids from units. Although a liner is a barrier to prevent migration of liquids out of the unit, no liner can be expected to remain impervious forever. As a result of waste interaction, environmental effects, and the effects of construction processes and operating practices, liners eventually may degrade, tear, or crack and may allow liquids to migrate out of the unit (47 FR 32284, July 26, 1982). Because generation of leachate cannot be eliminated completely during the active life and post-closure care period of a land disposal facility, leachate removal is essential to prevent subsurface migration (47 32313, July 26, 1982). For example, in a double liner system, measures must be taken to remove liquid that migrates through the top liner, thereby preventing hazardous constituents from migrating through the bottom liner and into the environment.

For facilities that clean close, the liquids management strategy is addressed by removing or decontaminating waste residues through the site-specific closure plan. The closure requirements ensure protection of human health and the environment by requiring that leachate migration from waste residues not present a hazard. The alternative closure rule for certain surface impoundments and waste piles proposed on March 19, 1987, also implements the liquids management strategy by requiring the owner or operator to demonstrate that leachate migration after closure will not present a threat to human health or the environment. The site-specific assessment of leachate migration for controlled conditions enables EPA to allow some leachate migration out of the facility and still be protective of ground water and surface water.

Today, the Agency is proposing leak detection performance and design criteria that will result in increased liquid removal and collection for landfills, surface impoundments and waste piles. Moreover, depending upon site-specific circumstances relating to the leakage, the Agency will require the owner or operator to take certain actions to prevent migration of hazardous constituents out of the units to the extent practicable.

Today's proposed rule, therefore, helps to implement the liquids management strategy. The land disposal system elements function in an integrated and interdependent manner along with a construction quality assurance program to prevent leachate migration out of the unit by maximizing its collection and removal. The liners serve as a barrier to leachate migration and facilitate its collection and removal; the leachate collection and removal system (LCRS) above the top liner in landfills minimizes the buildup of liquid pressure on the top liner; the LCRS system between the liners serves to reduce the buildup of head on the bottom liner; and the leak detection system notifies the owner or operator of leakage through the top liner, which may in turn require the owner and operator to implement certain response actions to

prevent migration of hazardous constituents from the unit.

C. Summary of Today's Proposed Rule for Landfills, Surface Impoundments, and Waste Piles

Today's proposed rule establishes:

- Leak detection requirements that result in detecting leaks "at the earliest practicable time."
- Requirements for response actions to certain detected leakage to prevent hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection.
- Double liners and LCRS requirements for certain land disposal units that are not currently required to be double lined.
- Construction quality assurance requirements for owners and operators of hazardous waste management facilities to ensure that land disposal units are constructed as designed.

Each of the elements of today's proposed rule is discussed briefly below:

1. Leak Detection Requirements for Newly Constructed Landfills, Surface Impoundments, and Waste Piles

Under today's proposal, owners or operators of all newly constructed landfills, surface impoundments, and waste piles are required to design, construct, operate, and maintain a system capable of detecting leakage of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period of the unit (see Sections 264.221(g), 265.221(f), and conforming amendments to Subparts L and N of today's rules). In addition to this narrative standard, the Agency is also proposing specific performance and design standards for an approved leak detection system for these units.

Essentially, the leachate collection and removal system (LCRS) requirements proposed by the Agency on March 28, 1986 (Sections 264.221(c)(3) 265.221(a)(3) and conforming amendments to Subparts L and N) form the basis of today's proposed leak detection requirements. However, today's rule proposes to modify these LCRSs by specifying the following design criteria: a minimum bottom slope, drainage layer hydraulic conductivity and transmissivity, and a sump of appropriate size to collect and remove liquids efficiently. Additionally, the system must be capable of detecting a specified leak within a certain time period and must be able to collect and remove liquids rapidly to minimize head on the bottom liner (see Sections 264.221(h), 265.221(g) and conforming amendments to Subparts L and N of today's rule). In lieu of meeting these requirements, the owner or operator may receive a variance for an alternative system that meets certain specifications (Sections 264.221(i), 265.221(h) and conforming amendments to Subparts L and N).

In addition to the design criteria discussed above, the owner or operator must establish an action leakage rate (ALR) during the design of the unit. The ALR is the rate of leakage from the top liner into the LCRS that triggers interaction between the owner or operator and the Agency to determine the appropriate response action for the leakage. The ALR proposed today consists of a range between 5 and 20 gallons per acre per day. In the final rule, the Agency intends to select a value within that range as the appropriate ALR.

When the leakage from the top liner exceeds the ALR, the owner or operator is required to implement the appropriate site-specific response activity for leakage. Therefore, the Agency is also proposing today that the owner or operator develop a response action plan (RAP) which consists of an assessment of the reason for leakage, the current conditions of the unit components (e.g., bottom liner and leachate collection and removal system), the potential for migration out of the unit of hazardous constituents at levels exceeding health-based standards, and an assessment of the effectiveness of various responses.

Under today's proposal, the time when a RAP must be submitted depends upon the rate of the leakage. For rapid and large leakage, the owner must submit a RAP before the unit receives waste. For leakage that exceeds the ALR, but is less than rapid and large, a RAP must be submitted no later than 90 days after the ALR is exceeded. The RAP proposed by the owner or operator must be reviewed and approved by the Regional Administrator (RA). During this time (from determination of exceedance of the ALR to implementation of the RAP) the owner or operator continues to operate the unit and collect and remove leachate.

2. Leak Detection requirements for Certain Existing Landfill and Surface Impoundment Units

As discussed previously, Section 3004(o)(1)(A) of RCRA imposes double liner and leachate collection system requirements for new landfills, surface impoundments, and lateral expansions and replacements of existing landfill and surface impoundment units at facilities for which a permit is issued after November 8, 1984. The Agency is proposing today that units constructed prior to the effective date of this rule which must meet these requirements use their existing LCRS between the top and bottom liners as a leak detection system. Owners and operators of these units will *not* be required to modify the design of their existing leachate collection systems. However, they will be required to develop an ALR appropriate for the existing unit and to initiate a response action plan as discussed in the above section.

3. Double Liner and Leachate Collection Requirements for Certain Landfills and Surface Impoundments

The Agency proposed double liner and leachate collection system standards for new landfills and surface impoundments and lateral expansions and replacements of existing landfill and surface impoundment units at facilities for which a permit was issued after November 8, 1984. The Agency is proposing under the authority of Section 3004(a) of RCRA to extend these requirements to new waste piles, and lateral expansions and replacements of existing waste piles where construction begins six months after promulgation of today's rule. EPA is also proposing, under the authority of Section 3004(a) of RCRA, to extend these requirements to significant portions at existing landfills and surface impoundments and to new landfills and surface impoundments and lateral expansions and replacements of existing units at facilities permitted before November 8, 1984.

a. Double liners and leachate collection and removal systems for waste piles. The Agency is proposing that six months after promulgation of today's proposed rule, owners and operators must install double liners and leachate collection systems for new waste piles, and lateral expansions and replacements of existing waste piles where construction begins after the effective date of today's rule. Today's proposed rule applies to all waste piles, regardless of the date of permit issuance. As a result of this proposed rule, these waste piles will have technological requirements equivalent to those at designated landfills and surface impoundments. The Agency believes that, in order to protect human health and the environment it is critical that waste piles be provided protection equivalent to that provided at landfills and surface impoundments, because the potential for leachate migration from a waste pile can be similar to or greater than that from a landfill for an equivalent time period. Waste piles

generally have a longer active life, usually are not covered, and are more prone to liner damage from heavy equipment than landfills. As a consequence, double liners and LCRSs above and between the liners are being required by today's proposal.

Owners or operators of permitted and interim status waste piles may seek the same variances as those allowed to owners and operators of landfills and surface impoundments under 40 CFR 264.221 (d) and (e) and 264.301 (d) and (e). To receive a variance, the owner or operator must demonstrate that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the proposed liners and leachate collection system. The owner or operator may also receive a variance for a monofill under 40 CFR 264.251(e). Additionally, owners or operators of totally enclosed waste piles that meet the requirements of Section 264.250(c) are exempt from the double liner and leachate collection and removal system requirements under today's rule.

b. Double liners and leachate collection system requirements for significant unused portions of existing landfills, surface impoundments, and waste piles. Under today's proposal, existing units at interim status and permitted facilities must install double liners and leachate collection and removal systems on significant portions of those unlined areas upon which waste has not been placed 24 months after promulgation. EPA takes the position that double liners should be installed at significant unused portions of existing units where the opportunity to do so is the same as for new units. This action reduces the potential for adverse human health and environmental impacts by preventing the migration of hazardous constituents from the unit.

c. Double liners for certain landfill and surface impoundment units at facilities permitted before November 8, 1984. Under Section 3004(a) of RCRA, EPA is proposing that new landfills and surface impoundments, and lateral expansions and replacements of existing landfill and surface impoundment units at facilities permitted before November 8, 1984, will be required to have double liners and leachate collection and removal systems (LCRS). Today's proposal will apply to units at these facilities that begin construction 6 months after the date the final rule is published in the **Federal Register**. The potential for migration of hazardous constituents from these units is the same as for units at facilities permitted after November 8, 1984. Because units permitted after November 8, 1984 are required to have double liners and leachate collection systems, the Agency believes it is appropriate to require new landfills and surface impoundments, and lateral expansions and replacements of existing landfills and surface impoundments at facilities permitted before November 8, 1984, to also meet these requirements. Note that, as discussed in the previous section, new waste piles, and replacements and lateral expansions of waste piles at facilities permitted before November 8, 1984 must also meet these requirements.

There is, however, an exception to the applicability of the requirements discussed above. Under 40 CFR 264.221(f) and 264.251(f), the Agency is proposing today to exempt certain replacement surface impoundments, landfills, and waste piles permitted before November 8, 1984, from the double liner and leachate collection system requirements. In essence, owners or operators who demonstrate that they have a single liner at a surface impoundment or waste pile that currently meets the Part 264 single liner requirements and who have no reason to suspect that the liner is leaking will be exempt from the double liner and leachate collection system requirements.

EPA takes the position that if the owner or operator made a good faith effort to satisfy single liner requirements in effect at the time of permitting, it is unreasonable to require the owner or operator to assume the expense of a new double liner system when the single liner system is adequately working.

4. Construction Quality Assurance Program for Landfills, Surface Impoundments, and Waste Piles

Under Section 3004(a), today's proposed rule requires a construction quality assurance (CQA) program for the following components of landfills, surface impoundments, and waste piles: foundations; low permeability soils; FMLs; dikes; leachate detection, collection, and removal systems; and final covers. Under Sections 264.19 and 264.20, and 265.19 and 265.20, the owner or operator must ensure that these components meet or exceed all design criteria, plans, and specifications. The CQA requirements are implemented through a CQA plan which is specifically tailored for each unit. The plan addresses activities such as inspecting, monitoring, and sampling for the individual components.

The CQA plan must specify the unit-specific procedures that the owner or operator will use to comply with the CQA requirements and to identify implementation procedures for construction and installation. For units applying for RCRA permits, the CQA plan must be submitted with the permit application. For permitted facilities desiring to construct new units, or to laterally expand or to replace such units, the plan must be submitted as a permit modification (Section 264.20). For interim status units, the owner or operator is required to submit a plan for approval prior to construction (Section 265.20).

The CQA plan is prepared at the design stage and is implemented during the construction and installation phase. Today's proposal requires the owner or operator to develop a CQA plan to be submitted to the Regional Administrator (RA) for approval prior to construction. Under today's proposal, the owner or operator is required to retain a registered professional engineer to implement the plan (Sections 264.20(a) and 265.20(a)). A CQA report documenting proper implementation of the approved plan must be submitted to the RA following construction (Section 40 CFR 264.20(g) and 265.20(f)). Report submission (both permitted and interim status units) and approval (permitted units only) is required before waste can be received (with the exception of the closure report). The RA will review and approve the report within 30 days unless the owner or operator is notified otherwise. If the RA does not respond within 30 days (permitted units only) the report does not need to be reviewed and approved.

CQA serves to detect deviation from the design caused by error or negligence during the construction phase of a unit and to allow for suitable corrective measures before wastes are disposed in the unit. Without proper CQA, problems with components (e.g., leachate collection and removal system) due to construction may not be discovered until the component or system fails during operation. Improper construction has been cited as one of the major causes of waste migration out of units. Two studies conducted by EPA indicate that proper CQA is extremely important for successful performance of liners, covers, leachate collection systems, and leak detection systems (see Liner/Leak Detection Background Document). EPA believes that the CQA program is an integral part of the land disposal requirements because it will provide a high degree of confidence that all components are working as designed

when a unit is started up to receive waste.

The objective behind the proposed CQA program is directly related to both parts of the liquids management strategy: minimizing leachate generation and maximizing leachate removal. To ensure that the waste management system will meet these goals, all components of the total system must function as designed: top and bottom liners, leachate collection and removal systems above and between the liners, the leak detection system, and the final cover. The CQA program will aid in meeting these goals by ensuring the quality of each component of the land disposal unit.

D. Summary of Today's Proposed Rule for Land Treatment Units

1. Leak Detection for Land Treatment Units

There are differences between land treatment and waste disposal in a landfill, waste pile, or surface impoundment. The land treatment process involves waste biodegradation in the upper layers of the soil and reduction of constituent hazard levels during the degradation process. Treatment, storage, or disposal at a landfill, surface impoundment, or waste pile relies on containing the hazardous constituents (further description of differences is provided in Section V). Therefore, the Agency is proposing a leak detection methodology for land treatment units that differs from the methodology proposed for landfills, surface impoundments, and waste piles.

Under today's proposed rule, the owner or operator of new and existing land treatment units must comply with the leak detection requirements within 6 months after the date the final rule is published in the **Federal Register.**

The Agency is proposing that the owner or operator meet the existing unsaturated zone monitoring requirements under Part 264 for both new and existing land treatment units at interim status and permitted facilities. These requirements are the core of the leak detection program for land treatment units. EPA is proposing to expand these requirements by requiring the owner or operator to meet a 95-percent monitoring confidence level for detection of a significant increase of hazardous constituents below the treatment zone; to detect leaks at the earliest practicable time; to monitor soil and soil-pore liquid immediately below the treatment zone; and to inspect unsaturated zone monitoring equipment.

Under today's proposal, the owner or operator of new and existing units at interim status or permitted facilities must develop a response action plan (RAP) for widespread leakage. This must be prepared and submitted to the RA for approval before waste can be received at a new unit or, for existing units, after the effective date of today's rule. Owners or operators who discover leaks that are less widespread are not required to develop a RAP for the following reason: The existing land treatment provisions under Part 264 require that if the owner or operator detects concentrations of constituents statistically exceeding background levels, appropriate operational controls must be implemented, such as reducing the waste application rate at the land treatment unit.

The owner or operator of a new facility must address today's proposed land treatment requirements in the permit application. The owner or operator of existing permitted land treatment units must submit a permit modification to the RA and implement the revised unsaturated zone monitoring program six months after promulgation of the final rule. An owner or operator of an interim status unit must have a written unsaturated zone monitoring plan that specifically sets forth the responsibilities of the new leak detection requirements and must implement the plan six months after promulgation of the final rule.

2. Construction Quality Assurance for Land Treatment Units

Today's proposed CQA program for land treatment units only addresses covers. The owner or operator of such a unit must ensure that the final cover meets or exceeds all design criteria, plans, and specifications in the permit (for permitted units) or in the operating record (for interim status units). The CQA requirements applicable to covers at land treatment units are the same requirements applicable to landfills, surface impoundments, and waste piles as discussed in Section 4 above.

E. Integration With Double Liner and Leachate Collection and Removal System Requirements

Today's proposal has been developed in conjunction with the double liner and leachate collection system requirements proposed March 28, 1986 (51 FR 10706) to modify the July 15, 1985 rule (50 FR 28702). The March 28, 1986 proposed rules require new landfills and surface impoundments and lateral expansions, and replacements of existing landfills and surface impoundments at facilities which receive a RCRA permit after November 8, 1984, to have two or more liners and a leachate collection system above (for landfills) and between the liners. The liner system proposed in March 1986 comprises an FML top liner and either a compacted soil (clay) bottom liner or a composite bottom liner consisting of a FML underlain by compacted soil.

On April 17, 1987, EPA issued Hazardous Waste Management System: Minimum Technology Requirements: Notice of Availability of Information and Request for Comments (52 FR 12566). That notice included data on the two bottom liner designs proposed in the March 28, 1986 rule: Composite and compacted soil. In the notice, the Agency compared the leak detection performance characteristics, leachate collection efficiency, and the potential for leachate migration into and out of the two liner types. EPA requested comments on the data presented in the Notice. The comment period closes June 1, 1987.

The April 17, 1987 notice discusses the deficiencies in the performance expected of compacted soil bottom liners under most conditions. Under most conditions soil bottom liners cannot be considered best available technology. Deficiencies of the compacted soil liner include:

1. The compacted soil liner does not maximize leachate removal in the LCRS between the liners because the compacted soil will absorb some of the liquid from the leachate collection system between the liners. Therefore, the absorbed leachate would not be available for collection and removal by the LCRS and may eventually migrate out of the unit. For a LCRS to remove leachate rapidly, it must have two characteristics: (1) High hydraulic conductivity, and (2) relatively smooth flow conditions. A compacted soil bottom liner can decrease the hydraulic conductivity of the LCRS by penetrating the lower portion of the LCRS. Moreover, because the surface of the compacted soil is rougher than the surface of the FML, the flow velocity in the leak detection system (LDS) is significantly reduced.

2. Under most conditions the compacted soil liner will not allow leak detection at the earliest practicable time. The compacted soil absorbs liquid leaking through the top liner and, therefore, delays or reduces the capability to detect leaks. The compacted soil bottom liner is estimated to have a leakage detection capability of between 100 to 500 gallons per acre per day while composite bottom liners have a much more sensitive detection capability ranging from 0.1 to 1 gallon per acre per day.

3. The compacted soil bottom liner encourages the buildup of higher liquid pressures on the bottom liner by not allowing for rapid drainage of liquid to the sump. This increases the potential for migration through the bottom liner.

In summary, the compacted soil bottom liner has the capability of absorbing rather than allowing for the collection of large volumes of leachate, and the absorbed constituents may migrate out of the unit. Also, the compacted soil bottom liner may not provide for detection of leakage at the earliest practicable time in most cases. Based on the data presented in the notice, EPA believes that the composite bottom liner is, overall, a more effective technology than a compacted soil liner.

Although the leak detection portion of today's proposal is based on the use of the composite bottom liner as the best available technology for meeting the statutory leak detection requirements, the leak detection proposal does not exclude the use of compacted soil liners under unique site-specific circumstances. This is because use of the best available technology (i.e., composite bottom liners) may not be necessary for protection of human health and the environment in all cases. Today's proposal allows for the use of alternative leak detection systems, such as one that may include a compacted soil bottom liner, provided that it is capable of meeting the detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. It may be possible that under certain site-specific conditions, such as low rainfall, a compacted soil bottom liner could be used. Further discussion on this point is provided under preamble Section V.A.2.a.(4).

IV. Systems Approach

In developing today's proposal, EPA considered all of the design and operating requirements for a land disposal unit (i.e, the entire system) rather than focusing on individual components of the unit: The leachate collection and removal system (LCRS) (above and between the liners); the top liner (FML); the bottom liner; and the cover. Figure 1 shows a schematic of a typical double liner and leak detection system for a landfill. The double liner and leak detection system includes a top and bottom liner and an LCRS above the top liner and between the top and bottom liners. Each component of the system is designed to prevent ground-water contamination. Therefore, some redundancy is provided by requiring all of these components in the land disposal unit. EPA believes that although individual component failures can occur, the system remains intact unless a fatal combination of failures occurs, which has a very low probability. For example, rainwater that breaches the cover will be collected in the leachate collection system above the top liner, and no liquid will be allowed to build up on the top liner. Thus, a breach in the final cover will not necessarily result in a leak from the unit.

The response action plan (RAP) for leak detection is designed with the integrated systems approach in mind. Under this approach, the owner or operator can make a site-specific assessment to examine the size and nature of the leak and the capability of the whole system, as opposed to a single component, to prevent migration of hazardous constituents out of the unit. Through this assessment the appropriate response can be determined which will meet the goal of protecting ground water and surface water.

Leakage through the top liner above the action leakage rate does not automatically mandate that the top liner be repaired because the Agency believes that the bottom liner will most likely impede liquid from migrating out of the unit. However, to ensure that this is the case, the Agency is using the RAP to assess the capability of the entire system to deter migration of hazardous constituents and to ensure the appropriate response to achieve that goal.

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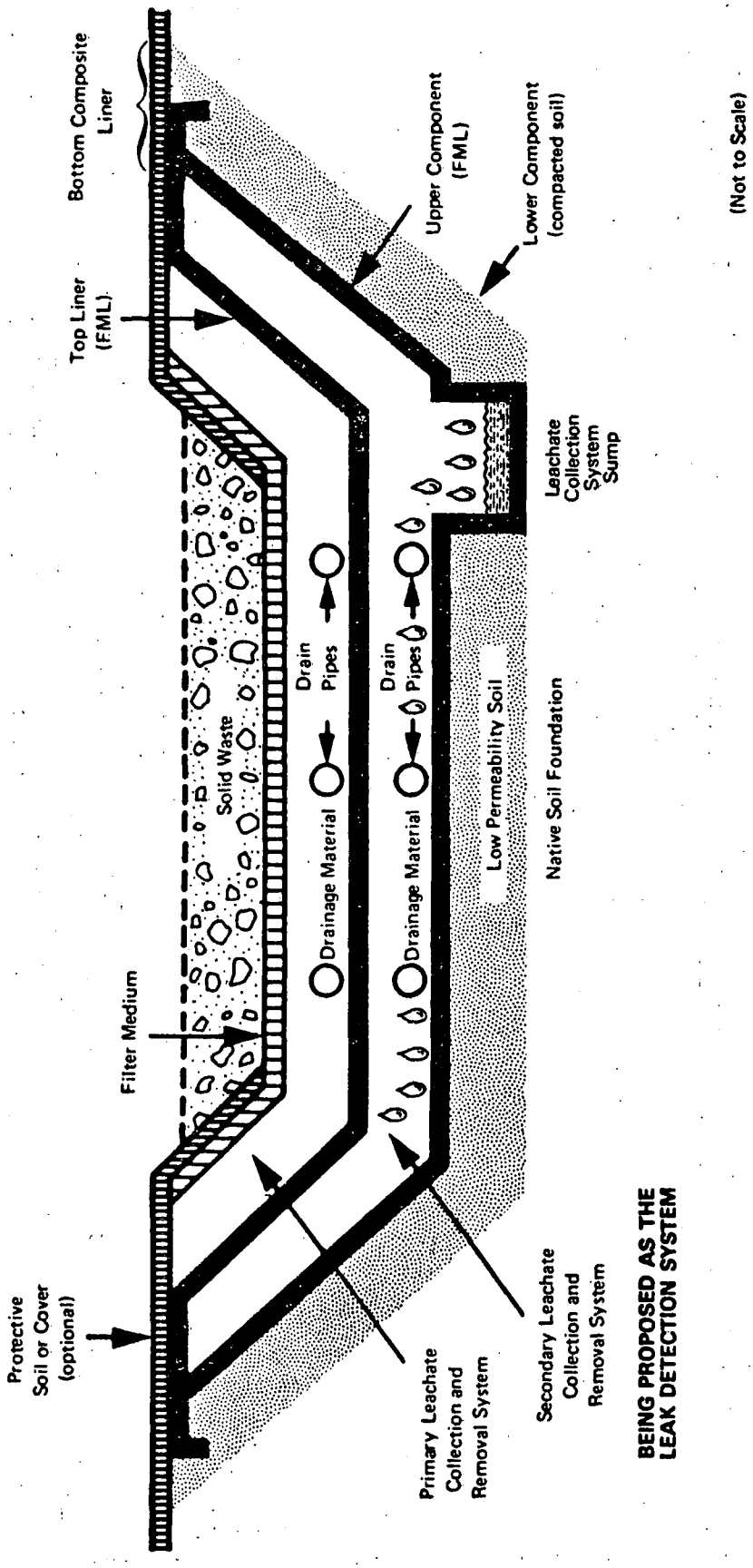
SCHEMATIC OF A DOUBLE LINER AND LEAK DETECTION SYSTEM FOR A LANDFILL



BEING PROPOSED AS THE LEAK DETECTION SYSTEM

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V. Section-By-Section Analysis of Proposed Rule

A. Leak Detection System

1. Background

a. Introduction. Today, EPA is proposing leak detection system (LDS) standards for surface impoundment, waste pile, land treatment, and landfill units in 40 CFR Subparts K through N. The proposed leak detection standards combine performance and design criteria.

The regulatory goal of preventing groundwater contamination is achieved in different ways with different types of units. For land treatment units, the existing standards require that hazardous constituents be degraded, transformed, or immobilized within the treatment zone. Owing to the unique features of the land treatment process, these units are discussed separately in Section V.A.3 of this preamble.

In today's proposed rule for surface impoundments, waste piles, and landfills, the Agency sets forth general performance criteria for the leak detection system that relate to detection sensitivity and detection time. Since there are many ways to achieve such goals, detailed specifications are not set forth in these rules. Rather, owners and operators are free to select a design that meets these performance criteria. EPA has developed and will continue to develop technical guidance documents to assist owners or operators and permitting authorities in evaluating the appropriateness of various designs, materials, and equipment.

The proposal also sets forth specific design criteria for the leak detection system that owners or operators must use as a minimum when designing a system. Owners or operators are not, however, precluded from using more stringent design criteria.

b. Objectives of the leak detection system. The regulatory objectives of today's proposed rule are to detect leaks at the earliest practicable time (in keeping with RCRA Section 3004(o)(4)(A)), to contain the leak within the engineered structure of the unit, to prevent ground-water contamination when technically feasible and thereby obviate the need for corrective action. Today's proposed leak detection regulations have the following key features:

(1) New and certain existing surface impoundments and landfills must have a leak detection system between the top and bottom liner capable of detecting leaks at the earliest practicable time.

(2) The technology-based standards for the leak detection system and bottom liner must be used to achieve the detection capability required for a leak detection system.

(3) The system must be able to detect leaks over all areas exposed to waste and leachate.

(4) The system must be operated during the active life and post-closure care period of the unit (if applicable).

(5) Response actions are required to prevent migration of hazardous constituents out of the unit to mitigate the potential for groundwater contamination.

c. Rationale of the proposed leak detection standards for surface impoundments, landfills, and waste piles. On March 28, 1986, the Agency proposed leachate collection and removal system requirements for surface impoundments and landfills based on a drainage layer technology (40 CFR 264.221(c) and 265.221(a) and conforming amendments to Subpart N). The leak detection system being proposed today relies on the proposed drainage layer technology requirements for leachate collection and removal systems between liners for surface impoundments and landfills. EPA selected a drainage layer technology as an approved leak detection system for several reasons. First, such a system is a proven technology that has been tested in land disposal sites under extreme weather and other unfavorable conditions, and that works well over a long period of time. Second, it is a highly reliable, low-maintenance system. Third, the drainage system is capable of detecting leaks in all areas between the liners. Fourth, because drainage layer technology is currently the basis for the existing leachate collection and removal systems, it combines two important functions, leak detection and leachate removal. An additional advantage of using the proposed leachate collection and removal system between the liners is that because of its basic capability to detect leaks, an owner or operator can continue to use the current design approach to meet today's requirements rather than developing new and potentially incompatible design concepts for the various components.

In selecting a leak detection system, EPA evaluated other systems and technologies including electrical resistivity, time domain reflectometry, acoustical emission monitoring, and other innovative technologies. These approaches were not selected for today's proposal for the reasons discussed below (for further information see the Liner/Leak Detection Background Document).

1. Electrical resistivity (ER) is a geophysical technique whereby an electrical current is introduced into the ground by a pair of surface electrodes, and the resultant potential field, as measured by a second pair of electrodes, is interpreted to detect anomolies (leaks). For the purpose of leak detection the current is passed from an electrode within the land disposal unit to an electrode outside the unit.

The method has been tested on a 1-acre single FML-lined surface impoundment and shows promise for detecting and locating leaks in this situation. Generally, ER has had limited application for the purpose of permanent leak detection at land disposal facilities to date; therefore, very little field data are available.

ER has several drawbacks. If using the electrode configuration as discussed above, ER is only applicable in a double-lined system where the bottom liner is compacted clay or is a composite that is also leaking. If the bottom FML is intact it will not allow a current path to be established between the electrodes. For this reason ER may not generally be applicable to double FML-lined units. ER may be used to detect top liner leakage in double FML-lined units by placing one set of electrodes between the liners, but wires and electrodes may corrode during the active and post-closure life of the unit. Additionally, ER cannot be used to evaluate the leakage rate but instead only locates leaks. ER applications to date have been temporary ones. For permanent applications the durability and reliability of the ER system components may be questionable and the burden associated with continuous or semi-continuous monitoring would be high. ER shows promise, however, for detecting the leak location at surface impoundments known to be leaking and for construction quality assurance (CQA) verification on certain portions of a liner such as the sump area.

2. Time domain reflectometry (TDR) measures the electrical property variations in the material along a pair of parallel transmission line conductors. TDR is sensitive to soil moisture content, making it attractive for leak detection. However, TDR has several drawbacks: (1) It must be installed in sand with a moisture content low enough to provide an adequate contrast between unwetted and wetted sand, (2) wires may corrode, and (3) although a drainage layer of well-compacted medium-to-fine grained sand increases horizontal dispersion of a leak, thus increasing the TDR response, too much fine sand rapidly attenuates the TDR signal and is not desirable for drainage.

3. Acoustic emission monitoring (AEM) detects vibrations produced by liquids leaking from a containment site by using transducers. The technology has not been proven at a full-scale site and has several drawbacks: (1) Sensors and wires may corrode during the active life and post-closure care period of the unit, (2) AEM may not detect small leaks or low velocity leaks where the flow is not turbulent, and (3) AEM is sensitive to background noises (for instance, nearby equipment or machinery), and (4) AEM is only reliable if it identifies leaks within a few minutes of the leak's occurance.

4. Other technologies were also considered but were found to be inappropriate as a primary leak detection system for landfills, surface impoundments, and waste piles. These technologies include lysimeters, seismic measurements, electromagnetics, and moisture blocks, all of which are still in the field-testing stage and may provide new technical capabilities under certain conditions in the future (see Liner/Leak Detection Background Document). On a site-specific basis, the owner or operator may request a variance from today's leak detection requirements (Section 264.221 (i) and 265.221 (h) and conforming amendments to Subparts L and N) in order to install one or a combination of these alternative technologies.

Once a leak has been detected, there is a need for interaction between the owner or operator and the Agency to determine the appropriate response action. The response action varies, depending upon the site-specific factors at the unit.

The Agency believes that it may be appropriate to require the owner or operator to undertake certain response activities when a leak above a predetermined value, the action leakage rate (ALR), is measured in the unit (Sections 264.226(c)(1) and 265.226(b)(1) and conforming amendments to Subparts L and N). Therefore, EPA is requiring the owner or operator to initiate a response action plan (RAP) when leakage in the sump exceeds the ALR.

The Agency believes that an appropriate response will vary depending upon the size of the leak. Therefore, in today's rules the Agency is proposing more stringent response activities for rapid and extremely large leaks than for smaller leaks. In addition to evaluating the size and nature of the leak, the Agency will consider the capabilities of the bottom liner and the leachate collection and removal system between the liners to determine an appropriate response action.

EPA takes the position that rapid and extremely large leaks require immediate attention. Therefore, EPA is proposing today that owner or operator prepare a RAP for such leaks before receiving waste at a unit. EPA believes lesser leaks do not require immediate action, and the response will be determined through an interactive process between EPA and the owner or operator, generally occurring at the time the ALR is exceeded.

Although not specifically required by the minimum technological requirements of HSWA, response activities are a logical outgrowth of an approved leak detection system. Moveover, such activities are consistent with the congressional intent underlying the leak detection provisions. Congress specifically noted that ground-water contamination would be prevented in most cases if leaks were detected at an early time. See Congressional Record-House, October 6, 1983, page 8150.

Cleanup of ground water after it has been contaminated with hazardous waste can be expensive or technically infeasible in some cases. The corrective actions may involve pumping and treating large volumes of contaminated ground water for many years. The leak detection program being proposed today is designed to address leakage before it can migrate out of the unit, thereby allowing actions to be taken to prevent ground-water and surface-water contamination before it can occur. For the above reasons, EPA believes that the response action parts of the leak detection standards are necessary to prevent ground-water contamination and provide protection of human health and the environment.

2. Proposed Rule for Surface Impoundments, Waste Piles, and Landfill Units

a. Detection Capability—(1) Overview—(a) Performance standards and rationale. Based on the narrative statutory language of Section 3004(o)(4) and its legislative history, today's proposed rule requires owners or operators of all newly constructed surface impoundment, waste pile, and landfill units to maintain a leak detection system capable of detecting hazardous constituent migration through the top liner at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. (See Sections 264.221(g) and 265.221(f) and conforming amendments to Subparts L and N.)

Section 3004(o)(4)(A) requires a leak detection system for all new landfills, surface impoundments, and waste piles. Section 3004(o)(4)(B)(ii) defines "new unit" as a unit on which construction will commence after the date that today's rule is promulgated in final form. A unit will also be considered a "new unit" if operation has begun subsequent to the promulgation of today's regulations in final form. The current definition of "commencing construction" in Section 260.10 for an existing facility will be used in today's proposal. Therefore, an owner or operator will be deemed to have "commenced construction" of a unit if:

(1) The owner or operator has obtained the Federal, State, and local approvals or permits necessary to begin physical construction, and;

(2) Either a continuous on-site physical construction program has begun, or, the owner or operator has entered into contractual obligations that cannot be cancelled or modified without substantial loss for physical construction of the unit to be completed within a reasonable time.

EPA is proposing that the leak detection system extend over all areas likely to be exposed to waste or leachate (Sections 264.221(g) and 265.221(f) and conforming amendments to Subparts L and N). This proposed requirement is consistent with the minimum technology double liner requirements under Section 3004(o) for surface impoundments and landfills. The minimum technology requirements call for placement of two or more liners with a leachate collection and removal system above (in the case of landfills) and between the liners, which is designed, constructed, operated, and maintained to prevent leachate migration out of the unit. EPA has interpreted these statutory provisions as necessitating double liners and leachate collection and removal systems under all areas likely to be exposed to waste or leachate (51 FR 28709). This interpretation is consistent with EPA's current regulatory practice regarding the design of liners and leachate collection and removal systems. Accordingly, to collect all potential leakage through the top liner, the leak detection system must extend under all areas likely to be exposed to waste or leachate.

Today's proposed rule also requires the leak detection system to operate effectively through the active life and post-closure care period of the unit (Sections 264.221(g) and 265.221(f) and conforming amendments to Subparts L and N). This is consistent with the proposed minimum technology double liner system requirements (40 CFR 264.221(c) and 265.221(a) and conforming amendments to Subpart N). These requirements call for a double liner

system designed to prevent leachate migration out of the unit during the active life and post-closure care period. By requiring a leak detection system with similar operating life requirements, there will be a mechanism for monitoring double liner system performance for the entire active life and post-closure care period (if applicable).

Sections 264.221(g) and 265.221(f) and conforming amendments to Subparts N and L of today's proposal also require a system that can detect leakage that migrates through the top liner into the space between the liners at the "earliest practicable time." The term "earliest practicable time" refers to the time after liquid has passed through a breach in the top liner until the time that a technology-based standard leak detection system can detect the liquid.

A leachate collection and removal system between the liners that employs a drainage layer technology will provide the most reliable, durable, and efficient system to satisfy the leak detection system performance standard. A drainage layer technology can provide 100 percent coverage under all areas that may be exposed to waste or leachate, requires little maintenance, is reusable, and provides a response mechanism (liquid collection and removal) at the same time the leak is being detected. This technology can provide continuous and accurate monitoring of top liner leakage through the active life and post-closure care period.

In addition to these technical reasons, this approach also has the advantage (for surface impoundments and landfills) of allowing the owner or operator to use the existing leachate collection and removal system between the liners, with only limited design modifications, for the leak detection system. This enables the owner or operator to use the current design approach to meet today's requirements rather than to develop new and potentially incompatible design concepts for the various components. It also minimizes additional operational and cost requirements associated with implementing a new leak detection system.

In developing today's proposal, EPA considered whether or not to establish the leak detection system below the bottom liner. The Agency rejected this option because it is inconsistent with its "liquids management strategy." Under this strategy the first line of defense in preventing ground- and surface-water contamination is to detect top liner leaks early enough to control the leak while the liquid is still in the unit. We believe that it is preferable to detect leaks from the top liner before leachate from the top liner migrates through the bottom liner.

Moreover, locating the leak detection system below the bottom liner would be inconsistent with the bottom liner performance standard of preventing hazardous constituent migration through the bottom liner. If a leak were detected below the bottom liner, there would be no backup liner to prevent ground-water contamination until the bottom liner leak is fixed. Instead, when the leak detection system is located between the top and bottom liners, the bottom liner acts as a barrier to allow leachate collection while the owner or operator performs a review and assessment of the leakage and implements, if necessary, a response action.

Based on these considerations, EPA is proposing to require the leak detection system to be located adjacent to and below the top liner and above the bottom liner. The Agency believes that using a leachate collection and removal system between the liners provides the best locational option for the leak detection system because: (1) All newly constructed landfills and surface impoundments falling under RCRA 3004(o)(1) will already have leachate collection and removal systems between the top and bottom liners and (2) detection of leakage that passes through the top liner will allow time to implement a response action well before leakage poses a threat to ground water.

EPA is today soliciting comments on the proper location for a leak detection system in a unit that contains more than two liners. As an example, a surface impoundment may have three liners, with leachate collection and removal systems between the top and middle liners and also between the middle and bottom liners. Under today's proposal, the leak detection system would be located above the bottom liner. For the surface impoundment example, therefore, the leak detection system would consist of the leachate collection and removal system between the middle and bottom liners. EPA requests comments on the appropriateness of this proposed requirement for systems that contain more than two liners.

In today's proposal, EPA has striven to develop leak detection system performance standards for the LCRS between the liners that not only comply with the statutory narrative requirements of Section 3004(o)(4) to detect leaks at the earliest practicable time, but also provide the level of protection of human health and the environment consistent with that inherent in the minimum technology double liner requirements of Section 3004(o)(1). The Agency's position is that it can achieve these objectives in the regulations for leak detection systems through two related leak detection system performance criteria: (1) Leak detection sensitivity and (2) leak detection time. These criteria will be discussed in detail subsequently in this preamble. The numerical values for these criteria are based on the best available technology (BAT) for composite bottom liners and leachate collection and removal systems.

Although today's proposal does not require that the leak detection system be able to detect the exact location of a leak in a top liner, this capability may be cost-effective for the owner or operator to install. The cost effectiveness of installation will depend on the unique features of each unit, such as the type of unit, operational status of the unit, type of top and bottom liner systems, and the design of the leachate collection and removal system. Even though installing a leak detection system with this capability may initially cost more, rapidly locating a leak can save time and resources when response measures for the liner are needed. However, we are not proposing detection of the exact location of a leak because with EPA's systems approach to leachate collection and removal, the inability to detect leak's exact location does not increase the potential for migration of hazardous constituents from the waste management unit.

Today's proposed rule will require the owner or operator to make a quantitative demonstration that the system performance criteria were met. This demonstration will be submitted as a part of the Part B application for facilities seeking permits or as part of a permit modification application for already permitted facilities (Section 270.17(b), 270.18(c) and 270.21(b)). If the facility is an interim status facility, the demonstration will be reviewed by EPA during permitting along with the double liner system requirements.

(b) Design and operating requirements. Today's proposed rule sets out specific minimum design and operating requirements for leak detection systems at both permitted and interim status facilities. (See Sections 264.221(h) and 265.221(g) and conforming amendments to Subparts L and N.) These design and operating requirements are being proposed for surface impoundments, waste piles, and landfills.

The requirements consist of both minimum design specifications and operating criteria for leak detection system components. The combination of

the performance criteria previously discussed, and minimum component and operating specifications, ensures that the leak detection system has a capability to detect leakage at the earliest practicable time over all areas likely to be exposed to waste or leachate. The minimum design specifications in today's proposal include drainage layer hydraulic conductivity and thickness for granular drainage media, hydraulic transmissivity for synthetic drainage media, bottom slope, and sump capacity. The minimum operating criteria specify removal of liquids rapidly to minimize the head on the bottom liner. The Regional Administrator will specify operating conditions in the permit to ensure the liquid head is minimized at all times.

In lieu of the design and operating criteria set forth in Sections 264.221(h) and 265.221(g) and conforming amendments to Subparts N and L, the owner or operator may choose to select an alternative leak detection system in accordance with Sections 264.221(i), 265.221(h), and conforming amendments to Subparts L and N. The alternative leak detection system would not be required to meet the LCRS requirements. This variance for the design and operating requirements will be discussed in Section a(4) below.

(2) Performance standards—(a) Leak detection sensitivity. The Agency is requiring leak detection systems for surface impoundments (Sections 264.221(h)(2) and 265.221(g)(2)), landfills (Sections 264.301(h)(2) and 265.301(g)(2)), and waste piles (Sections 264.251(h)(2) and 265.251(g)(2)) that are capable of detecting a rate of top liner leakage of no more than one gallon/acre/day (gpad). This "leak detection sensitivity" of one gpad is based on BAT leak detection sensitivities of leachate detection, collection, and removal systems (LDCRS) located between the top and bottom liners. Detection sensitivity refers to the smallest quantity of liquid that can pass through the top liner and be detected by the leak detection system.

As stated above, the detection sensitivity is reported in units of gpad. Areal units of acres were selected because the size of a typical surface impoundment, waste pile, or landfill unit is approximately one or more acres (see Liner/Leak Detection Background Document). The detection sensitivity is reported in 24-hour units (days) because leak detection using leachate collection and removal systems is on the order of days as opposed to other time units (see Liner/Leak Detection Background Document).

In establishing a detection sensitivity of one gpad, EPA considered the performance characteristics of compacted soil and composite bottom liners. EPA has conducted studies (see the EPA Background Document "Bottom Liner Performance in Double-Lined Landfills and Surface Impoundments") to evaluate the influence of bottom liner type on leak detection sensitivity. The studies included analytical and numerical evaluations of the performance of both compacted soil and composite bottom liners as well as an evaluation of small-scale and large-scale liner model test results. These studies showed that if the bottom liner is constructed of low-permeability compacted soil, a certain rate of liquid migration into the liner will occur due to gravitation and capillary forces. Drain flow will not occur in the LDCRS until the rate of liquid impingement onto the bottom liner exceeds the rate of liquid infiltration into the bottom liner due to these forces. The studies showed that if a top liner developed a leak that resulted in uniform leakage (similar to rain) onto a compacted soil bottom liner with a hydraulic conductivity of 1×10^{-7} cm/s, the bottom liner could absorb approximately 80 gpad under steady-state conditions before drain flow would begin. That means that the detection sensitivity of the leak detection system could be as high as 80 gpad or more, in this example.

Compared to compacted soil bottom liners, the EPA studies have shown that composite bottom liners consisting of an upper FML component and a lower compacted soil component will absorb much less liquid than a compacted soil bottom liner. The study results indicate leak detection sensitivities for composite bottom liners in the range of 0.001 to 0.1 gpad (see Liner/Leak Detection Background Document).

The results from the comparative study of low-permeability compacted soil bottom liners and composite bottom liners clearly demonstrated that LDCRS underlain by composite bottom liners are generally more effective. The study results also indicated that properly designed and constructed composite liners can result in LDCRS detection sensitivities of less than 0.1 gpad (see Liner/Leak Detection Background Document). The Agency is today proposing a detection sensitivity based on composite bottom liner of one gpad rather than 0.1. A value of one gpad has been selected to account for construction, operational, and other factors that limit the "practical" detection capability of a LDCRS. However, since the actual detection sensitivities associated with composite bottom liners were found to be less than 0.1 gpad, the Agency is considering lowering the detection sensitivity standard from the proposed value of one gpad to 0.1 gpad. EPA is requesting comment on the appropriate value for detection sensitivity within the range of 0.1 gpad to one gpad.

Today's proposal requires owners or operators to design a LDCRS to meet the detection sensitivity criterion and demonstrate that the system satisfies this criterion. EPA plans to issue guidance for making such a demonstration. This demonstration will be based on a calculation of the rate of migration of liquids into the bottom liner based on uniform top liner leakage and saturated, steady-state conditions (see Liner/Leak Detection Background Document). The owner or operator will not be required to account for liquids held in storage in the LDCRS by capillary tension.

(b) Detection time. The EPA is requiring leak detection systems for surface impoundments (Sections 264.221(h)(2) and 265.221(g)(2)) landfills (Sections 264.301(h)(2) and 265.301(g)(2)) and waste piles (Sections 264.251(h)(2) and 265.254(g)(2)) to be capable of detecting top liner leakage of one gpad or greater within one day of the leakage having passed through the top liner. Detection time refers to the time from when liquid enters the LDCRS between the liners to when it reaches the LDCRS collection laterals or sump.

A leak detection time design goal of one day was established based on the capabilities of currently available drainage materials. The one-day criterion has been established based on saturated, steady-state analyses using drainage layer materials meeting the proposed design specifications for drainage materials described in Sections 264.221(h)(1) and 265.221(g)(1) and conforming amendments to Subparts L and N (see Liner/Leak Detection Background Document). These drainage material specifications minimize capillary tension in the LDCRS, thereby permitting the use of saturated steady-state analyses to evaluate leak detection time. This is discussed in the following paragraphs.

The leak detection time criterion is based on steady-state analyses of drainage layer materials that exhibit minimal wetting up. The following is a brief explanation of some factors that affect detection time. An initially dry granular drainage layer material will absorb some moisture before drain flow

begins. This wetting up is due to the presence of capillary tensions in the pores of partially-saturated granular materials. The more finely grained the granular material, the larger the capillary tension and the greater the capillary rise or wetting up. During the wetting-up period, leachate fills up the pore volume of the leak detection layer. Drain flow will not occur and liquid will not be detected in the leak detection system sump until the drainage layer has wetted up. For sands with hydraulic conductivities of 1×10^{-2} cm/s, the wetting up period can amount to hundreds of days for small leaks in the top liners of typical landfill facilities. For thin synthetic drainage layers with only a fraction of the thickness of a sand drainage layer and for granular drainage media with hydraulic conductivities in the range of 1 cm/s or greater (such as clean coarse sand or clean pea gravel), the wetting up period is dramatically reduced. With gravels and synthetic drainage layers, only very small amounts of leachate will be held in storage through capillary tension. These types of drainage media, coupled with the use of a composite bottom liner, result in a leak detection system with rapid detection times (as long as the leakage rate through the top liner exceeds the detection sensitivity).

Today's proposed rule requires granular drainage materials with hydraulic conductivities equal to or greater than 1 cm/s so that capillary tension in the leak detection system will be small. Further, with the use of a bottom liner meeting today's proposed leak detection sensitivity criterion, only slight leakage will occur in the bottom liner before it is detected. EPA studies (which are discussed more fully in the Liner/Leak Detection Background Document) have shown that under these conditions, flow in the LDCRS between the top and bottom liner can be evaluated using saturated, steady-state analyses assuming an impermeable bottom liner. The EPA studies present these analyses for a range of waste management unit designs involving various drainage distances and hydraulic gradients. From these analyses, it was concluded that with the drainage layer materials specified in today's proposal and current good design practice, leak detection times on the order of one day or less would be calculated. These calculations were the basis for selecting a one-day detection time criterion.

The leak detection time criterion is a design objective that the owner or operator must satisfy through a quantitative demonstration during the design process. It is not a measured objective; the owner or operator is not required to carry out a field demonstration. Today's proposed rule, therefore, requires the owner or operator of permitted facilities to demonstrate, as part of the Part B permit application, how an individual landfill, waste pile, or surface impoundment unit complies with the leak detection performance criteria (Sections 270.17, 270.18 and 270.20). Interim status units regulated under Part 265 will be required to maintain a similar demonstration. The demonstration must be presented to EPA during permitting along with the other double liner system requirements. To make this demonstration, the owner or operator will be required to prepare detailed plans and engineering reports showing how the facility was designed and how it will be operated.

In demonstrating that the LDCRS satisfies the detection time performance criteria, all owners or operators will be required to consider a number of factors in the design demonstration, including: (1) The location of the top liner leak (distance to collection laterals and sumps), (2) the type of drainage media (granular or synthetic) and its properties, (3) the bottom slope of the LDCRS, and (4) the design of the top and bottom liner systems (FML or composite). The owner or operator will be expected to show how the LDCRS meets the detection time performance criterion for a worst-case leakage scenario (longest flow path to the detection point).

In completing the quantitative demonstration to satisfy the leak detection time performance criterion, the owner or operator will be allowed to assume saturated steady-state flow conditions. In addition, the owner or operator will be required to specify materials for LDCRS that meet the minimum LDCRS component design specifications proposed in today's rule for drainage media hydraulic conductivity and thickness (or hydraulic transmissivity for synthetic drainage media), bottom slope, and sump design. These minimum component design specifications will be discussed in Section V.2.a.(4) of this preamble.

(c) Collection efficiency. In developing today's proposal, the Agency also considered LDCRS collection efficiency. Collection efficiency refers to the quantity of liquid removed from the LDCRS sump divided by the quantity of liquid that enters the LDCRS (i.e., the quantity of liquid that passes through the top liner). A high efficiency collection system is a prerequisite to maximizing leachate collection and removal and minimizing the hydraulic head on the bottom liner.

EPA rejected explicitly setting a collection efficiency criterion because it is unnecessary, given the Agency's criteria for detection sensitivity, detection time, and minimum component design specifications. By complying with these other system criteria and component specifications, the owner or operator will inherently design a system with a high collection efficiency.

The collection efficiency of the LDCRS can be maximimized by minimizing: (1) Liquid migration into the bottom liner, and (2) liquid storage due to capillary tension in the pore volume of the drainage material in the LDCRS. Since today's proposal provides system requirements that minimize both migration into the bottom liner and LDCRS storage due to capillary tension, a very high collection efficiency is ensured.

Liquid migration into the bottom liner will be minimized through owner or operator compliance with the leak detection sensitivity and detection time criteria proposed today. By satisfying these criteria, the owner or operator will minimize liquid head in the LDCRS which in turn minimizes migration into the bottom liner. Since the absorptive capacity of a properly designed and constructed composite bottom liner is much less than that for a compacted low-permeability soil bottom liner, the collection efficiency of a LDCRS underlain by a composite bottom liner will be significantly larger than the collection efficiency of a LDCRS underlain by a compacted soil bottom liner. A thorough comparison of the collection efficiencies associated with both compacted soil and composite bottom liners is in the background technical documentation ("Background Document on Bottom Liner Performance in Double-Lined Landfills and Surface Impoundments") to EPA's April 17, 1987 Hazardous Waste Management System; Minimum Technology Requirements: Notice of Availability of Information and Request for Comments (52 FR 12566). The background document and notice present data comparing the performance capabilities of compacted soil and composite bottom liners.

(3) Design specifications. The Proposed Codification Rule of March 28, 1986 (51 FR 10707–12) requires owners and operators of certain surface impoundment and landfill units to install a leachate collection and removal system between the liners that is designed, constructed, maintained, and operated to detect, collect, and remove liquids that leak through any area of the

top liner during the active life and post-closure care period (Sections 264.221(c)(iii)(3) and 265.221(a)(iii)(3) and conforming amendments to Subpart N). That proposal further requires the leachate collection and removal system to be constructed of materials that are chemically resistant to the waste or leachate in the unit and to be designed and operated to function without clogging during the active life and post-closure care period of the unit.

The LCRS standards proposed on March 28, 1986 serve as the basis for today's proposed leak detection system. However, today's proposal also adds the following design requirements to those LCRS standards for new surface impoundments, waste piles, and landfills (see Liner/Leak Detection Background Document for supporting information):

(a) Bottom slope drainage layer—2 percent.

(b) Granular drainage layer hydraulic conductivity—1 cm/s.

(c) Granular drainage layer thickness—12 inches.

(d) Synthetic drainage layer hydraulic transmissivity—5×10^{-4} m^2/s.

(e) Sump capacity and monitoring requirements.

For granular drainage layers, hydraulic conductivity and thickness are being specified, while for synthetic drainage material a hydraulic transmissivity is being specified. Transmissivity is defined as hydraulic conductivity multiplied by thickness; therefore, in meeting the hydraulic conductivity and thickness, the hydraulic transmissivity will automatically be met for granular drainage material.

(a) Bottom slope. Under today's proposal the LDCRS must have a minimum bottom slope of 2 percent (Sections 264.221(h)(1), 264.251(h)(1) and 264.301(h)(1), and Sections 265.221(g)(1), 265.251(g)(1) and 265.301(g)(1)). The bottom slope of the LDCRS is important, because the rate of liquid movement through the LDCRS is proportional to the bottom slope. The steeper the slope, the faster a given leak will travel to the sump. The minimum bottom slope specified in today's proposal applies to all components in the LDCRS. Therefore, the minimum bottom slopes of the drainage media, collector pipes, collection laterals, and all other piping and/or drainage features must be at least 2 percent. This requirement will result in areas of the unit with bottom slopes greater than 2 percent.

The Agency selected the minimum 2 percent bottom slope to promote drainage in the unit. EPA has previously recommended this value as a minimum (Draft, Minimum Technology Guidance Document on Double Liner Systems, May 24, 1985, EPA/530-SW-85-014) based on the results of analytical studies and earlier design and construction practices. Today's minimum specified 2 percent bottom slope will create no new requirements for most owners and operators because EPA's existing technical guidance calls for a 2 percent bottom slope; consequently, most facilities are constructed with at least this minimum slope. EPA is concerned, however, that some waste management units designed with 2 percent bottom slopes actually end up with bottom slopes of less than 2 percent due to imperfect construction or post-construction settlement. The Agency is therefore considering increasing the minimum bottom slope requirement from today's proposed value of 2 percent to a value within the range of 2 to 4 percent. EPA requests comments on the appropriate value for minimum bottom slope.

The Agency believes that many owners and operators will elect to use bottom slopes greater than 2 percent for at least two reasons: (1) the larger the unit's bottom slope, the greater the efficiency of the leachate collection and removal system above the top liner (i.e., the top liner slope will parallel the bottom liner slope), the smaller the potential for liquid migration through the top liner since leachate is being efficiently collected, and the lower the probability that leakage will exceed the action leakage rate since leachate will not be building up on the top liner, and (2) the larger the unit's bottom slope, the easier it will be for the owner and operator to make a quantitative demonstration that the unit's design satisfies the detection sensitivity and detection time performance criteria.

(b) Hydraulic conductivity of granular drainage materials. Under today's proposal, granular drainage materials used in the LDCRS must have a minimum hydraulic conductivity (also called permeability) of 1 cm/s (see Liner/Leak Detection Background Document). (See Sections 264.221(h)(1)(i) and 265.221(g)(1)(i) and conforming amendments to Subparts L and N.) Hydraulic conductivity describes the velocity of liquid flow through the drainage layer under a hydraulic gradient equal to one. Because the velocity of liquid flow is directly proportional to hydraulic conductivity, hydraulic conductivity is the single most important variable controlling leak detection time. The larger the hydraulic conductivity of the drainage layer, the shorter the time for detecting leaks in the sump. In order to determine whether a granular material meets the proposed minimum specification, owners and operators will need to present results from hydraulic conductivity tests conducted on saturated samples of the drainage material. The tests should be performed under conditions simulating those that will exist in the unit.

Saturated hydraulic conductivities for granular drainage materials can vary over several orders of magnitude. In developing today's proposed specification for hydraulic conductivity, EPA considered granular drainage materials with hydraulic conductivities ranging from 10^{-3} cm/s to 10 cm/s. The lower value in this range corresponds to the hydraulic conductivity of silty sand, and the upper value corresponds to the hydraulic conductivity of clean gravel. In selecting the proposed design criterion from the considered range, EPA investigated the effect of hydraulic conductivity on detection time. Details of this investigation are presented in the Liner/Leak Detection Background Document. This background documentation presents results of analytical and numerical simulations of typical leachate collection and removal systems. In the simulations, the hydraulic conductivity of the drainage media was varied and the effect on detection time (and other parameters) was determined. The simulations showed that hydraulic conductivities in the range of 1 cm/s are required to develop unit designs that minimize capillary tensions in the LDCRS granular materials and that satisfy the detection time criterion previously discussed.

The conclusions drawn from the analytical and numerical simulations result in a minimum hydraulic conductivity specification in today's proposed rule that is two orders of magnitude larger than that recommended for leachate collection and removal system between the liners in EPA's May 24, 1985 Draft Minimum Technology Guidance on Double Liner Systems. The Agency notes that today's specification will require the owner and operator to use clean coarse sands, gravel, or synthetic drainage materials to meet the requirements. EPA solicits comments on the new proposed specification for minimum hydraulic conductivity.

(c) Thickness of granular drainage materials. The Agency is today proposing a minimum 12-inch thickness for the granular drainage layer in the LDCRS. (See Sections 264.221(h)(1)(i) and 265.221(g)(1)(i) and conforming amendments to Subparts L and N.) The purpose of this minimum thickness

specification is to ensure that the granular material in the LDCRS can be constructed to specification and that an underlying FML component of the bottom liner is not damaged by equipment during placement of the granular material. The minimum 12-inch value is from EPA's technical guidance on double liner systems (also see Liner/Leak Detection Background Document). This thickness of granular drainage material provides an LDCRS that automatically satisfies the proposed minimum hydraulic transmissivity ($5 \times 10^{-4} m^2/s$).

(d) Hydraulic transmissivity of synthetic drainage materials. Today's proposal requires synthetic drainage layer materials to have a hydraulic transmissivity of $5 \times 10^{-4} m^2/s$ or greater. (See Sections 264.221(h)(1)(2) and 265.221(g)(1)(2) and conforming amendments to Subparts L and N.) Hydraulic transmissivity of a layer of drainage material is equal to its hydraulic conductivity multiplied by its thickness. Hydraulic transmissivity, therefore, is a measure of the quantity of liquid that can flow through a layer of drainage material in a unit of time. The larger the hydraulic transmissivity, the larger the amount of liquid that can flow through a drainage layer under any given head. This parameter is important because if the hydraulic transmissivity of the drainage layer is inadequate, the drainage layer will not be able to accept large amounts of leakage while still maintaining gravity flow conditions in the LDCRS.

EPA has arrived at the minimum value of $5 \times 10^{-4} m^2/s$ for hydraulic transmissivity based on numerical simulations of typical leachate collection and removal systems. In these simulations, EPA considered a range of synthetic drainage materials. From the results of the simulations (which are discussed in detail in the Liner/Leak Detection Background Document), EPA concluded that a hydraulic transmissivity of $5 \times 10^{-4} m^2/s$ would enable the LDCRS to collect and remove relatively large amounts of leakage while maintaining gravity flow conditions. This specification therefore ensures that liquids in the LDCRS will be rapidly collected and that the hydraulic head on the bottom liner will be minimized.

The Agency notes that the minimum hydraulic transmissivity specification in today's proposal is about one order of magnitude larger than the minimum value cited in its May 24, 1985 Draft Minimum Technology Guidance on Double Liner Systems. EPA continues to consider values for minimum LDCRS hydraulic transmissivity, in the range of $3 \times 10^{-5} m^2/s$ to $5 \times 10^{-4} m^2/s$. Comments are solicited on the appropriate value from within this range.

EPA has not explicitly set a hydraulic conductivity minimum specification for synthetic drainage materials. The Agency believes it unnecessary because all available synthetic materials meeting today's proposed hydraulic transmissivity specification also exceed the proposed hydraulic conductivity criterion for granular drainage materials.

Adequate hydraulic transmissivity is a prerequisite to minimizing the hydraulic head on the bottom liner. This is an integral part of EPA's strategy to prevent migration of hazardous constituents out of waste management units. Since the migration rate is dependent on the liquid pressure head, as long as the head on the bottom liner is kept to a minimum, the potential for migration through a composite bottom liner is very small.

EPA believes that as a result of today's proposal, minimum hydraulic head for virtually all leakage scenarios at landfills and waste piles will be maintained. However, in a worst-case scenario for surface impoundments, the gravity flow capacity of the LDCRS could be exceeded because the hydraulic head above the top liner can be much larger than in a landfill or waste pile. At a surface impoundment, the owner or operator can use external pumps to augment the hydraulic capacity of the LDCRS for a major top liner leak. Using external pumps could be advantageous in handling the hydraulic flow from a major top liner leak because such a leak will result in a significant quantity of leachate that must be removed rapidly by the LDCRS. In addition, many surface impoundments can be rapidly emptied. Therefore, for worst-case top liner leaks at surface impoundments, response actions are available to reduce the hydraulic head acting on the bottom liner.

(e) Sump. Under today's proposal, the LDCRS must include a sump of appropriate size to collect liquids efficiently and to prevent liquids from backing up into the drainage layer. (See Sections 264.221(h)(4) and 265.221(g)(4) and conforming amendments to Subparts L and N.) EPA is requiring that each unit have its own sump and that each sump provide a method for measuring and recording the liquid volume present in the sump and the liquids removed to determine the leachate flow rate.

EPA believes that the owner or operator should minimize the head in the sump at all times. If liquids are being collected in the sump, EPA expects the owner or operator to institute monitoring and pumping schedules so as to minimize hydraulic head in the sump. Although EPA recognizes that the head in the sump may exceed 12 inches periodically, EPA expects the average liquids level in the sump to be well below 12 inches. As an example, an RA might find acceptable a monitoring and pumping schedule that allowed the liquids level in the sump to rise to several feet if this occurred only periodically and for only a short period of time, and if at other times the liquids level in the sump was kept well below 12 inches.

The hydraulic head in the LDCRS sump must be kept small to minimize the potential for hazardous constituent migration out of the unit. The reason for this is twofold: (1) Sumps are often of complex geometry, resulting in a greater potential for breaches in both FMLs (seam defects, tears, etc.) and compacted soil liner components (cracks); and (2) because the sump may not have an adequate bottom slope, liquid entering the sump simply will pond over any bottom liner breaches, creating the potential for leachate migration into and possibly through the bottom liner.

In today's proposed rule, the owner or operator is required to provide a method for measuring and recording the leachate volume present in the sump on a daily basis, as well as the leachate removed, to determine the leakage rate in the unit. The leachate volume in the sump typically will be determined by measuring the liquid level in the sump. The leachate volume removed from the sump can be determined by collecting (in barrels, tanks, etc.) and measuring the quantity of liquid pumped out of the sump or, alternatively, by recording the times when the pump is operating and then multiplying this time by the pumping rate. The leakage rate is assumed to be equal to the volume of liquid entering the sump over a period of time divided by the time and then also divided by the unit area served by the sump. The actual leakage rate through the top liner may be different (larger or smaller) than the measured leakage rate at the sump depending on: (1) The collection efficiency of the system and (2) the presence of water in the LDCRS from construction, ground-water infiltration, consolidation of compacted soil liners, or additional sources of liquid other than leakage. The measured leakage rate at the sump, however, is

what is considered in today's proposal in all references to leakage rate.

Today's proposed rule requires the owner or operator of a surface impoundment, waste pile, or landfill unit to inspect for leakage in the LDCRS sump daily during the active life (including the closure period) and weekly during the post-closure care period (if applicable). (See Sections 264.226(c)(1) and 265.226(b)(1) and conforming amendments to Subparts L and N.) EPA believes that this monitoring schedule will ensure that a minimum hydraulic head is maintained in the sump and that accurate information will be collected on the rate at which liquids are entering the sump.

For permitted units, today's proposed rule provides the RA with the authority to specify all monitoring, inspection, maintenance, reporting, response, and recordkeeping activities that are necessary to ensure that the objectives of detecting leakage at the earliest practicable time and of minimizing the hydraulic head on the bottom liner are met. (See Section 264.226(e) and conforming amendments in Subparts L and N.)

(4) Variances. Under Sections 264.221(i) and 265.221(h) and conforming amendments to Subparts L and N of today's proposed rule, the Regional Administrator (RA) may specify in the permit an alternative leak detection system. There are three types of variances for alternative leak detection technologies or systems although there is no variance from leak detection. The first is where the RA finds that there is no potential for migration of hazardous constituents from a unit to ground water or surface water during the active life and post-closure care period (Sections 264.221(i)(1), 265.221(h)(1) and conforming amendments to Subparts L and N). The second is if the RA finds that an alternative design or operating practice, together with location characteristics, will prevent the migration of any hazardous consituents into the ground water or surface water at least as effectively as the LDCRS (40 CFR 264.221(d), 265.221(c) and conforming amendments to Subparts L and N) or the unit is a monofill and meets requirements as specified in 40 CFR 264.221 (e), 265.221(d) and conforming amendments to Subparts L and N. The third is if the owner or operator proposes an alternative leak detection system or technology that is capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period (Sections 264.221(i)(3), 265.221(h)(3), and conforming amendments to Subparts L and N).

In deciding whether to allow a variance for an alternative leak detection system or technology under today's proposal, the RA will consider: (1) The ability of the proposed system or technology to operate effectively through the active life and post-closure care period of the unit; (2) the nature and quantity of the wastes; and (3) the ability of the system to detect leaks and, in combination with response actions to be taken, prevent migration of hazardous constituents out of the unit during the active life and post-closure care period.

In seeking a variance for an alternative leak detection system technology, the owner or operator will be required to demonstrate how the proposed alternative satisfies the general narrative statutory standard under Sections 264.221(g) and 265.221(f) and conforming amendments to Subparts L and N.

Owners or operators also will be required to demonstrate how the proposed alternative enables them to meet the response action requirements of today's proposed rule to prevent migration of hazardous constituents out of the unit during the active life and post-closure care period. For example, if an alternative leak detection system technology did not provide information about leakage until after the leakage had migrated through the bottom liner, response actions stemming from leak detection would occur too late to prevent migration of the leakage from the unit. Therefore, under today's proposed rule, such an alternative leak detection system technology would be unacceptable. The alternative leak detection technology proposed by the owner or operator must provide a trigger mechanism to initiate interaction with EPA for review of site-specific conditions to determine an appropriate response action. Variances for permitted facilities will be reviewed in the context of the 40 CFR Part 124 permitting procedures. For interim status facilities, EPA is considering variance review and approval under the procedures presently used for closure plans.

Examples of where the use of an alternative leak detection technology might be appropriate include small (e.g., less than one acre), temporary (e.g., one year or less) surface impoundment and waste pile units that could be quickly emptied and repaired in the case of a significant top liner leak. For this set of conditions, the use of a leak detection system based on geophysical methods involving the embedding of probes in a thin sand LCRS between the top and bottom liners might be shown to satisfy the previously cited general narrative statutory standards for leak detection systems. The geophysical method used could be set up to operate on a continuous monitoring basis or, alternatively, frequent discrete surveys could be carried out. Since the active life of these units would be relatively short, questions regarding the long-term reliability of the alternative technology would not be applicable. Further, in the event of a top liner breach, responses could be initiated to empty and repair the liner, thereby preventing migration of hazardous constituents out of the unit.

EPA is interested in comments on how locational characteristics should be considered in allowing a variance for an alternative leak detection system at facilities that have received a variance from double liners based on an alternative design and operating practice, together with locational characteristics, that prevent the migration of any hazardous constituents into groundwater or surface water at least as effectively as the required double liner system. (Sections 264.221(g), 265.221(c) and conforming amendments to Subparts L and N). For example, should a compacted soil bottom liner together with certain locational characteristics be considered to provide equivalent protection of human health and the environment as the leak detection system requirements in the proposed rule? More specifically, if locational factors such as climate (precipitation), hydrogeologic conditions, surface water conditions, and subsurface soil profile indicate that there is no potential for migration of hazardous constituents from a unit to groundwater or surface water, should a variance be allowed for a leak detection system incorporating a compacted soil bottom liner? EPA believes that in rare site-specific cases it may be possible for locational characteristics (e.g., very low precipitation and long travel time to groundwater) to allow compacted soil bottom liners to meet the requirements for alternative leak detection systems (Sections 264.221(i)(2) and 265.221(h)(2) and conforming amendments to Subparts L and N).

Sections 264.221(j), 265.221(i) and conforming amendments to Subparts L and N propose additional requirements for leak detection systems that are not located completely above the seasonal high water table. The owner or operator must demonstrate that the operation of the leak detection system will not be

adversely affected by the presence of groundwater.

b. Action leakage rate—(1) Proposed rule. Under the authority of Section 3004(a) of RCRA, EPA is proposing that the owner or operator establish an action leakage rate (ALR) during the design of the unit (Sections 264.221(k), 265.221(j) and conforming amendments to Subparts L and N). The ALR notifies the owner or operator of a leakage rate that may require implementation of a response action to prevent hazardous constitiuent migration out of the unit. The Agency believes that this requirement is necessary to assure protection of human health and the environment because it aids in preventing hazardous constituent migration from the land disposal unit. The ALR is a mechanism to trigger an assessment of the need to implement the RAP which is an integral part of EPAs systems approach.

The ALR constitutes a trigger for initiating interactions between the owner or operator and EPA. The owner or operator is required under today's proposal to monitor the rate of leakage into the LDCRS sump on a daily basis. The owner or operator also is required to determine whether the measured rate of leakage over a specified period of time exceeds the ALR (Sections 264.226(c)(2) and 265.226(b)(2) and conforming amendments to Subparts L and N). If the measured rate of leakage is less than the ALR, no action is required by the owner or operator, other than to remove the liquids from the sump to maintain a minimum hydraulic head in all parts of the LDCRS. If the measured leakage rate exceeds the ALR, today's proposal requires the owner or operator to initiate implementation of the RAP.

Under today's proposal, the owner or operator must establish an action leakage rate during the unit's design (Sections 264.221(k) and 265.221(j) and conforming amendments to Subparts L and N). The owner or operator has a choice between using a standard value for ALR specified by EPA in the final rule or, alternatively, a site-specific ALR obtained after EPA approval of a site-specific ALR demonstration by the owner or operator. EPA is not proposing a standard value for the ALR, but rather a range of 5–20 gallons per acre per day (gpad) from which EPA will select a value in finalizing this rule.

(2) Rationale. In developing today's proposal for leak detection systems, EPA selected an approach based, on the current technology capabilities of the top liner to prevent migration of liquid through the liner. EPA believes it is not appropriate to select a value that is below current capability of the top liner to control migration. EPA believes that an ALR in the range of 5 to 20 gpad is consistent with a technology based standard for FML top liners. This value is based on an evaluation of top liner leakage scenarios at surface impoundments, landfills, and waste piles. EPA is proposing a range of values for public comment because of limited data, particularly on the top liner's performance during the operating period after installation. Technical support for the proposed range for ALR values is presented in the Liner/Leak Detection Background Document supporting today's proposal. As discussed in that document, the proposed ALR range of 5 to 20 gpad is representative of a very high level of construction quality assurance at surface impoundments. The Agency believes that this range for ALR is appropriate, based on the current capabilities inherent in FML seaming techniques and CQA programs (using ponding tests, geophysical techniques, etc. to detect top liner defects before the surface impoundment unit is put into operation).

Although only one standard ALR will be cited in the final rule, lower ALRs could be considered for landfills and waste piles with properly designed and functioning leachate collection and removal systems above the top liner (since the hydraulic head acting on the top liner would be lower than the head acting on a surface impoundment). Additionally, in lieu of meeting the standard ALR value, owners or operators may demonstrate that a site-specific ALR is appropriate as discussed in Section 4 below.

The option of allowing no leakage in the LDCRS was not accepted for today's proposed rule because it would ignore the finite capabilities of lining systems and drainage media to contain and transmit leakage. Therefore, not allowing any leakage in the LDCRS would not be consistent with current BAT. The option of allowing a large leakage rate as the ALR was not selected because a large leakage rate may exceed the gravity flow capacity of the LDCRS, thereby increasing the hydraulic head on the bottom liner. As previously noted in this preamble, as the hydraulic head on the bottom liner increases, the potential for hazardous constituent migration into and through the bottom liner also increases. Thus, allowing leakage rates that increase the hydraulic head on the bottom liner is inconsistent with EPA's goal of preventing hazardous constituent migration from the waste management unit.

Today's proposal for the ALR is a logical extension of EPA's overall systems approach to preventing migration of hazardous constituents out of the unit. The ALR provides the mechanism or trigger to allow EPA to use a site-specific evaluation for the leak detection program. This mechanism and the associated response action program is a key element in the EPA regulatory program for preventing contamination of ground water and protecting human health and the environment. The top and bottom liners together with the LCRS above the top liner, the LDCRS between the top and bottom liners, and the trigger and response action program function together in an integrated, interdependent manner to achieve the objective of preventing hazardous constituent migration out of the unit by maximizing leachate collection and removal.

EPA is continuing to investigate the appropriate ALR based on BAT for top liners, and requests comments on the appropriate value for the ALR within the proposed range of 5–20 gpad. In particular, EPA is interested in comments on the appropriateness of the proposed range for surface impoundments. Owners or operators with data that support selection of an ALR are encouraged to provide these data to the EPA. The Agency also is interested in public comment on whether different ALR values are appropriate for FML and composite (FML plus compacted soil) top liner systems.

(3) Basis for the trigger. EPA is basing the trigger mechanism for today's proposed rule on the hydraulic rate of top liner leakage as opposed to the hazardous constituent concentration in the liquid collected in the LDCRS sump. EPA is not using constituent concentration as part of the determination as to whether the ALR has been exceeded because it would make the determination more complex and more costly to the owner or operator.

The determination would become more complex if based on hazardous constituents because: (1) Samples for chemical analyses must be taken carefully by trained personnel, whereas maintenance personnel can measure the quantity of liquid in the LDCRS sump using unsophisticated equipment; (2) complex chemical analyses are expensive and time-consuming, whereas liquid in the sump can be measured frequently and inexpensively; (3) chemical analyses take time to perform and a timelag exists between the time of

sampling and the time when a determination can be made whether the ALR has been exceeded; (4) chemical analyses are subject to more uncertainty than are volumetric measurements; and (5) trigger levels would have to be set for each hazardous constituent.

As a result of the complexities outlined above and the burden to the owner or operator of performing chemical analyses, monitoring hazardous constituents in the LDCRS sump is not feasible on a daily or weekly basis. While EPA believes that periodic monitoring of constituent concentrations is important and that most owners or operators will choose to conduct periodic monitoring, it is not desirable, feasible, or necessary to use hazardous constituent monitoring as the trigger. However, discussed subsequently in the preamble, hazardous constituent concentrations are an important factor in selecting the appropriate response action as part of the assessment in the response action plan.

(4) Site-specific ALR. Today's proposed rule permits the owner or operator to use an EPA-specified ALR which will be selected from the range of 5 to 20 gpad or, alternatively, to use a site-specific ALR obtained after EPA approval of a site-specific ALR demonstration by the owner or operator. The purpose of a site-specific ALR is to provide a mechanism to account for conditions that reduce the potential migration of hazardous constituents through the top liner. If site-specific factors enhance the capability of the top liner LCRS to collect and remove leachate or enhance attenuation of hazardous constituents in the waste containment unit, the owner or operator has an opportunity to demonstrate that the standard EPA-specified ALR is less appropriate than a site-specific ALR.

To obtain approval for a site-specific ALR, the owner or operator must make a conclusive demonstration to the Regional Administrator. If the RA does not approve the demonstration, the owner or operator may modify the demonstration or may submit a new demonstration for approval. The site-specific ALR demonstration must show that only small, isolated leakage through the top liner is allowed and that it does not affect the overall performance of the top liner. In deciding whether to grant a site-specific ALR, the RA will consider the following four factors:

(1) The design, construction, and operation of the top liner and the leachate collection and removal system above the top liner;

(2) The attenuative capacity and thickness of any soil component of the top liner;

(3) All other factors that would influence the potential for leachate to migrate through the top liner; and

(4) The quality and comprehensiveness of the engineering data and analyses provided to the RA in support of the site-specific ALR.

EPA believes a site-specific ALR will only be appropriate in unique situations.

(5) Monitoring requirements. Today's proposed rule requires the owner or operator to monitor on a daily basis during the active life for the presence of liquids in the LDCRS sump and determine when the ALR has been exceeded (Sections 264.226(c)(1) and 265.226(b)(1) and conforming amendments to Subparts L and N). This determination is made by measuring the amounts of liquid in the LDCRS sump at the beginning and end of the monitoring interval and the amount of liquid that was removed from the sump during that period. The RA may specify an alternative approach for determining whether the ALR has been exceeded in the facility permit (Section 264.226(2)(iii) and conforming amendments to Subparts L and N). In addition, today's proposed rule empowers the RA to specify more stringent monitoring and inspection requirements for permitted units if the RA believes such requirements are justified because of the operating characteristics of the unit (Section 264.226(e) and conforming amemdments to Subparts L and N).

EPA recognizes that there may be events that cause the ALR to be exceeded for short periods but that do not reflect a diminished integrity of the top liner system. These temporary flow rate increases may be due to singular precipitation events, such as exceptional rainfalls. Leakage rate increases due to these precipitation events would occur during or shortly after the event itself. EPA does not consider temporary flow rates exceeding the ALR for a day or two by a small margin to significantly increase the potential for the migration of hazardous constituents from the unit. EPA believes that it is acceptable to provide some flexibility to the owner or operator in determining whether a leakage rate exceeding the ALR triggers interaction with EPA.

Today EPA is proposing that the owner or operator monitor for the liquid in the LDCRS removal sump daily during the active life and closure period of the unit and at least weekly during the post-closure period (if applicable). Analysis of the data to determine if the ALR has been exceeded will be required on a weekly basis during the active life and closure period and quarterly during the post-closure period (Section 264.226(c)(2), 265.226(b)(2), and conforming amendments to Subparts L and N). EPA believes that a time-weighted value is appropriate for a trigger for lower leakage rates. From recent experience with leak detection systems, EPA recognizes that the system will not provide an instantaneous measurement of the actual leakage rate and that some period of time is needed for the system rate to provide an accurate indication of leakage through the top liner. For instance, EPA believes that it may be reasonable to allow an owner or operator up to 30 days to determine whether the ALR has been exceeded if the maximum daily leakage rate recorded on a daily basis does not exceed 50 gpad during any one day within the 30 days (see Liner/Leak Detection Background Document). The leakage rate for the 30-day period would be equal to the total leakage during 30 days divided by 30. If during any monitoring interval during the 30 days the leakage rate exceeds the 50 gpad value, the ALR would be triggered immediately, and the owner or operator would have 7 days to notify the RA. Today's proposed rule also allows the RA to approve an alternative method for determining if the action leakage rate of the top liner is exceeded. EPA solicits comments on the above approach to allow the RA some flexibility in specifying permit conditions for determining whether the ALR has been triggered.

c. Response action plan. (1) Background—(a) Introduction. Under the authority of Section 3004(a) of RCRA, EPA is proposing a response action plan (RAP) for leakage exceeding the ALR (Sections 264.222, and 265.222, and conforming amendments to Subparts L and N). The Agency believes that this requirement is necessary to assure protection of human health and the environment. The RAP is a site-specific plan that the owner or operator develops to address leakage through the top liner to assure that it does not migrate out of the unit. It is based on an assessment of the capability of the total system rather than of individual components. The goal of the RAP is to prevent the migration of hazardous constituents out of the unit at levels exceeding health-based standards by providing a mechanism for appropriate actions to mitigate the potential for such migration should the leak detection system reveal the presence of liquids between the top and bottom liners. In the RAP, the owner or operator

characterizes the reason for leakage, assesses current conditions of the double liner system, assesses the potential for migration out of the unit, reviews various responses and their effectiveness, and recommends a response. The RA will review and approve the RAP with the recommended response.

The RAP proposed today is an integral component of EPA's systems approach, wherein the goal of protecting human health and the environment is achieved through the design and operation requirements for an entire unit, rather than its individual components. With this thought in mind, the appropriate response actions to any leakage event are linked to the system capabilities rather than the capabilities of any single system component. The appropriate response actions must consider not only the concentrations of hazardous constituents in the liquid contained in the leak detection system but also the overall ability of the lining system (in particular, the ability of the leak detection system and the bottom liner) to contain top liner leakage within the unit.

In today's proposal, the Agency is taking the position that migration of hazardous constituents out of the unit at concentrations below EPA approved health based standards for ground-water protection will be protective of human health and the environment. Therefore, the presence of such liquids in the leak detection system between the liners is consistent with EPA's objectives for protection of human health and the environment for a land disposal unit. Furthermore, the presence of hazardous constituents in the leak detection system at concentrations exceeding EPA's health-based standards is not necessarily a problem, since the overall lining system, with a composite bottom liner and a leak detection system between the top and bottom liner, should protect human health and the environment. The role of the RAP in this instance is to provide an opportunity to review the design, construction, and operation of the unit, and all factors that might affect the performance of the lining system in order to ensure that the entire unit can meet its performance goal of protecting human health and the environment. The RAP will initiate any necessary actions to ensure compliance with this goal.

The leak detection approach proposed in this rule differs from the leak detection approach in the Tank Rule (51 FR 25487, July 14, 1986). The Tank Rule requires the unit to be taken out of service and replaced or repaired if leakage is detected. The difference between the leak detection approaches that EPA is using for tanks and for landfills, waste piles, and surface impoundments results from differences in the design and materials used for construction, operating practices, and waste placed in these units. To replace a steel tank or repair a leak in the tank is feasible and relatively easy. However, EPA's position is that, in most cases, requiring the repair of a top liner in a landfill when the liner is covered by waste is not a practical approach. Top liners at surface impoundments and certain waste piles where the waste is periodically removed are repairable; EPA has data showing surface impoundment liners are commonly repaired or replaced when they are damaged. Also, a top liner leak in a landfill would be very difficult to locate, and repairing the leak would require excavating large quantities of the previously placed hazardous waste. Therefore, the leak detection approach proposed today recognizes the system's capabilities in determining the appropriate response action.

Today the Agency is proposing that a RAP be required for all newly constructed landfills, surface impoundments, and waste piles; replacement landfill, surface impoundment, and waste pile units; and landfill and surface impoundment units required to have double liners after November 8, 1984, at both permitted and interim status facilities (Section 264.222, and conforming amendments to Subparts L and N). EPA is proposing a RAP as a means to implement the appropriate response activity for leakage on a site-specific basis. The RAP sets forth actions to be taken to ensure that hazardous constituent migration out of the unit is prevented at levels exceeding EPA-approved health-based standards for ground water protection. Although the statute requires only leak detection and not a response action (Section 3004(o)(4)(A)), EPA considers the RAP, with its response action requirement, to be a logical step to minimizing head-on the bottom liner and preventing hazardous constituent migration out of the unit.

RAPs are required for two leakage rates: (1) Rapid and extremely large leakage and (2) leaks less than rapid and extremely large that exceed the ALR. Rapid and extremely large leakage (RLL) is defined as the maximum design leakage rate that the LDCRS can remove under gravity flow conditions (i.e., without the fluid head on the bottom liner exceeding one foot of water in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems). In determining the design value for the RLL rate, the owner or operator should use an adequate safety margin to allow for uncertainties in the design, construction, and operation of the LDCRS (e.g., decreases in the flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.). (See Liner/Leak Detection Background Document for further information.)

EPA takes the position that leakage in excess of the RLL can significantly increase the potential for migration of hazardous constituents out of the unit. If a leak occurs, and the leakage rate exceeds the gravity flow capacity of the leak detection system, the hydraulic head on the bottom liner can become equal to the elevation difference between the liquid level in the unit and the elevation of the bottom liner. In the case of a surface impoundment, or in the case of a failure of the LCRS above the top liner, this elevation difference can be large (see Liner/Leak Detection Background Document). Based on the increased migration potential if the RLL is exceeded, the procedures for submitting a RAP differ for RLL and less than RLL. The owner or operator must have an approved RAP for RLL before receiving waste as a result of this increased migration potential. For leakage less than RLL, EPA allows the owner or operator to submit the RAP in the permit application or to develop the RAP subsequent to the leakage event. The EPA does not believe that leakage below rapid and extremely large poses as great an immediate threat; therefore, the RAP for these leaks can be developed after the ALR is exceeded.

(b) Overview of RAP requirements and implementation—(i) RAP for leakage greater than ALR, but less than rapid and large.

Leachate collection and removal and sampling. If the owner or operator detects leakage exceeding the ALR, but not exceeding the RLL rate, he must immediately notify the Regional Administrator. The owner or operator must continue leachate collection and removal to minimize the head on the bottom of the liner as currently required in the LCRS requirements. If he has not yet submitted a RAP for these lower leakage rates to EPA, he must submit one within 90 days of detecting leakage above the ALR. The RAP must identify the hazardous constituents which are present in the waste and project which constituents will be present in the sump. The Regional Administrator will review this list and specify which hazardous

constituents must be sampled in the sump of the LCDRS to give a reasonably accurate representation of the concentrations of hazardous constituents in the leachate.

The RAP must also require the owner or operator to sample the designated constituents as soon as possible after the RAP is implemented. If the sampling shows that the concentration of all of the constituents are below EPA-approved health-based standards (explained in more detail below), the RAP may limit response action to the continued collection and removal of leachate. If, however the owner or operator finds that the concentration of any of the sampled constituents exceeds a health-based standard, he must implement the approved response for leakage above health-based standards. The RAP would require the owner or operator to consider a series of factors that relate to the potential for the leachate to escape from the unit into the environment. These factors are described in more detail in section V.A.2.C.(2)(a) below.

Major response action. The RAP must then require the owner or operator to implement a response that is appropriate in light of all the factors and conditions considered. The goal of the response will be to prevent migration out of the unit of any leachate with constituent concentrations exceeding the health-based standards. For leaks that exceed the ALR, but are less than rapid and large, acceptable responses include:

- Terminating receipt of waste and closing the unit;
- Repairing any leaks expeditiously;
- Instituting operational changes to reduce leakage into the LDCRS between the liners;
- Collecting and removing leachate, and, in addition, accelerating ground-water monitoring; and
- Maintaining current operating procedures (including the collection and removal of leachate).

The owner or operator may choose to write a RAP that sets out a range of top liner leakage rates and corresponding responses. For example, the owner or operator may recommend in the RAP the following responses to the corresponding leakage bands for a landfill where the RLL rate has been determined to be 2,000 gpad:

Leakage band	Response
20-200 gpad	Increase the LDCRS pumping and monitoring.
200-2,000 gpad	Change operating practices to reduce the leakage to less than 200 gpad.
Greater than 2,000 gpad (RLL).	Modify the operating practice to minimize precipitation infiltration into the waste and partially close the unit.

This approach offers the owner or operator greater flexibility by allowing the leakage rate to fluctuate within reasonable limits without requiring the owner or operator to change to a different response with every increase or decrease in the leakage rate.

Although EPA encourages owners and operators to submit broad RAPs responding to a wide range of possible scenarios, EPA is not requiring them to do so. The owner or operator may choose, for a leak that exceeds the ALR, but is less than rapid and large, to submit a narrower RAP focusing on the problem actually observed. EPA, however, expects that these more specific RAPs will frequently need modifications, and predicts that most owners and operators will find it in their interest to submit broader and more flexible plans.

The Regional Administrator will review the owner or operator's submission and evaluate it against the goal of preventing migration of leachate with hazardous constituent concentrations exceeding health-based standards. Upon reaching a tentative conclusion to approve, disapprove, or modify the RAP, the Regional Administrator will provide the owner and operator with a chance to comment. The Regional Administrator will also provide the public with an opportunity to comment. More details on the criteria and procedures the Regional Administrator will use in reviewing the RAP appear in Section V.A.2.C.(2)(c) below.

Implementation of response and follow-up. Once the owner or operator is required to implement a Regional Administrator-approved RAP, the owner or operator must sample the leachate to determine hazardous constituent concentrations and then select the appropriate response action from the Regional Administrator-approved RAP. If constituent concentrations are below health-based standards, the owner or operator may continue following current operating procedures. If, however, constituents exceed the health-based standards, the owner or operator must implement the response action approved in the RAP for leakage above health-based standards. Within 60 days of selecting and initiating a response action under a RAP, the owner or operator must submit a report to the Regional Administrator that describes how effective the response has been in preventing migration out of the unit of any leachate that exceeds health-based levels. After reviewing this report, the Regional Administrator may require modifications or different responses that are necessary to assure that migration of leachate exceeding these levels does not in fact occur. Finally, the proposed regulations will also require owners and operators who are conducting responses under approved RAPs to report to the Regional Administrator any significant increase in leakage rates. This report must be submitted within 45 days of the detection of the change and must describe, among other things, any change in the response that the owner or operator has implemented or plans to implement to address the increased leakage. The Regional Administrator may require additional or different responses as necessary. If these additional or different responses require a change in the RAP, the Regional Administrator will require the owner or operator to submit a modification to the plan and review it under the procedures referred to above and described more fully in section V.A.2.C. (2)(c) below.

Variance. The RAP may also provide the owner or operator with an opportunity to demonstrate at any time that the elevated rate of liquid appearing in the LDS is not the result of a leak in the top liner, but rather from an alternative source, such as fluids trapped between the liners during construction, or water that escaped during consolidation of the compacted soil component of a composite top liner. The owner or operator will not be required to implement the RAP if the Regional Administrator approves the demonstration before the deadline for RAP implementation. If the demonstration is not approved before this date, the owner must begin to implement an appropriate response. He may halt all response activity, however, as soon as EPA approves the demonstration. The requirements for this demonstration are described in more detail in a separate section below.

(ii) RAP for Rapid and large leakage. Many of the substantive and procedural RAP requirements are the same for leakage that exceeds the RLL rate as those discussed in the previous section for leakage less than RLL. The discussion below highlights the differences.

Initial responses. The RAP for leaks exceeding RLL must be submitted for certain existing units within 12 months of promulgation of this rule and, for new units, before hazardous waste is placed in them. Consequently, EPA will require

the owner or operator to begin implementing the RAP immediately upon detecting leakage that exceeds the RLL level.

Additionally, the RAP for RLL leaks will require the owner or operator to undertake more serious responses more quickly. This program will require operational changes that will reduce the volume of leachate flowing into the LDCRS, such as a partial cover or a limit or restriction on receipt of liquid wastes or repair of the liner in a surface impoundment. EPA believes this more stringent initial response is necessary because leakage exceeding the RLL rate interferes with the functioning of the leak detection system. These large leachate quantities can "swamp" the LDS, making it difficult or impossible to tell whether leak rates continue to increase. This requires immediate response to restore the function of the LDS.

EPA is also concerned that the volume of leachate between the liners in an RLL situation may threaten the ability of the containment system to prevent migration. The large volume may significantly increase the hydraulic head that exerts pressure on the bottom liner, and, consequently, increases the possibility that contaminated leachate may escape from the unit to contaminate soil or ground water. Hence, EPA is proposing to require all RAPs for RLL to require owners and operators to undertake immediate responses even before sampling the leachate in the LDS. EPA requires that this immediate response would, at a minimum, involve operational changes to reduce leakage into the LDCRS between the liners. EPA would also expect the RAP to include a very aggressive immediate response (such as immediate repair of the upper liner) to be implemented if the volumes of leachate in the leak detection system indicate the possibility of a drastic leak in the upper liner.

Sampling and major response actions. During implementation of these initial responses, the owner or operator must also sample the leachate in the LDCRS sump for the hazardous constituents specified in the RAP. If concentration levels do not exceed approved health-based levels, the owner or operator will not have to undertake further responses if the head on the bottom liner is minimized. If, however, they do exceed health-based levels, the RAP will require the owner or operator to implement a Regional-Administrator approved response action selected from a broader range of actions in the RAP. The range of appropriate responses will be narrower for RLL leaks than for leaks below RLL levels because the large volumes increase the chance of system failure. Appropriate responses would include:

- Terminate receipt of waste and close unit;
- Repair leaks expeditiously; and
- Introduce further or more permanent operational changes to reduce leakage first to a rate below RLL, and ultimately, to a rate that prevents migration out of the unit.

EPA believes that evaluation of a range of RLL rates is important at some types of units, such as surface impoundments, where scenarios exist for top liner rates of leakage significantly in excess of the RLL. The RAP should include an assessment of the possible response activities not only for RLL, but also for leakage significantly in excess of RLL, if this level of leakage is likely to occur at that unit. The detailed assessments for rates of leakage significantly in excess of the RLL must address the same site-specific factors required for assessments of the possible RLL response activities. It is expected that the RAP for leakage rates significantly in excess of the RLL will provide for extraordinary measures to rapidly reduce the hydraulic head acting on the bottom liner. Again, the goal of the RAP will be to prevent migration out of the unit of hazardous constituents at concentrations exceeding health-based levels.

Elimination of variance. The final significant difference for a RAP for RLL is the elimination of the variance procedure. EPA has not been able to imagine a scenario where other sources of liquid, such as construction water, could generate the quantity of liquid required to meet the RLL test. Furthermore, even if all of the liquid came from sources other than a leak in the upper liner, the volumes involved would threaten the ability of LDCRS to function. Response action would be needed to maintain the capability of the LDCRS to detect additional new leakage and minimize the head on the bottom liner.

(c) Leachate quality levels. The issue concerning what level of release of hazardous constituents out of the unit that must be prevented to protect human health and the environment is relevant in a broad range of regulatory contexts currently being examined by EPA, including closure and corrective actions under RCRA and response actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) programs. The Agency is proposing today to use EPA-approved health-based standards for setting the maximum concentrations of hazardous constituents deemed by EPA to meet its prevent migration goal. It is EPA's position that the assessment of migration potential for hazardous constituents out of the unit will, in most cases, need to be based on the quality of the leachate in the leak detection system and not on the projected quality of leachate leaving the unit. Therefore, if hazardous constituents in the leachate are below the health-based standards, assuming a drinking water ingestion scenario, the owner or operator would not be required to initiate a response action.

The Agency has used health-based standards and criteria in several aspects of the RCRA program that involve protection of ground water, assuming human consumption. For example, the ground-water protection standards of Subpart F, de-listing procedures of Section 261, and clean closure process under Sections 264.228 and 265.228 for storage or treatment surface impoundments involve the use of EPA-approved health-based standards for evaluating compliance with an environmental performance standard. The Agency believes that such approaches are protective of human health and the environment, and is, therefore, proposing to use the health-based standards as the levels to which the response action plan must prevent migration of hazardous constituents out of the unit.

The owner or operator should use the Maximum Contaminant Levels (MCLs) established as drinking water standards under the Safe Drinking Water Act, as the primary Agency-approved health-based standards. The Agency is in the process of proposing and finalizing additional MCLs, and will continue to do so over the next several years. The Agency does not believe it is appropriate to use the Maximum Contaminant Level Goals (MCLGs), since these criteria are not considered to be relevant and appropriate regulatory standards.

Where no MCLs exist, however, the owner or operator should use the Reference Doses (RFDs), for any threshold constituents and the Carcinogenic Potency Factors (CPFs) for non-threshold constituents, assuming a risk level of 10^{-6} for Class A and B carcinogens and 10^{-5} for Class C carcinogens.

Under certain circumstances, the Agency believes that the levels based on MCLs, RFDs, and CPFs, as described above, may be lowered to ensure adequate protection of human health and the environment. The Agency may

lower these levels, as appropriate, under either of the following circumstances:

a. Where a mixture of contaminants is present, resulting in exposure to multiple contaminants that could cause adverse effects on the same human organ; or

b. Where an unusual exposure scenario or a vulnerable population at the site requires a more stringent target level.

If an EPA-approved health-based standard does not exist for a hazardous constituent, EPA is considering allowing the owner or operator to base the response action plan on not exceeding the background ground-water protection level for that constituent.

The Agency is in the process of developing guidance on the use of Agency-approved health-based standards for protecting ground water in the context of the clean closure and corrective action regulations, and for implementing the Subpart F provisions. In the future, as additional Agency-approved health-based standards are developed, these sources of information will be updated.

(2) Rule requirements—(a) Elements of the RAP. The common RAP elements for rapid and extremely large leakage and for other leakage below RLL but above the ALR are presented under Sections 264.222 (b) and (e) and conforming amendments to Subparts L and N for permitted facilities, and Sections 265.222 (b) and (e), and conforming amendments to Subparts L and N for interim status facilities. At a minimum, the owner or operator must include the following site-specific information in the RAP: (1) A general description of the operation of the unit; (2) a description of the hazardous constituents contained in the unit; (3) a description of the range of events that may potentially cause leakage exceeding both the ALR (if appropriate) and RLL; (4) a discussion of the important factors that can affect the amount of liquid entering the leachate collection and removal system between the liners; (5) a description of major mechanisms that will prevent migration of hazardous constituents out of the unit; and (6) a detailed assessment describing the effectiveness of each of a given range of possible responses. Each of these categories of required information is briefly addressed below.

First, the response action plan must include a general description of the operation of the unit including whether or not at closure the wastes will be decontaminated in place, removed from the unit, or left in place. The site-specific information should include, as a minimum, the type, size, and location of the unit; the design of the unit including details of the lining system; the geographic and climatic setting; and the operating history and practices at the unit, including the age of the unit, planned unit active life, ongoing activities at the unit, volume of wastes being stored or disposed, methods of waste placement, equipment used, intermediate cover practices, and the closure plan.

Second, the response action plan must also include a general discussion of the hazardous constituents contained in the unit. This discussion should include, at a minimum, a summary of the results of analyses carried out as part of the site-specific waste analysis plan (Sections 264.13(b) and 265.13(b)) as well as description of the physical characteristics of the waste.

Third, the response action plan must include a discussion of all events that may potentially cause leakage exceeding both the ALR (if appropriate) and the RLL. These potential causes will be site-, design-, and operation-specific. In general, they may include operational accidents, design deficiencies identified subsequent to the start of unit operation (such as inadequate connections between liners and liner penetrations such as pipes and manholes), unforeseen incompatible wastes, equipment damage, unforeseen site subgrade settlements, and catastrophic natural events such as earthquakes or tornadoes, if applicable.

Fourth, the response action plan must include a discussion of the important factors that can affect the amount of liquid entering the leachate collection and removal system between the liners. These factors should include, but not be limited to, the size and type of top liner breach, the potential for additional breaches in the future, the amount of liquid head in the leachate collection and removal system above the top liner, the potential for leachate generation in the unit due to the moisture content of the waste, the anticipated amount and frequency of precipitation, and the potential for surface water run-on. The potential for sources of liquid other than top liner leakage should also be considered, including liquids from construction water, consolidation of any compacted soil component of the top liner, or water due to ground-water infiltration.

Fifth, the response action plan must include a description of major mechanisms that will prevent migration of hazardous constituents out of the unit. This description should include an evaluation of the capabilities of the entire land disposal unit as well as the capability of each individual unit component. Particular attention should be given to: the condition of the composite bottom liner; the condition and operational capability of the leak detection system between the top and bottom liners; the condition and operational capabilities of the top liner and the leachate collection and removal system above the top liner; the potential to repair or retrofit the top liner if the RLL is exceeded; and the potential for the use of intermediate covers and run-on controls to limit leachate production potential in the unit.

Last, the response action plan must include a detailed assessment describing the feasibility of each of a range of responses for preventing hazardous constituent migration out of the unit. The discussion in section (b) above sets out the range of acceptable responses for RLL leakage and leakage that is less than rapid and large.

In developing the site-specific information for the response action plan, the owner or operator should evaluate the condition of the liners by reviewing activities that have occurred at the unit from the time of construction to the present. An analysis of the results of a rigorous construction quality assurance (CQA) plan should provide a good data base to assess the condition of the liners after construction of the unit. Results of CQA testing will be particularly valuable if key areas of the liner were tested hydraulically for leaks.

Other information that the owner or operator may use in assessing liner condition during development and implementation of a RAP includes: (1) A review of operational practices during the active life, (2) leachate analysis to indicate whether unanticipated waste constituents are present, (3) coupon testing in the sump above the top liner of a landfill or waste pile or in the waste at a surface impoundment to determine any chemical compatibility problems, and (4) an assessment of operating activities that may have damaged the liner. A review of the double liner system design can also reveal whether the design concept had any weaknesses that could increase the probability of a liner breach. The evaluation of the design will also indicate areas that include redundancy or design concepts that will minimize leakage if a breach occurs. This type of review of site-specific information can often isolate the location and extent of damage to a liner and can provide information showing that the breach is the result of a design, construction, or operational activity.

In the specific case of a breach in the top liner, the full extent of damage typically cannot be determined without

a field investigation to evaluate the liner condition. However, EPA believes that a field evaluation, including inspection and liner testing, is not currently an appropriate across-the-board requirement of the liner assessment element of the RAP. Field evaluation may be feasible in some cases where the owner or operator has conducted electrical resistivity surveys, performed acoustical monitoring, conducted a visual examination of a surface impoundment after draining, or performed evaluation of the working face of a landfill. In other cases, as in a landfill where the breach is under a significant depth of waste, field evaluation will not usually be feasible. The owner or operator, when feasible, may provide field data as part of a response action plan to demonstrate the condition of the liner.

Leakage bands. Since the likelihood exists that leakage through the top liner will fluctuate during the active life and post-closure care period, the owner or operator may develop a RAP that addresses a range of leakage bands with corresponding responses. A leakage band refers to a range of top liner leakage rates. With a specific response tied to a leakage band instead of a single leakage rate, the leak can fluctuate over time without the need to implement a different response. EPA believes that the responses should be flexible enough to accommodate reasonable fluctuations in top liner leak rates.

Examples of response actions for RLLs. To assist owners or operators in understanding today's proposed rule, EPA is providing three examples of when certain response actions that may be appropriate for three different RLL scenarios.

The first example is a disposal surface impoundment where both the top and bottom liners have been breached as a result of equipment falling into the surface impoundment and the quality of the leachate is above health-based standards. After detecting rapid and large leakage, the owner or operator determines that removing the waste and repairing the liners is not feasible. The double liner system is no longer functioning as designed, and migration of hazardous constituents (exceeding health-based standards) out of the unit is expected. In this case, the appropriate action is to drain the surface impoundment and repair or close the unit.

In the second scenario, the owner or operator of a surface impoundment detects rapid and extremely large leakage between the liners above health-based standards. The top liner has been breached at the water line. An assessment of the unit reveals that the bottom composite liner and LDCRS have not been damaged and continue to function as designed to prevent leachate migration into the ground water and surface water. In this situation, the owner or operator continues to collect and remove leachate while draining the impoundment below the breached area and repairing the top liner. If repair is not possible, the owner or operator may elect to retrofit a new top liner over the existing one, or alternatively, the RA may allow operation of the unit with reduced liquid depth so that the waste is not in contact with the area of the breach. Although this action is feasible for a surface impoundment, in most cases it would not be for a landfill.

The last scenario involves rapid and extremely large leakage above health-based standards caused by a major storm (50-year storm) at a landfill where repairing the leak is not feasible. The landfill has a remaining active life of 6 months and will be closing shortly. The LDCRS and bottom liner are functioning properly. The FML component of the composite bottom liner allows for rapid and efficient leachate collection and prevents migration into the liner. The owner or operator proposes a RAP that uses operational changes to reduce leakage into the space between the liner to a range of between 200–500 gpad for 6 months, and following that time, the unit will be closed with an initial rapid reduction in leakage. The operational changes proposed include: placing predominantly dry waste in the unit; immediately covering active portions of the unit as they are filled; covering daily to significantly reduce the rate of liquid infiltration into the waste; developing a precipitation runoff system within the unit; increasing the frequency of leak detection and ground-water monitoring; and developing a contingency RAP for closure if the high leakage rate continues or increases. This proposed RAP would be acceptable.

The range of responses for leakage less than rapid and large includes the responses for RLL and adds the following responses:

(1) The owner or operator continues to remove and treat leakage with increased ground-water monitoring. This response may be appropriate for a unit where the leakage periodically exceeds the ALR in the range of 50–100 gpad, but the system is functioning to protect ground water and surface water. Although migration out of the unit is not expected, the facility is located near a sensitive environment. The owner or operator continues to remove and monitor the quality of leachate. The frequency of ground-water monitoring and reporting is increased to confirm that no leakage is leaving the unit.

(2) The owner or operator maintains current operating practices because the leachate quality in the LDCRS is below EPA-approved health-based standards for ground-water protection. An example where this response may be appropriate is a unit where the ALR is exceeded infrequently and can be correlated to heavy rainfall. Analysis of the leachate has shown hazardous constituent concentrations are below EPA health-based standards. Assessment of the double liner system indicates the bottom liner and sump are continuing to function as designed, and leakage can be collected and removed efficiently when it occurs. A second example is where it has been shown that the leachate in the LDCRS is most probably due to a source other than top liner leakage (e.g., consolidation of a compacted soil component of the top liner) and analysis of the leachate shows it to meet the aforementioned health-based standards.

Another example where maintaining current operating practices might be appropriate involves a landfill with a leakage rate determined to be approximately 100 gpad, and the owner or operator will be closing the unit within one year. Assessment of the unit has shown that the remainder of the unit system is functioning to prevent migration of hazardous constituents out of the unit. Following RA approval, the facility continues current operating practices. The pumping rate is increased to maximize leachate collection and minimize the head on the bottom liner, and leachate quality is monitored.

The owner or operator may develop other appropriate responses that involve operational changes at the unit. EPA believes that there should be some flexibility in the responses allowed and realizes that not all units will require the responses discussed above. Therefore, EPA is allowing the owner or operator the opportunity to develop other operational responses if they are appropriate and protect human health and the environment. The response chosen by the owner or operator and approved by the RA will depend on the unit design, construction and operation, hazardous constituent concentrations in the leachate, and other factors that influence the leachate quality and mobility.

Actions to take in implementing a response action plan (RAP). Sections 264.222(d), 264.222(g), 265.222(d), 265.222(g), and conforming amendments to Subparts L and N of the proposed rule

require the owner or operator to perform the following actions after detecting leakage above the ALR: (1) Notify the RA in writing within 7 days of the occurrence, (2) collect and remove accumulated liquids, (3) immediately implement the RAP (if already part of the facility permit or interim status plan) or submit to the RA within 90 days a RAP developed after the occurrence (for facilities where the RAP was not preapproved), (4) immediately sample the leachate in the LDCRS and determine the concentrations as specified in the RAP, and (5) report in writing to the RA on the effectiveness of the response as soon as practicable after the response has been in place for 60 days, and annually thereafter for leakage that is less than RLL, or at subsequent time periods as specified by the RA for RLL. These five actions are described in more detail below:

(1) If leakage into the LDCRS exceeds the ALR, the owner or operator must notify the RA of the occurrence in writing within 7 days after determining that the ALR is being exceeded in accordance with Sections 264.222(d)(1), 264.226(g)(1), 265.222(d)(1), 265.226(g)(1) and conforming amendments to Subparts L and N. The notification to the RA must indicate preliminary liquid volumes that have been detected, collected, and removed.

(2) The owner or operator must continue to collect and remove all volumes of liquids that accumulate between the liners following the detection of leakage exceeding the ALR. Leachate collection and removal reduces the liquid head on the bottom liner, decreasing the potential for migration out of the unit. In this way, the leakage is being mitigated even before the RAP is implemented; this is especially important for greater leakage rates.

(3) The owner or operator of a landfill, surface impoundment, or waste pile unit at a permitted facility must implement the RAP immediately if it is part of the permit. For RLL, the RAP must be included in the permit; for leakage less than RLL, submission with the permit application is optional. If the RAP for less than rapid and extremely large is not part of the permit, it is developed after finding leakage exceeding the ALR and must be submitted to the RA for approval before implementation. Procedures for submittal of the RAP to the RA are discussed subsequently.

The owner or operator of an interim status facility where the RAP was submitted to the RA before receiving waste (for RLL and, optionally, for leakage less than RLL) must implement the RAP immediately. The RAP for leakage that is less than rapid and extremely large may be submitted at any time within 90 days after the ALR is exceeded. A RAP prepared while the facility is under interim status will be included in the draft facility permit at the time of permitting. The facility then will be subject to the same requirements under Part 264 (Sections 264.222, and conforming amendments to Subparts L and N).

(4) Immediately upon determining that the ALR has been exceeded, the owner or operator must sample the leachate in the LCRS sump and have it analyzed as specified in the RAP to determine the concentration of specified Appendix VIII hazardous constituents (40 CFR Part 261). The owner or operator must provide the analytical results to the RA at the earliest practicable time.

(5) Sections 264.222(d)(5), 264.222(g)(5), 265.222(d)(5), and 265.222(g)(5) and conforming amendments to Subparts L and N require that, after the implementation of a response activity, the owner or operator must report to the RA on its effectiveness. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health-based standards for ground-water protection. An initial report demonstrating the effectiveness of the RAP must be submitted to the RA by the owner or operator and as soon as practicable after the response action has been implemented for 60 days. Following this initial submittal, a report must be submitted annually (for leakage less than RLL) or at a time period specified by the RA (for leakage exceeding the RLL). These subsequent reports submitted after the initial report must discuss the effectiveness of the ongoing response action program.

The RA will review the initial report and subsequent reports on the effectiveness of the response along with the leachate quality analyses to determine if the response selected is preventing hazardous constituent migration out of the unit. The RA will make this determination based on the criteria discussed in Section V.A.2.c(2)(c) of this preamble. If the RA or owner or operator determines that the response activity is not effective in meeting these criteria, either at initial implementation or at any time subsequent to initial implementation, the RA will require the owner or operator to recommend an alternative response action that is already identified in the RAP or to develop a new response action as part of a permit modification or plan amendment (Section 264.222(d)(5), 264.222(g)(5), 265.222(d)(5), 265.222(g)(5), and conforming amendments to Subparts L and N). EPA believes that, in most cases, a RAP that is prepared prior to a leakage event, will need some revision due to the difficulty in predicting site-specific factors. Unit conditions and operating practices may change from the time of the RAP submittal and may, therefore, need to be reassessed at the time of the leakage event. Any new recommended responses must be reviewed and approved by the RA. The RAP review process will be an interactive process between the RA and the owner or operator in determining an effective response activity that prevents hazardous constituent migration out of the unit. EPA believes that in many cases a RAP developed before waste is received at a unit will require some level of modification if it is implemented.

EPA is aware that leakage rates can fluctuate and change over time; therefore, EPA is today proposing a requirement for the owner or operator to identify significant changes in the liquid volume between the liner during monitoring and submit a report to the RA (Sections 264.222(i), and 265.222(i) and conforming amendments to Subparts L and N). EPA believes a "significant change" to be of such a magnitude that it cannot be attributed to predictable, temporary fluctuations as described in the RAP. The Agency requests comments on what a correct value for a significant change should be. EPA is considering using a 100 gpad or 25–50 percent increase in leakage, whichever is larger, to define a significant change.

Today's proposed rule will require the owner or operator to submit a report to the RA within 45 days detection of a significant change in leakage rate. The report must include an assessment of the problem causing the leakage fluctuation and a determination of whether the fluctuation is of concern. A fluctuation caused by heavy rain which is infrequent may not be of concern, whereas a spike determined to have occurred as the result of a new top liner breach of considerable size would definitely be of concern. The assessment must include, at a minimum, a profile of the liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage.

In the report, the owner or operator will also be required to describe any proposed change in response activities and the schedule for implementation. The RA will review the report and will

assess the appropriateness of the revised response activities and implementation schedule.

(b) How and when to submit a RAP. The requirements for submitting a RAP differ for permitted and interim status facilities, and for RLL and leakage less than RLL. For newly permitted facilities, the owner or operator must include in the permit application a RAP setting forth actions to be taken immediately following detection of rapid and extremely large volumes of leakage between the liners. The owner or operator of a permitted facility that is building a new unit or replacing a unit must include a RAP for RLL in a request for a permit modification. In either case, the RAP must be approved before the unit can receive waste.

For leakage rates less than rapid and extremely large, the owner or operator of a permitted facility has the option to submit the RAP with the permit application or with a permit modification or to submit a request for a permit modification to the RA within 90 days of detecting leakage above the ALR. A RAP submitted as part of the permit application or modification must be implemented as specified in the permit. If a RAP is submitted after detecting leakage exceeding the ALR, the RA's approval is required before implementation; however, the owner or operator should make immediate efforts to reduce leakage, and at a minimum, carry out the activities under Section 264.222(g) and conforming amendments to Subparts L and N.

The owner or operator of an interim status facility required to comply with the leak detection requirements must submit a RAP for RLL 120 days prior to accepting waste at the unit (Section 265.222(a), and conforming amendments to Subparts L and N). The owner or operator of an interim status facility also may choose to file a RAP prior to receiving waste for leakage less than the RLL. Alternatively, the RAP for leakage rates above the ALR but below the RLL may be submitted to the RA when leakage is detected (Section 265.222(e)(1)(ii) and conforming amendments to Subparts L and N). The owner or operator must submit to the RA a request to amend the RAP (for less than RLL) within 90 days after exceeding the ALR. Within 60 days of receipt, the RA will approve, modify, or disapprove the RAP or will request to have the RAP amended.

(c) EPA review of the RAP. The RAP is submitted to the RA for review either as part of the permit application, as a request for permit modification, or as a plan in the case of interim status facilities. The RA will review and approve or disapprove the RAP 264.222(c)(1), 264.222(f)(1), and 265.222(f)(1), 265.222(c)(1), and conforming amendments to Subparts L and N. The RA will approve the RAP if he determines that the plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit at concentrations in excess of EPA-approved health-based standards for ground-water protection.

In making this determination, EPA will consider the overall design, operation, and performance of the unit, as well as several specific factors which will include, but not be limited to (1) the actual or anticipated types and concentrations of hazardous constituents in the leachate between the liners, (2) the mobility of the hazardous constituents in the actual or anticipated leachate, (3) the degree to which the liquid head on the bottom liner will be minimized by implementation of the RAP, (4) the rate of top liner leakage and the cause of this leakage, (5) the current condition of the liners and leachate collection and removal systems, (6) the design and current condition of the entire double liner system, (7) future planned activities including remaining active life time period, and closure and post-closure care activities, and (8) environmental factors such as the amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeologic setting. Each of these factors is briefly addressed below.

In considering the acceptability of a RAP, the RA will review the actual or anticipated types, concentrations, and mobilities of the hazardous constituents in the leachate between the liners. The quality of the leachate will be evaluated for at least two criteria, (1) the potential threat it poses to human health and the environment, and (2) the potential deleterious effects the leachate may have on the physical properties of lining system components. With respect to the first criteria, if the leachate meets EPA-approved health-based standards for ground-water protection, human health and the environment are protected and the only necessary response activity will be continued pumping of leachate and periodic monitoring of leachate quality. However, if hazardous constituent concentrations exceed the health-based standards, additional response activities may be required. In addition, if the actual or anticipated leachate contains significant concentrations of hazardous constituents, the RA will expect the RAP to address the potential deleterious effects of the constituents on the lining system components (e.g., swelling of FMLs or synthetic components of the leak detection system).

In reviewing the RAP, the RA will also consider the degree to which the liquid head on the bottom liner is minimized. This is an important consideration, as the rate of leakage through a defect in the FML component of a composite bottom liner is proportional to the hydraulic head acting on top of the bottom liner. Since leakage through an FML defect would be the most probable cause of leakage into and through a composite bottom liner, the hydraulic head on the bottom liner must be minimized if leakage into and through the bottom liner is to be minimized.

The RA will also consider the rate of top liner leakage and the cause of leakage. If the rate of leakage is stable and relatively low, and if the cause of leakage is believed to be well understood and not progressive, then limited response actions, such as an increased frequency of leachate monitoring and removal, may be acceptable to the RA. Causes of leakage that might fall into this category include top liner breaches associated with an operational accident or leakage through a connection between the top liner and a pipe or other structure penetrating the liner. On the other hand, if the rate of leakage is high or is increasing over time, or if it is believed that the causes of top liner failure is progressive (e.g., due to chemical incompatibility between the liner and leachate), then more rigorous response actions will likely be required.

The RA will also evaluate the design and current condition of the double liner system as well as the design and current condition of the individual lining system components. The Part B permit application, CQA documentation and operating report will be used in the assessment. The Part B permit application will be reviewed to ensure proper material selection and design. CQA documentation will be reviewed to establish that the system components were properly installed and to identify potential problem areas. Unit operating records will be reviewed for events that may have resulted in a top liner breach or in deterioration, clogging, or other malfunction of a system component. The current condition of the entire double liner system will be reviewed to understand the degree to which the overall system can function to meet the goal of preventing migration of hazardous constituents out of the unit. The overall lining system will also be reviewed for any special features beyond the minimum technological

requirements that might enhance the containment capabilities of the unit.

In reviewing the RAP, the RA will look at future planned activities. In particular, the RA will review at what stage the unit is in its active life. For example, if a landfill were to exhibit top liner leakage in the range of several hundred gallons/acre/day early in its operational life, operational changes, intermediate covers, or other measures would be expected response activities in the RAP to reduce the rate of top liner leakage. However, if the landfill were near the end of its active life, and review of the planned closure and post-closure activities showed the plans to be acceptable, and if the LDCRS and bottom liners were believed to be functioning properly, the RA might accept more limited response activities, such as increased leachate monitoring and removal, for the remaining active life.

Lastly, in assessing the acceptability of a RAP, the RA will consider site-specific environmental factors. These factors include the amount and frequency of precipitation (which will influence the leachate generation potential of a unit), and weather extremes.

EPA is currently developing technical guidance for owners or operators and regulatory authorities to assist them in the development, review and implementation of response action plans. In this guidance document, factors that must be considered in a RAP, and criteria for evaluation of a RAP will be presented in detail. Comments are solicited on the appropriate factors and criteria to include in the guidance document.

The RA will identify in the RAP monitoring activities for specific hazardous constituents identified in 40 CFR Part 261, Appendix VIII. Specifically, the RA will require the owner or operator to test the liquids in the sump of the LDCRS to determine whether specified hazardous constituents are present. Other chemical and physical properties for testing may also be identified by the RA.

Permitted facilities. Sections 264.222 (c) and (f) and conforming amendments to Subparts L and N, propose review and approval procedures that EPA will use for the RAP (RLL and other leakage rates). This review will occur in the context of the 40 CFR Part 124 permitting procedures described below. After completing review of the RAP as part of a permit application or request for a permit modification, the RA either will deny the permit or permit modification and notify the owner or operator or will prepare a draft permit or permit modification. The RA will give notice of the draft permit or permit modification in the **Federal Register**. A 30-day public comment period and public hearing will follow the notification. Thirty days after the close of the public comment period, the RA will decide whether to approve, modify, or disapprove the permit or permit modification. The decision as well as the response to public comment will be published in the **Federal Register**.

If the permit or modification (including the RAP) is approved, the RA will prepare the final permit. If the permit requires modification, the owner or operator will be notified and given 30 days to respond.

Interim status facility. Sections 265.222 (c) and (f), and conforming amendments to Subparts L and N propose review and approval procedures EPA will use for the RAP (RLL and other leakage rates). After receiving a RAP, the RA will provide public notice of the plan through a local newspaper. A 30-day public comment period will follow the notification. The RA, in response to public request or his own discretion, may also hold a public hearing. The RA will approve, modify, or disapprove the plan within 90 days of receipt. If the RA does not approve the plan, he will notify the owner or operator in writing of the reasons, and the owner or operator will be required to submit a new or modified plan within 30 days. The RA will approve or modify this plan within 60 days, at which time this plan becomes the approved RAP.

(d) Demonstration showing alternative source of liquids. Sections 264.222(h), and 265.222(h), and conforming amendments to Subparts L and N propose a variance from continued RAP implementation for leakage less than RLL if the owner or operator of a permitted or interim status facility can demonstrate that the leakage is from a source other than the top liner. Upon triggering the ALR, the owner or operator has the opportunity to demonstrate that the top liner ALR appears to have been exceeded because of an error in sampling, analysis, or evaluation; or the top liner ALR has been exceeded due to sources of liquid other than leakage through the top liner, such as liquids trapped between the liners during construction, or water due to consolidation of a compacted soil component of a composite top liner.

The owner or operator will not be required to implement the RAP if the demonstration is approved before the specified implementation time of the RAP. The response action can be discontinued after a successful demonstration if implementation had already begun. This opportunity for a variance applies to leakage less than RLL. EPA's position is that not all of a RLL can be attributed to sources other than leakage through the top liner such as construction water. Rapid and extremely large leakage volumes would be of concern in any case.

The owner or operator is required to notify the RA in writing as soon as practicable of the intent to make a variance demonstration for liquids from a source other than top liner leakage. Within 90 days of this notification, the owner or operator must submit a report demonstrating that the liquid resulted from a source other than top liner leakage. The demonstration by the owner or operator must contain sufficient scientific and technical information to clearly show the source of the liquids. The report must include all data, analyses, documentation, and calculations used to make the demonstration. If the RA approves the demonstration, the response action, if already implemented, can be discontinued. The owner or operator then must submit an application for a permit modification for permitted facilities or plan modification for interim status facilities. The application must make appropriate changes to the RAP (if the plan was prepared previously) at the unit within 90 days of the RA's approval of the demonstration. A successful determination by the RA will result in discontinuing the response action for the current leakage, as described in the approval notice, and the modification of the permit or plan. The owner or operator may be required to monitor the leachate volumes more frequently and provide periodic leachate analyses to assure that conditions remain similar. If the RA determines the demonstration is not successful, the owner or operator must continue RAP implementation.

Any subsequent increases in leakage or hazardous constituent concentration above that specified in the demonstration will reinitiate the RAP, unless another demonstration is successfully completed and approved by the RA. In some cases, the demonstration approval may require a reduction in the leakage rate to a rate specified in the demonstration within a certain number of years. An example of this would be a demonstration based on water trapped during construction. The RAP also may be reinitiated if the owner or operator does not comply with the requirements of the demonstration approval.

The EPA allows the owner or operator to make demonstrations as provided above, because EPA believes that there

is a need for a certain amount of flexibility in the leak detection requirements. EPA's position is that the requirements cannot be rigid and all-inclusive.

(e) Significant change in leakage rate. Sections 264.222(i) and 265.222(i) and conforming amendments to Subparts L and N, propose requirements for significant change in leakage rates. If during monitoring of leakage, the owner or operator detects a significant increase in the leakage rate, he must submit a report to the RA within 45 days including the following information:

(1) An assessment of the problem causing the leak that includes a profile of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage;

(2) A description of any change in the response to be implemented as approved in the RAP.

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

If the RA determines that the current RAP needs to be modified the owner or operator must submit an application for a permit modification (within 60 days) or an interim status plan amendment (within 120 days) to make any appropriate modifications to the RAP. The procedures in 40 CFR Part 124 will be applied to permitted facility permit modifications. Procedures modelled after the 40 CFR Part 265.112 closure plan procedures will be applied to interim status plan amendments.

(f) An example of a RAP. The following is an example of a RAP for a surface impoundment:

Facility Description: The site is a 1.6 acre surface impoundment with rough dimensions of 200 feet by 350 feet. The surface impoundment will contain 11 feet of liquids with two feet of freeboard. The sidewall slopes are 3H:1V. The pond design incorporates a bottom composite liner; a leachate detection, collection, and removal system (LDCRS) between the bottom and top liner; and a top liner comprised of two sections, a composite section across the base and a single FML on the side slopes.

No protective cover is provided above the top FML. The drainage media for the LDCRS consists of a 0.25 inch thick synthetic drainage layer with an in-plane hydraulic conductivity of 10 cm/sec. The minimum bottom slope of the surface impoundment is 2 percent.

The surface impoundment is located above the historical high water table, rainfall averages about 40 inches per year, and the temperature ranges from 95 °F down to −20 °F. Run-on drainage control is prevented by the judicious use of ditches and berms.

Response Action Plan: A response action plan has been submitted and the following specifics have been established:

The action leakage rate (ALR) is 15 gallons per acre per day. This value was selected as an example from the range proposed in today's rule. This value is only slightly higher than the value determined by analysis of leakage by using conservative assumptions of liquid head and liner breaches and defects.

The rapid and large leakage rate (RLL) is determined to be 3,000 gpad. The sump system was also evaluated and found to be capable of handling the RLL value of 3,000 gpad without a resultant rise of over 1 foot of liquid on the bottom liner (a factor of safety of two is included in this calculation; i.e., the system is actually designed to remove about 6,000 gpad without 1 foot of head buildup). EPA considered this level of safety factor to be appropriate in a situation where a significant remediation action is necessary to ensure continued performance of the LDCRS system.

The RAP states that the response action plan for leakage rates between the ALR and the RLL will be developed if leakage exceeds the ALR. Construction and operation activities and operating record data on the past performance of the unit will be reviewed in determining the appropriate response activities to be implemented if the leakage rate exceeds the ALR and is less than the RLL value. The RAP will be submitted to the RA for approval before implementation.

Some examples of expected probable causes of a liner breach would be a seam failure or puncture caused by an accident as the ponds were filled or cleaned, an accident caused by human or animal activities in and around the ponds, or weather-induced accidents, such as wind-driven ice chunks impinging on exposed liner material. These breaches most probably would occur on the side slopes near the liquid level and would result in an almost immediate increase in leachate detected at the sump. The response would be the same for most leakage rate increases, which would be an immediate inspection of the exposed liner to determine if a liner breach had occurred at a location where it could be repaired immediately.

If the breach is at the liquid level, the owner or operator will lower the liquid level below the breach to repair it. If the breach is below the liquid level, it may be possible to locate the leakage area by electrical resistivity or acoustical methods (other techniques may be equally satisfactory) and then determine a plan of action.

Location of a significant breach is not expected to be difficult because there should be an immediate reduction in the leakage rate shortly after the pond liquid level is lowered below the breach. It also should be relatively easy to identify the breach location by electrical resistivity or acoustic survey. Once a repair is implemented, the leakage rate should provide an almost immediate indication of the effectiveness of the repair.

If the RLL occurs, no further liquid will be placed in the ponds. The liquid level will be lowered as necessary to complete a survey of the exposed liner. The unit will not be placed back into service until the owner or operator demonstrates to the RA that the leak in the top liner has been repaired to control the leakage rate.

3. Proposed Rule for Land Treatment Units

The goal of land treatment is to reduce the hazardousness of waste applied in or on the soil through degradation, transformation, and immobilization processes. EPA believes that land treatment can be a viable management practice for treating and disposing of some types of hazardous waste. However, the general approach to preventing hazardous constituents from migrating into ground water is somewhat different for land treatment units than for other land disposal units. At surface impoundments, waste piles, and landfills this objective is met by the double liner and leachate collection system and the final cover that prevent liquids from entering the unit and migrating into the subsoils. Land treatment units are dissimilar to other land disposal units in that they are not designed and operated to minimize liquid releases to ground water. On the contrary, they are open systems that freely allow liquid (without hazardous constituents) to move out of the unit. The land treatment regulatory approach, however, does seek to minimize the uncontrolled migration of hazardous constituents into the environment. This is accomplished by using a defined layer of surface and subsurface soils (referred to as the "treatment zone") to degrade, transform, or immobilize the hazardous constituents contained in the leachate passing through the system. Such treatment processes achieve the same general objectives as the liquids management strategy used at other

types of land disposal in that they act to prevent hazardous constituents from migrating into the environment.

Because land treatment depends upon a number of soil and waste interactions for success, it is especially important that the unit be carefully operated and monitored. The current design and operating requirements under Parts 264 and 265 require an owner or operator of a land treatment unit to monitor the unsaturated zone to provide information that he will use in modifying his operating practices to maximize the success of treatment processes. The principle objective of the current unsaturated zone monitoring requirements is to provide effective management of liquids in the unit to minimize the risk of ground-water contamination. At surface impoundments, waste piles, and landfills this objective is met by the double liner and leachate collection system, and the final cover that prevents liquids from entering the unit and migrating into the subsoils.

Both soil-core and soil-pore liquid monitoring are required in existing EPA rules. These two monitoring procedures are intended to complement one another. Soil-core monitoring will provide information primarily on the movement of "slower-moving" hazardous constituents (such as heavy metals), whereas soil-pore liquid monitoring will provide essential data on fast-moving, highly soluble hazardous constituents that soil-core monitoring may miss.

For example, if a significant increase of a hazardous constituent is detected in unsaturated zone monitoring, the owner or operator is required under the existing Part 264 to examine more closely the unit characteristics that significantly affect the mobility and persistence of that constituent. These significant unit characteristics may include treatment zone characteristics (e.g., pH, cation exchange capacity, organic matter content), or operational practices (e.g., waste application method and rate). Modifications to one or more of these characteristics may be necessary to maximize treatment of the hazardous constituent within the treatment zone and to minimize additional migration of that constituent to below the treatment zone.

EPA is today proposing leak detection requirements for new land treatment units under the authority of 3004(o) of RCRA and for existing land treatment units under the authority of 3004(a) of RCRA. The Agency believes that requiring leak detection at existing land treatment units, while not mandated by RCRA, is necessary to assure protection of human health and the environment because it prevents hazardous constituent migration from the treatment zone. Additionally, due to the nature of the unit, leak detection can be implemented as easily at an existing land treatment unit as at a new land treatment unit.

a. Permitted facilities. The current regulations for land treatment at permitted facilities under Part 264 require the following:

(1) The owner or operator must obtain a detailed chemical and physical analysis of a representative sample of the waste to establish what hazardous constituents will be at the unit (40 CFR 264.13).

(2) The owner or operator must provide a clear definition of the treatment zone.

(3) The owner or operator must demonstrate that hazardous constituents in the waste can be completely degraded, transformed, or immobilized in the treatment zone (40 CFR 264.272). The treatment demonstration is used to define two elements of the land treatment program. First, it establishes what wastes may be managed at the unit. Second, it defines the initial set of waste management practices (including waste application rates) that will be incorporated into the facility permit.

(4) The owner or operator must design, construct, operate and maintain the unit to maximize the degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The RA will specify waste application method and rate, measures to control soil pH, measures to enhance microbial or chemical reactions, measures to control moisture content, run-off and run-on control, wind dispersal control, and weekly inspection after storms (40 CFR 264.273).

(5) Food chain crops cannot be grown in or on the treatment zone unless the owner or operator can successfully demonstrate that there is no substantial risk to human health (40 CFR 264.276).

(6) The owner or operator must establish an unsaturated zone monitoring program capable of determining whether hazardous constituents have migrated below the treatment zone. (40 CFR 264.278). The purpose of unsaturated zone monitoring is to provide feedback on the success of treatment in the treatment zone. The information obtained from this monitoring will be used to adjust the operating conditions at the unit in order to maximize degradation, transformation, and immobilization of hazardous constituents in the treatment zone. It is this section of the existing land treatment program that EPA is proposing to amend today to cover the leak detection requirements under Section 3004(o)(4) of RCRA.

The monitoring program must include both soil-core and soil-pore liquid monitoring. The owner or operator is required to monitor immediately below the treatment zone to determine if statistically significant increases in the concentrations of hazardous constituents have occurred.

Under the existing Part 264 regulation the appearance of hazardous constituents below the treatment zone does not in itself constitute a violation. The Agency is today proposing that the Part 264 land treatment regulations be applied to interim status units as part of the leak detection system. Additional requirement, discussed below will also be included.

In today's proposal, EPA is adding new leak detection requirements for both new and existing land treatment units. Although RCRA only requires leak detection at new units, EPA believes that existing units can comply with the standard in the same manner. Installation of soil-pore liquid monitoring equipment as well as soil-core sampling can be accomplished as easily at a new as an existing unit. Therefore, existing units should be required to provide the same level of protection for human health and the environment.

Today's proposal expands the current Part 264.278 unsaturated zone monitoring requirements by adding the following new requirements: (1) Detection of leakage at the earliest practicable time; (2) a 95-percent confidence level for detecting hazardous constituents below the treatment zone; (3) monitoring to be conducted above the seasonal high water table; (4) a response action plan (RAP) for widespread leakage; and (5) inspection of unsaturated zone monitoring equipment. These new requirements are explained briefly in the following paragraphs (for further information see the Liner/Leak Detection Background Document).

1. *Earliest Practicable Time.* Sections 264.278(a) and 265.278(a) of today's proposal require detection of leakage out of the treatment zone at the "earliest practicable time". EPA interprets the term "earliest practicable time" as the quarterly unsaturated zone monitoring period. Migration of contaminants at land treatment facilities would generally be slow and EPA believes detection of a statistically significant increase of hazardous constituents below the treatment zone within a monitoring

period would allow sufficient time to protect groundwater and surface water.

2. *Confidence Level.* In Sections 264.278(b) and 265.278(b) of today's proposal, EPA is adding to the existing requirements a 95-percent confidence level of detecting hazardous constituent migration out of the treatment zone. Land treatment units have no barrier to downward migration, and ground water can be located as close as 1 meter to the bottom of the treatment zone (Section 264.271(c)(2)). For this reason, EPA believes that the owner or operator must detect leakage out of the unit at the earliest practicable time and at the 95-percent confidence level to assure protection of ground water and surface water.

Today's proposal requires the use of a 95-percent confidence level of detection because the unsaturated zone monitoring generally is less reliable in detecting hazardous constituent migration from the treatment zone than a drainage-type leak detection system. By requiring a 95-percent confidence level, EPA is assuring that the unsaturated zone monitoring system will consist of a sufficient number of sampling points at appropriate locations and depths to determine the spatial and temporal variations in constituent concentration through the treatment zone. A well-managed and properly designed site with uniform waste application will require fewer sample locations than a poorly managed site. The owner or operator must consider site-specific variations and the inherent uncertainty associated with soil-core and soil-pore liquid sampling procedures for the analysis of certain hazardous constituents (e.g., volatile organic chemicals). The owner or operator must characterize the total treatment zone as well as individual lysimeter results.

EPA is proposing the confidence level value to be 95 percent as a result of recently developed guidance on unsaturated zone monitoring. Detailed information explaining what the owner or operator must do to comply with this requirement is explained in *Permit Guidance Manual on Hazardous Waste Land Treatment Demonstrations* (Utah Water Research Laboratory, July 1986, NTIS PB 86229–184) and *Permit Guidance Manual on Unsaturated Zone Monitoring for Hazardous Waste Land Treatment Units* (U.S. EPA, October 1986, EPA/530–SW–86–040).

3. *Monitoring Location.* Sections 264.278(d) and 265.278(d) of today's proposal require that soil-core and soil-pore liquid monitoring be conducted immediately below the treatment zone and entirely above the seasonal high water table (SHWT). To determine the SHWT at a facility, the owner or operator must use the SHWT data published for that region for the smallest area encompassing the facility.

Current regulations require unsaturated zone monitoring below the treatment zone but do not specify that the monitoring must also be above the SHWT. In order to detect contamination before it reaches ground water, EPA is requiring monitoring above the ground-water table. Today's proposal requires the owner or operator to install all lysimeters and collect all soil cores above the published SHWT. By requiring monitoring above the SHWT the owner or operator can be assured that soil-core samples and soil-pore liquid samples are collected within the unsaturated zone throughout the year.

Unsaturated zone monitoring at land treatment units must include soil monitoring and soil-pore liquid monitoring immediately below the treatment zone. At least 15 cm (6 inches) of soil depth below the treatment zone is needed for adequate soils sampling. Thirty cm (12 inches) of soil will be sufficient, in most cases, for placement of the soil-pore liquid sampling device wholly below the treatment zone. However, due to the difficulties associated with field monitoring, sample collection will often occur somewhere above or below the desired depth. Hence, sufficient soil depth (above the SHWT) must be available to account for the inherent errors associated with field monitoring. The Agency believes that a one-meter soil depth will accomplish this. The seasonal high water table specified in local soil surveys (which have many times been conducted by the Soil Conservation Service and State Agricultural Extension Agency), will often fluctuate over time. In most cases, EPA believes that the one-meter soil buffer will adequately account for this fluctuation.

4. *Response Action Plan.* Existing regulations (Section 264.278) require the owner or operator to report to the Regional Administrator (RA) within 7 days when there is a statistically significant increase of hazardous constituents below the treatment zone. The owner or operator also must submit to the RA within 90 days an application for a permit modification to modify the operating practices at the facility to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.

Sections 264.278(i) and 265.278(j) of today's proposed rule require the owner or operator to develop a response action plan (RAP) after the effective date of this rule, for widespread leakage before waste can be received. The RAP will specify actions to take upon finding widespread leakage. Widespread leakage is defined as a statistically significant increase (as defined in the guidance manuals cited above) in concentration of hazardous constituents at a specified percentage of the unsaturated zone monitoring points. EPA has not chosen a percentage but believes it should be within the range of 50–90 percent. EPA is requesting comments on an appropriate value for defining widespread leakage or on whether an alternate approach would be more appropriate. Comments on whether the distribution of hazardous constituent concentration below the unit should be assessed and how the results of that assessment should be addressed are also requested.

The owner or operator of a new land treatment facility, that has not yet received a permit, must submit a RAP for widespread leakage with the permit application. For an existing land treatment unit that does not meet the RAP or other requirements specified in Sections 264.278 and 264.284 on the date of promulgation of this final rule, the owner or operator must submit an application for a permit modification to the RA by the effective date of this rule and receive RA approval. New units or replacements at existing facilities must submit a RAP and a request for a permit modification and receive RA approval before receiving waste. The RAP for land treatment contains similar information requirements as discussed previously for landfills, surface impoundments, and waste piles. These include: (1) General description of the unit operation, (2) a description of the hazardous constituents contained in the unit, (3) an assessment of potential causes of widespread leakage of hazardous constituents from the treatment zone, (4) a discussion of important factors that can affect leakage of hazardous constituents from the treatment zone, (5) a description of major mechanisms that will prevent migration of hazardous constituents out of the treatment zone, and (6) a detailed assessment describing the effectiveness and feasibility of each potential response as described subsequently. The RA will review the RAP and will approve, disapprove, or modify the plan following the same procedures as for other types of units (Section V.A.2.c. of this preamble).

Upon detecting widespread leakage, the owner or operator must implement the RAP immediately and notify the RA in writing within 7 days. With this notification, the owner or operator must include preliminary constituent

concentrations and the extent of the contamination. Preliminary constituent concentration refers to the concentration of any hazardous constituent monitored that significantly increases above background (see guidance manuals cited above). Any area of the unit containing hazardous constituents at concentrations significantly above background levels will be considered part of the contaminated area. Notification for leakage that is less than widespread is already required under existing regulations (Section 264.278(g)).

The possible courses of action to take upon finding widespread leakage include changing the operating practices or closing the facility. Changing the operating practices may include changing the type of waste treated, the timing of application, a reduction of the amount of waste applied, or a reduction in the application frequency. Closing the facility may be necessary if changing operating practices cannot be shown to be protective of ground water and surface water or if the owner or operator finds the changes to be cost prohibitive.

The EPA considered other possible response actions but did not choose to include them in today's proposal. These actions include increasing the frequency of ground-water monitoring, installing a cover over the unit, and excavating the unit. The EPA takes the position that more frequent ground-water monitoring would be too slow to detect contamination and does not achieve the goal of preventing ground-water contamination. The installation of a temporary landfill cover over the unit or part of the unit is counter to the principles of land treatment, which is to allow natural aerobic processes to degrade waste. The last option considered by EPA is requiring excavation of the unit and disposal of the contaminated soil. Although this option would be expensive compared to closing the unit, in some instances it may be the only way to prevent groundwater contamination. EPA is requesting comment on whether to include any other response actions in the final rule and specifically requests comments on excavation of the unit as an option.

5. *Inspection.* The new Sections 264.284 and 265.283 being added in today's proposal require the owner or operator to establish an inspection program for the unsaturated zone monitoring equipment during the active life and the post-closure care period of the facility. The program established must allow for determining deterioration, malfunction, or improper operation of unsaturated zone monitoring equipment. The program also will determine the effectiveness of controls implemented in response to hazardous constituent migration beyond the treatment zone, the concentrations of which statistically exceed background levels. Under section 264.15, the owner or operator will be required to keep a detailed log of all inspection information to demonstrate compliance with unsaturated zone monitoring permit requirements. The RA may require additional inspection and monitoring requirements in the permit to ensure detecting hazardous constituent migration out of the treatment zone at the earliest practicable time. Inspection and monitoring requirements contained in the facility permit must prevent hazardous constituent migration so that ground water and surface water will not be contaminated.

b. Interim status facilities. The current 40 CFR Section 265.278 regulations for unsaturated zone monitoring for interim status facilities require the owner or operator to have an unsaturated zone monitoring plan designed to detect vertical migration of hazardous constituents below the active portion of the land treatment facility. While permitted facilities are required to follow the leak detection program, interim status requirements are self-implementing by the owner or operator. EPA involvement is sometimes necessary. In these instances EPA has found the use of a plan facilitates EPA and owner or operator interaction. Therefore, today's proposal is requiring the owner or operator of an interim status facility to develop and retain at the facility an unsaturated zone monitoring plan.

The interim status monitoring plan must provide background concentrations of hazardous waste and constituents. The plan must include the use of soil cores for soil monitoring and lysimeters (or other such devices) for soil-pore liquid monitoring. It should be noted that the existing interim status requirements are less stringent than the existing Part 264 requirements for permitted facilities. For example, there is no requirement that owners or operators of interim status facilities modify their operating practices if there is a statistically significant increase of hazardous constituents as is required for permitted units under Section 264.278.

In today's proposed rule, EPA is replacing the current Section 265.278 requirements with the existing Section 264.278 requirements and the proposed land treatment leak detection requirements discussed in Section V.A.3.a. Accordingly, the leak detection program for interim status land treatment facilities will be essentially the same as that for permitted facilities. We believe that this is appropriate because the level of confidence needed for protection of human health and the environment for an interim status facility is the same as that for a permitted facility.

The major difference in the proposed regulations for interim status and permitted facilities is the mechanism for implementing the above requirements. Permitted facilities are required to establish a leak detection program through the permit process, while interim status requirements are implemented through an unsaturated zone monitoring plan. The plan provides interaction between the owner or operator and EPA concerning the specifics of the unsaturated zone monitoring. Under Section 265.278 the owner or operator must develop and implement an unsaturated zone monitoring plan which incorporates the existing 264.278 requirements in addition to the leak detection land treatment requirements proposed today. The Agency will briefly discuss these requirements and explain these standards.

(1) Proposed interim status monitoring plan requirements. The unsaturated zone monitoring plan must include at least the following:

(a) A description of how the owner or operator will monitor the soil and soil-pore liquid to determine, at the earliest practicable time, whether hazardous constituents have migrated out of the treatment zone over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. The description must identify the hazardous constituents or the principal hazardous constituents (PHC) to be monitored (Section 265.278(a)).

(b) A description of the number, location, and depth of soil-pore liquid monitoring devices, such as lysimeters, and soil sampling points necessary to represent to a 95-percent confidence level the quality of soil and soil-pore liquid below the treatment zone and the quality of background soil and soil-pore liquid quality (Section 265.278(b)).

(c) A description of the methodology for establishing background values for each hazardous constituent to be monitored (Section 265.278(c)).

(d) A description of the frequency, timing, and depth of soil and soil-pore liquid monitoring based on the frequency, timing, and rate of waste

application and the soil permeability (Section 265.278(d)).

(e) A description of sampling and analytical procedures designed to ensure sampling results that provide a reliable indication of soil-pore liquid quality and the chemical makeup of the soil below the treatment area. Procedures for sample collection, sample preservation, shipment, and analytical procedures for the chain-of-custody control should be included (Section 265.278(e)).

(f) A description of the statistical procedure to determine if there is a significant increase over background values in the monitoring data. This description must include the time after sampling within which such a determination will be made. The plan must specify a statistical procedure that is appropriate for the distribution of data used to establish background values and that provides a reasonable balance between the probability of a false determination and failure to identify migration (Section 265.278(f)).

(g) A RAP that describes actions to take upon finding widespread leakage (Section 265.278(j)).

Although the requirements under Section 264.278 and 265.278 are similar, they differ procedurally. The monitoring plan for interim status facilities must be submitted to the RA for review and approval by the effective date of the final rule. Public notification of the plan will be provided through a local newspaper notice. A 30-day public comment period will follow and a public hearing may be held in response to public request or at the RA's discretion, when such a hearing may clarify one or more issues concerning the plan. The RA will give public notice of the hearing at least 30 days before it occurs. (It may be given at the same time as the notice of the opportunity to submit comments). The RA will approve, modify, or disapprove the plan within 90 days of its receipt. If the RA does not approve the plan he will provide the owner or operator with a detailed written statement of the reasons for his disapproval and the owner or operator must modify the plan or submit a new plan. The RA will approve or modify this plan in writing. If the plan is modified, it will become the approved plan.

(2) Amendments to the interim status monitoring plan. In today's proposal, if the owner or operator determines that there is a statistically significant increase of hazardous constituents below the treatment zone or that widespread leakage has occurred, the owner or operator must notify the RA in writing within 7 days of the occurrence. The submittal must include the identity and preliminary concentrations of constituents detected. An amended operating plan must be submitted to the RA within 90 days of the occurrence, demonstrating that operating practices have been modified sufficiently to maximize the success of degradation, transformation, or immobilization processes in the treatment area.

After the modified plan has been submitted to the RA, the public will be notified through a local newspaper. A 30-day public comment period will be held, as well as a public hearing, if necessary. Within 30 days following the close of the comment period, the RA will approve, disapprove, or modify the plan. If the plan is disapproved, the owner or operator will be notified and will have 30 days to respond. Following the public comment period the RA will make a final decision whether to approve the plan.

c. Demonstrations. Upon determining that there is a statistically significant increase in hazardous constituents below the treatment zone, the owner or operator of a permitted or interim status facility may choose to demonstrate that a source other than the land treatment unit caused the increase. The owner or operator also may demonstrate that what appeared to be an increase resulted from an error in sampling, analysis, or evaluation. (Sections 264.278(h) and 265.278(h).

To make this demonstration, the owner or operator must notify the RA within 7 days of the statistically significant increase of hazardous constituents below the treatment zone and his intent to make a demonstration. Within 90 days, the owner or operator must submit a report to the RA demonstrating that the source is not from the land treatment unit or that there was an error in sampling, analysis, or evaluation. The RA will review the demonstration report and notify the applicant as to whether or not such a determination is successful. The applicant is allowed 45 days to comment on such a determination. The RA will respond to these comments and make a final decision on the applicant's demonstration. If the RA approves the demonstration, then the owner or operator must also submit within 90 days a modified unsaturated zone monitoring plan to make any appropriate changes (interim status) or a request for a permit modification (permitted). The owner or operator must continue to monitor as specified.

B. Extension of Double Liner Requirements

Under the authority of Section 3004(a) of RCRA, EPA is proposing to extend the double liner and leachate collection system requirements to (1) new waste piles and lateral expansions and replacements of existing waste piles; (2) significant portions of existing landfills, surface impoundments, and waste piles; and (3) new units, lateral expansions, and replacements of existing units at landfills, surface impoundments, and waste piles at facilities permitted before November 8, 1984.

EPA believes these requirements are necessary to protect human health and the environment by preventing migration of hazardous contituents out of the unit and contamination of ground water and surface water.

Under the current regulations, waste piles and significant portions of landfills, surface impoundments, and waste piles must have single liners (either clay or FML depending on the unit) with a LCRS above the liner (for landfills and waste piles). Landfills and surface impoundments, and replacements and lateral expansions of landfills and surface impoundments at facilities permitted before November 8, 1984 are not required by EPA to have liners if the units were existing before 1982; conversely, if these units were in existence subsequent to the effective date of the rule, they were required to have either clay or FML liners, depending upon the type of unit.

Based on the data presented in the Liner/Leak Detection Background Document, the Agency believes that single liners are inadequate to protect human health and the environment. There is a greater potential for leachate migration through a single liner than a double liner. Since there is a reasonable probability that damage to the top liner may occur, the Agency believes that a double liner system with a LCRS between the liners to collect and remove liquids provides a mechanism to ensure that migration out of the unit is prevented.

EPA believes that a double liner system incorporating leachate collection between the liners is in most cases sufficient to prevent migration of hazardous constituents out of the unit. If a double liner system is employed at a land disposal unit, the modeling data that the Agency has gathered indicate that there will be minimal hazardous constituent migration from the unit.

1. Waste Piles

(a) Background. 40 CFR 264.251(a) currently requires permitted waste piles to have a single liner that is designed, constructed, and installed to prevent any leachate migration out of the waste pile and into the surrounding environment during the active life (and the closure period if applicable) of the waste pile. The liner may be constructed of materials (such as low-permeability soils) that allow leachate migration into the liner as long as the liner prevents any migration of waste out of the pile into the adjacent subsurface soil, ground water or surface water at any time during the active life. A leachate collection and removal system (LCRS) that is designed, constructed, maintained, and operated to collect and remove leachate from the waste pile is required directly above the liner (40 CFR 264.251(a)). An owner or operator of a permitted facility whose waste pile is inside or under a structure that provides protection from precipitation so that neither runoff nor leachate is generated is exempted from liner and leachate collection and removal system requirements provided that: (1) Liquids or materials containing free liquids are not placed in the waste pile; (2) the waste pile is protected from surface water run-on by the structure or in some other manner; (3) the waste pile is designed and operated to control waste dispersal by wind, where necessary, by means other than wetting; and (4) the waste pile will not generate leachate through decomposition or other actions. For waste received beginning May 8, 1985, the owner or operator of an interim status waste pile is subject to the requirements for liners and leachate collection systems under 40 CFR 264.251 for each new unit, replacement of existing unit, or lateral expansion of an existing unit that is within the area identified in the Part A permit application.

In today's proposal, EPA is requiring double liners and leachate collection and removal systems for waste piles because we believe that waste piles pose a potential threat to human health and the environment similar to the threat from landfills. There is, however, one difference between the double liner requirements for landfills and those for waste piles. 40 CFR 264.301 provides that the liner must function or operate during the active life and post-closure care period for a landfill. This provision is somewhat different for waste piles under today's proposal which specifies that the liners and leachate collection and removal systems for waste pile units only need to function or operate during the active life of the waste pile (Section 264.251(c)). Current regulations require waste piles to decontaminate or remove the waste at closing (40 CFR 264.258), thus obviating the need for post-closure care. This difference, however, may be of minimal impact, because the active life of a waste pile can be equivalent to or longer than the combined active life and post-closure care period for landfills.

EPA assessed the potential for migration of leachate from waste piles through a modeling study (see Liner/Leak Detection Background Document). This study indicates that the potential for migration from a waste pile is almost equivalent to the potential for migration from landfills. Because EPA has imposed double liner and leachate collection system requirements for certain landfills, the Agency's position is that it is appropriate to do the same for certain waste piles, given ground water migration considerations.

Moreover, EPA believes that waste piles have a greater potential for equipment-related liner damage than landfills, because during the active life of a waste pile, equipment is used to remove and replace waste periodically. Because waste is not removed from above the liner at a landfill, the liner is not exposed to such heavy equipment operation. Equipment-related liner damage has the potential to allow constituent migration beyond the waste pile, thus increasing the potential for leachate migration out of the unit. If the liner is breached in a single-lined waste pile, there would be no backup liner to contain leachate. Therefore, we believe today's proposed double liner and leachate collection system requirements are appropriate. In addition, it would not be possible to use the proposed leak detection system if the unit is not double lined. Therefore, an alternate leak detection system would have to be used at single-lined waste piles. EPA believes that the proposed double liner and leachate collection and removal system standards are an integral component for leak detection systems at waste piles containing liquids or exposed to precipitation. The leak detection system proposed for waste piles is the best mechanism for providing information about any potential leakage rate, quality, and sources of detected liquids.

Moreover, EPA believes that there are additional reasons why unenclosed waste piles in particular merit double liners and LCRSs. EPA believes that these unenclosed waste piles generally have a higher percentage of their waste areas exposed to precipitation than landfills do and that waste generally is exposed to precipitation for a longer period at waste piles than at landfills. Most landfill owners or operators partially close their units on a periodic basis by placing a temporary or intermediate cover over the in-place waste to minimize leachate generation. Therefore, these unprotected waste piles have a greater potential for leachate generation. In addition, the active life for a new landfill unit is typically 6 months to 5 years, while a waste pile may be used for storage for a much longer period, in some cases for 20 years or more.

As a result of all of the above-cited factors, EPA believes waste piles pose a threat to human health and the environment similar to landfills. Since double liners and LCRSs are required for landfills, EPA believes it is appropriate to require the same standards at waste piles in order to protect human health and the environment.

(b) Proposed rule—(1) Double liner and leachate collection and removal system standards. Today EPA is proposing a double liner system for new lateral expansions and replacements of all permitted waste piles irrespective of when the permit was received (Section 264.251) and interim status waste piles (Section 265.254). This rule is effective 6 months after the date of promulgation. Owners or operators of waste piles may qualify, however, for the exemption contained in Section 264.250 for totally enclosed waste piles. As discussed herein, variances for certain monofills and approved alternative designs may be granted.

EPA is proposing today to require owners or operators of new waste piles and lateral expansions or replacements of existing waste piles to install double liners and leachate collection and removal systems that essentially are equivalent to those for landfills in the Proposed Codification Rule of March 28, 1986 (51 FR 10707–12). As with landfills, EPA is not proposing to require retrofitting of existing waste piles. Today's proposed double liner requirements call for a flexible membrane liner (FML) top liner and a bottom liner of either a compacted clay or, alternatively, a composite liner consisting of a FML top component and a compacted clay lower component. Owners or operators also are required to install a leachate collection and removal system above the top liner and between the liners. On April 17, 1987, EPA issued Hazardous Waste Management; Minimum Technology Requirements: Notice of Availability of

Information and Request for Comments, which showed that compacted clay bottom liners may impair the leak detection sensitivity and the detection time, and collection efficiency of the leachate detection, collection, and removal system (LDCRS). EPA currently is evaluating the comments received on that Notice. For the reasons set forth in the Notice, EPA believes that it is likely that we will require the composite bottom liner as the generally applicable standard in the finalization of the double liner requirement for surface impoundments, waste piles, and landfills. We have not proposed the requirement for a composite liner as the basic standard in this rule to allow EPA the option of allowing both types of bottom liners for now, and to be consistent with the March 28, 1986 proposed double liner rule for landfills and surface impoundments.

EPA believes that, based on information now available for the Agency (and discussed in the Notice), the composite bottom liner, or an equivalent design, will be required in the final double liner requirements for waste piles, surface impoundments and landfills.

EPA invites comments about whether such double liners and leachate collection and removal systems are necessary at waste piles to protect human health and the environment. Comments are requested to provide data that may show that alternative requirements for waste piles provide adequate protection of human health and the environment. In addition, EPA believes that there exists a wide range of operating conditions and active life periods for waste piles. EPA is interested in comments about whether today's proposal is appropriate for all waste piles or if alternative liner and leak detection system requirements might be applicable for some types of units. EPA encourages owners or operators to provide information and data about this issue.

(2) Totally enclosed units. Today's proposal exempts the owner or operator of a new waste pile or of a lateral expansion or replacement of an existing waste pile from the double liner and leachate collection and removal system requirements if the waste pile complies with the requirements of 40 CFR 264.250(c). This regulation currently allows an owner or operator to be exempted from the single liner requirements if: (1) The waste pile is inside or under a structure that provides protection from precipitation so that neither runoff nor leachate is generated; (2) liquids or materials containing free liquids are not placed in the pile; (3) the pile is protected from surface water run-on by the structure or in some other manner; (4) the pile is designed and operated to control waste dispersal by wind, where necessary, by means other than wetting; and (5) the pile will not generate leachate through decomposition or other reactions. EPA today is proposing to continue this exemption for the owner or operator of a new waste pile, lateral expansion, and replacement of an existing waste pile at a permitted facility who meets these conditions from the double liner system requirements. If the owner or operator meets the foregoing conditions, the waste in the waste pile will have such a low water content that no free liquids will be present, and no leachate will drain out of the waste pile at any time after placement.

Totally enclosed waste piles that contain liquid or waste that will generate leachate do not qualify for the 40 CFR 264.250(c) exemption. EPA recognizes that enclosed waste piles with moist waste will have a greatly diminished capacity for leachate generation compared to unenclosed wastes from precipitation. However, because the active life and operating practices (frequency of waste "turnover") of the waste pile are unrestricted, significant amounts of leachate can be generated within enclosed units. In addition, enclosed waste piles are allowed a hydraulic head above the liner to no more than 30 cm (one foot) 40 CFR 264.251(a)(2). This level of liquid above the liner represents a mechanism for migration potential similar to that for landfills and unenclosed waste piles. Thus, the Agency believes it appropriate to require minimum technology double liner systems for enclosed waste piles containing moist wastes that will generate leachate. EPA requests comments on this issue and encourages owners or operators to submit information and data about operating practices at existing facilities that support the appropriateness of today's proposal, or alternatively, that provide the basis for modified requirements.

(3) Leak detection requirements for totally enclosed units. The proposed leak detection rule allows the owner or operator to use an alternative leak detection technology. Because waste piles that qualify for the waiver under 40 CFR 264.250(c) are not required to meet the double liner and leachate collection and removal system requirements under Section 264.251, a drainage layer type of leak detection system would not be possible. Recognizing this, EPA's position is that the owner or operator of a waste pile that qualifies for a waiver under 40 CFR 264.250(c) should be able to use an enclosure and waste inspection program as an alternative leak detection system. If no enclosure leaks or run-on are detected and the waste pile contains no free liquids, then the waste pile would not be considered to be leaking. The owner or operator using this type of alternative leak detection system would be required to maintain the waste pile in a condition such that it would meet the requirements of 40 CFR 264.250(c).

EPA believes that an inspection program in which the owner or operator inspects the waste pile after every precipitation event (rain, snow, or ice) and checks the waste pile and enclosure for leaks would satisfy the requirements of Section 3004(o)(4) of RCRA. For example, the owner or operator would check the roof and sidewalls of the enclosure for leaks, the floor of the enclosure for puddles or wet spots, the waste pile for signs of moisture infiltration and lastly, the perimeter of both the waste pile and enclosure for signs of runoff or seepage. By inspecting the enclosure and waste pile in this way after each precipitation event, EPA is satisfying the statutory mandate of requiring leak detection at the "earliest practicable time."

EPA believes the owner or operator of a protected waste pile, meeting the requirements of Section 264.250(c), should have the option of implementing the proposed enclosure inspection program as an alternative to the leak detection system. If the owner or operator of an enclosed waste pile does not meet the requirements of Section 264.250(c), a leak detection system must be installed that meets the leak detection system performance standard for detection sensitivity and detection time under Section 264.251 (g), (h), (i), and (j). The Agency is seeking comments about the types of systems that could satisfy the leak detection system performance standard for detection sensitivity and detection time at waste piles that have single liners and leachate collection and removal above the liner or that have no lining system at all.

(4) Variances. Current regulations provide owners or operators of permitted (40 CFR Part 264) and interim status (40 CFR Part 265) surface impoundments and landfills with certain exemptions from the minimum technology double liner standards. One type of exemption (e.g., Section 264.221(d)) applies if the owner or operator can demonstrate that

alternative design and operating procedures together with location characteristics will prevent the migration of any hazardous constituents into ground water or surface water at least as effectively as the minimum technology double liner system. The second type of exemption (e.g. Section 264.221(e)) applies to certain types of monofills. EPA is proposing today to extend these two types of exemptions for landfills and surface impoundments to waste piles. EPA believes that extension of these exemptions to waste piles is appropriate because: (1) Waste piles falling under the exemptions will handle wastes similar to those at landfills and surface impoundments; and (2) waste pile lining systems have similar designs and design lives to landfills and surface impoundments.

Today's proposed rule presents a variance for double liners and leachate collection and removal systems for waste piles under Sections 264.251(d) and 265.254(c). To receive a variance under these sections, the owner or operator must demonstrate that alternative design and operating procedures, together with location characteristics, will prevent the migration of any hazardous constituents into ground water or surface water at least as effectively as a double liner system required under Section 264.251(c) or 265.254(b).

The owner or operator of a permitted waste pile must apply to make a variance demonstration as part of a new permit or as a permit modification. For interim status units, the owner or operator must submit a variance request to the RA and have the variance approved by the RA before receiving hazardous waste. EPA is using procedures similar to the interim status closure plan development and approval process under Section 265.112 (see Section V.A.3.b.(1)). The public participation process found in Section 265.112 is applicable also. The regulations on variances do not require a specific administrative procedure. When EPA finalizes this rule, we plan to employ the interim status closure plan procedures (40 CFR 265.112) for variance approval. However, it is EPA's position that this demonstration must be a comprehensive state-of-the-art evaluation that is representative of the potential worst-case scenarios. The owner or operator seeking a variance must include a complete description of the waste pile components, unit operation, and location characteristics. The description should include sufficient information for the RA to determine that the proposed waste pile provides the same level of protection of ground water and surface water from contamination as a waste pile with a minimum technology double liner system. Concerns that the owner or operator should consider in developing a variance demonstration include, at a minimum:

(1) Waste (types; quantities; porosity; hydraulic conductivity; waste interactions; mobility in unsaturated/saturated zone, etc.)

(2) Unit components (liners; leachate collection and removal system; detection system; cover design; intermediate cover layers; construction quality assurance (CQA) program for design and construction; etc.)

(3) Unit operation (treatment, storage, or disposal; length of the active life; leachate removal; repair of a leaking liner; etc.)

(4) Location characteristics (precipitation; climate; unsaturated zone; saturated zone; flood plain; etc.)

In making a variance demonstration, the owner or operator will need to demonstrate to EPA quantitatively how the proposed alternative design and operating procedures satisfy double liner system and leak detection system performance criteria. These criteria may include those proposed today for the LDCRS (detection sensitivity and detection time) as well as other criteria, such as collection efficiency. Also, the owner or operator may be required to demonstrate that the hydraulic modeling methodology used to make the demonstration is at least as conservative as that considered today for the LDCRS design. The owner or operator may be required to provide independent documentation and verification of the proposed design approach (including who developed the approach, their credentials and experience; laboratory bench- or full-scale physical demonstrations; numerical simulations; assumptions of the approach; clear and complete report presentation, etc.). The owner or operator may be required further to present quantitative results using the alternative design approach, along with various failure scenarios, including scenarios where primary design components are assumed to fail and a secondary system becomes necessary to minimize releases to the environment. For these scenarios, the owner or operator may be required to report such things as: (1) Maximum rate of leakage out of the unit for a given scenario; (2) duration of leakage; (3) breakthrough time; (4) cumulative leakage out of the unit; and (4) potential response actions.

Examples of situations that the Agency is considering for approval of a variance from these design requirements include:

1. A landfill or waste pile receiving only wastes treated to the land disposal restriction BDAT levels and having a low rate of net infiltration due to climatic factors or engineering controls.

2. A unit located and/or designed to have low rates of net infiltration and long times of travel to the saturated zone.

3. A unit receiving wastes with completely immobilized hazardous constituents.

4. A surface impoundment where active physical, chemical, or biological processes rapidly degrade all of the unit's hazardous constituents.

5. A unit operated solely for the purposes of short-term storage.

These samples are illustrative of the types of design, operation, and location characteristics the Agency is considering a variance from the design requirements. The Agency requests comments on the appropriateness of these conditions for approval of a design variance.

Today's proposal provides a second variance from the double liner system requirements under Sections 264.251(e) and 265.254(d) for owners and operators of monofills containing only hazardous wastes from foundry furnace emission controls or metal casting molding sands if such wastes do not contain constituents that would render the waste hazardous for reasons other than the EP toxicity characteristics in Section 261.24, 40 CFR Ch. 1. To obtain a waiver, today's proposed rule further requires that the waste pile have at least one liner for which there is no evidence that the liner is leaking. For purposes of the waiver, the "liner" means either a liner designed, constructed, installed and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner during the active life of the facility. It also requires the monofill to be located more than one-quarter mile from an underground source of drinking water (as defined by Section 144.3, 40 CFR Ch. 1) and, lastly, to be in compliance with generally applicable ground-water monitoring requirements for facilities with permits under RCRA Section 3005(c). The owner or operator may be exempt from today's requirements if the unit meets the requirements for waste piles permitted prior to November 8,

1984 as discussed in Section V.B.3. (Sections 264.251(f) and 265.251 (f)).

2. Significant Portions

As discussed previously, under the authority of Section 3004(o) of RCRA, EPA has imposed minimum technological requirements (i.e., double liners and leachate collection and removal systems) for surface impoundments and landfills. Today's proposed rule extends EPA's minimum technology double liner system standards to significant portions of existing surface impoundments (Sections 264.221(c) and 265.221(a)), waste piles (Sections 264.251(c) and 265.254(a)), and landfills (Sections 264.301(c) and 265.301(a)). This requirement would go into effect 24 months after promulgation of today's proposed rule.

(a) Background. EPA's current regulations require units not covered with waste at permit issuance to install a single liner (with a leachate collection and removal system above the liner for a landfill or waste pile). This means that even if a landfill or surface impoundment unit is exempt from the double liner standards, any portion of the unit not covered with waste at permit issuance is still subject to EPA's current single liner standards in Sections 264.221(a), 264.251(a), and 264.301(a).

The statutory authority to implement a requirement for a minimum technology double liner system for significant portions of existing units is in RCRA Section 3004(a). This statutory provision provides EPA with the authority to promulgate regulations protecting human health and the environment at new land disposal facilities or facilities in existence on the date of promulgation of such regulations.

EPA is proposing to require double liners and leachate collection and removal systems for those portions of landfill, surface impoundment and waste pile units that are not defined as existing portions in Section 260.10, do not have a liner system that meets the Part 264 single liner standard, and meet the definition of a significant portion. The single liner requirement will remain in effect until the significant portions rule becomes effective.

(b) Proposed rule—(1) Double liner standard. The proposed rule defines "significant portion" (in the amendments to Section 260.10) as:

> any unlined area of a unit that has not received waste and, if double-lined before receiving waste, would significantly reduce the potential for migration of hazardous constituents out of the unit, thereby reducing the potential for ground-water and surface-water contamination.

The phrase is used in revisions to the Part 264 design and operating requirements for surface impoundments, waste piles, and landfills.

The surface impoundment proposed regulation (Section 264.221) reads as follows:

> (c) The owner/operator of each new surface impoundment, each new surface impoundment unit at an existing facility, each replacement of an existing surface impoundment unit, and each lateral expansion of a surface impoundment unit must install two or more liners and a leachate collection system between such liners. This requirement shall apply to the owner/operator of all such units, regardless of the date of permit issuance, as well as to the owner/operator of significant portions of surface impoundment units, effective 24 months after promulgation of this rule. The requirements of this paragraph apply with respect to all waste received after the issuance of the permit or modified permit. The liners and leachate collection system must protect human health and the environment.

The language of the proposed waste pile regulation (Section 264.251(c)) and landfill regulation (264.301(c)) is virtually identical to that specified for surface impoundments. This change is simultaneously made for interim status surface impoundments, waste piles, and landfills as a result of the requirements under Sections 265.221(a) and conforming amendments to Subparts L and N, that required owners or operators to install liners and LCRSs in accordance with Sections 264.221(c) and conforming amendments to Subparts L and N of this chapter.

The Agency is proposing that, effective 24 months after promulgation of this rule, owners or operators of permitted and interim status landfill, surface impoundment, and waste pile units that qualify as existing units provide a minimum technology double liner system on those unlined areas upon which waste has not been placed if such a double liner system would significantly reduce the potential for adverse human health and environmental impacts from the unit. EPA is allowing 24 months because we believe it may take that long to install liners with ongoing placement of waste.

The Agency is also proposing in today's rule to amend the present single liner requirements. Under the proposal, the owner or operator would be required to provide double liners and LCRSs for significant portions of unlined areas of existing units. Owners or operators of nonsignificant portions would, conversely, not be required to line these portions of the unit. We believe that by requiring significant portions of units to be double lined would minimize the potential for leachate migration.

(2) Exemption from leak detection requirements. Today's proposed rule does not require a leak detection system to be installed at the significant portions of any unlined areas that have not received wastes at existing units (interim status and permitted). We believe it would be unreasonable to require leak detection at significant portions for several reason. One reason is that the possibility of leakage from other areas of the unit could cause a false indication of leakage through the top liner of the significant portion. Also, EPA is not requiring leak detection for significant portions because of potential problems from requiring a response action. EPA believes that response actions to migration out of a unit should be developed and implemented on a unit basis. If there are different operational requirements for different portions of one unit, it would be difficult or impossible to determine if the portion of the unit with more stringent operational controls is meeting its specific requirements. This is because current monitoring techniques would not be able to determine which area of the unit was leaking. Therefore, EPA would not know whether or not the "significant portion" was in compliance with the double liner standards.

(3) Description of "significant portion". Today's proposal defines "significant portion" of any unlined area of a unit that has not received waste as that portion which, if double lined before receiving waste, would significantly reduce the potential for migration of hazardous constituents out of the unit, thereby reducing the potential for ground-water and surface-water contamination from the unit (Section 260.10). If lining an unused portion of an existing unit would result in significant reductions in the potential for hazardous constituents to migrate out of the unit, then the unused portion would be considered "significant" and the owner or operator would have to install double liners and LCRS. One of the main criteria in determining significant portions is the size of a unit's area that would be double lined. The second criterion is the amount of leachate that the double liner system would collect and remove.

These criteria for distinguishing significant portions from nonsignificant portions are not meant to be precise because EPA believes that a more flexible standard is needed. This standard will cover areas in existing units that require site-specific

evaluation by EPA and, therefore, require more flexibility than the evaluation of a new facility. However, the following examples provide guidance on EPA's thinking of what are significant and nonsignificant portions:

- An example of a "significant portion" of an existing landfill unit would be an exposed unlined bottom area of several acres that was not covered by waste. If waste were to be placed in this area of the unit with double liners and leachate collection, a significant benefit to human health and the environment would likely result, because large amounts of leachate would be collected and removed over a 5-year period.
- An example of a portion of an existing unit that may not be a "significant portion" is the unlined area of a surface impoundment located above the liquid surface level that would be covered with waste if the liquid level were raised.
- In most cases, "significant portions" will be those areas in a unit where the addition of a double liner system will provide hydraulic control of leachate or liquid waste and ensure collection and removal.
- "Significant portions" may include both the bottom and sidewalls of existing units.

The primary purpose of requiring minimum technology requirements for significant portions is to provide these portions with the same level of protection that other newly constructed land disposal units provide by controlling migration of hazardous constituents out of the unit to prevent ground-water contamination. By requiring a double liner system for significant portions, EPA is minimizing the total number of landfill, surface impoundment, and waste pile units that can receive hazardous waste without providing the same level of human health and environmental protection as other units with minimum technology double liner systems.

(4) Variances. Under today's proposal, owners or operators of significant portions of permitted and interim status units wanting to use designs different from those specified under the minimum technology requirements may do so if they can demonstrate that the alternative design and operating procedures, together with location characteristics, will prevent the migration of any hazardous constituents into ground water or surface water at least as effectively as a minimum technology double liner system.

The owner or operator of a permitted unit must apply for a permit modification to make such a variance demonstration. For interim status units, the owner or operator must have the variance demonstration approved before receiving hazardous waste. A description of the components of this variance demonstration was given previously in Section V.C.1.(b)(5) of this preamble.

Today's proposed rule also provides a provision for owners or operators of significant portions of permitted or interim status facilities to seek a waiver from the double liner system requirements for monofills containing only hazardous wastes from foundry furnace emission controls or metal casting molding sands if such wastes do not contain constituents that would render the waste hazardous for reasons other than the EP toxicity characteristics in Section 261.24, 40 CFR Ch. 1. Further requirements to obtain such a waiver were given previously in Section V.C.1.(b)(5) of this preamble.

(5) Issues. One issue with which EPA is concerned is that owners or operators of existing units may initiate rapid lateral spreading of waste onto areas of significant portions that are uncovered with waste in an effort to circumvent the proposed double liner system requirements before this rule is promulgated. EPA is considering restricting the potential for any lateral spreading by requiring owners or operators of existing facilities affected by this proposal to document clearly that wastes were placed in a "normal" manner up to the date this rule becomes effective. EPA requests comments on this issue and whether this documentation should be used by the permitting agency before rendering a decision as to whether an unused portion of an existing facility is a significant portion.

A second issue, particularly for waste piles and landfills, is whether the working face of the unit should be considered part of a significant portion. If so, the entire working face would be subject to minimum technology double liner system requirements. While placing a lining system on the working face is desirable, the practicality of doing such is questionable, and the benefit to human health and the environment is unclear. The Agency is investigating this question, and seeks comments on this issue.

The third issue is whether significant portions should be addressed under today's proposed rule. EPA recognizes that there are very few units with existing portions that would qualify as significant portions. Also, evaluating whether a portion is significant may need to be accomplished on a site-specific basis. The Agency is requesting comments on whether to regulate significant portions under today's proposal or, alternatively, under the authority of Section 3005(c)(3) of RCRA.

3. New Units, Replacement Units, and Lateral Expansions of Units at Facilities Permitted Before November 8, 1984

a. Background. As noted previously, under the authority of Section 3004(o)(1) of RCRA, EPA has imposed minimum technological requirements for double liners and leachate collection and removal systems on new landfills and surface impoundments, and replacements and lateral expansions of landfills and surface impoundments at facilities permitted after November 8, 1984. Also, under 3004(a) authority, EPA is proposing to extend these requirements to new waste piles and lateral expansions and replacements of existing waste piles. Under the current regulations, new or replacement landfills, surface impoundments, or waste piles at facilities that were permitted before November 8, 1984, are not subject to the minimum technology double liner system standards. Today's proposed rule also extends EPA's minimum technology double liner system standards to new landfills, surface impoundments, and waste piles, and replacement units and lateral expansions of surface impoundments (Section 264.221(c)), waste piles (Section 264.251(c)), and landfills (Section 264.301(c)) at facilities permitted *before* November 8, 1984. This requirement is proposed to go into effect 6 months after promulgation of today's proposed rule.

b. Proposed rule—(1) Double liner system requirement. The Agency is proposing that new landfills, surface impoundments and waste piles, and replacements and lateral expansions of existing landfills, surface impoundments, and waste piles at facilities that were permitted before November 8, 1984, meet the double liner and. LCRS requirements currently proposed for landfills, surface impoundments, and waste piles. This proposal is to be effective for these units 6 months after promulgation of this rule. The primary purpose of proposing that the minimum technology requirements be applied to new units, replacement units; and lateral expansions at facilities permitted before November 8, 1984, is to assure that these units provide protection of human health and the environment. This proposal will result in minimizing the number of units in which waste can be placed that do not protect human health and the environment. EPA believes the opportunity for constructing units which meet these requirements at

facilities permitted prior to November 8, 1984 is the same as for units at facilities permitted after November 8, 1984.

On March 28, 1986 (51 FR 10722) EPA proposed to amend 40 CFR 270.41(a)(3) to give the Agency authority to modify a permit. This amendment will enable EPA to require double liners and leachate collection and removal systems for units permitted before November 8, 1984.

Only eight facilities potentially will be affected by this proposed extension of the double liner standard. The Agency believes that all these cases will involve lateral expansions or replacements but not new units.

(2) Exemption for certain replacement units. As discussed earlier in this preamble, the Agency is proposing today to require minimum technology double liner and leachate collection systems for certain landfills, surface impoundments, and waste piles at facilities that were permitted before November 8, 1984. However, the Agency also is proposing that certain replacement units at surface impoundments, landfills, and waste piles be exempted from the proposed double liner and leachate collection and removal system requirements, as well as the leak detection system requirements proposed today. EPA can exempt these units from the leak detection requirements because they are not required by the statute to have leak detection.

As stated in the Draft Minimum Technology Guidance Document of May 24, 1985 (EPA/530-SW-85-012), a unit qualifies as a replacement unit when (a) the unit is taken out of service (the receipt of waste is stopped or the normal input of waste is significantly reduced), (b) all or substantially all of the waste is removed, and (c) the unit is reused. However, a unit is not considered a replacement unit if the waste is removed from the unit, treated, and only the treated waste is placed back into the same unit as part of closure or post-closure care activities of the facility.

The Agency is proposing to exempt from the proposed double liner system and leak detection system requirements those replacements of landfills, surface impoundments, and waste piles that meet all of the following conditions:

(1) The existing unit received a final permit before November 8, 1984;

(2) The existing unit was constructed in compliance with the single liner requirements (and leachate collection and removal system requirements for landfills and waste piles) or requirements for equivalent protection (the variance) contained in Part 264, and the liner or leachate collection and removal system was not replaced; and

(3) There is no reason to believe that the liner or leachate collection system is not functioning as designed.

EPA is proposing to exempt units that meet the above criteria from the double liner system and leak detection system requirements, because the owner or operator of these units made a good faith effort to satisfy the liner system requirements that were in effect at the time the facility was permitted (and the liner or leachate. collection system is still functioning as designed). EPA also considered that in order to double line these units, in many cases the owner or operator would be required to replace the whole unit. Retrofitting the unit by placing an additional liner on top of the existing liner would not be feasible for three reasons: (a) Existing single liners would not meet bottom liner requirements for a double liner system; (b) reduced capacity may not meet unit owner or operator needs; and, (c) retrofitting a new design may not be compatible with the previously designed system and would not meet new technology-based standards for liners.

(3) Variances. Owners or operators of new units, replacement units, and lateral expansions of units at facilities permitted before November 8, 1984, may use the same variances as previously described in Section VI.C.1.(b)(5) of this preamble.

C. Construction Quality Assurance (CQA) Program

1. Background

Under the authority of Section 3004(a) of RCRA, EPA is today proposing CQA requirements. EPA believes these requirements are necessary to protect human health and the environment by preventing leachate from migrating out of the unit and contaminating ground water and surface water. CQA is needed to ensure that the unit is constructed to exceed design criteria, plans, and specifications necessary to prevent migration of leachate out of the unit.

In 40 CFR Parts 264 and 265, the overall goal of the design and operating standards for landfills, surface impoundments, waste piles, and land treatment units is to minimize leachate formation and its migration into the subsurface soil, ground water, and surface water. To meet this goal, owners or operators must install liners; leachate detection, collection, and removal systems; dikes; and final covers.

In 1983, EPA conducted a study assessing existing technology for liner installation at hazardous waste land disposal facilities (see Liner/Leak Detection Background Document). The data base used in the study comprised information from the literature supplemented by data collected through 40 interviews with technical experts in industry, State regulatory agencies, trade and professional associations, research organizations, and waste management companies. This study's conclusions were: (1) Construction-related problems during liner system installation constituted one of the major causes of liner system failure and (2) a rigorous construction quality assurance program could have identified and corrected many of the problems that contributed to such failure. The study also concluded that construction techniques that were available at that time could be used to install flexible membrane liner (FML) and clay liner systems that meet the Agency's performance standards for liner systems. However, the study noted that a comprehensive monitoring and audit program during construction would be needed to attain the Agency's performance standards for liner systems.

In 1985, EPA conducted another study to supplement existing information on liner performance (see Liner/Leak Detection Background Document). This study was designed to evaluate the factors that contributed to successes and failures at 27 landfills and surface impoundments selected for case studies.

The results of this study showed that there were two main elements related to successful liner installation. The first element was a proper philosophical and conceptual approach applied to all stages of liner system construction and use, including design, material selection, contractor selection, liner system installation, facility operation, and closure. The second element was the extensive use of formal quality assurance programs to ensure that the components of the unit were constructed properly in all facets and stages of a unit's construction. The report stated that a quality assurance program resulted in a better constructed lining system.

As a result of these studies, EPA believes that one of the principal factors in ensuring that the design and operating standards of Parts 264 and 265 are met is a program that ensures that all the components of the waste management unit are constructed and installed properly. Therefore, EPA is proposing today a construction quality assurance program for waste management facilities.

2. Proposed Rule

a. The Construction Quality Assurance (CQA) Program. The CQA program proposed today (Section 264.19 for permitted units and Section 265.19 for interim status units) is a program that uses scientific and engineering principles and practices to ensure, within a reasonable degree of certainty, that a constructed hazardous waste landfill, surface impoundment, waste pile, or land treatment unit meets or exceeds the design criteria, plans, and specifications. The CQA program must begin during the facility's design and continue through the completion of the facility's construction. The CQA program for landfills, surface impoundments, and waste piles ensures that the following components are properly designed, constructed, and documented:

(1) Foundations,

(2) Compacted low-permeability soil liners,

(3) Flexible membrane liners (FMLs),

(4) Dikes,

(5) Leachate detection, collection, and removal systems, and

(6) Final covers.

For land treatment units, the CQA program proposed today addresses final covers only.

A CQA program will be required for all units and significant portions of units, both permitted and interim status, on which construction begins 12 months after promulgation of this rule. Under today's proposed rule, an owner or operator has begun construction on a unit or portion of a unit if the following conditions are met:

(1) The owner or operator has obtained the Federal, State, and local approvals or permits necessary to begin physical construction.

(2) A continuous on-site, physical construction program has begun, or the owner or operator has entered into contractual obligations that cannot be cancelled or modified without substantial loss for physical construction of the facility to be completed within a reasonable time.

Today's proposed rule also applies to interim status, good-faith compliance provisions under Section 265.310(e); that is, to comply with the good-faith provisions, interim status units will now also be required to implement a CQA program (Section 265.19).

A properly executed CQA program consists of the development and approval of a CQA plan, implementation of the approved CQA plan, and the submission of a CQA report signed and sealed by a registered professional engineer or the equivalent.

Today's proposed CQA program is essentially comprised of two parts: performance standards and CQA guidance documents. The first part specifies using performance-type standards for the six major components of land disposal facilities listed above. The Agency is supplementing the performance standards with guidance documents because EPA believes that certain parts of the overall construction quality assurance program (e.g., detailed, site-specific, construction monitoring and testing protocol) are not appropriate for coverage by regulation and that guidance is a more effective mechanism. Consider, for example, the specific test methodologies and the number of tests that should be conducted during a given installation. EPA's position is that these will vary significantly for different types of units, materials, and locations. Also, the knowledge and technology in many areas is still being developed, and detailed regulations requiring a specific test or methodology may limit the use of improved tests or methods. Therefore, specific tests and methods for monitoring activities are not included in today's proposed rule, although the rule does require the owner or operator to provide a description of the type and number of tests to be used. This EPA guidance document is intended to provide detailed information on the site-specific aspects of the CQA program and examples of the types of information that will be necessary for the owner or operator to document and submit. EPA does not intend that the approaches described in the guidance document should be the only approaches for meeting construction quality assurance requirements. In fact, improved technologies and approaches are welcome. The guidance document simply indicates approaches that may be used and also indicates the level of control EPA considers acceptable.

On November 21, 1985, the Agency noticed for public comment in the **Federal Register** (50 FR 48129) the availability of a draft guidance document entitled "Construction Quality Assurance for Hazardous Waste Land Disposal Facilities," EPA/530-SW-021. Construction quality assurance activities are also outlined in the draft "Minimum Technology Guidance on Double Liner Systems for Landfills and Surface Impoundments—Design, Construction, and Operation," dated May 24, 1985. Public comments received on these documents were used in preparing the final Construction Quality Assurance Guidance (EPA 530-SW-86-031, OSWRR Policy Directive No. 9472.003, available from NTIS), as well as today's proposed rule. EPA also is planning to expand this guidance document by gathering information on leak detection systems.

b. The Construction Quality Assurance (CQA) Plan. EPA takes the position that a site-specific CQA plan prepared by the owner or operator is needed to address the components of a hazardous waste land disposal unit. Therefore, the Agency is proposing that, effective 12 months after promulgation of today's proposed rule, owners or operators are required to prepare a CQA plan before constructing all new units, replacement units, lateral expansions, and unconstructed components of existing units, regardless of whether those units are permitted or in interim status (Sections 264.19 and 265.19). However, if the owner or operator of a facility seeking a permit can demonstrate that having detailed construction specifications at the time of initial submission is not practicable, the Regional Administrator (RA) may allow phasing of the CQA plan submission and approval.

Under today's proposal, the CQA plan must document the owner's or operator's commitment to CQA for the specific unit or portion of a unit to be constructed. For facilities seeking a permit, the CQA plan must be included in the permit application, and construction cannot begin until the RA approves the permit (Section 264.20(a)). If the facility is already permitted, then the plan must be submitted as a permit modification. The permitting agency must review the plan for completeness and approve it (following public participation), before implementation. Today's proposal allows the owner or operator to amend the CQA plan at any time before and during the active life (including the closure period) of the unit.

Also, today's proposal contains a provision that requires the owner or operator to modify the CQA plan whenever the owner or operator requests a permit modification (under Section 264.20(e)) to authorize a change in operating activities or facility design that would affect the construction quality assurance plan.

Under today's proposal, for new construction at interim status facilities, the owner or operator must document compliance with all CQA program requirements and must retain this documentation at the facility for future review as described in 265.20. The RA may review this documentation during a site inspection of the facility. The CQA program will be the chief means for an interim status facility owner or operator, to demonstrate that EPA regulations

were properly implemented. Also, the owner or operator can use the CQA documentation to demonstrate that the completed facility meets or exceeds the design criteria, plans, and specifications.

(1) Elements of a CQA plan. The CQA plan must address those activities that pertain to each of the following areas in sufficient detail to show, that, if the CQA plan is properly implemented, the constructed facility will meet or exceed the design plans and specifications (Sections 264.20 and 265.20).

(a) Responsibility and authority. As proposed, the plan must include a detailed description of the responsibility and authority of organizations and key personnel positions involved in preparing and implementing the construction quality assurance plan.

(b) Construction quality assurance personnel qualifications. Under today's proposal, the CQA plan must describe the qualifications of the CQA officer and supporting personnel. The position descriptions must demonstrate that the personnel possess the training and experience necessary to fulfill their identified responsibilities.

(c) Monitoring activities. The CQA plan should detail the observations and tests that will be monitored to ensure the quality of the installation of the components.

(d) Sampling requirements. A description of sampling and testing activities must be provided in sufficient detail, both in concept and specifics, to project the quality of materials that were installed during construction. The description of sampling activities should include:

(i) The types of sampling activities;

(ii) The types of samples;

(iii) The number and locations of samples;

(iv) The frequency of testing;

(v) Data evaluation procedures;

(vi) Acceptance and rejection criteria;

(vii) Plans for implementing any corrective measures that sampling results warrant; and

(viii) Procedures for handling testing errors.

(e) Documentation. The CQA plan must describe in detail procedures for documenting construction quality assurance activities. Documentation must include such items as daily summary reports, monitoring data sheets, change orders, meeting memoranda, photographs, problem identification and reports on corrective measures, block evaluation reports for large projects (phased construction quality assurance reports on construction activities for portions of a large unit), design acceptance reports (for errors, inconsistencies, and other problems), and final documentation, including record drawings. Provisions for the final storage of all records also must be discussed in the construction quality assurance plan.

(2) Components covered by the CQA plan. Under today's rule, a CQA plan must cover the following components of land disposal units: foundations; compacted low-permeability soil liners; flexible membrane liners; dikes; leachate detection, collection and removal systems; and final covers. The specific components that must be addressed in any given CQA plan will vary depending on the type of unit. The following is a description of some key construction factors that may affect the engineered components at land disposal units. The CQA plan is intended to identify these factors so that problems are rectified during construction in a manner consistent with the design intent.

(a) Foundations (Sections 264.20(b)(1) and 265.20(b)(i)). Under today's proposal, the CQA plan must confirm that foundations are constructed with structurally stable subgrades for the facility components and waste above. Furthermore, the foundation also must provide satisfactory contact with the overlying liner or other system components.

Important steps in soil subgrade preparation for foundation construction at landfills, surface impoundments, and waste piles include excavation, placement, and compaction of soil lifts; embankment and slope construction; surface finishing; and soil sterilization. These factors are important to ensure that the requirements under Sections 264.20(b)(1) and 265.20(b)(1) are met. EPA believes that the criteria in Sections 264.20(b)(1) and 265.20(b)(1) are necessary to ensure proper foundation preparation. The following is a list of some of the key factors that need to be addressed in the CQA plan:

Compaction. If a recompacted soil subgrade is not compacted adequately, it may not have the strength and stability needed to support a liner, and, as a result, it may settle unevenly under the weight of equipment or waste. This differential settlement may create areas where the liner is unsupported or otherwise stressed. An unsupported compacted soil liner may settle differentially, creating channels or cracks in the liner where permeability will be higher. An unsupported or stressed flexible membrane liner (FML) may fail under tension. To achieve proper subgrade compaction, specifications must be adequate, and followed strictly. If the design specifies subgrade reinforcement, then such reinforcement is also required in the construction quality assurance plan. Compaction relates to stability and strength of the constructed foundation.

Saturated subgrade. A subgrade may fail if it becomes wet or disturbed before or during liner placement. This occurred during construction of the Mt. Elbert reservoir (Morrison, et al., 1981). At Mt. Elbert, liner placement and seaming stopped because of rain. When placement recommenced, some soft, moist, subgrade areas were inadvertently overlooked. After backfill placement, it was discovered that the liner failed in tension. These areas had to be excavated and the liner patched. This experience demonstrates the necessity for a firmly compacted subgrade to ensure strength and stability of the foundation and a monitoring program to confirm that design conditions are met.

Slope construction. The steepness of the side and bottom slopes that the design specifies must be adhered to during installation to prevent problems during the remainder of the installation or during facility operation. Two difficulties with over-steepened side slopes that have been reported are: (1) equipment problems leading to liner damage and (2) sloughing of the earthen side slope material. If the design specifies slope reinforcement (synthetic or otherwise), then such reinforcement also must be required in the construction quality assurance plan.

The bottom slope must be designed and constructed to allow for adequate gravity flow of liquids after any projected settlement has occurred. Another concern for the slope of the bottom is that a slope which is too flat may allow gas or liquid to accumulate under the liner. As a result, a flexible membrane liner can be raised, stretched, and eventually ruptured because of the pressure against the liner. A clay liner also can be damaged by that pressure. Some designs specify pressure relief systems to preclude such problems. If pressure relief systems are specified, then they also must be required by the construction quality assurance plan.

Surface texture. Flexible membrane liners can be damaged if the subgrade surface is not smooth. For example, a flexible membrane liner may be punctured by small rocks. Such a puncture of a flexible membrane liner because of a rough subgrade may occur at the time of liner placement or after waste has been placed in the unit.

Failure to remove roots and vegetation of all types and to sterilize the subsoil also can cause liner failures. Existing vegetation can grow through

liners, and some types of grasses can germinate after liner placement and grow through the liner. This can provide channels for leachate movement. In addition, the decay of organic matter produces gas that can accumulate and exert pressure on the liner, as described above. Because surface texture problems can cause liner breaches, the CQA plan must address these types of problems.

(b) Dikes (Sections 264.20(b)(2) and 265.20(b)(2)). The CQA plan activities for dikes are necessary so that a completed dike meets or exceeds design criteria, plans, and specifications. These activities may include examining the prepared dike foundation, monitoring incoming materials, monitoring and testing fill placement and compaction, constructing a drainage system, and implementing erosion control measures. These factors are important to ensure the requirements under §§ 264.20(b)(2) and 265.20(b)(2) are met. EPA believes that the criteria in §§ 264.20(b)(2) and 265.20(b)(2) are necessary to ensure that dikes are properly constructed to ensure structural strength and stable support for the overlying facility, thereby ensuring protection of human health and the environment.

A dike in a hazardous waste unit functions as a hydraulic barrier as well as a retaining structure, resisting the lateral forces of the wastes, liners, and leachate collection systems. A dike is also the above-ground extension of the foundation, providing support to the facility components above. In addition, dikes can be used to separate cells for different wastes within a large landfill or surface impoundment. Dikes, therefore, must be designed, constructed, and maintained with sufficient structural stability to prevent failure.

Materials to be used for the dike must be monitored to confirm that they are the same as the design specifies and that they are uniform, so that no unsuitable materials are included in the dike. A test fill must be constructed to verify that the specified soil density, moisture content, compactive effort and strength relationships hold for field conditions and to determine the suitability of the proposed construction procedure.

Dike construction generally involves standard earthwork construction practices. Adequate CQA during dike construction will identify problems resulting from using inadequate construction methodologies or materials that could result in dike failure from slope instability, settlement, seepage problems, or erosion.

(c) Low-Permeability Soil Liners (Sections 264.20(b)(3) and 265.20(b)(3)). The CQA program for low-permeability soil liners must confirm that the liners meet or exceed the design intent. The purpose of a compacted low-permeability soil liner depends on the overall liner system design. For soil liners used as the lower component of a composite liner, the soil component serves as a protective bedding material for the upper component of the FML and minimizes the leakage rate through any breaches in the upper component. An objective for all low-permeability soil liners is to serve as long-term, structurally stable bases for all material above them.

Before construction, adequate studies should have confirmed that the low-permeability soil liner design meets or exceeds regulatory requirements. These studies should include an evaluation of the proposed material source area to confirm the existence of an adequate quantity of suitable material, particle size distribution, Atterburg limits, compaction, permeability, liner-leachate compatibility tests, and appropriate consolidation and strength tests of fabricated samples of the proposed soil liner.

EPA has published a technical resource document "Design, Construction, and Evaluation of Clay Liners for Hazardous Waste Facilities" (EPA/530-SW-86-007, March 1986) that provides detailed information on constructing a compacted soil liner.

The following is a summary of the key factors that need to be addressed for the construction of compacted low-permeability soil liners at landfills, surface impoundments, and waste piles. The construction process primarily consists of material excavating, stockpiling and handling, moisture conditioning, and placing and compacting soil lifts. The major problems in construction relate to (1) proper material stockpiling and handling; (2) using proper compaction equipment; (3) placing of lifts in the proper thickness; (4) promoting bonding between lifts; (5) obtaining and maintaining proper moisture content and distribution; and (6) attaining the specified relative compaction. These factors are important to ensure the requirements under §§ 264.20(b)(3) and 265.20(b)(3) are met. EPA believes that the criteria in §§ 264.20(b)(3) and 265.20(b)(3) are necessary to ensure that low-permeability compacted soil liners are properly constructed to ensure against imperfections, improper materials and improper permeability. These criteria will ensure the unit is built as designed and is protective of human health and the environment.

Material stockpiling and handling. The main concerns regarding the soil stockpiling relate to preventing the soil from being contaminated or becoming too wet or too dry. Contaminants that might become mixed with the soil and increase permeability, decrease strength, or cause other deficiencies include sand, silt, vegetation, and debris from preparing the site. Higher permeability may allow waste or leachate to leave the unit or may allow ground water to enter the unit. To prevent contamination, excavated materials must be examined to remove undesirable contaminants before the soil is placed in the stockpile area. Whether referred to as blemishes, macrofeatures, or structural nonuniformities, material imperfections may increase the overall permeability by several orders of magnitude.

Methods to identify and remove these contaminants should be included in the CQA program both to prevent and to detect these imperfections. Details of the information that should be gathered before, during, and after constructing of a compacted soil (which should serve to reduce the number of these imperfections) are given in the guidance document entitled "Construction Quality Assurance for Hazardous Waste Land Disposal Facilities," EPA/530-SW-86-031.

Permeability testing. EPA requires, as part of the CQA program, a test fill to be constructed using the same borrow soil, compaction equipment, and construction procedures as proposed in the full-scale unit. According to Sections 264.20(3)(iii)(A) and 265.20(3)(iii)(A), a test fill is required because of concern that laboratory permeability tests will overestimate the actual field permeability. A field hydraulic conductivity test of the compacted soil in the test fill is necessary to confirm that the materials and procedures used in the field will result in a compacted soil liner with a hydraulic conductivity of 1×10^{-7} cm/sec or lower. Field testing is not intended to preclude using laboratory testing in the design or construction phases or as a means of evaluating liner-leachate compatibility. The design phase and the construction quality assurance program both may include a mixture of field and laboratory hydraulic conductivity tests.

As appropriate methods are developed and verified, EPA intends to require hydraulic conductivity tests to be conducted on the full-scale facility. In the meantime, field hydraulic conductivity tests can be performed in

the test fill without causing delays during the full-scale facility construction. The field test used in the test fill should be performed long enough to verify that the hydraulic conductivity of the compacted soil liner is 1×10^{-7} cm/sec or less.

In addition to being used as a site for the field hydraulic conductivity test, the test fill also will verify other elements of the soil liner design and construction. The test fill construction will allow the construction quality assurance monitors to verify that equipment and construction procedures for breaking up clods (Sections 264.20(3)(iv)(D) and 265.20(3)(iv)(D)), moisture conditioning (Sections 264.20(3)(iv)(F) and 265.20(3)(iv)(F)), and compacting the soil are adequate to meet the specified density, moisture content, and permeability criteria. In addition, construction monitoring activities, including measuring of lift thickness (Sections 264.20(b)(3)(iv)(C)) and 265.20(b)(3)(iv)(C) and compaction equipment coverages (Sections 264.20(b)(3)(iv)(I) and 265.20(b)(3)(iv)(I)), can be correlated with in-place density and moisture content tests and with the field hydraulic conductivity.

(d) Flexible Membrane Liners (FML) (Sections 264.20(b)(4) and 265.20(b)(4)). The CQA plan for the FML must address the following points: (1) Conformance of testing the liner material to confirm that materials used in the manufacture of the liner are as specified in the design; (2) monitoring the delivery and unloading of the liner material to confirm that it is the material specified in the design and that it is not damaged, (3) observing and testing the subgrade to confirm that the subgrade has been prepared and compacted properly; (4) monitoring the liner deployment to observe any damage to the subgrade or to the liner during deployment; (5) monitoring and testing seaming operations; (6) monitoring installation procedures so that improper techniques or workmanship that can result in inadequate seams or liner damage are identified and corrected; (7) checking for identifying any tears, punctures, or other breaches in the liner so that they can be properly patched and repaired; and (8) continuous monitoring while placing cover soil or other materials over the liner to observe any damage to the liner, in which case it can be repaired properly. These factors are important to ensure the requirements under Sections 264.20(b)(4) and 265.20(b)(4) are met. EPA believes that the criteria in Sections 264.20(b)(4) and 265.20(b)(4) are necessary to ensure that the flexible membrane liner is constructed to ensure tight seams, use of proper materials as approved, and proper manufacture of the FML. These factors will ensure the unit is built as designed and is protective of human health and the environment.

The following is a summary of key factors that must be considered when constructing a FML. The most significant consideration relates to installation procedures; however, many other areas must be monitored so that the installed liner meets the CQA design specifications.

Storing and handling. Properly storing and handling of liner materials at the site is necessary to prevent their degradation as a result of exposure to the elements or physical damage, so that the properties of the materials that are installed are the same as those the design specifies. The main concerns in storing and handling are protecting the material from wind, sunlight, hail, vandalism, and equipment damage.

Some FML materials can be damaged when the material is folded and unfolded repeatedly. Other FML materials should not be folded. Weather can affect the performance of the membrane in several ways. Relatively gentle breezes (as little as 10 miles per hour) can easily lift and tear liner sheeting. Hail can impact and puncture some materials. The ultraviolet component of sunlight damages some FML materials over time. Another effect of exposure to sunlight with some FML materials is blocking, which occurs when the liner material sticks together as a result of the combination of heat from the sun and pressure from the weight of the liner material. When the material is unfolded or unrolled, delaminating or ripping of the blocked material can occur. The material storage and handling damage can be detected easily by visual inspection and repaired or replaced with little technical difficulty. For the above reasons, inspection of the liner material after it is received at the facility and before installation to confirm that it is the material specified in the design and is not damaged, is required under Sections 264.20(b)(4)(iv)(B) and 265.20(b)(4)(iv)(B).

Installation. Installation can be divided into two operations: liner placement and seaming. Proper placement of liner materials is essential: to guard against damage to the liner material during and after placement so that subsequent seaming operations can be performed effectively.

Another concern about liner placement is the occurrence of "bridging" in the liner material where depressions or angles form in the subgrade. Bridging exists when the liner extends from one side of a depression or angle to the other, leaving a void beneath the liner at the apex. The liner essentially is unsupported at this spot and could fail under stress. Bridging occurs most often at penetrations and where steep sidewalls meet the bottom of a unit. To prevent bridging, installers must keep the liner in a relaxed condition and in contact with the subgrade at these locations.

Seaming is perhaps the most critical operation in flexible membrane liner installation. Furthermore, seaming procedures are material-specific. If procedures are performed improperly, serious performance problems can result. Different types of geomembranes may use different seaming techniques. Problems can occur when seaming during adverse weather and when using improper seaming techniques or materials. In addition, special problems are associated with sealing liner penetrations and with seaming new liner material to old liner material. Therefore to ensure tight seems (Sections 264.201(b)(4)(i) and 265.20(b)(4)(i)) EPA is requiring inspection and testing to provide protection of human health and the environment.

Adverse weather. Weather conditions that affect liner seam viability include wind, moisture, and temperature. Wind-blown sand, dust, and other debris can adhere to field joints during their preparation. Another wind-related problem is simply that the liner may be blown around so that it is difficult to hold in place during the seaming operation, and wrinkles may appear in the seams as a result.

Excessive moisture can cause problems in several ways. Moisture in the seam area will vaporize during seaming and cause vapor bubbles which weaken the seam. Seaming during high relative humidity or during precipitation will cause poor seam adhesion unless the areas are kept dry. In addition, moisture under the seaming area, particularly when the temperature is below the dew point, may condense in the seam interface and prevent proper adhesion. To eliminate these problems, seaming should not occur during precipitation or high moisture conditions and particular care should be taken during conditions of high relative humidity to keep the seam area dry. If a good seam quality assurance program is conducted, faulty seams can be identified and repaired.

Temperature extremes or changes can interfere with the seaming process by changing dimensions of the liner material or by preventing the seaming

equipment from operating properly. Thermal expansion and contraction of some liner materials may stress the seams and cause them to fail. Either high or low temperatures may interfere with the ability of a method to produce a good seam.

Improper materials and techniques. A common problem with adhesive seaming is using improper materials or the wrong adhesives; that is, materials that can damage the liner or cause improper bonding. If an adequate quality assurance program is developed and followed, improper materials can be identified and replaced.

Improper seaming techniques may include applying too much or too little adhesive, applying adhesive unevenly, providing insufficient support beneath the seaming area, or applying pressure to the seam incorrectly. Applying an insufficient amount of adhesive will prevent complete bonding, while applying too liberal an amount of adhesive or applying it unevenly can cause blisters in the seam. If such problems occur, good quality assurance should identify and correct them.

Allowing insufficient time for the seaming system to take effect before stresses are applied to the seam can be a problem with the installation of any field seaming system.

A problem common to both solvent and extrusion welding systems is that breaks in the solvent or extrudate feed will cause gaps in the seam. The solutions to these problems are (1) to follow recommended seaming practices, (2) to use experienced personnel, and (3) to conduct a good quality assurance program to identify problem areas for repair. Because of the reasons above EPA is requiring observation of placement of the FML to ensure that design requirements are met and observation of any liner damage that may occur as a result of adverse weather conditions, inadequate temporary anchoring, or rough handling, under Sections 264.20(b)(4)(iv) (F) and (G) and 265.20(b)(4)(iv) (F) and (G).

Sealing around penetrations is critical to the integrity of any lined facility, because improperly devised or sealed penetrations may leak. Problems occur when the liner and appurtenance are incompatible regarding seaming, when the penetration stresses the liner in some way, and when the subgrade adjacent to the structure is weak or relatively compressible.

Materials and equipment. Procedures for monitoring and testing materials and equipment as they arrive at the site should confirm that materials and equipment used to construct the liner or cover are the correct ones and that they are not defective. Using improper or defective materials could result in such problems as ineffective seaming and leaks in the liner itself. Using the wrong equipment also could cause incomplete seaming; it could create such problems as mechanical damage to the liner during fill placement or inadequate subgrade performance. An effective monitoring program can detect these problems (Sections 264.20(b)(4)(iv)(A) and 265.20(b)(4)(iv)(A)).

Testing of field seams. Sections 264.20(b)(4)(iv)(6) and 265.20(b)(4)(iv)(6), require observation and testing of seams to ensure proper seaming and conformance to the seam strength specified in the design. Field seam testing ensures that seams have been constructed to be continuous and of the specified strength. Because field seam integrity (strength) generally determines the success of the entire job, it is important for the best available field seam monitoring, testing protocol, and equipment to be used during construction. This will reduce the risk that the liner will fail to perform its intended function.

There are different types of tests to measure the various seam properties and seaming methods. These tests fall into two general categories: nondestructive (qualitative) and destructive (quantitative). A good quality control program will include tests of both types. One hundred percent of field and factory seams should be tested by nondestructive testing techniques to verify their continuity. Some seams at or adjacent to structures and penetrations cannot be tested. These locations should be limited in number and the seaming of those locations should be continuously observed by construction quality assurance monitors. Periodic samples should be removed from both factory and field seams and tested for seam integrity by destructive tests (shear and peel tension tests). Areas in field seams where samples are removed for destructive tests must be patched with a new piece of the same liner material and then nondestructively tested.

(e) Leachate Detection, Collection, and Removal Systems (Sections 264.20(b)(5) and 265.20(b)(5)). The CQA program for leachate collection and removal systems (LCRS) must provide reliance that the installed system meets or exceeds the design specifications. The functions of a LCRS above the top liner in a double-lined landfill or waste pile unit are to minimize leachate head on the top liner and to collect and remove liquids from the unit, during the active life and post-closure care period. The purpose of a LCRS between the two liners of a double-lined waste unit is to rapidly collect and remove liquids entering the system, also through the post-closure care period. By providing for rapid leachate removal, the LCRS between the liners will greatly minimize the hydraulic head on the secondary liner and, thereby, minimize or eliminate leachate migration out of the unit. If the LCRS between the liners is also used to detect leaks in the top liner, the CQA program must ensure that the system is installed as designed for that purpose by meeting the sensitivity and detection time performance standards presented in this proposal.

Observing and testing the subcomponent materials of the LCRSs as they are delivered to the site and installed are necessary to confirm and document that these materials conform to the design criteria, plans, and specifications. This observation and testing applies to the granular materials, geosynthetic materials, piping and sumps, and any other materials that make up a LCRS. The factors are important to ensure that the criteria under Sections 264.20(b)(5) and 265.20(b)(5) are met.

EPA believes these requirements are necessary to protect human health and the environment.

Below are summaries of key factors that need to be addressed while constructing a LCRS. The major problems related to installation are (1) damage to the collection system during installation resulting from excessive stress and (2) leachate flow obstruction through the system.

Leachate collection pipes. Leachate collection pipes installed in trenches at the base of a landfill or waste pile and between the liners in a landfill, surface impoundment, or waste pile are subjected to loads from construction equipment during installation and operation, and the waste itself. In a well-designed trench, only a small fraction of the load of a wheel or tracked vehicle applied at the top of the trench should be transmitted through the trench backfill to the pipe. However, the percentage of the load transmitted increases rapidly as the vertical distance between the loaded surface and the top of the pipe decreases. In addition, moving loads cause impact loading, which is generally considered to have a one and one half to two times the effect of stationary loading. Thus, backfill procedures and equipment traffic over pipe trenches must be monitored carefully to prevent damage to pipes.

Leachate flow. The second consideration when installing a leachate

collection system is to provide confidence that the flow of leachate through the system is not impaired by construction activities or occurrences. Collection systems generally are designed so that leachate generated within the unit drains first through a soil or geosynthetic filter before entering the LCRS drainage layer. The purpose of this filter is to remove any fine particles that otherwise would clog the LCRS drainage layer and prevent its functioning. The filter, therefore, must be designed and constructed carefully to perform under the expected conditions. The leachate then flows through the LCRS drainage layer, which is comprised of permeable soils or geosynthetic drainage materials placed over the liner. If this layer does not have sufficient transmissivity (thickness times hydraulic conductivity) to accommodate the maximum leachate flow, the flow will be held up, and hydraulic head will build up on the liner. Achieving the designed thickness can be made more difficult by improper installation procedures, such as placing a granular drainage layer during high wind or intense rain, which may displace the soil so that it is no longer of uniform thickness. Another weather-related problem is drainage material contamination with fine soil particles, which decreases the permeability. This can occur as a result of soil particle erosion into granular or geosynthetic drainage layers from runoff from facility side slopes, mud, or windblown dust. These types of problems can be minimized by monitoring and testing activities that check the critical factors in the leachate collection system.

Installation procedures must be monitored to confirm that the drainage soils meet design specifications for size distribution of particles. In particular, excessively fine soils must not be allowed, because they will decrease the hydraulic conductivity of the layer and will clog collection pipes. Similarly, geosynthetic materials must be conformance tested to ensure that they meet design specifications, and they also must be covered to keep them clean.

Geosynthetic components. Geosynthetic components (geotextiles, geonets, and geocomposites) can be damaged during installation if proper placement and seaming techniques are not used. Some geotextiles will degrade very quickly when exposed to the sun's ultraviolet radiation. Thus, these materials must be stored with protective covering and, once installed, must be covered.

Protective soil. Protective soil includes any cover material placed over a lining system to protect it from mechanical, weather, or other environmental damage, such as wave action, exposure to the elements, vehicular or animal traffic, suction pressures exerted by an aerator, or high-temperature wastes in a surface impoundment. Protective soil may be an integral part of the leachate collection system in a landfill or waste pile. Because protective soil has so many important roles in liner systems, improperly placed soil can adversely affect the liner system performance. Improperly placed protective soil may not provide the desired protection for the liner system, or it may itself fail and cause the liner system to fail.

(f) Final Cover Systems (Sections 264.20(b)(6) and 265.20(b)(6)). The successful construction of the final cover, like the other components, relies on following recommended practices for construction, employing experienced personnel, and conducting a CQA program. The CQA plan for final covers at all land disposal units must provide assurance that (1) all layers of the final cover are monitored for uniformity, imperfections, and damage; (2) the materials for each layer are as specified in the design specifications; and (3) each layer is installed or constructed to meet the design requirements.

The following is a summary of the key factors that must be addressed to ensure that the requirements are met.

Subsidence. Subsidence under a final cover may cause problems similar to those experienced when the subgrade under a liner subsides. A flexible membrane liner may fail in tension if the waste that comprises its subgrade subsides differentially. If the final cover uses a compacted clay layer, the clay layer may develop cracks as a result of differential subsidence that allows rainwater to infiltrate. In addition, differential subsidence may result in rainwater ponding above the final cover. The ponded rainwater may have an increased chance of penetrating the cover even if the clay is intact because of the increased pressure head on the liner. If a cover of any type has failed, ponding prevents runoff from leaving the area and provides additional opportunities for leachate production.

For covers, the problem of subgrade subsidence begins with waste placement. The waste may not have sufficient bearing strength to support the weight of additional waste and soil cover material placed above it. In addition, if the waste is not compacted well and placed so that void spaces are filled, proper compaction of the liner bedding material will not be sufficient to prevent subsidence. Therefore, to minimize subsidence, waste placement must be considered a part of final cover subgrade preparation. Cover subsidence resulting from improper waste compaction may be less of a problem today than it has been in the past. Wastes were not compacted well or at all in older landfills or disposal surface impoundments when problems associated with final cover subsidence were not well known. Now, however, virtually all landfills compact their waste. Nonetheless, differential settlement because of waste subsidence continues to be a serious problem that must be anticipated in the cover system design. Some key considerations follow:

(i) The stress-strain properties of the cover system FML, geosynthetics and soils;

(ii) The ability to maintain minimum slopes for gravity drain systems;

(iii) The slope stability of layers above FMLs and geosynthetics;

(iv) The use of subgrade reinforcement or stabilization methods, such as geosynthetic reinforcement or dynamic compaction.

Installation procedures. The construction process for final covers at landfills and disposal surface impoundments involves subcomponents similar to many of the components previously discussed, such as foundations, compacted low-permeability soil liners, flexible membrane liners, and drainage layers (leachate collection systems). There are few examples to substantiate the quality of final covers that are constructed to comply with the landfill and surface impoundment requirements in Parts 264 or 265. However, EPA believes that most of the installation problems for final covers for these units should be similar to those experienced installing liners, dikes, and leachate collection systems.

For example, the compacted low-permeability soil layer and FML in a final cover is constructed much like the low-permeability soil and FML liner. However, the foundation for the final cover may have a lower bearing strength than the soil liner foundation; this may require using different construction techniques to achieve the required permeability in the field. Additionally, the design may specify foundation (waste) soil reinforcement and such soil reinforcement must be carefully monitored during installation by construction quality assurance personnel. As with the compacted low-permeability soil and FML liner, it is necessary to monitor the construction of

the compacted low-permeability soil and FML cover layer.

Installation procedures for FMLs in a final cover include proper on-site storage, handling and placing of the panels to ensure proper positioning, allowing enough slack in the material for it to fit around angles and penetrations, proper seaming and anchoring procedures, and installation only during proper weather conditions. A more complete discussion of problems and monitoring activities for flexible membrane liners and other subcomponents of the cover is contained in Sections C.2.b(2) (b) through (d).

Vegetative layers. The key factors that need to be addressed for constructing the vegetative layer of the final cover at land disposal units include: vegetative layer soil quality and thickness, seeding uniformity and timing, and vegetation establishment. The vegetative layer is the only layer of the final cover required for properly operated land treatment units under a permit.

Vegetation establishment and maintenance can be accomplished only by carefully addressing the soil type and the nutrient and pH levels to provide the proper soil conditions for successful seed germination and vigorous growth. The thickness of the vegetative soil layer also must be as specified in the design to provide proper root development and a sufficient moisture reserve to sustain the vegetation during dry periods.

The timing of the seeding is probably the most important factor in successfully establishing a vegetative cover. The timing will depend on whether the plant species selected is a cool- or warm-season species and on local climate conditions. The recommendations of the local county agricultural extension agent or seed company should be used. The CQA plan must address seeding procedures so that the recommendations are followed.

For covers at interim status land treatment units, the closure plan may require the cover design to provide infiltration control. In such a case, the CQA plan should address factors similar to those discussed above for landfills and disposal surface impoundments. The monitoring activities for the infiltration control components would be determined on a case-by-case basis according to the cover design.

c. Construction Quality Assurance Documentation. After completing construction at a unit regulated through either Part 264 or 265, the owner or operator must prepare a CQA report (Sections 264.20(g) and 265.20(g)), which demonstrates that the CQA plan was implemented as approved, and submit it to the Regional Administrator (RA). This report must include (1) a summary of all of the observations, daily inspection reports, inspection data sheets, and any photographic or video records; (2) problem identification and corrective measure reports; (3) design engineer acceptance reports (for errors, inconsistencies, and other problems); (4) deviations from design and material specifications (with justifying documentation); (5) as-built drawings; and (6) a summary for each component describing how the monitoring activity results demonstrate that the constructed unit meets the design intent and purpose.

The CQA report must be signed by a qualified registered professional engineer, or the equivalent (CQA officer), in charge of the CQA program and must state that the report accurately represents the activities and findings of the CQA program and that the program was implemented according to requirements of the approved CQA plan (Sections 264.20(g)(3) and 265.206(g)(3)). EPA requests comments on whether signatures of the facility owner or operator, CQA officer, and design engineer (if involved) should be included with the documentation as confirmation that each party understood and accepted the areas of responsibility and lines of authority and performed their functions according to the CQA plan.

The CQA report is not intended to present the CQA plan as a guarantee of facility construction and performance. Rather, the primary purpose of this documentation is to improve confidence in the constructed facility through written evidence that the CQA plan was implemented as approved (or as modified) and that the construction proceeded according to design criteria, plans, and specifications.

Permitted units. For construction activities at permitted units, the owner or operator must submit the CQA report to the RA for acceptance before waste is received at the unit. The RA has 30 days to review and approve the CQA report. If the RA does not respond within 30 days, the CQA report does not need to be review and approved before waste is received. When EPA reviews the CQA report and has comments that need to be addressed before the report can be accepted, additional time beyond the 30 days may be required. In this case, the RA can extend the 30-day review period in additional 30-day increments, as needed. If the owner or operator does not respond satisfactorily to the Agency's comments, additional 30-day time periods may be necessary to complete review and approval of the report.

EPA takes the position that restricting the waste receipt before the CQA report is approved will ensure that the implemented CQA plan will comply with the permitting agency requirements. In addition, the Agency believes that the benefits to be derived from a properly executed CQA program will be significant.

Interim status units. For new construction activities at interim status units, the owner or operator is to follow the same CQA report requirements that are described above for permitted units. However, unlike the proposed Part 264 requirements, the proposal for Part 265 does not include a schedule for report submission and review. For Part 265, the owner must provide the completed report to the RA and place a copy in the facility files (Section 265.20(f)).

If a liner and leachate collection and removal system has been installed in good faith compliance with administrative regulations and guidance documents, the LCRS need not be retrofitted when the permit is issued (Section 3015(b) of RCRA). For landfills and surface impoundments, EPA believes that meeting the construction quality assurance requirements in this proposed rule pertaining to double liners and leachate collection systems is evidence of the owner or operator's good-faith.

EPA is aware that the owner or operator may not have developed all the construction information necessary to finalize the CQA report at the completion of construction. This especially may be true when the construction schedule involves the phased construction of a unit (Sections 264.20(a) and 265.20(a)). EPA also recognizes that the design or materials may be updated when long construction periods are involved in completing a unit's construction. This proposal allows phasing of the CQA report for specific segments of a unit, if approved by the RA. As the construction activities for a specified phase are completed, the owner or operator must submit the CQA report to the RA for the completed segment of the unit.

d. Managing of the Construction Quality Assurance Program. Managing the CQA program is an important part of ensuring that the unit meets or exceeds the specified design. The activities for a CQA program can be divided into four parts: (1) development of the CQA plan, (2) approval of the plan by the regulatory agency, (3) implementation of the plan with documentation that demonstrates proper implementation,

and (4) submittal of the CQA report, demonstrating compliance with the plan (applicable to permitted units only). In developing today's rule, EPA considered which individual should be responsible for the CQA program parts.

The Agency is proposing that the development of the CQA plan be conducted by the owner or operator. The Agency proposes this because the facility owner or operator is ultimately responsible for the design, construction, and operation of the hazardous waste land disposal facility and also must comply with the requirements of the regulatory agency in order to obtain a permit. EPA believes that requiring the owner or operator to develop the CQA plan is consistent with the reponsibilities for facility design, construction, and operation.

The second part, approving the CQA plan, requires the regulatory agency to review and approve the CQA plan for consistency with the design specifications and to verify that every element of the CQA program has been taken into account.

The Agency is asking for comments on who should be responsible for documenting that the implementation was properly conducted. Under today's proposal the CQA plan would be implemented by the owner or operator by retaining a registered professional engineer. The Agency is seeking comments regarding the following:

(i) Whether the plan should be implemented by an independent registered professional engineer (should it be an independent third party); and,

(ii) Whether the plan should be implemented by EPA or by an EPA-controlled contractor.

The Agency is proposing that the owner or operator use a registered professional engineer or the equivalent as the appropriate party responsible for implementing the plan. This approach would afford the greatest flexibility to the owner or operator. EPA believes that the use of a registered professional engineer or the equivalent will provide an acceptable level of assurance to EPA that the CQA program was implemented as approved in the plan.

The first alternative approach to today's proposal on which the Agency is seeking comments would require the owner or operator to engage an independent third party to implement the CQA plan. Using a third party would provide more independence in implementing the CQA plan than would the proposal; however, this may result in a greater burden on the owner or operator because of the need for coordination with the third party. This additional coordination may result in more cost and time for construction contractors and owners or operators. EPA is seeking comments about whether the benefits to human health and the environment from this alternative are justified.

The second alternative approach that EPA is considering would have EPA or a CQA contractor reporting directly to EPA implement the CQA plan on every project. This approach potentially could delay each project because of a nationwide network that would need to be developed to manage EPA CQA contractors. Also, this option would result in a need for a significant increase in EPA resources to provide an adequate number of CQA contractors to satisfy the construction schedules for every project and to prevent or minimize construction schedule delays.

EPA believes that by using a registered professional engineer chosen by the owner or operator or the equivalent, there is a balance between the burdens of program implementation and the need for assurance of proper unit construction. EPA also recognizes that most owners or operators currently are selecting the CQA plan to be implemented by an independent third party to implement the CQA plan.

The fourth issue in the CQA program involves who should be responsible for review and acceptance of the CQA report. EPA considered several options in this fourth management area for units regulated through Part 264, as discussed below. There is no provision in today's proposal for the regulatory agency to review and approve the CQA report for facilities regulated through Part 265.

The first option that EPA considered would require the permitting agency to review and approve all CQA reports before allowing the owner or operator to receive waste at the newly constructed unit. Requiring review and approval of all CQA reports could result in prolonged review and approval periods, EPA chose not to use this option.

The second option involves employing an independent registered professional engineer selected by the owner or operator, who would review and approve all CQA documentation and reports before the newly constructed unit may receive wastes. Under this option, the Agency could select certain construction quality assurance reports for review and approval by an independent professional engineer. This option was not selected in today's proposal because EPA believes that if the owner or operator pays for the contractors services the engineer is not sufficiently independent.

A third option would require the owner or operator to state to the permitting agency that the CQA final report, which was prepared and signed by a registered professional engineer, was correct before the unit could receive wastes. This option would not provide EPA with the opportunity to review and approve selected CQA final reports. This option was not selected for today's proposal, because EPA needs that opportunity to review and approve selected CQA documentation reports to verify that plans were implemented properly.

A fourth option, which provides EPA with the choice of reviewing and approving selected CQA final reports for permitted units before waste receipt would be allowed, is presented in today's proposal. This provision does not allow waste receipt until the CQA final report is approved. This option was selected because (1) it was viewed as less burdensome to the owner or operator by allowing the registered professional engineer who implements the CQA plan to prepare and sign the plan; and (2) it gives EPA the opportunity to review and approve selected CQA documented reports. Furthermore, it allows EPA the option of using contracted engineers to conduct the review (in a similar manner to the current review process for Part B permit applications in many regions).

As discussed above, EPA is proposing to select certain CQA final reports for review and approval. Such selection would be random. EPA has several concerns and requests public comments about the following aspects of today's selected approach.

(i) Should the RA be allowed multiple 30-day periods to review and comment on the CQA report submitted by the owner or operator until the RA is satisfied that the plan was implemented as approved?

(ii) During permitting agency review and comment on the CQA documentation report, should the facility be denied waste receipt until the agency is satisfied that the CQA plan was implemented as approved?

(iii) In today's proposal, EPA requires that the CQA officer be a registered professional engineer or the equivalent. However, EPA requests comments on whether it is appropriate to require the CQA officer to be a registered professional engineer or the equivalent. The Agency believes that the CQA officer's responsibilities determine the necessary qualifications. Typically, the responsibilities of a CQA officer include the following:

- Serving as the liaison for the owner or operator, design engineer, or construction contractor personnel and

helping to interpret and clarify construction documents.

• Evaluating construction and monitoring personnel on job requirements.

• Reviewing design drawings and specifications for clarity and completeness.

• Scheduling site monitoring and testing.

• Directing, overseeing, or checking the CQA activities when performing site monitoring and testing.

• Providing CQA reports to the owner or operator on the results of monitoring and testing. This includes:

—Reviewing observation records and test results;

—Advising the owner or operator or the design engineer of work that the CQA officer believes should be corrected, rejected, or uncovered for observation or that may require special testing, inspection, or approval;

—Rejecting defective work and specifying corrective measures when authorized by the owner or design engineer.

EPA also recognizes that, in most States, legislation requires the CQA officer to be a registered professional engineer or the equivalent.

D. Permit Application

Sections 270.17(b), .18(c), and .21(b) of today's proposal amend the existing Part B permit application requirements of Part 270 for surface impoundments, waste piles, and landfills at facilities seeking a RCRA permit. These new provisions require owners and operators of such units to provide descriptive information, including detailed plans and engineering reports on how the double liner, leachate collection and removal, and leak detection system will be designed, constructed, operated and maintained to meet the requirements stipulated in applicable sections of Part 264. Today's proposal also requires owners and operators of these units that pursue a variance from the double liner, leachate collection and removal system, or leak detection system requirements to submit the appropriate detailed plans, and engineering and hydrogeologic reports describing alternative design and operating practices, as well as locational aspects. This information must demonstrate that the requirements for the variance are met. Section 270.20 is amended by adding a new paragraph (i) that requires the owner or operator to provide information required in the response action plan to meet the requirements of Section 264.278(i).

Sections 270.17(c), .18(d), .20(k) and .21(c) of today's proposal require the owner or operator to provide a description of how the leachate detection systems will be inspected to meet the monitoring and inspection requirements in Part 264.

E. Applicability to Hazardous Waste Tank Systems

The Agency is considering making several of the same standards being proposed today applicable to owners and operators of hazardous waste tank systems that use external liners as the means of providing secondary containment for their tank systems. In the July 14, 1986 revised tank system standards, EPA did not envision that tank liner systems would be designed, installed, and operated differently from those liner systems used at surface impoundments, landfills, or waste piles. Therefore, the Agency is evaluating the applicability of today's proposed standards for use in hazardous waste tank system design. The release detection and containment strategy that was established with the promulgation of the July 14, 1986 tank system standards is consistent with the approach described in today's proposal. However, EPA is unsure whether it would be appropriate to apply all of the standards being proposed today to hazardous waste tank systems. The requirements for liners established in the revised tank system standards are essentially performance standards. On the other hand. the standards contained in today's proposal are specific design standards. The Agency believes that certain aspects of today's proposed regulations can be incorporated into the Subpart J hazardous waste tank system standards. Specifically, these are (1) the Construction Quality Assurance (CQA) program of Sections 264.19, 264.20, 265.19, and 265.20 and (2) the design standards for leak detection systems of Sections 264.221(h) and 265.221(g).

The revised hazardous waste tank system standards under Sections 264.191, 264.192, 265.191 and 265.192 require that tank systems be properly designed and installed and so certified by a registered professional engineer or qualified installation inspector. The CQA program being proposed today is, in large part, an elaboration of the tank system performance standards and should enable the certifying engineer/installation inspector to evaluate the design/installation of the tank system more easily. EPA believes that the proposed CQA program is equally as applicable to a hazardous waste tank liner system as to a liner system for a surface impoundment, landfill, or waste pile. We solicit public comment on this matter.

In allowing an owner or operator to use an external liner system as a means of providing secondary containment for a hazardous waste tank system (see Sections 264.193 (d) and (e), 265.193 (d) and (e); 51 FR 25422, July 14, 1986), EPA intended that such a liner and the leak detection system be designed, installed, and operated similar to systems for land-based units such as surface impoundments. EPA thus believes that the standards being proposed today under Sections 264.221(h) and 265.221(g) may also be applicable to hazardous waste tank systems. EPA believes that a leak detection system (referred to as a leachate collection and removal system in this proposal) equivalent to that described for bottom liners in this proposal is also appropriate for hazardous waste tank systems. Presently, the hazardous waste tank system standards require that a release from the primary tank or its ancillary equipment be detected 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 (see Sections 264.193(c)(3) and 265.193(c)(3)). The Agency believes that existing detection technologies or site conditions might, in many cases, not allow the detection, within 24 hours, of releases from primary tank systems that use secondary containment liners similar to those used at land-based units (e.g., surface impoundments). For example, factors such as the rate of the leak, the viscosity of the waste, or the thickness and type of drainage layer could singularly, or in combination, act to retard the time to detection. Thus, EPA is particularly interested in the public's views on whether or not the proposed requirements in Sections 264.221(h)(2) and 265.221(g)(2) are appropriate for hazardous waste tank systems. The provision would require that the leak detection system be capable of detecting a leak of no more than 1 gallon per acre per day (not including liquids absorbed by the leachate collection and removal system) within 1 day after the leak occurs. Although these proposed standards tie this requirement to leakage from the top liner of a mandated two-liner system (top-bottom liner combination) for land-based units, the Agency believes that the shell of a storage/treatment tank may substitute for the top liner. Comments on the applicability of the 1-gallon leak detection limit to tank systems should be made considering any difference between tank systems and land-based

units (i.e., landfills, surface impoundments and waste piles) such as size of unit, liner system design, etc. For example, from a viewpoint of environmental protection, how does the proposed 1 gpad detection standard compare to the existing release detection standard for tank systems (i.e., detection 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)?

Would the proposed standard be considered more or less stringent than the existing leak detection standards for tank systems? Can the proposed detection standard be appropriately applied to the ancillary equipment (e.g., piping) that is associated with the hazardous waste storage/treatment tank?

The Agency has several options by which to apply these provisions to hazardous waste tank systems. First, this proposal, when promulgated in final form, could, where appropriate, add hazardous waste tank systems to the list of units for which these standards apply or, second, EPA could amend the existing Subpart J standards to include these provisions. Another option is to develop a separate and new proposal to apply these or similar provisions, pending review of public comments, to hazardous waste tank systems. A final option would not involve modifying the provisions applicable to the use of liners in providing secondary containment for tank systems. Rather, EPA could use the design and operating standards contained in today's proposal as a guide in evaluating the adequacy of secondary containment systems employing liners for hazardous waste tank systems.

VI. State Authority

A. 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 through 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 the 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 HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect on State Authorization

1. Background

Today's proposal includes the provision to require new and certain existing land disposal units for the treatment, storage or disposal of hazardous waste to utilize an approved leak detection system. Also, in today's proposal, the Agency is requiring double liners and leachate collection and removal systems above and between the liners for new waste piles, and replacements and lateral expansions of existing waste piles in parallel with minimum technology requirements for landfills and surface impoundments.

Today's proposal also requires the installation of double liners and leachate collection and removal systems for significant portions of units at existing hazardous waste landfills, waste piles and surface impoundments. In addition, double liners and leachate collection and removal systems are being proposed for new units, and lateral expansions and replacements of existing units at landfills, waste piles and surface impoundments at facilities permitted before November 8, 1984. Under today's proposal, owners and operators would be required to develop a construction quality assurance program for certain landfills, surface impoundments and waste piles as well as for construction of final covers at land treatment units.

Certain portions of today's rule are promulgated pursuant to provisions added by HSWA. Section 3004(o)(4) of RCRA, as amended by HSWA, mandates promulgation of standards requiring utilization of approved leak detection systems at new landfills, surface impoundments, waste piles and land treatment units that store, treat or dispose of hazardous waste identified or listed under Section 3001.

Under today's proposal, owners or operators of newly constructed landfills, surface impoundments, waste piles and land treatment units must design, construct, operate and maintain a leak detection system that is capable of detecting leakage of hazardous constituents at the earliest practicable time over all areas likely to be exposed to leachate during the active life and post-closure care period of the unit.

To achieve this earliest practicable time detection requirement, the Agency is proposing performance and design criteria along with monitoring requirements for a leachate detection, collection and removal system that is to be located between the liners at newly constructed landfills, surface impoundments and waste piles. To achieve this earliest practicable time detection requirement at land treatment units, the Agency is proposing performance criteria and monitoring requirements. These requirements will augment the existing unsaturated zone monitoring requirements under Part 264 for both new and existing land treatment units.

2. HSWA

Today's rule is proposed pursuant to Section 3004(o) of RCRA, a provision added by HSWA. Therefore, the Agency is proposing to add the requirement to Table 1 in 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all states, regardless of their authorized status. States may apply for either interim or final authorization for the HSWA provisions identified in Table l, as discussed in the following section of this preamble.

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because this rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under Section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all

HSWA interim authorizations will expire January 1, 1993 (See Section 271.24(c)).

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadlines by which the State must modify its program to adopt this proposed regulation will be determined by the date of promulgation of the final rule in accordance with 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to 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 efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

Listing of HSWA provisions:

40 CFR

260.10
264.15 (b)(1) and (b)(4)
264.117(a)(1)(ii)
264.118 (b)(1), (b)(2)(ii)
264.221 (g), (h), (i) and (j)
264.226 (c)(1), (c)(3)(i), (c)(3)(ii), (d) and (e)
264.228(b)(4)
264.251 (g), (h), (i) and (j)
264.254 (b)(1), (b)(3)(i), (b)(3)(ii), (c) and (d)
264.278 (a), (b)(1), (b)(2) and (d)
264.284 (a)(1), (b) and (c)
264.301 (g), (h), (i) and (j)
264.303 (b)(1), (b)(3)(i), (b)(3)(ii), (c) and (d)
264.310(b)(6)
265.15 (b)(1) and (b)(4)
265.117(a)(1)(ii)
265.118 (c)(1) and (c)(2)(ii)
265.221 (g), (h), (i) and (j)
265.226 (b)(1), (b)(3)(i), (b)(3)(ii) and (c)
265.254 (e), (f), (g) and (h)
265.260 (a)(1), (a)(3)(i), (a)(3)(ii) and (b)
265.278 (a), (b)(1), (b)(2) and (d)
265.284 (a)(1) and (b),
265.301 (g), (h), (i) and (j)
265.303 (a)(1), (a)(3)(i), (a)(3)(ii) and (b)
265.310(b)(5)

3. Non-HSWA

Today's rule also proposes standards that would not be effective in authorized States since the requirement would not be imposed pursuant to the HSWA. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt this proposed regulation will be determined by the date of promulgation of the final rule in accordance with Section 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until the State program modification is submitted to EPA and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit their official application for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in Section 271.21(e). States that submit official applications for final authorization 12 months after the effective date of those standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

VII. Regulatory Requirements

A. Executive Order 12291

Executive Order 12291 requires the regulatory impact of potential Agency actions to be evaluated during regulation development. Such an assessment consists of a description of the potential benefits and the potential costs of the rule, including any beneficial and any adverse effects that cannot be quantified in monetary terms.

In addition, Executive Order 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis in connection with major rules. Major rules are defined as those likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

1. Estimated Cost of the Proposed Rule

a. General Approach. EPA estimated incremental costs for provisions of the proposed rule which require compliance activities. The incremental cost of each provision was estimated by taking the difference between the cost of complying with the provision and the cost of complying with current regulations (the baseline for measurement).

In projecting both the costs of provisions and the costs of baseline scenarios, EPA developed estimates of affected populations, unit costs of compliance, and aggregate costs of compliance. Estimates of affected populations were based on hazardous waste facilities identified in the Part A data base as of early 1987 that have not lost their interim status. Unit cost of compliance, based on capital costs, operating and maintenance costs, closure costs, and post-closure costs (where appropriate), were developed using EPA's Liner Location and Cost Analysis Model. Both direct and indirect costs were included. Aggregate costs were then obtained by multiplying unit costs by the number of units in the affected population.

EPA used discounted cash flow analysis to convert streams of costs over time to equivalent annual costs over the life of the facility. First, EPA converted cost streams to present values by dividing costs incurred in each year by a discount factor, as follows:

$$PV = \sum_{i=o}^{n} \frac{(costs)_n}{(1+r)^n}$$

where the real rate of return (r) equals 3 percent and n is the number of periods in which costs are incurred. The cash flows do not include inflation, taxes, or depreciation. As such, the present value costs report the full social costs in real terms.

Second, in order to spread the costs evenly over the life of the facility, EPA annualized the present value costs by multiplying them by a capital recovery factor (CRF):

$$CRF = \frac{r(r+1)^{OL}}{(r+1)^{OL}-1}$$

Where OL is the operating life the facility. EPA assumed a 20-year operating life and a 3 percent real rate of return, which lead to a CRF of 0.0672. The annualized present value represents the annual revenue required to cover the costs imposed by the provision. This value provides a consistent basis for presenting and comparing costs of different provisions. However, it implicitly assumes that facilities can predict future costs and can recover them at a steady rate over the life of the facility.

EPA also estimated unit costs of response action for excessive leakage through the top liner at landfill and surface impoundment units. No aggregate response action costs were developed.

b. Double Liner and Leak Detection System—(1) Landfill Units. The proposed rule would require a leak detection system (LDS) between the double liners of a landfill. The owner or operator would be required to develop a minimum sensitivity value, which is the smallest quantity of liquid that can pass through a breach in the top liner and be detected by the LDS, and calculate the time required for detection of the liquid. The owner or operator would also be required to estimate an action leakage rate or ALR (gal/acre/day) to serve as a trigger for response action and prepare a response action plan (RAP) which would describe responses to be initiated by the owner or operator when leakage through the top liner exceeded the ALR.

In estimating the cost of complying with the LDS provisions, EPA assumed that the number of landfill facilities would remain equal to the current number in the affected population and that each unit would have a 20-year operating life and a 30-year post-closure care period. This simplifying assumption was necessary due to lack of data on the current and future number of new landfill units, replacement units, lateral expansions, and significant portions. It was also assumed that one cell would be opened and closed each year during the 20-year operating life of a unit.

Based on facilities listed in the Part A data base, the affected population was found to incldue 126 landfill facilities each with at least one unit, ranging in size from 500 MT/year to 150,000 MT/year. The affected population and the total incremental costs (above current statutory requirements) of compliance with the LDS provisions are shown in Table 1. EPA estimates that the incremental costs required to comply with the LDS provisions would be approximately $600,000.

(2) Surface Impoundment Units. The proposed rule would require an LDS between the double liners of a surface impoundment. In addition, the owner or operator would be required to develop a minimum sensitivity value, detection time, ALR, and RAP, as described for landfill units.

TABLE 1.—COST OF COMPLIANCE WITH DOUBLE LINER AND LEAK DETECTION SYSTEM PROVISIONS FOR LANDFILL UNITS

[1987 Dollars]

Size	Number of active units	Incremental annualized present value unit cost ($1,000)	Incremental annualized present value total cost ($1,000)
500 mt/yr	48	3.8	182.4
1,000 mt/yr	14	3.8	53.2
2,000 mt/yr	8	3.9	31.2
6,000 mt/yr	20	7.2	144.0
15,000 mt/yr	22	4.2	92.4
35,000 mt/yr	6	4.5	27.0
60,000 mt/yr	2	5.0	10.0
100,000 mt/yr	2	5.4	10.8
150,000 mt/yr	4	5.5	22.0
Total	126		573.0

To estimate the cost of compliance with the LDS provisions, EPA assumed that the number of surface impoundment units would remain equal to the current number in the affected population (except that no new impoundments larger than 15 acres would be constructed) and that each unit would have a 20-year operating life. Based on facilities identified in the Part A data in early 1987 the affected population was found to include 535 surface impoundment units, ranging in size from 0.25 acres to 15 acres. The affected population and the total incremental costs (above current statutory requirements) of compliance with the LDS provisions are shown in Table 2. EPA estimates that the incremental costs of complying with the LDS provisions would be approximately $1,700,000.

(3) Waste Pile Units. The proposed rule would require double liners in waste pile units, with a flexible membrane top liner and a flexible membrane/clay composite bottom liner. A leachate collection system would be required above the top liner, and an LDS would be required between the liners. In addition, the owner or operator would be required to develop a minimum sensitivity value, detection time, ALR, and RAP, as described for landfill units.

TABLE 2.—COST OF COMPLIANCE WITH DOUBLE LINER AND LEAK DETECTION SYSTEM PROVISIONS FOR SURFACE IMPOUNDMENT UNITS

[1987 Dollars]

Size	Number of active units[1]	Incremental annualized present value unit cost ($1,000)	Incremental annualized present value total cost ($1,000)
0.25 AC	216	2.9	626.4
0.50 AC	132	2.9	382.8
1.00 AC	70	3.1	217.0
2.00 AC	75	3.3	247.5
5.00 AC	30	4.6	138.0
15.00 AC	12	7.2	86.4
Total	535		1,697.6

[1] Based on 2.3 impoundments per active facility.

Costs were estimated jointly for the double liner and LDS provisions. It was assumed that facilities meeting minimum technology requirements for the double liner and the leachate collection and removal system between the liners would satisfy requirements for the leak detection system.

In estimating the cost of compliance with the double liner and LDS provisions, EPA assumed that the number of waste pile units would remain the same as the current number and that each unit would have an operating life of 20 years. Based on facilities identified in the Part A data base in early 1987, the affected population was found to include 72 waste pile facilities with at least one ranging in size from 250 cu. ft. to 1,000,000 cu. ft.

The affected population and the total incremental costs (above current statutory requirements) of compliance with the double liner and LDS provisions are shown in Table 3. EPA estimates that the incremental costs of compliance with the double liner would be approximately $800,000.

TABLE 3.—COST OF COMPLIANCE WITH DOUBLE LINER AND LEAK DETECTION SYSTEM PROVISIONS FOR WASTE PILE UNITS

[1987 Dollars]

Size	Number of active units [1]	Incremental annualized present value unit cost ($1,000)	Incremental annualized present value total cost ($1,000)
250 cu. ft	7	4.6	32.2
1,000 cu. ft	15	4.9	73.5
5,000 cu. ft	14	5.8	81.2
25,000 cu. ft	12	7.7	92.4
100,000 cu. ft	11	11.5	126.5
500,000 cu. ft	7	21.8	152.6
1,000,000 cu. ft	6	39.1	234.6
Total	72		793.0

[1] Outdoor (uncovered) waste piles.

c. Construction Quality Assurance—(1) Landfill Units. The proposed rule would require the owner/operator to complete a construction quality assurance (CQA) plan prior to construction, implement the plan during construction, and prepare a report following completion of construction to document CQA activities. CQA would not only be required for the opening and closing of cells during the operating life of the unit but for replacement of cell covers as necessary during the post-closure care period.

To estimate the cost of complying with the CQA provision, EPA assumed that the number of landfill units would remain equal to the current number in the affected population and that each unit would have a 20-year operating life and a 30-year post-closure care period. This assumption was made as a result of the limited data on the current and future number of new units, replacement units, lateral expansions, and significant portions. EPA also assumed that a cell would be opened and closed each year during the 20-year operating life, and that five cell covers would need to be replaced within the 26–30 year post-closure care period.

The affected population, which is the same as for the double liner and LDS provisions, is shown in Table 4. The total incremental costs (above current statutory requirements) of compliance with the CQA provision are also shown. EPA estimates that the incremental costs required to comply with the CQA provision would be approximately $13,400,000.

TABLE 4.—COST OF COMPLIANCE WITH CONSTRUCTION QUALITY ASSURANCE PROVISIONS FOR LANDFILL UNITS

[1987 Dollars]

Size	Number of active units	Incremental annualized present value unit cost ($1,000)	Incremental annualized present value total cost ($1,000)
500 MT/YR	48	102.6	4,924.8
1,000 MT/YR	14	101.7	1,423.8
2,000 MT/YR	8	100.2	801.6
6,000 MT/YR	20	96.4	1,928.0
15,000 MT/YR	22	123.4	2,714.8
35,000 MT/YR	6	113.7	682.2
60,000 MT/YR	2	149.4	298.8
100,000 MT/YR	2	127.4	254.8
150,000 MT/YR	4	104.3	417.2
Total	126		13,446.0

(2) Surface Impoundment Units. The proposed rule would require the owner or operator to prepare a CQA plan, implement the plan during construction, and then document CQA activities. To estimate the cost of complying with the CQA provision, EPA assumed that the number of surface impoundment units would remain equal to the current number in the affected population (except that no new impoundments larger than 15 acres would be constructed) and that each unit would have a 20-year operating life. The affected population and total incremental costs (above current statutory requirements) of compliance with the CQA provision are shown in Table 5. EPA estimates that the total cost would be approximately $2,200,000.

TABLE 5.—COST OF COMPLIANCE WITH CONSTRUCTION QUALITY ASSURANCE PROVISIONS FOR SURFACE IMPOUNDMENT UNITS

[1987 Dollars]

Size	Number of active units [1]	Incremental annualized present value unit cost ($1,000)	Incremental annualized present value total cost ($1,000)
0.25 AC	89	10.1	898.9
0.50 AC	54	10.0	540.0
1.00 AC	29	9.7	281.3
2.00 AC	31	9.1	282.1
5.00 AC	12	9.9	118.8
15.00 AC	5	11.1	55.5
Total	220		2,176.6

[1] Based on 2.3 impoundments per active facility. It was assumed that only disposal surface impoundments (41 percent of total active impoundments) would require CQA for cover installation.

(3) Waste Pile Units. The proposed rule would require the owner or operator to prepare a CQA plan, implement the plan during construction, and then document CQA activities. In estimating the cost of compliance with the CQA provision, EPA assumed that the number of waste pile units would remain equal to the current number in the affected population and that each unit would have a 20-year operating life. The affected population and total incremental costs (above current statutory requirements) of compliance with the CQA provision are shown in Table 6. EPA estimates that the incremental costs of compliance with the CQA provision would be approximately $600,000

TABLE 6.—COST OF COMPLIANCE WITH CONSTRUCTION QUALITY ASSURANCE PROVISIONS FOR WASTE PILE UNITS

[1987 dollars]

Size	Number of active units [1]	Incremental annualized present value unit cost ($1,000)	Incremental annualized present value total cost ($1,000)
250 cu. ft	7	8.1	56.7
1,000 cu. ft	15	8.0	120.0
5,000 cu. ft	14	8.0	112.0
25,000 cu. ft	12	7.9	94.8
100,000 cu. ft	11	7.9	86.9
500,000 cu. ft	7	7.5	52.5
1,000,000 cu. ft	6	7.2	43.2
Total	72		566.1

[1] Outdoor (uncovered) waste piles.

(4) Land Treatment Units. The proposed rule would require the owner or operator to prepare a CQA plan, implement the plan during construction, and then document CQA activities. These CQA activities would be required only during the construction of the final vegetative cover on the unit. In estimating the cost of compliance with the CQA provision, EPA assumed that the number of land treatment units would remain equal to the current number in the affected population and that each unit would have a 20-year operating life. The affected population and total incremental costs of compliance are shown in Table 7. EPA estimates that the total cost would be approximately $500,000.

TABLE 7.—COST OF COMPLIANCE WITH CONSTRUCTION QUALITY ASSURANCE PROVISIONS FOR LAND TREATMENT UNITS

[1987 dollars]

Size	Number of active units	Incremental annualized present value unit cost ($1,000)	Incremental annualized present value total cost ($1,000)
2.0 AC	8	4.7	37.6
5.0 AC	11	4.7	51.7
12.0 AC	15	5.9	88.5
35.0 AC	17	7.1	120.7
60.0 AC	13	7.7	100.1
200.0 AC	7	12.4	86.8
Total	71		485.4

d. Total Incremental Costs of the LDS, CQA, and Double Liner. The total costs of the LDS, CQA, and double liner provisions are shown in Table 8 for landfills, surface impoundments, waste piles, and land treatment units of different sizes. The total incremental cost of the provisions would be approximately $3,000,000 for the LDS and double liner and $16,600,000 for CQA, for a total of $19,600,000.

TABLE 8.—TOTAL COST OF COMPLIANCE WITH DOUBLE LINER, LEAK DETECTION SYSTEM, AND CONSTRUCTION QUALITY ASSURANCE PROVISIONS

[Incremental annualized present value cost in 1987 dollars]

Facility type	Liner/LDS ($1,000)	CQA ($1,000)	Total ($1,000) [1]
Landfill	573.0	13,446.0	13,905.2
Surface impoundment	1,697.6	2,176.6	3,874.7
Waste pile	793.0	566.1	1,352.9
Land treatment	—	485.4	485.4
Total	3,063.6	16,674.1	19,618.2

[1] Raw totals may be off slightly due to roundoff error in calculations.

e. Response Action Costs. Response action costs are the costs, incurred by the owner or operator of a landfill, surface impoundment, or waste pile, responding to excessive leakage through the top liner of a unit. As discussed under the LDS provisions above, the proposed rule would require the owner or operator to establish an action leakage rate (ALR) to serve as a trigger for initiating interaction between the owner or operator and EPA, to determine the appropriate response action for the leakage. The owner or operator would also be required to prepare a response action plan (RAP) as a means to implement the appropriate response action for leakage rates in excess of the ALR on a site-specific basis.

EPA used the Liner Location and Cost Analysis Model to gauge the frequency and magnitude of potential releases from landfills, surface impoundments, and waste piles. Modeling results indicated that leakage through the top liner during the operating life or post-closure care period that the ALR (20 gal/acre/day) should be very unlikely to occur, assuming that the units complied with all applicable provisions of the proposed rule. However, EPA presents the unit costs of responding to a leakage rate exceeding the ALR.

For a leak slightly larger than the ALR (100 gal/acre/day) EPA assumed that the appropriate response would be to increase pumping and monitoring. The cost of this increased pumping and monitoring would be insignificant.

For a leak substantially larger than the ALR (2,000 gal/acre/day) the appropriate response would depend on the type of facility which was leaking. In the case of landfills, the response was assumed to involve increased leachate collection in the primary LCRS, location of the general area of the leak (using the LDS), and installation of an intermediate flexible membrane barrier over the leaking area. Operational changes, such as use of daily cover and grading of the waste surface, would act to reduce water infiltration into the landfill. In addition, there would be early closure of the leaking area within a few months and a resulting loss of disposal capacity. EPA estimated the cost of this reponse to be approximately $600,000 in the case of a one-acre area.

In the case of surface impoundment, EPA assumed that the response to a large leak would require draining the unit into a redundant unit at the facility, removal and disposal of sludge from the bottom of the impoundment, and installation of a new flexible membrane liner over the existing top liner. The estimated cost for a five-acre impoundment would be $500,000.

For waste piles, EPA assumed that response action for a large leak would include location of the general area of the leak (using the LDS), removal of waste from the leaking area and placement on another part of the pile, and installation of a new section of flexible membrane liner over the existing top liner. The estimated cost to repair a one-acre area would be approximately $250,000.

2. Impacts on Small Business. For purposes of this analysis, EPA used Small Business Administration (SBA) criteria for defining small businesses. SBA regulations established size standards in terms of either maximum number of employees or maximum revenues, and vary the cutoff by 4-digit SIC code. For this analysis EPA used the SBA definitions for small businesses for each 4-digit SIC code with the number of employees as the primary method of delineating small businesses, except for those industries where the SBA defined small businesses by total revenues. Although size standards vary within industry sectors, in general, small firms in the manufacturing industries (SIC codes 2000–3999) are defined according to number of employees. Service and trade industries are usually defined

according to maximum revenue, with limits ranging from less than $3.5 million to $13.5 million in sales.

Using these definitions EPA evaluated the impact of today's rule on small businesses using regulation-induced business closures as the key indicator of regulatory impact. This test assumes that firms will spend up to 3 percent of total assets per year to meet regulatory requirements; any cost greater than 3 percent of total assets will result in forced closures. EPA also considered a second impact measure that compares the increased annual compliance costs to total production costs with 5 percent as the threshold for significance. Using these tests EPA has determined that the regulatory costs associated with the rule will not have a significant impact on a substantial number of small entities.

3. Benefits. EPA also evaluated the benefits of today's rule. EPA measured benefits in terms of reduction in human health risk. For purposes of this analysis, EPA evaluated the benefits of the proposal by comparing the risk that could result from an unlined hazardous waste landfill or surface impoundment to the reduced risks at these units that are attributed to a properly installed double liner and a leachate detection and collection system (as proposed today and in the proposed double liner and leachate collection rules of March 28, 1986).

EPA systematically evaluated this risk reduction using the Liner Location Model. This model is a composite of several submodels that act in concert to estimate the impacts from hazardous waste management/disposal practices. The model stochastically simulates the performance of the land disposal unit, using the best available data to describe the frequency of occurrence of individual failure events. The model uses an extensive set of generic climatic and hydrogeologic settings to simulate leachate release, subsurface transport, and constituent concentrations in ground water at specified distances from the disposal unit.

The model has several simplifying assumptions that should be understood so that its results can be interpreted properly. An important assumption that is typically used in analytical ground-water models is that the aquifer is homogeneous and isotropic. Under this assumption, plumes develop in a steady, symmetric manner, diluting with distance and time. In reality, however, homogeneous and isotropic conditions are rarely encountered in the real world, where structural, stratigraphic, and lithologic properties of aquifers create varying degrees of anisotropy and heterogeneities which are important determinants of ground-water flow. The discrepancies between model assumptions and actual conditions can cause models to underpredict or overpredict the rate at which contaminants are transported in the subsurface and the concentrations of constituents over space and time. For more information about the underlying assumptions and limitations of the model, refer to the "Liner Location Risk and Cost Analysis Model, Draft Phase II Report," March 1986 in the docket established for today's rule.

The results of the modeling analysis are not intended to be the final work on the risk reduction capabilities of the requirements proposed today, but rather a first attempt at an objective and systematic analysis. Due to the inherent limitations of analytic ground-water models used in generic analyses, combined with a limited data set and simplifying assumptions, the results presented below cannot be fully evaluated for their validity or representativeness. Therefore, the quantitative results should not be viewed as reflecting, in an absolute sense, an accurate and precise representation of the risk reduction capabilities of the technical strategies employed by today's proposed rule.

The basic approach to analyze the benefits of the requirements in today's proposal was to simulate risks under two scenarios: without liner controls, and with properly installed (using construction quality assurance) double liner and leachate detection and collection system controls. EPA evaluated the risk under each of these scenarios using information on the waste and locations from 55 hazardous waste facilities with landfills and surface impoundments. This sample of facilities comprises slightly over 10 percent of the approximately 500 operating land disposal facilities. For purposes of the analysis, the modeling assumed that the facilities operate for 20 years under both scenarios, and have a 30-year post-closure care period.

The analysis indicated that about two-thirds of the facilities included in the analysis have baseline risks that are less than 10^{-6}; one-third have risks that exceed 10^{-6} and are as high as 10^{-1} in the baseline. The effect of the proposed liner, leak detection, and construction quality assurance requirements is to reduce the risk by over an order of magnitude, such that less than one-fifth of the facilities have risks exceeding 10^{-6}.

The analysis further indicated that the technical design behind these proposed liner, leak detection, and construction quality assurance requirements is more effective for surface impoundments than for landfills. For landfills, a properly installed double liner and leachate collection system, together with a final cover placed at closure, substantially reduces release during the operating life and post-closure care period (assumed to be 50 years). However, for landfills, these technologies do not effectively reduce the longer term (400 year) risk because they do not significantly reduce the pollutant mass released from the unit. As a result, the leachate will not likely form and be released from the landfill until after post-closure, when the cap and leachate collection system begin to fail.

Despite the findings that the double liner, leachate collection, leak detection system and construction quality assurance requirements do not significantly reduce longer term risk (unless very long-term post-closure care were implemented), the extra years of containment should reduce the mass of those pollutants that degrade in the landfill environment.

Like landfills, properly installed double liner and leachate collection and detection systems at surface impoundments delay release, but unlike landfills, at impoundments they are also effective in reducing long-term risk. The analysis indicates that these requirements are effective in reducing the risk at almost two-thirds of the surface impoundments with risk when uncontrolled. Moreover, these requirements reduce the risk below 10^{-6} at half of the units with risk when uncontrolled.

The risk reduction capabilities at surface impoundments are attributable to the effectiveness in controlling releases during the operating life of the unit. The large hydraulic head that exists during the operating life results in extremely high releases from unlined units during this period, causing dissolved constituents to be released to the unsaturated zone at relatively high rates. The rapid initial release is virtually eliminated by a properly installed double liner and leachate detection collection system, causing the dissolved constituents to be retained in the impoundment. At closure, all liquids and dissolved constituents are removed; thus the total quantity of constituents released is substantially reduced.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354), 5 U.S.C. 601 et seq., which amends the Administrative Procedures Act, required Federal regulatory agencies to consider small entities throughout the regulatory

process. The purpose of the RFA is to describe the effects the regulations will have on small entities and to examine alternatives that may reduce these effects. EPA has determined that today's proposed rule will not have a significant impact on a substantial number of small entities. EPA expects smaller firms to face larger costs per unit of production than large firms as a result of the regulation but expects both small and large firms to recover these costs in the market place. The competitive effects of this regulation on small entities, therefore, are not significant. A more detailed discussion of the impact of today's proposal may have on small firms is contained in the previous section concerning Executive Order 12291.

C. Paperwork Reduction Act

The information collection requirements of this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 et seq. An information Collection Request document has been prepared by EPA (ICR No. 995 Amended) and a copy may be obtained from Rick Westlund, Information Policy Branch; EPA; 401 M St. SW. (PM-223); Washington, DC 20460 or by calling (202) 382-2745. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs; OMB; 726 Jackson Place NW.; Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

VIII. Supporting Documents

In preparing this proposal, 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 the U.S. Environmental Protection Agency, EPA RCRA Docket (Sub-basement), 401 M Street SW., Washington, DC 20460. The docket is open from 9:30 AM to 3:30 PM, Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling Michelle Lee at (202) 475-9327.

The major sources of information are the following, which are available for viewing only at the EPA RCRA Docket:

Background Documents

U.S. EPA, "Liner and Leak Detection Rule Background Document," Draft, prepared by GeoServices, Inc., May 1987.

U.S. EPA, "Bottom Liner Performance in Double-Lined Landfills and Surface Impoundments," Draft, prepared by GeoServices, Inc., April 1987.

Regulatory Impact Analyses

U.S. EPA, "Engineering Costs Documentation for Baseline and Proposed Double Liner Rule, Leak Detection System Rule, and CQA Program Costs for Landfills, Surface Impoundments, Waste Piles, and Land Treatment," Draft, prepared by Pope-Reid Associates, Inc., April 1987.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, 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: May 13, 1987.

Lee M. Thomas,

Administrator.

For the reasons given in the preamble, Parts 260, 264, 265, 270 and 271 of Chapter I of Title 40 of the Code of Federal Regulations are proposed for amendment as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019 and 7004, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939 and 6974).

2. Section 260.10 is amended by adding the following definitions in alphabetical order:

§ 260.10 Definitions.

* * * * *

"Leakage" means, in the case of landfills, surface impoundments, or waste piles used for treatment, storage, or disposal, any liquids that flow through a liner as a liquid.

* * * * *

"Replacement unit", means a unit (1) that is taken out of service (i.e., the unit has stopped receiving waste, or the "normal" rate of waste receipt is significantly decreased), (2) where all or substantially all of the waste is removed, and (3) the unit is reused (i.e., the unit is used to treat, store, or dispose of *hazardous* waste). Replacement does not apply to a unit where waste is removed for treatment, followed by placement of the treated waste from the unit in the same unit as part of closure or post-closure care activities of the unit.

* * * * *

"Significant portion of an existing unit that has not received wastes" means any unlined area of a unit that has not received waste and, if double lined before receiving waste, would significantly reduce the potential for migration of hazardous constituents out of the unit thereby reducing the potential for ground water and surface water contamination.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

2. Section 264.15 is amended by revising paragraphs (b)(1) and (b)(4) to read as follows:

§ 264.15 General inspection requirements.

* * * * *

(b)(1) The owner or operator must develop and follow a written schedule for inspecting all monitoring and leak detection equipment, safety and emergency equipment, security devices,

and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

* * * * *

(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 §§ 264.174, 264.194, 264.226, 264.254, 264.278, 264.303 and 264.347, where applicable.

* * * * *

3. Subpart B is amended by adding §§ 264.19 and 264.20.

§ 264.19 Construction quality assurance program: Objective.

(a) A construction quality assurance program is required for all landfills, surface impoundments, and waste piles to ensure, to a reasonable degree of certainty, that a completed unit or portion of a unit meets or exceeds all design criteria, plans, and specifications required in the permit. Land treatment units must have a construction quality assurance program to ensure, to a reasonable degree of certainty, that a completed unit or portion of a unit meets or exceeds all design criteria, plans, and specifications for construction of a cover over the closed portion of the unit, where applicable under § 264.280.

(b) The construction quality assurance program must address the following physical components of a landfill, surface impoundment, or waste pile, where applicable:

(1) Foundations;

(2) Dikes;

(3) Low-permeability soil liners;

(4) Flexible membrane liners;

(5) Leachate collection systems (includes leak detection systems); and

(6) Final cover systems.

§ 264.20 Construction quality assurance program: Elements of the program.

(a) The owner or operator of a new landfill, surface impoundment, waste pile, or land treatment unit, or a lateral expansion or replacement of an existing landfill, surface impoundment, waste pile, or land treatment unit of an existing unit and for which construction commences later than 12 months after promulgation of this rule, must have a written construction quality assurance plan. The owner or operator of an existing unit for which construction commences on a portion of the unit later than 12 months after promulgation of this rule must also have a written construction quality assurance plan for any component of that portion listed under § 264.19(b). The construction quality assurance plan must be developed, implemented, and documented under the direction of a construction quality assurance officer who is a registered professional engineer and is responsible for all aspects of the construction quality assurance program. The plan must be submitted with the permit application or as a permit modification in accordance with § 270.41 and approved by the Regional Administrator as part of the permit issuance or modification proceeding under Part 124 of this chapter. Approval by the Regional Administrator will assure that an approved construction quality assurance plan is consistent with § 264.19 and the applicable requirements of Subparts K, L, M, and N of this Part. The Regional Administrator may allow the construction quality assurance plan to be submitted and approved in phases based on a demonstration by the owner or operator that detailed construction specifications are not practicable at the time that the plan is initially submitted, due to the planned phased construction of the unit over an extended time period. If the Regional Administrator allows for phasing the submission of the construction quality assurance plan, a phased time schedule will be specified in the permit. A copy of the approved plan and all revisions to the plan must be kept by the owner or operator as part of the operating record required under § 264.73 until closure, and must be available for inspection by the Regional Administrator until the post-closure care period is completed and certified in accordance with § 264.117. The plan must identify steps necessary to monitor and document the quality of materials used and the condition and manner of their placement. The specific content of the construction quality assurance plan will depend on site-specific factors. The construction quality assurance plan must include at least the following information:

(1) General description of the units—Plans for the design, construction, operation, and closure of the unit(s) must be discussed. The description must identify the construction stages for the components at the unit(s);

(2) Responsibility and authority—A detailed description of the responsibility and authority of all organizations and key personnel positions involved in the development, implementation, and documentation of the construction quality assurance program must be provided. The description must assure that the objective of the construction quality assurance program identified in § 264.19(a) will be met;

(3) Construction quality assurance personnel qualifications— The qualifications of the construction quality assurance officer and supporting inspection personnel must be described in the contruction quality assurance plan. The position descriptions must demonstrate that the personnel will possess the training and experience necessary to fulfill their identified responsibilities;

(4) Inspection and sampling activities—The observations and tests that will be used to ensure that the materials and the constructed components meet the design specifications must be described. The description of the inspection and testing activities must be in sufficient detail to allow for review of both the conceptual approach and the specifics of title activities. The following areas must be included:

(i) Sampling and inspection activities for all constructed components;

(ii) Sample size and sample locations;

(iii) Frequency of testing;

(iv) Data evaluation procedures;

(v) Acceptance and rejection criteria; and

(vi) Plans for implementing corrective measures as addressed in the project specifications.

(5) Documentation of construction quality assurance activities—At the time of submittal of the construction quality assurance plan, a report outline is required that describes how the results of the construction quality assurance program activities for each constructed component will be documented.

(b) The owner or operator must describe in detail in the construction quality assurance plan how the components and materials used for their construction on-site will be inspected before, during, and after construction to comply with the following:

(1) For construction of foundations, the construction quality assurance program must:

(i) Ensure structurally stable subgrades for the overlying facility components as specified in the design specifications;

(ii) Ensure necessary strength, as specified in the design specifications, for resistance to settlement, compression, and uplift resulting from internal or external pressure gradients; and

(iii) Provide descriptions of the following inspection activities:

(A) Measurements of the depth and slope of the excavation to ensure that it meets design requirements;

(B) Observations to ensure proper placement of any recessed areas for pipes and other materials used for leak detection, leachate collection, and removal;

(C) Tests and observations to ensure that all characteristics of the compacted soil meet design specifications; and

(D) Observations of stripping and excavation to ensure that all soft, organic, and otherwise undesirable materials are removed.

(2) For dikes, the construction quality assurance program must:

(i) Ensure structural strength, as specified in the design;

(ii) Ensure stable support for the overlying facility components as specified in the design; and

(iii) Provide descriptions of the following inspection activities:

(A) Verification of material quality;

(B) Construction and use of a test fill to verify the specified density/moisture content/compactive effort/strength relationship for field conditions and construction equipment as needed to support the design specifications when field data on this relationship are not available;

(C) Measurement of loose lift thickness;

(D) Observation of clod size reduction and material homogenization operations, if applicable;

(E) Observation of type of compaction equipment, number of passes, and uniformity of compaction coverage;

(F) Testing of the compacted fill density; and

(G) Observation of proper placement of the vegetation layer on the dike surface.

(3) For low-permeability compacted soil liners, the construction quality assurance program must:

(i) Ensure inspection for imperfections including deleterious material, off-specification material, cracks, channels, structural and hydraulic non-uniformities, and any other conditions that may cause an increase in the permeability of the liner;

(ii) Ensure the installed material is the same as was evaluated for chemical resistance under §§ 264.221(a)(1), 264.251(a)(1)(i), 264.301(a)(1)(i), and any other material specifications;

(iii) Ensure that the liner has an installed permeability that meets the permit requirements.

(A) A test fill must be constructed to verify that the constructed liner complies with permit requirements for field permeability. The test fill compaction and testing must be well documented, and soil materials, procedures, and equipment used in the test fill construction and testing must be the same as those to be used during construction of the full-scale unit. The owner or operator must describe observations and tests to be used on the test fill, including a description of the testing sample arrays and replications to be conducted. The Regional Administrator will review for completeness the owner and operator's plan for the design and evaluation of the test fill to ensure that the evaluation conditions will accurately represent the performance of the full-scale unit.

(B) Based on the parameters evaluated and data collected from the test fill, the owner or operator must justify that the tests applied to the full-scale facility liner serve as surrogates for actual field permeability tests. The surrogate tests are a group of tests that do not actually measure field permeability but whose results, when considered together, can be used to estimate field permeability and, hence, can be used to assure the proper permeability of the installed liner in all areas.

(C) The Regional Administrator may approve an alternative approach to test fill construction and testing for demonstrating that the low-permeability soil liner meets the installed permeability requirement of the unit as required by the permit; and

(iv) Provide descriptions of the following inspection activities:

(A) Observation of the removal of roots, rocks, rubbish, or off-specification soil from the liner material;

(B) Identification of variations in soil characteristics that require a change in construction specifications;

(C) Observation of the spreading of liner material to obtain complete coverage and the specified loose lift thickness;

(D) Observation of the reduction of clod size to meet liner material specifications;

(E) Observation of the spreading and incorporation of soil amendments (if specified) to obtain uniform distribution of the specified amount in the liner material;

(F) Observation of the spreading and incorporation of water to obtain full penetration through clods and uniform distribution of the specified moisture content;

(G) Observation of the use of procedures, as specified in the construction quality assurance plan, for adjusting the soil moisture content in the event of a significant period of prolonged rain during construction;

(H) Observing and testing to ensure that significant water loss before and after compaction is prevented; and

(I) Observing and testing the soil liner compaction process to ensure that the compactive effort specifications are met.

(4) For flexible membrane liners, the construction quality assurance program must:

(i) Ensure tight seams and specified structural strength of the seams and joints, and the absence of tears, punctures, or other breaches. The field seams must be visually checked throughout their length and width and must also be destructively tested on a spot basis. The Regional Administrator will review for completeness the owner or operator's inspection and testing approach for destructive seam testing;

(ii) Ensure that the liner polymer material properties are the same as were evaluated for chemical resistance under §§ 264.221(a)(1), 264.251(a)(1)(i), or 264.301(a)(1)(i), and any other material specifications;

(iii) Include certification that adequate quality control was practiced during the manufacturing of the flexible membrane liner at the fabrication plant; and

(iv) Provide descriptions of the following inspection activities:

(A) Inspection of the liner material after it is received at the facility and before installation to confirm that it is the material specified in the design and is not damaged;

(B) Inspection of the liner material after storage at the facility to ensure that it is not damaged;

(C) Testing and observation of placement of the lower bedding layer to ensure that design requirements are met;

(D) Observation of placement of the flexible membrane liner to ensure that design requirements are met;

(E) Observation of any damage to the liner that may occur as a result of adverse weather conditions, inadequate temporary anchoring, or rough handling;

(F) Observation of the overlapping of flexible membrane liner sheets to ensure that off-specification seams do not result; and

(G) Observation and testing of seams to ensure proper seaming and conformance to the seam strength specified in the design.

(5) For leachate collection systems (above and between the liners, where required) the construction quality assurance program must:

(i) Ensure that material properties comply with the design criteria, plans, and specifications;

(ii) Ensure the materials are the same as were evaluated for chemical resistance under §§ 264.221(c)(3)(i), 264.251(a)(2)(i)(A), 264.251(c)(5)(i), 264.301(a)(2)(i)(A), or 264.301(c)(5)(i);

(iii) Provide descriptions of the following inspection activities:

(A) Observations and measurements to ensure that the pipes are placed at locations and in configurations specified in the design;

(B) Observations and tests to ensure that pipe grades are as specified in the design;

(C) Observations and tests to ensure that all pipes are joined together as specified in the design;

(D) Observations to ensure that the placement of any filter materials around the pipe meet the specifications in the design;

(E) Observations and tests to ensure that backfilling and compaction are completed as specified in the design and that, in the process, the pipe network is not damaged;

(F) Observations and tests to ensure that the drainage layer material is of the particle size as specified in the design and free from excessive amounts of fines or organic materials;

(G) Observations and tests to ensure that the thickness and coverage of the drainage layer complies with the design specifications,

(H) Survey of the drainage layer to ensure that grades are obtained as specified in the design;

(I) Observation of construction procedures to prevent the transport of fines by runoff into the leachate collection system;

(J) Observations to ensure that all synthetic drainage layer or geotextile materials are placed according to the placement plan;

(K) Measurements to ensure that the overlap of all synthetic drainage layer or geotextile material as specified in the design is achieved;

(L) Observations to ensure that the synthetic drainage layer or geotextile materials are free from excessive wrinkles and folds;

(M) Observations to ensure that weather conditions are appropriate for placement of the synthetic drainage layer or geotextile materials and that exposure to rain, wind, and direct sunlight during and after installation is in compliance with the manufacturer's recommendations;

(N) Inspection of filter layer placement to ensure that the design specifications, including material specifications, placement procedures, and thickness are met; and

(O) Inspection and testing of the sump, leachate removal and detection equipment, and any other associated equipment or structures to ensure that the design specifications, including material and equipment specifications, coating specifications, and mechanical and electrical equipment installation specifications, are met.

(6) For final cover, the construction quality assurance program must:

(i) Ensure all layers of the cover are inspected for uniformity, imperfections, and damage;

(ii) Ensure that the materials for each layer are as specified in the design material specifications;

(iii) Ensure each layer of the final cover is installed or constructed to meet the requirements specified in the design; and

(iv) Provide descriptions of the following inspection activities. (Some of these activities may not be appropriate for all land treatment unit covers; inspection activities for land treatment unit covers must also be based on the applicable requirements of § 264.280.) The Regional Administrator will review the owner or operator's planned inspection activities for completeness to ensure that the completed final cover will meet the design specifications.

(A) Procedures and methods consistent with those under § 264.20(b)(3) for observing and testing the installation of any low-permeability compacted soil layer to ensure that the design specifications are met;

(B) Procedures and methods consistent with those under § 264.20(b)(4) for observing and testing the installation of any flexible membrane layer to ensure the design specifications are met; and

(C) Procedures and methods for observing and testing other layers of the final cover (e.g., drainage and vegetative layer) to ensure that the design specifications are met. These activities must include inspection of the completed cover slope, vegetation, and drainage conduits to ensure that they meet the specified design.

(c) The Regional Administrator may specify in the permit specific additional procedures and methods for observing and testing the construction of components under §§ 264.20(b) (1), (2), (3), (4), (5), and (6) to ensure that the completed unit meets or exceeds all design criteria, plans, and specifications.

(d) The owner or operator will be exempted from any part of the requirements of paragraph (b) of this section if the Regional Administrator finds, based on a demonstration by the owner or operator, that alternative inspection practices, observations, or tests will ensure that the completed component meets or exceeds all design criteria, plans, and specifications.

(e) The owner or operator may request that the Regional Administrator amend his construction quality assurance plan at any time before and during the active life of the facility.

(1) The CQA officer may make some changes to the approved CQA plan under § 264.20(a) without seeking and receiving prior approval from the Regional Administrator. Changes which do not require Regional Administrator approval are limited to instances where the CQA officer certifies in the operating record that the revised CQA plan will provide equivalent or better certainty that the constructed component meets the design-specifications. Within seven days of modifying the CQA plan approved under § 264.20(a), the owner or operator must amend the operating record to include the revised CQA plan and certification.

(2) Changes other than those specified in paragraph (e)(1) of this section, must be submitted to the Regional Administrator and approved by the Regional Administrator prior to construction in accordance with the permit modification procedures in § 270.41. The owner or operator must submit a written request for a permit modification including a copy of the amended CQA plan prior to any construction relating to the amended area of the CQA plan at least 30 days prior to the proposed change in the facility construction. The Regional Administrator will approve, disapprove, or modify this amended plan in accordance with the procedures in Parts 124 and 270. In accordance with § 270.32 of this chapter, the approved CQA plan will become a condition of any RCRA permit issued.

(f) The owner or operator must notify the Regional Administrator at least 180 days prior to the date he expects to begin construction of the final cover. The notification must include the following:

(1) Schedule of major activities; and

(2) Supplemental information required in the construction quality assurance plan that was not previously included.

(g) Upon completion of construction of facility components listed under § 264.19(b), the owner or operator must submit a construction quality assurance report in writing to the Regional Administrator demonstrating compliance with the construction quality assurance plan. The owner or operator must submit this report before waste is received, except in the case of construction of the final cover. For the final cover, the report must be submitted

to the Regional Administrator within 60 days after cover construction is completed. Submission of the report may be phased, if approved by the Regional Administrator in the permit, to facilitate the permitting process or allow the phased construction of a unit. The construction quality assurance report must include at least the following:

(1) Summaries of all construction and material inspection activities to include:

(i) Observations;

(ii) Test data sheets;

(iii) Problem reports;

(iv) Repair activities;

(v) Deviations from the design and material specifications;

(vi) Design engineer acceptance reports (for errors, inconsistencies, and other problems);

(vii) As built drawings; and

(viii) Block evaluation reports for large projects.

(2) Summary discussion for each applicable component under § 264.19(b) that describes the major construction quality assurance inspection activities, detailing how the results demonstrate that the constructed unit meets or exceeds all design criteria, plans, and specifications. Summary tables, charts, and graphs must be used, where appropriate, to document implementation of the construction quality assurance program.

(3) Certification by the qualified registered professional engineer in charge of the construction quality assurance program, that the report accurately represents the activities and findings of the construction quality assurance program and that the program was implemented in accordance with all requirements of the approved construction quality assurance plan.

(h) The Regional Administrator will review the construction quality assurance documentation report required under paragraph (g) of this section and notify the owner or operator in writing whether it is accepted. If the Regional Administrator takes no action within 30 days from receipt of the construction quality assurance report, the owner or operator may receive waste. The Regional Administrator may notify the owner or operator that he does not intend to review the construction quality assurance report at this time. The Regional Administrator may extend the 30-day review period in order to request additional information on the implementation and documentation of the construction quality assurance program, or to complete an ongoing evaluation of the report; if such an extension is necessary, the Regional Administrator will notify the owner or operator in writing.

4. 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 §§ 264.222, 264.226, 264.252, 264.254, 264.276, 264.278, 264.280, 264.302, 264.303, 264.309, and 264.347;

* * * * *

5. Section 264.117 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 264.117 Post-closure care and use of property.

(a)(1) * * *

(ii) Maintenance of monitoring, waste containment, leachate collection, and leak detection systems in accordance with the requirements of Subparts F, K, L, M, and N of this Part.

* * * * *

6. Section 264.118 is amended by revising paragraphs (b)(1) and (b)(2)(ii) to read as follows:

§ 264.118 Post-closure plan; amendment of plan.

* * * * *

(b) * * *

(1) A description of the planned monitoring and leak detection activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N of this Part during the post-closure care period; and

(2) * * *

(ii) The function of the monitoring, leachate collection, and leak detection equipment in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

* * * * *

7. Section 264.221 is amended by redesignating paragraphs (f), (g), and (h) as paragraphs (m), (n), and (o), respectively.

8. Section 264.221 is amended by revising the introductory text of paragraph (c) and adding new paragraphs (f) through (l) to read as follows:

§ 264.221 Design and operating requirements.

* * * * *

(c) The owner or operator of each new surface impoundment, each new surface impoundment unit at an existing facility, each replacement of an existing surface impoundment unit, and each lateral expansion of a surface impoundment unit must install two or more liners and a leachate collection system between such liners. This requirement shall apply to the owner or operator of all such units, regardless of the date of permit issuance. This requirement also applies to the owner or operator of significant portions of surface impoundment units on which waste has not been placed, effective 24 months after promulgation of this rule. The requirements of this paragraph apply with respect to all waste received after the issuance of the permit or modified permit. The liners and leachate collection system must protect human health and the environment. At a minimum, the liners and leachate collection system must meet the following requirements:

* * * * *

(f) The owner or operator of any surface impoundment unit that is replaced later than 24 months after promulgation of this rule is exempt from the requirements of paragraphs (c) and (g) of this section provided:

(1) The existing surface impoundment unit received a final permit under this part prior to November 8, 1984;

(2) The existing unit was constructed in compliance with the requirements of paragraphs (a) or (b) of this section and the liner is not replaced; and

(3) There is no reason to believe that the liner is not functioning as designed.

(g) The owner or operator of any unit for which construction commences after the date of promulgation of this rule must design, construct, operate, and maintain a leak detection system capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. Any liquid, waste, or waste constituent migrating into the leak detection system is assumed to originate from liquids leaking through the top liner of the unit unless the Regional Administrator finds, based on a demonstration by the owner or operator under § 264.222(h), that such liquid, waste, or waste constituent originated from another source.

(h) The leak detection system required under paragraph (g) of this section shall be part of the leachate collection system between the liners described under paragraph (c)(3) of this section. The leachate collection system between the liners shall, in addition to meeting the requirements of paragraph (c)(3) of this section, meet the following requirements for leak detection:

(1) The minimum bottom slope must be 2 percent, and drainage layer material must have the following hydraulic characteristics:

(i) For granular materials, a minimum hydraulic conductivity of 1 cm/sec and

a minimum layer thickness of 12 inches; or

(ii) For synthetic drainage layer materials, a hydraulic transmissivity of 5 x 10^{-4} m^2/sec or greater.

(2) Be capable of detecting a top liner leak in the sump of no more than 1 gallon per acre per day (not including liquids absorbed by the leachate collection system); and, be capable of detecting leakage in the sump in excess of 1 gallon per acre per day within 1 day after the leak occurs (not including liquids absorbed by the leachate collection system or bottom liner);

(3) Collect and remove liquids rapidly to minimize the head on the bottom liner. The Regional Administrator will specify design and operating conditions in the permit to ensure that the liquid head on the bottom liner is minimized at all times; and

(4) Include a sump of appropriate size to efficiently collect liquids and prevent liquids from backing up into the drainage layer. Each unit must have its own sump. The design of the sump and removal system must provide a method for measuring and recording the liquid volume present in the sump and liquids removed. The leachate volume in the sump must be determined on a daily basis during the active life of the unit and at least weekly during the post-closure care period (if applicable).

(i) In lieu of the requirements of paragraph (h) of this section, the Regional Administrator may specify in the permit an alternative leak detection system if:

(1) The Regional Administrator finds that there is no potential for migration of any hazardous constituents from a unit to ground water or surface water during the active life and post-closure care period of the unit; or

(2) The unit complies with the requirements of paragraphs (d) or (e) of this section; or

(3) The owner or operator proposes an alternative leak detection system or technology that will meet the requirements under paragraph (g) of this section. In deciding whether to allow an alternative leak detection system or technology, the Regional Administrator will consider:

(i) The durability and effectiveness of the proposed system or technology;

(ii) The nature and quantity of the wastes; and

(iii) The ability of the system or technology to detect leaks and, in combination with response actions to be taken in compliance with § 264.222, prevent migration of hazardous constituents out of the unit during the active life and post-closure care period so that ground water and surface water are not contaminated.

(j) The owner or operator of any unit that is required by paragraph (g) of this section to have a leak detection system and that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(k) The owner or operator must establish a top liner action leakage rate during the design of the unit for leak detection systems under paragraph (h) of this section. The action leakage rate is determined by:

(1) Using a standard value of (EPA is proposing to select a final value from the range of 5–20 gallons/acre/day); or

(2) A review by the Regional Administrator of an owner or operator demonstration, and a finding by the Regional Administrator, that a site-specific top liner action leakage rate is appropriate for initiating review of the actual leakage rate to determine if a response action is necessary. The site-specific top liner action leakage rate demonstration must be based on allowing only very small isolated leakage through the top liner that does not affect the overall performance of the top liner. In deciding whether to grant a site-specific action leakage rate, the Regional Administrator will consider at least the following factors:

(i) The design, construction, and operation of the top liner;

(ii) The attenuative capacity and thickness of any soil component of the top liner; and

(iii) All other factors that would influence the potential for leachate to migrate through the top liner.

(l) The owner or operator of a surface impoundment unit that is required to comply with § 264.221(c) and commenced construction on or before the effective date of this rule is required to have a leak detection program.

(1) Within 1 year of the effective date of this rule, the owner or operator must submit to the Regional Administrator an application for a permit modification to establish a leak detection program for the leachate collection system between the liners. The proposed leak detection program must include operation and maintenance of the system in a manner consistent with the requirements under paragraphs (g) and (h) of this section, considering the site-specific capabilities of the constructed unit to prevent migration of hazardous constituents out of the unit.

(2) The Regional Administrator will specify in the permit all monitoring, inspection, maintenance, reporting, response, and recordkeeping activities that are necessary to ensure that the leak detection program provides similar protection of ground and surface water to that provided by leak detection systems required under paragraphs (g) through (k) of this section and §§ 264.222 and 264.226, considering the capabilities of the constructed liners and the leachate collection system between the liners.

9. New § 264.222 is added to Subpart K to read as follows:

§ 264.222 Response actions.

(a) The owner or operator must include a response action plan in the permit application, or for units permitted prior to the effective date of today's rule, in a permit modification. This plan must set forth the actions to be taken immediately following a finding of rapid and extremely large volumes of leakage between the liners in accordance with the requirements under paragraph (b) of this section. A rapid and extremely large leak is the maximum design leakage rate that the leachate detection, collection, and removal system can remove under gravity flow conditions without the fluid head on the bottom liner exceeding 1 foot in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems. The owner or operator must use an adequate safety margin in determining the rapid and extremely large leak to allow for uncertainties in the design, construction, and operation of the leachate detection, collection, and removal system (e.g., the owner or operator must consider decreases in the flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.).

(b) The response action plan for rapid and extremely large volumes of leakage between the liner must, at a minimum, include the following information:

(1) A general description of the operation of the unit including the expected active life of the unit and whether or not at closure wastes will be decontaminated or removed from the unit or left in place;

(2) A description of the hazardous constituents contained in the unit;

(3) A description of the range of events that may potentially cause rapid and extremely large volumes of leakage into the space between the liners;

(4) A discussion of important factors that can affect leakage into the leachate collection and removal system between the liners (e.g., amount and frequency of precipitation, and amount of liquids in the unit);

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the unit (e.g., the condition of the liners and leachate collection system between the liners);

(6) A detailed assessment describing the effectiveness and feasibility of each of the following potential immediate interim responses for preventing hazardous constituent migration out of the unit by decreasing the volume of leakage into the leak detection system:

(i) The owner or operator limits or terminates receipt of waste;

(ii) The owner or operator provides expeditious repair of the leak(s); or

(iii) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large.

(7) The plan must also include the response the owner or operator will undertake after determining the concentration of hazardous constituents in the liquids in the sump of the leak detection system in accordance with the requirements under paragraph (c)(3) of this section.

(i) If any hazardous constituent concentrations in the leachate exceed health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for preventing hazardous constituent migration out of the unit:

(A) The owner or operator terminates receipt of waste and closes the unit;

(B) The owner or operator provides expeditious repair of the leak(s); or

(C) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large. If as a result of these operational changes the leakage is still above the action leakage rate, the owner or operator must comply with the requirements set forth in paragraph (e) of this section; or

(ii) If all hazardous constituent concentrations in the leachate are below health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for minimizing the head on the bottom liner:

(A) The owner or operator provides expeditious repair of the leak(s); or

(B) The owner or operator institutes operational changes at the unit.

(8) The response action plan must address a range of rapid and extremely large volumes of leakage appropriate for the unit with correlating recommended responses and indicate why other response actions were not chosen. Each response presented must be based on a demonstration incorporating the factors set forth in paragraphs (b) (1) through (7) of this section. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(c)(1) The Regional Administrator will review and approve the response action plan for rapid and extremely large leaks if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (c)(1) of this section, the Regional Administrator shall consider, but not be limited to the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review or review of design for deficiency);

(v) Design of the double liner system, including design features that provide further protection beyond those required under § 264.221;

(vi) Future planned activities, including remaining active lifetime period, and closure and post-closure care activities; and

(vii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(d) When there is a rapid and extremely large volume of leakage between the liners the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the rapid and extremely large leakage. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Immediately implement the response action plan; and

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (c)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and at other subsequent time periods as specified by the Regional Administrator. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (c)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan, if the approved response action plan does not contain an alternative response, by modifying the permit in accordance with Part 124 procedures. The owner or

operator must submit a permit modification to the Regional Administrator within 60 days. At a minimum, such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The permit modification will be processed in accordance with Part 124 procedures.

(e) Leaks that are less than rapid and extremely large.

(1) The owner or operator is required to prepare and submit to the Regional Administrator a response action plan for leaks that exceed the action leakage rate for the top liner but are less than rapid and extremely large. In order to satisfy this requirement, the owner or operator may either:

(i) Submit a response action plan with the permit application identifying actions to be taken when lower levels of leakage exceed the action leakage rate, or

(ii) Submit to the Regional Administrator a request for a permit modification in accordance with the Part 124 procedures to amend the response action plan within 90 days from the date that liquids first exceed the action leakage rate. The permit will be processed in accordance with Part 124 procedures.

(2) For leakage that exceeds the action leakage rate, the response action plan must, at a minimum, include the information set forth in paragraph (b) (1) to (5) of this section. The owner or operator must also include a detailed assessment describing the effectiveness and feasibility of each of the following responses for preventing hazardous constituent migration out of the unit in excess of health-based standards:

(i) The owner or operator terminates receipt of waste and closes the unit;

(ii) The owner or operator institutes operational changes at the unit that will reduce leakage between the liners to prevent hazardous constituent migration out of the unit;

(iii) The owner or operator provides expeditious repair of the leak(s);

(iv) The owner or operator continues to remove and treat the leakage with increased ground water monitoring activities; or

(v) The owner or operator maintains current operating procedures.

(3) The response action plan must recommend a specific response action for leakage above the action leakage rate for the unit and indicate why other response actions were not chosen. The response action plan may address a range of leakage with varying responses. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(f)(1) The Regional Administrator will review and approve the response action plan for leakage less than rapid and extremely large if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (f)(1) of this section, the Regional Administrator shall consider, but not be limited to, considering the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners or the actual type and amount if the action leakage rate is exceeded;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) The rate of leakage, if the response action plan is submitted after the action leakage rate is exceeded, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, accident, or minor leak);

(v) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review, review of design for deficiency, or review of the unit operating record concerning accidents that have occurred);

(vi) Design of the double liner system, including design features that provide further protection beyond those required under Section 264.221;

(vii) Future planned activities, including remaining active life time period, and closure and post-closure care activities; and

(viii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(g) If liquids leaking into the leak detection system specified under § 264.221(h) exceed the action leakage rate for the top liner, but are less than rapid and extremely large, the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the leakage exceeding the action leakage rate. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Implement the plan if it was previously submitted with the application pursuant to paragraph (e)(1)(i) of this section, or submit a permit modification pursuant to paragraph (e)(1)(ii) of this section.

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (f)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time. If the owner or operator determines that the leachate exceeds health-based standards he must implement any response action approved in the plan.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and annually thereafter. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (f)(2) above and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing to the extent technically

feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan, if the approved response action plan does not contain an alternative response, by modifying the permit in accordance with Part 124 procedures. The owner or operator must submit a permit modification to the Regional Administrator within 60 days. At a minimum, such modification must address information set forth in paragraph (b) of this section. The permit modification will be processed in accordance with Part 124 procedures.

(h) If the owner or operator determines that the top liner action leakage rate is being exceeded, he may demonstrate for leakage less than rapid and extremely large that the liquid resulted from an error in sampling, analysis, or evaluation, precipitation during construction, or a source other than leakage through the top liner. While the owner or operator may make a demonstration under this paragraph in addition to submitting an application under paragraph (e) of this section, he is not relieved of the requirement to submit a permit modification application or to implement the response unless the Regional Administrator approves the demonstration made by finding that the liquid resulted from a source other than a top liner leakage, and was attributed to precipitation during construction, or error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing as soon as practicable, that he intends to make a demonstration under this paragraph;

(2) Within 90 days of notifying the Regional Administrator under (g)(1) of this section, submit a report to the Regional Administrator that demonstrates that the liquid resulted from a source other than top liner leakage or that the apparent noncompliance with the standards resulted from precipitation during construction, or error in sampling, analysis, or evaluation. The Regional Administrator shall review the demonstration and notify the applicant as to whether or not such a determination is successful. The applicant has 45 days to comment on such a determination. The Regional Administrator shall respond to those comments and make a final decision on the applicant's demonstration.

(3) If the Regional Administrator approves the demonstration in paragraph (h)(2) of this section, then the owner or operator must submit an application for a permit modification to the Regional Administrator to make any appropriate changes to the response action plan for the unit within 90 days of the Regional Administrator's determination under paragraph (h)(2) of this section.

(i) Within 45 days of detecting a significant change in the leakage rate, the owner or operator must submit to the Regional Administrator a report on the leakage that includes the following information:

(1) An assessment of the problem causing the leak that includes a profile of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage;

(2) A description of any change in the response to be implemented as approved in the response action plan;

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

10. New § 264.223 is added to Subpart K to read as follows:

§ 264.223 Construction quality assurance.

Effective 12 months after promulgation of this rule, the owner or operator of each new surface impoundment unit or component constructed at a surface impoundment and listed under § 264.19(b) must conduct a construction quality assurance program in compliance with §§ 264.19 and 264.20.

11. Section 264.226 is amended by removing paragraph (a), redesignating paragraphs (b) and (c) as (a) and (b), respectively, and adding new paragraphs (c), (d), and (e) as follows:

§ 264.226 Monitoring and inspection.

* * * * *

(c) An owner or operator required to have a leak detection system under this subpart must:

(1) Monitor for and record on a daily basis the presence of liquids in the leak detection system removal sump during the active life (including the closure period) and at least weekly during the post-closure period (if applicable);

(2) Analyze the daily monitoring data during the active life under paragraph (c)(1) of this section on a weekly basis and the weekly monitoring data during the post-closure period under paragraph (c)(1) of this section on a quarterly basis to determine if the action leakage rate under paragraph (k) (1) or (2) of § 264.221 is exceeded under the conditions of paragraphs (c)(2) (i), (ii), or (iii) of this section:

(i) During the active life of the unit, the daily monitoring data averaged over one month exceed the action leakage rate or during the post-closure care period, the weekly monitoring data averaged over three months exceed the action leakage rate; or

(ii) During the active life, the daily rate for any one-day period during a week exceeds 50 gallons per acre per day or during the post-closure period, the weekly rate for any one-week period during a quarter exceeds 350 gallons per acre per week; or

(iii) In lieu of the requirements of paragraphs (c)(2) (i) and (ii) of this section, the Regional Administrator may specify in the permit an alternative method for determining if the action leakage rate under paragraph (k) (1) or (2) of § 264.221 is exceeded.

(3) Establish a monitoring and inspection program that will allow the determination of the following throughout the active life (including the closure period) and post-closure period:

(i) The rate of leakage into the leak detection system sump, and the removal rate;

(ii) The deterioration, malfunction, or improper operation of the leak detection system;

(iii) The effectiveness of additional controls implemented as part of a response action plan when the action leakage rate of the top liner is exceeded; and

(iv) The effectiveness of the bottom liner and leachate detection, collection, and removal system to control leakage below the action leakage rate.

(d) The owner or operator must record all inspection information required in paragraph (c) of this section in the inspection log required under § 264.15 of this part. The recorded information must be in sufficient detail to demonstrate that the leak detection permit requirements are being complied with.

(e) Specific inspection and monitoring requirements in addition to those described in paragraph (c) of this section may be required in the facility permit by the Regional Administrator as needed to assure detection of leaks at the earliest practicable time. Inspection and monitoring requirements contained in the facility permit will be based on preventing migration of liquids containing hazardous constituents out of the unit.

12. Section 264.228 is amended by adding a new paragraph (b)(4) to read as follows:

§ 264.228 Closure and post-closure care.

* * * * *

(b) * * *

(4) Maintain and monitor the leak detection system in accordance with §§ 264.221 (g) and (h), 264.226 (c), (d), and (e), and comply with all other applicable leak detection requirements of this subpart.

§ 264.251 [Amended]

13. Section 264.251 is amended by redesignating paragraphs (c), (d), (e), (f), and (g) as paragraphs (m), (n), (o), (p), and (q), respectively.

14. Section 264.251 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 264.251 Design and operating requirements.

(a) Any waste pile that is not covered by paragraph (c) of this section must have a liner system for all portions of the waste pile (except for existing portions of such waste pile). The liner system must have: * * *

* * * * *

15. Section 264.251 is amended by adding new paragraphs (c) through (k) to read as follows:

§ 264.251 Design and operating requirements.

* * * * *

(c) The owner or operator of each new waste pile, each new waste pile unit at an existing facility, each replacement of an existing waste pile unit, and each lateral expansion of a waste pile unit must install two or more liners and a leachate collection system above and between such liners. This requirement shall apply to the owner or operator of all such units, regardless of the date of permit issuance. This requirement also applies to the owner or operator of significant portions of waste piles on which waste has not been placed, effective 24 months after promulgation of this rule. The requirements of this paragraph apply with respect to all waste received after the issuance of the permit or modified permit. The liners and the leachate collection systems must protect human health and the environment. At a minimum, the liners and leachate collection systems must meet the following requirements:

(1) The liners must include:

(i) A top liner designed, operated, and constructed of materials to prevent the migration of any hazardous constituent into such liner during the active life and post-closure care period, and a bottom liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. The bottom liner must be constructed of at least a 3-foot-thick layer of compacted clay or other compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec; or

(ii) A top liner designed, operated, and constructed of materials to prevent the migration of any hazardous constituent into such liner during the active life and post-closure care period, and a bottom liner consisting of two components. The upper component of the bottom liner must be designed, operated, and constructed to prevent the migration of any hazardous constituent into this component during the active life and post-closure care period. The lower component of the bottom liner must be designed, operated, and constructed to minimize the migration of any hazardous constituent through the upper component if a breach in the upper component were to occur prior to the end of the post-closure care period. The lower component must be constructed of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(2) The liners must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon materials capable of providing support to the liners and resistance to pressure gradients above and below the liners to prevent failure of the liners due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(3) The leachate collection system immediately above the top liner must be designed, constructed, maintained, and operated to collect and remove leachate from the waste pile during the active life and post-closure care period. The Regional Administrator will specify design and operating conditions in the permit to ensure that the leachate depth over the top liner does not exceed 30 cm (1 foot).

(4) The leachate collection system between the liners must be designed, constructed, maintained, and operated to detect, collect, and remove liquids that leak through any area of the top liner during the active life and post-closure care period.

(5) The leachate collection systems must be:

(i) Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and any equipment used at the waste pile; and

(ii) Designed and operated to function without clogging during the active life and post-closure care period.

(d) Paragraph (c) of this section will not apply if the owner or operator demonstrates to the Regional Administrator, and the Regional Administrator finds for such waste pile, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(e) The double liner requirement set forth in paragraph (c) of this section may be waived by the Regional Administrator for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in § 261.24 of this chapter, and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this paragraph, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in § 144.3 of this chapter); and

(C) The monofill is in compliance with generally applicable ground water monitoring requirements for facilities with permits under RCRA section 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into ground

water or surface water at any future time.

(f) The owner or operator of any waste pile that is replaced later than 24 months after promulgation of this rule is exempt from the requirements of paragraphs (c) and (g) of this section provided:

(1) The existing waste pile unit received a final permit under this Part prior to November 8, 1984.

(2) The existing unit was constructed in compliance with the requirements of paragraphs (a) or (b) of this section and the liner or leachate collection system is not replaced; and

(3) There is no reason to believe that the liner or leachate collection system is not functioning as designed.

(g) The owner or operator of any unit for which construction commences after the date of promulgation of this rule must design, construct, operate, and maintain a leak detection system capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. Any liquid, waste, or waste constituent migrating into the leak detection system is assumed to originate from liquids leaking through the top liner of the unit unless the Regional Administrator finds, based on a demonstration by the owner or operator under § 264.252(h), that such liquid, waste, or waste constituent originated from another source.

(h) The leak detection system required under paragraph (g) of this section shall be part of the leachate collection system between the liners described under paragraphs (c)(4) and (c)(5) of this section. The leachate collection system between the liners shall, in addition to meeting the requirements of paragraphs (c)(4) and (c)(5) of this section, meet the following requirements for leak detection:

(1) The minimum bottom slope must be 2 percent, and drainage layer material must have the following hydraulic characteristics:

(i) For granular materials, a minimum hydraulic conductivity of 1 cm/sec and a minimum layer thickness of 12 inches; or

(ii) For synthetic drainage layer materials, a hydraulic transmissivity of 5 x 10^{-4} m^2/sec or greater.

(2) Be capable of detecting a top liner leak in the sump of no more than 1 gallon per acre per day (not including liquids absorbed by the leachate collection system), and, be capable of detecting leakage in the sump in excess of 1 gallon per acre per day within 1 day after the leak occurs (not including liquids absorbed by the leachate collection system or bottom liner);

(3) Collect and remove liquids rapidly to minimize the head on the bottom liner. The Regional Administrator will specify design and operating conditions in the permit to ensure that the liquid head on the bottom liner is minimized at all times; and

(4) Include a sump of appropriate size to efficiently collect liquids and prevent liquids from backing up into the drainage layer. Each unit must have its own sump. The design of the sump and removal system must provide a method for measuring and recording the liquid volume present in the sump and liquids removed. The leachate in the sump must be determined on a daily basis during the active life of the unit and at least weekly during the post-closure care period (if applicable).

(i) In lieu of the requirements of paragraph (h) of this section, the Regional Administrator may specify in the permit an alternative leak detection system if:

(1) The Regional Administrator finds that there is no potential for migration of any hazardous constituents from a unit to ground water or surface water during the active life and post-closure care period of the unit, or

(2) The unit complies with the requirements of paragraphs (d) or (e) of this section, or

(3) The owner or operator proposes an alternative leak detection system or technology that will meet the requirements under paragraph (g) of this section. In deciding whether to allow an alternative leak detection system or technology, the Regional Administrator will consider:

(i) The durability and effectiveness of the proposed system or technology;

(ii) The nature and quantity of the wastes; and

(iii) The ability of the system or technology to detect leaks and, in combination with response actions to be taken in compliance with § 264.252, prevent migration of hazardous constituents out of the unit during the active life and post-closure care period so that ground water and surface water are not contaminated.

(j) The owner or operator of any unit that is required by paragraph (g) of this section to have a leak detection system and that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(k) The owner or operator must establish a top liner action leakage rate during the design of the unit for leak detection systems under paragraph (h) of this section. The action leakage rate is determined by:

(1) Using a standard value of (EPA proposing to select a final value from the range 5–20 gallons/acre/day); or

(2) A review by the Regional Administrator of an owner or operator demonstration, and a finding by the Regional Administrator, that a site-specific top liner action leakage rate is appropriate for initiating review of the actual leakage rate to determine if a response action is necessary. The site-specific top liner action leakage rate demonstration must be based on allowing only very small isolated leakage through the top liner that does not affect the overall performance of the top liner. In deciding whether to grant a site-specific action leakage rate, the Regional Administrator will consider at least the following factors:

(i) The design, construction, and operation of the top liner and the leachate collection and removal system above the top liner;

(ii) The attenuative capacity and thickness of any soil component of the top liner; and

(iii) All other factors that would influence the potential for leachate to migrate through the top liner.

16. New § 264.252 is added to Subpart L to read as follows:

§ 264.252 Response actions.

(a) The owner or operator must include a response action plan in the permit application, or for units permitted prior to the effective date of today's rule, in a permit modification. This plan must set forth the actions to be taken immediately following a finding of rapid and extremely large volumes of leakage between the liners in accordance with the requirements under paragraph (b) of this section. A rapid and extremely large leak is the maximum design leakage rate that the leachate detection, collection, and removal system can remove under gravity flow conditions without the fluid head on the bottom liner exceeding 1 foot in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems. The owner or operator must use an adequate safety margin in determining the rapid and extremely large leak to allow for uncertainties in the design, construction, and operation of the leachate detection, collection, and removal system (e.g., the owner or operator must consider decreases in the flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.).

(b) The response action plan for rapid and extremely large volumes of leakage between the liner must, at a minimum, include the following information:

(1) A general description of the operation of the unit including the expected active life of the unit and whether or not at closure wastes will be decontaminated or removed from the unit or left in place;

(2) A description of the hazardous constituents contained in the unit;

(3) A description of the range of events that may potentially cause rapid and extremely large volumes of leakage into the space between the liners;

(4) A discussion of important factors that can affect leakage into the leachate collection and removal system between the liners (e.g., amount and frequency of precipitation, and amount of liquids in the unit);

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the unit (e.g., the condition of the liners and leachate collection system between the liners);

(6) A detailed assessment describing the effectiveness and feasibility of each of the following potential immediate interim responses for preventing hazardous constituent migration out of the unit by decreasing the volume of leakage into the leak detection system:

(i) The owner or operator limits or terminates receipt of waste;

(ii) The owner or operator provides expeditious repair of the leak(s); or

(iii) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large.

(7) The plan must also include the response the owner or operator will undertake after determining the concentration of hazardous constituents in the liquids in the sump of the leak detection system in accordance with the requirements under paragraph (c)(3) of this section.

(i) If any hazardous constituent concentrations in the leachate exceed health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for preventing hazardous constituent migration out of the unit:

(A) The owner or operator terminates receipt of waste and closes the unit;

(B) The owner or operator provides expeditious repair of the leak(s); or

(C) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large. If as a result of these operational changes the leakage is still above the action leakage rate, the owner or operator must comply with the requirements set forth in section (e) below: or

(ii) If all hazardous constituent concentrations in the leachate are below health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for minimizing the head on the bottom liner:

(A) The owner or operator provides expeditious repair of the leak(s); or

(B) The owner or operator institutes operational changes at the unit.

(8) The response action plan must address a range of rapid and extremely large volumes of leakage appropriate for the unit with correlating recommended responses and indicate why other response actions were not chosen. Each response presented must be based on a demonstration incorporating the factors set forth in paragraph (b) (1) through (7) of this section. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(c)(1) The Regional Administrator will review and approve the response action plan for rapid and extremely large leaks if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (c)(1) of this section, the Regional Administrator shall consider but not be limited to considering the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review, or review of design for deficiency);

(v) Design of the double liner system, including design features that provide further protection beyond those required under § 264.251;

(vi) Future planned activities, including remaining active life time period, and closure and post-closure care activities; and

(vii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(d) When there is a rapid and extremely large volume of leakage between the liners the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the rapid and extremely large leakage. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Immediately implement the response action plan; and

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (c)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and at other subsequent time periods as specified by the Regional Administrator. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (c)(2) of this section and any additional information required by the Regional Administrator. The

Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response, by modifying the permit in accordance with Part 124 procedures. The owner or operator must submit a permit modification to the Regional Administrator within 60 days. At a minimum, such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The permit modification will be processed in accordance with Part 124 procedures.

(e) *Leaks that are less than rapid and extremely large.* (1) The owner or operator is required to prepare and submit to the Regional Administrator a response action plan for leaks that exceed the action leakage rate for the top liner but are less than rapid and extremely large. In order to satisfy this requirement, the owner or operator may either:

(i) Submit a response action plan with the permit application identifying actions to be taken when lower levels of leakage exceed the action leakage rate; or

(ii) Submit to the Regional Administrator a request for a permit modification, in accordance with the Part 124 procedures, to amend the response action plan within 90 days from the date that liquids first exceed the action leakage rate. The permit modification will be processed in accordance with Part 124 procedures.

(2) For leakage that exceeds the action leakage, the response action plan must, at a minimum, include the information set forth in paragraph (b) (1) to (5) of this section. The owner or operator must also include a detailed assessment describing the effectiveness and feasibility of each of the following responses for preventing hazardous constituent migration out of the unit in excess of health-based standards.

(i) The owner or operator terminates receipt of waste and closes the unit;

(ii) The owner or operator institutes operational changes at the unit that will reduce leakage between the liners to prevent hazardous constituents migration out of the unit;

(iii) The owner or operator provides expeditious repair of the leak(s);

(iv) The owner or operator continues to remove and treat the leakage with increased ground water monitoring activities; or

(v) The owner or operator maintains current operating procedures.

(3) The response action plan must recommend a specific response action for leakage above the action leakage rate for the unit and indicate why other response actions were not chosen. The response action plan may address a range of leakage with varying responses. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(f)(1) The Regional Administrator will review and approve the response action plan for leakage less than rapid and extremely large if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (f)(1) of this section, the Regional Administrator shall consider but not be limited to considering the following factors

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners or the actual type and amount if the action leakage rate is exceeded;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) The rate of leakage, if the response action plan is submitted after the action leakage rate is exceeded, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, accident, or minor leak);

(v) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review, review of design for deficiency, or review of the unit operating record concerning accidents that have occurred);

(vi) Design of the double liner system, including design features that provide further protection beyond those required under § 264.251;

(vii) Future planned activities, including remaining active life time period, and closure and post-closure care activities; and

(viii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(g) If liquids leaking into the leak detection system specified under § 264.251(h) exceed the action leakage rate for the top liner, but are less than rapid and extremely large, the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the leakage exceeding the action leakage rate. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids,

(3) Implement the plan if it was previously submitted with the application pursuant to paragraph (e)(1)(i) of this section, or submit a permit modification pursuant to paragraph (e)(1)(ii) of this section.

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (f)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time. If the owner or operator determines that the leachate exceeds healthbased standards, he must implement any response action approved in the plan.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response

action as soon as practicable after the response has been in place for 60 days, and annually thereafter. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (f)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan, if the approved response action plan does not contain an alternative response by modifying the permit in accordance with Part 124 procedures. The owner or operator must submit a permit modification to the Regional Administrator within 60 days. At a minimum, such modification must address information set forth in paragraph (b) of this section. The permit modification will be processed in accordance with Part 124 procedures.

(h) If the owner or operator determines that the top liner action leakage rate is being exceeded, he may demonstrate for leakage less than rapid and extremely large that the liquid resulted from an error in sampling, analysis, or evaluation, precipitation during construction, or a source other than leakage through the top liner. While the owner or operator may make a demonstration under this paragraph in addition to submitting an application under paragraph (e) of this section, he is not relieved of the requirement to submit a permit modification application or to implement the response unless the Regional Administrator approves the demonstration made by finding that the liquid resulted from a source other than a top liner leakage, and was attributed to precipitation during construction, or error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing as soon as practicable, that he intends to make a demonstration under this paragraph;

(2) Within 90 days of notifying the Regional Administrator under (g)(1) of this section, submit a report to the Regional Administrator that demonstrates that the liquid resulted from a source other than top liner leakage or that the apparent noncompliance with the standards resulted from precipitation during construction, or error in sampling, analysis, or evaluation. The Regional Administrator shall review the demonstration and notify the applicant as to whether or not such a determination is successful. The applicant has 45 days to comment on such a determination. The Regional Administrator shall respond to those comments and make a final decision on the applicant's demonstration.

(3) If the Regional Administrator approves the demonstration in paragraph (h)(2) above, then the owner or operator must submit an application for a permit modification to the Regional Administrator to make any appropriate changes to the response action plan for the unit within 90 days of the Regional Administrator's determination under paragraph (h)(2) of this section.

(i) Within 45 days of detecting a significant change in the leakage rate, the owner or operator must submit to the Regional Administrator a report on the leakage that includes the following information:

(1) An assessment of the problem causing the leak that includes a profile of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage,

(2) A description of any change in the response to be implemented as approved in the response action plan;

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

17. New § 264.253 is added to Subpart L to read as follows:

§ 264.253 Construction quality assurance.

Effective 12 months after promulgation of this rule, the owner or operator of each new waste pile unit or component constructed at a waste pile and listed under § 264.19(b) must conduct a construction quality assurance program in compliance with §§ 264.19 and 264.20.

18. Section 264.254 is amended by removing paragraph (a), redesignating paragraph (b) as (a), and adding new paragraphs (b), (c), and (d) as follows:

§ 264.254 Monitoring and inspection.

* * * * *

(b) An owner or operator required to have a leak detection system under this subpart must:

(1) Monitor for and record on a daily basis the presence of liquids in the leak detection system removal sump during the active life (including the closure period);

(2) Analyze the daily monitoring data during the active life under paragraph (6)(1) of this section on a weekly basis to determine if the action leakage rate under paragraph (k) (1) or (2) of § 264.251 is exceeded under the conditions of paragraphs (b)(2) (i), (ii), or (iii) of this section:

(i) The daily monitoring data averaged over one month exceed the action leakage rate during the active life; or

(ii) The daily rate for any one-day period during a week exceeds 50 gallons per acre per day; or

(iii) In lieu of the requirements of paragraphs (b)(2) (i) and (ii) of this section, the Regional Administrator may specify in the permit an alternative method for determining if the action leakage rate under paragraph (k) (1) or (2) of § 264.251 is exceeded.

(3) Establish a monitoring and inspection program that will allow the determination of the following throughout the active life and the post-closure care period:

(i) The rate of leakage into the leak detection system sump, and the removal rate,

(ii) The deterioration, malfunction, or improper operation of the leak detection system;

(iii) The effectiveness of additional controls implemented as part of a response action plan when the action leakage rate of the top liner is exceeded; and

(iv) The effectiveness of the bottom liner and leachate detection, collection, and removal system to control leakage below the action leakage rate.

(c) The owner or operator must record all inspection information required in paragraph (b) of this section in the inspection log required under § 264.15 of this part. The recorded information must be in sufficient detail to demonstrate that the leak detection permit requirements are being complied with.

(d) Specific inspection and monitoring requirements in addition to those described in paragraph (b) of this section may be required in the facility

permit by the Regional Administrator as needed to assure detection of leaks at the earliest practicable time. Inspection and monitoring requirements contained in the facility permit will be based on preventing migration of liquids containing hazardous constituents out of the unit.

19. Section 264.278 is amended by revising paragraphs (a) introductory text, (b)(1), (b)(2), and the first sentence of paragraph (d) and adding new paragraphs (i), (j), and (k), to read as follows:

§ 264.278 Unsaturated zone monitoring.

* * * * *

(a) The owner or operator must monitor the soil and soil-pore liquid to determine at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period whether hazardous constituents migrate out of the treatment zone.

* * * * *

(b) * * *

(1) Represent, to at least a 95% confidence level, the quality of background soil-pore liquid quality and the chemical make-up of soil that has not been affected by leakage from the treatment zone; and

(2) Indicate, to at least a 95% confidence level, the quality of soil-pore liquid and the chemical make-up of the soil below the treatment zone.

* * * * *

(d) The owner or operator must conduct soil monitoring and soil-pore liquid monitoring immediately below the treatment zone and entirely above the seasonal high water table. * * *

* * * * *

(i) The owner or operator must include in the permit application a response action plan that sets forth the action to be taken immediately following a finding, pursuant to paragraph (f) of this section of widespread leakage of hazardous constituents from the treatment zone.

The response action plan for widespread leakage must, at a minimum, include the following information:

(1) A general description of the operation of the unit;

(2) A description of the hazardous constituents contained in the unit;

(3) An assessment of potential causes of widespread leakage of hazardous constituents from the treatment zone;

(4) A discussion of important factors that can affect leakage of hazardous constitutents from the treatment zone;

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the treatment zone;

(6) A detailed assessment describing the effectiveness and feasibility of the following responses that the owner or operator may implement for any potential widespread leakage out of the treatment zone:

(i) The owner or operator terminates application of waste and closes the unit; or

(ii) The owner or operator institutes operational changes at the unit that will minimize leakage out of the treatment zone so that the permit conditions are met.

(j) For widespread leakage out of the treatment zone the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days following measurement of widespread leakage. The notification must indicate preliminary identification of hazardous constituents that have been detected, and the extent of the area and depth below the treatment zone where constituents have migrated; and

(2) Immediately implement the response action plan.

(k)(1) The owner or operator of a land treatment unit that does not meet the requirements of paragraphs (a), (b)(1), (b)(2), (d), and (i) of this section on the date of promulgation of this rule must, by the effective date of this rule, submit to the Regional Administrator an application for a permit modification to ensure compliance with those paragraphs.

(2) The Regional Administrator will specify in the permit all monitoring, inspection, maintenance, reporting, response, and recordkeeping activities that are necessary to ensure compliance with paragraphs (a), (b)(1), (b)(2), (d), and (i) of this section.

20. New § 264.284 is added to Subpart M to read as follows:

§ 264.284 Inspection.

(a) The owner or operator must establish an inspection program that will allow the determination of the following during the active life and post-closure care period:

(1) The deterioration, malfunction, or improper operation of unsaturated zone monitoring equipment required under § 264.278; and

(2) The effectiveness of additional controls implemented as part of any response action when hazardous constituents that migrate beyond the treatment zone statistically exceed background levels.

(b) The owner or operator must record all inspection information required in paragraph (a) of this section in the inspection log required under § 264.15 of this part. The recorded information must be in sufficient detail to demonstrate that the unsaturated zone monitoring permit requirements are being complied with.

(c) Specific inspection and monitoring requirements in addition to those described in paragraph (a) of this section and § 264.278 may be required in the facility permit by the Regional Administrator as needed to assure detection of the migration of hazardous constituents out of the treatment zone at the earliest practicable time. Inspection and monitoring requirements contained in the facility permit will be based on preventing migration of hazardous constituents, so that ground water and surface water will not be contaminated.

21. Section 264.301 is amended by redesignating paragraphs (f), (g), (h), (i), and (j) as paragraphs (m), (n), (o), (p), and (q), respectively and by revising paragraph (k) and the introductory text of paragraph (c) and adding new paragraphs (f) through (j) and (l), to read as follows:

§ 264.301 Design and operating requirements.

* * * * *

(c) The owner or operator of each new landfill, each new landfill unit at an existing facility, each replacement of an existing landfill unit, and each lateral expansion of a landfill unit must install two or more liners and a leachate collection system above and between such liners. This requirement shall apply to the owner or operator of all such units, regardless of the date of permit issuance. This requirement also applies to the owner or operator of significant portions of landfill units on which waste has not been placed, effective 24 months after promulgation of this rule. The requirements of this paragraph apply with respect to all waste received after the issuance of the permit or modified permit. The liners and the leachate collection systems must protect human health and the environment. At a minimum, the liners and leachate collection systems must meet the following requirements:

* * * * *

(f) The owner or operator of any landfill unit that is replaced later than 24 months after promulgation of this rule is exempt from the requirements of paragraphs (c) and (g) of this section provided:

(1) The existing landfill unit received a final permit under this Part prior to November 8, 1984;

(2) The existing unit was constructed in compliance with the requirements of paragraphs (a) or (b) of this section and

the liner or leachate collection system is not replaced; and

(3) There is no reason to believe that the liner or leachate collection system is not functioning as designed.

(g) The owner or operator of any unit for which construction commences after the date of promulgation of this rule must design, construct, operate, and maintain a leak detection system capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. Any liquid, waste, or waste constituent migrating into the leak detection system is assumed to originate from liquids leaking through the top liner of the unit unless the Regional Administrator finds, based on a demonstration by the owner or operator under § 264.302(h), that such liquid, waste, or waste constituent originated from another source.

(h) The leak detection system required under paragraph (g) of this section shall be part of the leachate collection system between the liners described under paragraphs (c)(4) and (c)(5) of this section. The leachate collection system between the liners shall, in addition to meeting the requirements of paragraphs (c)(4) and (c)(5) of this section, meet the following requirements for leak detection:

(1) The minimum bottom slope must be 2 percent, and drainage layer material must have the following hydraulic characteristics:

(i) For granular materials, a minimum hydraulic conductivity of 1 cm/sec and a minimum layer thickness of 12 inches; or

(ii) For synthetic drainage layer materials, a hydraulic transmissivity of 5 x 10^{-4} m^2/sec or greater.

(2) Be capable of detecting a top liner leak in the sump of no more than 1 gallon per acre per day (not including liquids absorbed by the leachate collection system); and, be capable of detecting leakage in the sump in excess of 1 gallon per acre per day within 1 day after the leak occurs (not including liquids absorbed by the leachate collection system or bottom liner);

(3) Collect and remove liquids rapidly to minimize the head on the bottom liner. The Regional Administrator will specify design and operating conditions in the permit to ensure that the liquid head on the bottom liner is minimized at all times; and

(4) Include a sump of appropriate size to efficiently collect liquids and prevent liquids from backing up into the drainage layer. Each unit must have its own sump. The design of the sump and removal system must provide a method for measuring and recording the liquid volume present in the sump and liquids removed. The leachate in the sump must be determined on a daily basis during the active life of the unit at least weekly during the post-closure care period (if applicable).

(i) In lieu of the requirements of paragraph (h) of this section, the Regional Administrator may specify in the permit an alternative approved leak detection system if:

(1) The Regional Administrator finds that there is no potential for migration of hazardous contituents from a unit to ground water or surface water during the active life and post-closure care period of the unit; or

(2) The unit complies with the requirements of paragraphs (d) or (e) of this section; or

(3) The owner or operator proposes an alternative leak detection system or technology that will meet the requirements under paragraph (g) of this section. In deciding whether to allow an alternative leak detection system or technology, the Regional Administrator will consider:

(i) The durability and effectiveness of the proposed system or technology;

(ii) The nature and quantity of the wastes; and

(iii) The ability of the system or technology to detect leaks and, in combination with response actions to be taken in compliance with § 264.302, prevent migration of hazardous constituents out of the unit during the active life and post-closure care period so that ground water and surface water are not contaminated.

(j) The owner or operator of any unit that is required by paragraph (g) of this section to have a leak detection system and that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(k) The owner or operator must establish a top liner action leakage rate during the design of the unit for leak detection systems under paragraph (h) of this section. The action leakage rate is determined by:

(1) Using a standard value of (EPA is proposing to select a final value from the range 5–20 gallons/acre/day); or

(2) A review by the Regional Administrator of an owner or operator demonstration, and a finding by the Regional Administrator, that a site-specific top liner maximum leakage rate is appropriate for initiating review of the actual leakage rate to determine if a response action is necessary. The site-specific top liner maximum leakage rate demonstration must be based on allowing only very small isolated leakage through the top liner that does not affect the overall performance of the top liner. In deciding whether to grant a site-specific maximum leakage rate, the Regional Administrator will consider at least the following factors:

(i) The design, construction, and operation of the top liner and the leachate collection and removal system above the top liner;

(ii) The attenuative capacity and thickness of any soil component of the top liner; and

(iii) All other factors that would influence the potential for leachate to migrate through the top liner.

(l) The owner or operator of a landfill unit that is required to comply with § 264.301(c) and commenced construction on or before the effective date of this rule is required to have a leak detection program.

(1) Within one year of the effective date of this rule, the owner or operator must submit to the Regional Administrator an application for a permit modification to establish a leak detection program for the leachate collection system between the liners. The proposed leak detection program must include operation and maintenance of the system in a manner consistent with the requirements under paragraphs (g) and (h) of this section, considering the site-specific capabilities of the constructed unit to prevent migration of hazardous constituents out of the unit.

(2) The Regional Administrator will specify in the permit all monitoring, inspection, maintenance, reporting, response, and recordkeeping activities that are necessary to ensure that the leak detection program provides similar protection of ground and surface water to that provided by leak detection systems required under paragraphs (g) through (k) of this section and §§ 264.302 and 264.303, considering the capabilities of the constructed liners and the leachate collection system between the liners.

23. New § 264.302 is added to Subpart N to read as follows:

§ 264.302 Response actions.

(a) The owner or operator must include a response action plan in the permit application, or for units permitted prior to the effective date of today's rule, in a permit modification. This plan must set forth the actions to be taken immediately following a finding of rapid and extremely large volumes of leakage between the liners in accordance with the requirements under paragraph (b) of this section. A rapid and extremely large

leak is the maximum design leakage rate that the leachate detection, collection, and removal system can remove under gravity flow conditions without the fluid head on the bottom liner exceeding 1 foot in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems. The owner or operator must use an adequate safety margin in determining the rapid and extremely large leak to allow for uncertainties in the design, construction, and operation of the leachate detection, collection, and removal system (e.g., the owner or operator must consider decreases in the flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.).

(b) The response action plan for rapid and extremely large volumes of leakage between the liner must, at a minimum, include the following information:

(1) A general description of the operation of the unit including the expected active life of the unit and whether or not at closure wastes will be decontaminated or removed from the unit or left in place;

(2) A description of the hazardous constituents contained in the unit;

(3) A description of the range of events that may potentially cause rapid and extremely large volumes of leakage into the space between the liners;

(4) A discussion of important factors that can affect leakage into the leachate collection and removal system between the liners (e.g., amount and frequency of precipitation, and amount of liquids in the unit),

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the unit (e.g., the condition of the liners and leachate collection system between the liners);

(6) A detailed assessment describing the effectiveness and feasibility of each of the following potential immediate interim responses for preventing hazardous constituent migration out of the unit by decreasing the volume of leakage into the leak detection system:

(i) The owner or operator limits or terminates receipt of waste;

(ii) The owner or operator provides expeditious repair of the leak(s); or

(iii) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large.

(7) The plan must also include the response the owner or operator will undertake after determining the concentration of hazardous constituents in the liquids in the sump of the leak detection system in accordance with the requirements under paragraph (c)(3) of this section.

(i) If any hazardous constituent concentrations in the leachate exceed health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for preventing hazardous constituent migration out of the unit

(A) The owner or operator terminates receipt of waste and closes the unit;

(B) The owner or operator provides expeditious repair of the leak(s); or

(C) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large. If as a result of these operational changes the leakage is still above the action leakage rate, the owner or operator must comply with the requirements set forth in paragraph (e) of this section; or

(ii) If all hazardous constituent concentrations in the leachate are below health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for minimizing the head on the bottom liner:

(A) The owner or operator provides expeditious repair of the leak(s); or

(B) The owner or operator institutes operational changes at the unit.

(8) The response action plan must address a range of rapid and extremely large volumes of leakage appropriate for the unit with correlating recommended responses and indicate why other response actions were not chosen. Each response presented must be based on a demonstration incorporating the factors set forth in paragraph (b) (1) through (7) of this section. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(c)(1) The Regional Administrator will review and approve the response action plan for rapid and extremely large leaks if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (c)(1) of this section, the Regional Administrator shall consider, but not be limited to considering the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review or review of design for deficiency);

(v) Design of the double liner system, including design features that provide further protection beyond those required under § 264.301;

(vi) Future planned activities, including remaining active life period, and closure and post-closure care activities, and

(vii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(d) When there is a rapid and extremely large volume of leakage between the liners the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the rapid and extremely large leakage. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Immediately implement the response action plan; and

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (c)(3) of this section. The owner or operator must provide this information to the Regional

Administrator at the earliest practicable time.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and at other subsequent time periods as specified by the Regional Administrator. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (c)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response by modifying the permit in accordance with Part 124 procedures. The owner or operator must submit a permit modification to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, or an accident). The permit modification will be processed in accordance with Part 124 procedures.

(e) *Leaks that are less than rapid and extremely large.* (1) The owner or operator is required to prepare and submit to the Regional Administrator a response action plan for leaks that exceed the action leakage rate for the top liner but are less than rapid and extremely large. In order to satisfy this requirement, the owner or operator may either:

(i) Submit a response action plan with the permit application identifying actions to be taken when lower levels of leakage exceed the action leakage rate; or

(ii) Submit to the Regional Administrator a request for a permit modification, in accordance with the Part 124 procedures, to amend the response action plan within 90 days from the date that liquids first exceed the action leakage rate. The permit modification will be processed in accordance with Part 124 procedures.

(2) For leakage that exceeds the action leakage rate, the response action plan must, at a minimum, include the information set forth in paragraph (b) (1) to (5) of this section. The owner or operator must also include a detailed assessment describing the effectiveness and feasibility of each of the following responses for preventing hazardous constituent migration out of the unit in excess of health-based standards:

(i) The owner or operator terminates receipt of waste and closes the unit;

(ii) The owner or operator institutes operational changes at the unit that will reduce leakage between the liners to prevent hazardous constituents migration out of the unit;

(iii) The owner or operator provides expeditious repair of the leak(s);

(iv) The owner or operator continues to remove and treat the leakage with increased ground water monitoring activities; or

(v) The owner or operator maintains current operating procedures.

(3) The response action plan must recommend a specific response action for leakage above the action leakage rate for the unit and indicate why other responses action were not chosen. The response action plan may address a range of leakage with varying responses. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(f)(1) The Regional Administrator will review and approve the response action plan for leakage less than rapid and extremely large if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (f)(1) of this section, the Regional Administrator shall consider, but not be limited to considering the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners or the actual type and amount if the action leakage rate is exceeded;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) The rate of leakage, if the response action plan is submitted after the action leakage rate is exceeded, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, accident, or minor leak);

(v) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review, review of design for deficiency, or review of the unit operating record concerning accidents that have occurred);

(vi) Design of the double liner system, including design features that provide further protection beyond those required under § 264.221;

(vii) Future planned activities, including remaining active life time period, and closure and post-closure care activities;

(viii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentrations. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(g) If liquids leaking into the leak detection system specified under § 264.301(h) exceed the action leakage rate for the top liner, but are less than rapid and extremely large, the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the leakage exceeding the action leakage rate. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids; and

(3) Implement the plan if it was previously submitted with the application pursuant to paragraph (e)(1)(i) of this section, or submit a permit modification pursuant to paragraph (e)(1)(ii) of this section.

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (f)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time. If the owner or operator determines that the leachate exceeds health-based standards he must implement any response action approved in the plan.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and annually thereafter. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (f)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan, if the approved response action plan does not contain an alternative response, by modifying the permit in accordance with Part 124 procedures. The owner or operator must submit a permit modification to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section. The permit modification will be processed in accordance with Part 124 procedures.

(h) If the owner or operator determines that the top liner action leakage rate is being exceeded, he may demonstrate for leakage less than rapid and extremely large that the liquid resulted from an error in sampling, analysis, or evaluation, precipitation during construction, or a source other than leakage through the top liner. While the owner or operator may make a demonstration under this paragraph in addition to submitting an application under paragraph (e) of this section, he is not relieved of the requirement to submit a permit modification application or to implement the response unless the Regional Administrator approves the demonstration made by finding that the liquid resulted from a source other than a top liner leakage, and was attributed to precipitation during construction, or error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing as soon as practicable, that he intends to make a demonstration under this paragraph;

(2) Within 90 days of notifying the Regional Administrator under (g)(1) of this section, submit a report to the Regional Administrator that demonstrates that the liquid resulted from a source other than top liner leakage or that the apparent noncompliance with the standards resulted from precipitation during construction, or error in sampling, analysis, or evaluation.

The Regional Administrator shall review the demonstration and notify the applicant as to whether or not such a determination is successful. The applicant has 45 days to comment on such a determination. The Regional Administrator shall respond to those comments and make a final decision on the applicant's demonstration.

(3) If the Regional Administrator approves the demonstration in paragraph (h)(2) of this section, then the owner or operator must submit an application for a permit modification to the Regional Administrator to make any appropriate changes to the response action plan for the unit within 90 days of the Regional Administrator's determination under paragraph (h)(2) of this section.

(i) Within 45 days of detecting a significant change in the leakage rate, the owner or operator must submit to the Regional Administrator a report on the leakage that includes the following information:

(1) An assessment of the problem causing the leak that includes a profile of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage;

(2) A description of any change in the response to be implemented as approved in the response action plan;

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

24. Section 264.303 is amended by removing paragraph (a), redesignating paragraph (b) as (a) and adding new paragraphs (b), (c), and (d) as follows:

§ 264.303 Monitoring and inspection.

* * * * *

(b) An owner or operator required to have a leak detection system under this subpart must:

(1) Monitor for and record on a daily basis the presence of liquids in the leak detection system removal sump during the active life (including the closure period) and at least weekly during the post-closure period;

(2) Analyze the daily monitoring data during the active life under paragraph (b)(1) of this section on a weekly basis and the weekly monitoring data during the post-closure period under paragraph (b)(1) of this section on a quarterly basis to determine if the action leakage rate under paragraph (k) (1) or (2) of § 264.301 is exceeded under the conditions of paragraphs (b)(2) (i), (ii), or (iii) of this section:

(i) The daily monitoring data averaged over one month exceeds the action leakage rate during the active life or the weekly monitoring data averaged over three months exceeds the action leakage rate during the post-closure period; or

(ii) The daily rate for any one-day period during a week exceeds 50 gallons per acre per day during the active life or the weekly rate for any one-week period during a quarter exceeds 350 gallons per acre per week during the post-closure period; or

(iii) In lieu of the requirements of paragraphs (b)(2) (i) and (ii) of this section, the Regional Administrator may specify in the permit an alternative method for determining if the action leakage rate under paragraph (k) (1) or (2) of § 264.301 is exceeded.

(3) Establish a monitoring and inspection program that will allow the determination of the following throughout the active life and post-closure care period:

(i) The rate of leakage into the leak detection system sump, and the removal rate;

(ii) The deterioration, malfunction, or improper operation of the leak detection system;

(iii) The effectiveness of additional controls implemented as part of a response action plan when the maximum leakage rate of the top liner is exceeded; and

(iv) The effectiveness of the bottom liner and leachate detection, collection, and removal system to control leakage below the action leakage rate.

(c) The owner or operator must record all inspection information required in paragraph (b) of this section in the inspection log required under § 264.15 of this part. The recorded information must be in sufficient detail to demonstrate that the leak detection permit requirements are being complied with.

(d) Specific inspection and monitoring requirements in addition to those described in paragraph (b) of this section may be required in the facility permit by the Regional Administrator as needed to assure detection of leaks at the earliest practicable time. Inspection and monitoring requirements contained in the facility permit will be based on preventing migration of liquids containing hazardous constituents out of the unit.

25. New § 264.304 is added to read Subpart N to as follows:

§ 264.304 Construction quality assurance.

Effective 12 months after promulgation of this rule, the owner or operator of each new landfill unit or component constructed at a landfill and listed under § 264.19(b) must conduct a construction quality assurance program in compliance with §§ 264.19 and 264.20.

26. Section 264.310 is amended by adding a new paragraph (b)(6) to read as follows:

§ 264.310 Closure and post-closure care.

* * * * *

(b) * * *

(6) Maintain and monitor the leak detection system in accordance with §§ 264.301 (g) and (h), 264.303 (b), (c), and (d), and comply with all other applicable leak detection requirements of this subpart.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, and 3015, 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).

2. Section 265.15 is amended by revising paragraphs (b)(1) and (b)(4) to read as follows:

§ 265.15 General inspection requirements.

* * * * *

(b)(1) The owner or operator must develop and follow a written schedule for inspecting all monitoring and leak detection equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

* * * * *

(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, 265.194, 265.226, 265.260, 265.278, 265.303, 265.347, 265.377, and 265.403.

* * * * *

3. Subpart B is amended by adding §§ 265.19 and 265.20.

§ 265.19 Construction quality assurance program: Objective.

(a) A construction quality assurance program is required for all landfills, surface impoundments, and waste piles to ensure, to a reasonable degree of certainty, that a completed unit or portion of a unit meets or exceeds all design criteria, plans, and specifications. Land treatment units must have a construction quality assurance program to ensure, to a reasonable degree of certainty, that a completed unit or portion of a unit meets or exceeds all design criteria, plans, and specifications for construction of a cover over the closed portion of the unit, where applicable under § 265.280.

(b) The construction quality assurance program must cover the following physical components of a landfill, surface impoundment, or waste pile, where applicable:

(1) Foundation;

(2) Dikes;

(3) Low-permeability soil liners;

(4) Flexible membrane liners;

(5) Leachate collection systems (includes leak detection systems); and

(6) Final cover system.

(c) 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, 265.194, 265.226, 265.260, 265.278, 265.303, 265.347, 265.377, and 265.403, where applicable.

§ 265.20 Construction quality assurance program; Elements of the program.

(a) The owner or operator of a landfill, surface impoundment, waste pile, or land treatment unit, which is a new unit or replacement of an existing unit and for which construction commences later than 12 months after promulgation of this rule, must have a written construction quality assurance plan. The owner or operator of an existing unit for which construction commences on a portion of the unit later than 12 months after promulgation of this rule must also have a written construction quality assurance plan for any component of that portion listed under § 265.19(b). The construction quality assurance plan must be developed, implemented, and documented under the direction of a construction quality assurance officer responsible for all aspects of the construction quality assurance program. The construction quality assurance officer must be a registered professional engineer. The owner or operator must submit his construction quality assurance plan to the Regional Administrator for approval prior to starting construction. The Regional Administrator may determine within 30 days of receipt of the plan that the plan does not need to be reviewed for approval. If the Regional Administrator makes such a finding, he must notify the owner or operator in writing. The Regional Administrator, as part of his review of the plan, will provide the public, through a notice in local newspapers, the opportunity to submit written comments on the construction quality assurance plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the construction quality assurance plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the

hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the construction quality assurance plan. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new construction quality assurance plan for approval. The Regional Administrator will approve or modify this plan in writing within 60 days following the close of the public comment period or public hearing, whichever is later. If the Regional Administrator modifies the plan, this modified plan becomes the approved construction quality assurance plan. Approval by the Regional Administrator will assure that the approved construction quality assurance plan is consistent with §§ 265.19, 265.20, and the applicable requirements of Subparts K, L, M, and N of this part. A copy of this modified plan must be mailed to the owner or operator. The Regional Administrator may allow phasing of the construction quality assurance plan to be submitted and approved in phases based on a demonstration by the owner or operator that detailed construction specifications are not practicable at the time that the plan is initially submitted, due to the planned phased construction of the unit over an extended time period. If the Regional Administrator allows for phasing the submission of the construction quality assurance plan, he will review and approve a phased time schedule. A copy of the approved plan and all revisions to the plan must be kept by the owner or operator as part of the operating record required under § 265.73 until closure, and must be available for inspection by the Regional Administrator until the post-closure care period is completed and certified in accordance with § 265.117. The plan must identify steps necessary to monitor and document the quality of materials used and the condition and manner of their placement. The specific content of the construction quality assurance plan will depend on site-specific factors. The construction quality assurance plan must include at least the following elements:

(1) General description of the units—Plans for the design, construction, operation, and closure of the unit(s) must be discussed. The description must identify the construction stages for the components at the unit(s);

(2) Responsibility and authority—A detailed description of the responsibility and authority of all organizations and key personnel positions involved in the development, implementation, and documentation of the construction quality assurance program must be provided. The description must assure that the objective of the construction quality assurance program identified in § 265.19(a) will be met;

(3) Construction quality assurance personnel qualifications—The qualifications of the construction quality assurance officer and supporting inspection personnel must be described in the construction quality assurance plan. The position descriptions must demonstrate that the personnel will possess the training and experience necessary to fulfill their identified responsibilities;

(4) Inspection and sampling activities—The observations and tests that will be used to ensure that the materials and the constructed components meet the design specifications must be described. The description of the inspection and testing activities must be sufficiently detailed to allow for review of both the conceptual approach and the specifics of the activities. The following areas must be included:

(i) Sampling and inspection activities for all constructed components;

(ii) Sample size and sample locations;

(iii) Frequency of testing;

(iv) Data evaluation procedures;

(v) Acceptance and rejection criteria; and

(vi) Plans for implementing corrective measures as addressed in the project specifications.

(5) Documentation of construction quality assurance activities—At the time of submittal of the construction quality assurance plan, a report outline is required that describes how the results of the construction quality assurance program activities for each constructed component will be documented.

(b) The owner or operator must describe in detail in the construction quality assurance plan how the components and materials used for their construction on-site will be inspected before, during, and after construction to comply with the following:

(1) For construction of foundations, the construction quality assurance program must:

(i) Ensure structurally stable subgrades for the overlying facility components as specified in the design specifications;

(ii) Ensure necessary strength, as specified in the design specifications, for resistance to settlement, compression, and uplift resulting from internal or external pressure gradients; and

(iii) Provide descriptions of the following inspection activities:

(A) Measurements of the depth and slope of the excavation to ensure that it meets design requirements;

(B) Observations to ensure proper placement of any recessed areas for pipes and other materials used for leak detection, leachate collection, and removal;

(C) Tests and observations to ensure that all characteristics of compacted soil meet the design specifications; and

(D) Observations of stripping and excavation to ensure that all soft, organic, and otherwise undesirable materials are removed.

(2) For dikes, the construction quality assurance program must:

(i) Ensure structural strength, as specified in the design;

(ii) Ensure stable support for the overlying facility components as specified in the design; and

(iii) Provide descriptions of the following inspection activities:

(A) Verification of material quality;

(B) Construction and use of a test fill to verify the specified density/moisture content/compactive effort/strength relationship for field conditions and construction equipment as needed to support the design specifications when field data on this relationship are not available;

(C) Measurement of loose lift thickness;

(D) Observation of clod size reduction and material homogenization operations, if applicable;

(E) Observation of type of compaction equipment, number of passes, and uniformity of compaction coverage;

(F) Testing of the compacted fill density; and

(G) Observation of proper placement of the vegetation layer on the dike surface.

(3) For low-permeability compacted soil liners, the construction quality assurance program must;

(i) Ensure inspection for imperfections including deleterious material, off-specification material, cracks, channels, structural and hydraulic non-uniformities, and any other conditions that may cause an increase in the permeability of the liner;

(ii) Ensure the installed material is the same as was evaluated for chemical resistance in accordance with §§ 265.221 (a)(2)(i), 265.251(b)(2)(i), or 265.301(a)(2)(i), and any other material specifications;

(iii) Ensure that the liner has an installed permeability that meets the requirements of Subparts K, L, and N of this Part.

(A) A test fill must be constructed to verify that the constructed liner complies with requirements for field permeability. The test fill compaction and testing must be well documented, and soil materials, procedures, and equipment used in the test fill construction and testing must be the same as those used during construction of the full-scale unit. The owner or operator must describe observations and tests to be used on the test fill, including a description of the testing sample arrays and replications to be conducted. The Regional Administrator will review for completeness the owner or operator's plan for the design and evaluation of the test fill to ensure that the evaluation conditions will accurately represent the performance of the full scale unit.

(B) Based on the parameters evaluated and data collected from the test fill, the owner or operator must justify that the tests applied to the full-scale facility liner serve as surrogates for actual field permeability tests. The surrogate tests are a group of tests that do not actually measure field permeability but whose results, when considered together, can be used to estimate field permeability and, hence, can be used to assure the proper permeability of the installed liner in all areas.

(C) The Regional Administrator may approve an alternative approach to test fill construction and testing for demonstrating that the low-permeability soil liner meets the installed permeability requirement of the unit as required; and

(iv) Provide descriptions of the following inspection activities:

(A) Observation of the removal of roots, rocks, rubbish, or off-specification soil from the liner material;

(B) Identification of variations in soil characteristics that require a change in construction specifications;

(C) Observation of the spreading of liner material to obtain complete coverage and the specified loose lift thickness;

(D) Observation of the reduction of clod size to meet liner material specifications;

(E) Observation of the spreading and incorporation of soil amendments (if specified) to obtain uniform distribution of the specified amount in the liner material;

(F) Observation of the spreading and incorporation of water to obtain full penetration through clods and uniform distribution of the specified moisture content;

(G) Observation of the use of procedures, as specified in the construction quality assurance plan, to adjust the soil moisture content in the event of a significant period of prolonged rain during construction;

(H) Observing and testing to ensure that significant water loss before and after compaction is prevented; and

(I) Observing and testing the soil liner compaction process to ensure that the compacted effort specifications are met.

(4) For flexible membrane liners, the construction quality assurance program must:

(i) Ensure tight seams and specified structural strength of the seams and joints, and the absence of tears, punctures, or other breaches. The field seams must be visually checked throughout their length and width and must also be destructively tested on a spot basis. The design engineer or the construction quality assurance officer will develop the inspection and testing approach for destructive seam testing to ensure that the design specifications are met;

(ii) Ensure that the liner polymer material properties are the same as were evaluated for chemical resistance in accordance with §§ 265.221(a)(2)(i), 265.254(b)(2)(i), or 265.301(a)(2)(i), and any other material specifications;

(iii) Include certification that adequate quality control was practiced during manufacture of the constructed flexible membrane liner at the fabrication plant; and

(iv) Provide descriptions of the following inspection activities:

(A) Inspection of liner material after it is received at the facility and before installation to confirm that it is the material specified in the design and is not damaged;

(B) Inspection of the liner material after storage at the facility to ensure that it is not damaged;

(C) Testing and observation of placement of the lower bedding layer to ensure that design requirements are met;

(D) Observation of placement of the flexible membrane liner to ensure that design requirements are met;

(E) Observation of any damage to the liner that may occur as a result of adverse weather conditions, inadequate temporary anchoring, or rough handling;

(F) Observation of the overlapping of flexible membrane liner sheets to ensure that off-specification seams do not result; and

(G) Observation and testing of seams to ensure proper seaming and conformance to the seam strength specified in the design.

(5) For leachate collection systems (above and between the liners, where required) the construction quality assurance program must:

(i) Ensure that material properties comply with the design criteria, plans, and specifications;

(ii) Ensure the materials are the same as were evaluated for chemical resistance in accordance with §§ 265.221(a)(3)(i), 265.254(b)(5)(i), or 265.301(a)(5)(i);

(iii) Provide descriptions of the following inspection activities:

(A) Observations and measurements to ensure that the pipes are placed at locations and in configurations specified in the design;

(B) Observations and tests to ensure that pipe grades are as specified in the design;

(C) Observations and tests to ensure that all pipes are joined together as specified in the design;

(D) Observations to ensure that the placement of any filter materials around the pipe meet the specifications in the design;

(E) Observations and tests to ensure that backfilling and compaction are completed as specified in the design and that, in the process, the pipe network is not damaged;

(F) Observations and tests to ensure that the drainage layer material is of the particle size as specified in the design and free from excessive amounts of fines or organic materials;

(G) Observations and tests to ensure that the thickness and coverage of the drainage layer complies with the design specifications;

(H) Survey of the drainage layer to ensure that specified grades are obtained as specified in the design;

(I) Observation of construction procedures to prevent the transport of fines by runoff into the leachate collection system;

(J) Observations to ensure that all synthetic drainage layer or geotextile materials are placed according to the placement plan;

(K) Measurements to ensure that the overlap of all synthetic drainage layer or geotextile material as specified in the design is achieved;

(L) Observations to ensure that the synthetic drainage layer or geotextile materials are free from excessive wrinkles and folds;

(M) Observations to ensure that weather conditions are appropriate for placement of the synthetic drainage layer or geotextile materials and that exposure to rain, wind, and direct sunlight during and after installation is

in compliance with the manufacturer's recommendations;

(N) Inspection of filter layer placement to ensure that the design specifications, including material specifications, placement procedures, and thickness are met; and

(O) Inspection and testing of the sump, leachate removal and detection equipment, and any other associated equipment or structures to ensure that the design specifications, including material and equipment specifications, coating specifications, and mechanical and electrical equipment installation specifications, are met.

(6) For final cover, the construction quality assurance program must:

(i) Ensure all layers of the cover are inspected for uniformity, imperfections, and damage;

(ii) Ensure that the materials for each layer are as specified in the design material specifications;

(iii) Ensure each layer of the final cover is installed or constructed to meet the requirements specified in the design; and

(iv) Provide descriptions of the following inspection activities. Some of these activities may not be appropriate for all land treatment unit covers; inspection activities for land treatment unit covers must also be based on the requirements of § 265.280.

(A) Procedures and methods consistent with those under § 265.20(b)(3) for observing and testing the installation of any low-permeability compacted soil layer to ensure that the design specifications are met;

(B) Procedures and methods consistent with those under § 265.20(b)(4) for observing and testing the installation of any flexible membrane layer to ensure that the design specifications are met; and

(C) Procedures and methods for observing and testing other layers of the final cover (e.g., drainage, and vegetative layer) to ensure that the design specifications are met. These activities must include inspection of the completed cover slope, vegetation, and drainage conduits to ensure that they meet the specified design.

(c) The owner or operator will be exempted from any part of the requirements of paragraph (b) of this section if the Regional Administrator finds, based on a demonstration by the owner or operator, that alternative inspection practices, observations, or tests will ensure that the completed component meets or exceeds all design criteria, plans, and specifications.

(d) The owner or operator may request that the Regional Administrator amend his construction quality assurance plan at any time before and during the active life of the facility.

(1) The CQA officer may make changes to the approved CQA plan under § 265.20(a) without seeking and receiving prior approval from the Regional Administrator. Changes that do not require Regional Administrator approval are limited to instances where the CQA officer certifies that the revised CQA plan will provide equivalent or better certainty that the constructed component meets the design-specifications. Within seven days of modifying the CQA plan approved under § 265.20(a), the owner or operator must amend the operating record to include the revised CQA plan and certification.

(2) Changes other than those specified in paragraph (d)(1) of this section, must be submitted to the Regional Administrator and approved by the Regional Administrator prior to construction. The owner or operator must submit a copy of the amended CQA plan to the Regional Administrator for approval prior to starting construction relating to the amended area of the CQA plan. The Regional Administrator will approve, disapprove or modify this amended plan in accordance with the procedures discussed under paragraph (a) of this section.

(e) The owner or operator must notify the Regional Administrator at least 180 days prior to the date he expects to begin construction of the final cover. The notification must include the following:

(1) Schedule of major activities; and

(2) Supplemental information required in the construction quality assurance plan that was not previously included.

(f) Upon completion of construction of facility components listed under § 265.19(b), the owner or operator must submit a construction quality assurance report in writing to the Regional Administrator demonstrating compliance with the construction quality assurance plan. The report must be certified by the construction quality assurance officer before waste is received, except in the case of construction of the final cover. For the final cover, the report must be submitted to the Regional Administrator within 60 days after cover construction is completed. Submission of the report may be phased, if approved by the Regional Administrator during approval of the construction quality assurance plan to allow for the phased construction of a unit. The construction quality assurance report must include at least the following:

(1) Summaries of all construction and material inspection activities to include:

(i) Observations;

(ii) Test data sheets;

(iii) Problem reports;

(iv) Repair activities;

(v) Deviations from the design and material specifications;

(vi) Design engineer acceptance reports (for errors, inconsistencies, and other problems);

(vii) As built drawings; and

(viii) Block evaluation reports for large projects.

(2) Summary discussion for each applicable component under § 265.19(b) that describes the major construction quality assurance inspection activities, detailing how the results demonstrate that the constructed unit meets or exceeds all design criteria, plans, and specifications. Summary tables, charts, and graphs must be used, where appropriate, to document implementation of the construction quality assurance program.

(3) Certification by the qualified registered professional engineer in charge of the construction quality assurance program that the report accurately represents the activities and findings of the completed construction quality assurance program and that the program was implemented in accordance with all requirements of the approved construction quality assurance plan.

4. Section 265.73 is amended by revising paragraph (b)(6) to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(6) Monitoring, testing, or analytical data where required by §§ 265.90, 265.94, 265.226, 265.260, 265.276, 265.278, 265.280(d)(1), 265.303, 265.347, and 265.377; and,

* * * * *

5. Section 265.117 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 265.117 Post-closure care and use of property.

(a)(1) * * *

(ii) Maintenance of monitoring, waste containment, and leak detection systems in accordance with the requirements of Subparts F, K, L, M, and N of this Part.

* * * * *

6. Section 265.118 is amended by revising paragraphs (c)(1) and (c)(2)(ii) to read as follows:

§ 265.118 Post-closure plan; amendment of plan.

* * * * *

(c) * * *

(1) A description of the planned monitoring and leak detection activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N of this Part during the post-closure care period; and

(2) * * *

(ii) The function of the monitoring, leachate collection, and leak detection equipment in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

* * * * *

7. Section 265.221 is amended by revising the section heading and by adding new paragraphs (f) through (j) to read as follows:

§ 265.221 Design and operating requirements.

* * * * *

(f) The owner or operator of any unit for which construction commences after the date of promulgation of this rule must design, construct, operate, and maintain a leak detection system capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. Any liquid, waste, or waste constituent migrating into the leak detection system is assumed to originate from liquids leaking through the top liner of the unit unless the Regional Administrator finds, based on a demonstration by the owner or operator under § 265.222(h), that such liquid, waste, or waste constituent originated from another source.

(g) The leak detection system required under paragraph (f) of this section shall be part of the leachate collection system between the liners described under paragraph (a)(3) of this section. The leachate collection system between the liners shall, in addition to meeting the requirements of paragraph (a)(3) of this section, meet the following requirements for leak detection:

(1) The minimum bottom slope must be 2 percent, and drainage layer material must have the following hydraulic characteristics:

(i) For granular materials, a minimum hydraulic conductivity of 1 cm/sec and a minimum layer thickness of 12 inches; or

(ii) For synthetic drainage layer materials, a hydraulic transmissivity of 5 x 10^{-4} m^2/sec or greater.

(2) Be capable of detecting a leak of no more than 1 gallon per acre per day in the top liner (not including liquids absorbed by the leachate collection system); also, be capable of detecting leakage in excess of 1 gallon per acre per day within 1 day after the leak occurs (not including liquids absorbed by the leachate collecting system or bottom liner);

(3) Collect and remove liquids rapidly to minimize the head on the bottom liner; and

(4) Include a sump of appropriate size to efficiently collect liquids and prevent liquids from backing up into the drainage layer. Each unit must have its own sump. The design of the sump and removal system must provide a method for measuring and recording the liquid volume present in the sump and liquids removed so that the leachate flow rate can be determined on a daily basis.

(h) In lieu of the requirements of paragraph (g) of this section, the Regional Administrator may approve an alternative leak detection system if:

(1) The Regional Administrator finds, based on a demonstration by the owner or operator, that there is no potential for migration of hazardous constituents from a unit to ground water or surface water during the active life and post-closure care period of the unit; or

(2) The unit complies with the requirements of paragraphs (c) or (d) of this section; or

(3) The Regional Administrator finds, based on a demonstration by the owner or operator, that an alternative leak detection system or technology will meet the requirements of paragraph (f) of this section. In deciding whether to grant an alternative leak detection system or technology, the Regional Administrator will consider:

(i) The durability and effectiveness of the proposed system or technology;

(ii) The nature and quantity of the wastes; and

(iii) The ability of the system or technology to detect leaks and, in combination with response actions to be taken in compliance with § 265.222, prevent migration of waste out of the unit during the active life and post-closure care period so that ground water and surface water are not contaminated.

(i) The owner or operator of any unit that is required by paragraph (f) of this section to have a leak detection system and that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(j) The owner or operator must establish a top liner action leakage rate during the design of the unit for leak detection systems under paragraph (g) of this section. The action leakage rate is determined by:

(1) Using a standard value of (EPA is proposing to select a final value from the range of 5–20 gallons/acre/day); or

(2) A review by the Regional Administrator of an owner or operator demonstration, and a finding by the Regional Administrator, that a site-specific top liner action leakage rate is appropriate for initiating review of the actual leakage rate to determine if a response action is necessary. The site-specific top liner action leakage rate demonstration must be based on allowing only very small isolated leakage through the top liner that does not affect the overall performance of the top liner. In deciding whether to grant a site-specific action leakage rate, the Regional Administrator will consider at least the following factors:

(i) The design, construction, and operation of the top liner;

(ii) The attenuative capacity and thickness of any soil component of the top liner; and

(iii) All other factors that would influence the potential for leachate to migrate through the top liner.

The Regional Administrator will approve, modify, or disapprove the demonstration of an alternative site-specific action leakage rate within 60 days of its receipt. If the Regional Administrator does not approve the demonstration, the owner or operator may modify the demonstration or submit a new demonstration for approval.

8. Sections 265.221 and 265.222 are amended by redesignating paragraphs (a) and (b) of § 265.222 as paragraphs (k) and (l) of § 265.221, respectively.

9. Section 265.222 is revised to read as follows:

§ 265.222 Response actions.

(a) Prior to receipt of waste at the unit, the owner or operator must have a response action plan approved by the Regional Administrator that sets forth the actions to be taken immediately following a finding of rapid and extremely large volumes of leakage between the liners in accordance with the requirements under paragraph (b) of this section. A rapid and extremely large leak is the maximum design leakage rate that the leachate detection, collection, and removal system can remove under gravity flow conditions without the fluid head on the bottom liner exceeding 1 foot in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems. The owner or operator must use an adequate safety margin in determining the rapid and extremely large leak to allow for uncertainties in the design, construction, and operation of the leachate detection, collection, and removal system (e.g., the owner or operator must consider decreases in the

flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.). The response action plan must be submitted to the Regional Administrator at least 120 days prior to receipt of waste at the unit.

(b) The response action plan for rapid and extremely large volumes of leakage between the liner must, at a minimum, include the following information:

(1) A general description of the operation of the unit including the expected active life of the unit and whether or not at closure wastes will be decontaminated or removed from the unit or left in place;

(2) A description of the hazardous constituents contained in the unit;

(3) A description of the range of events that may potentially cause rapid and extremely large volumes of leakage into the space between the liners;

(4) A discussion of important factors that can affect leakage into the leachate collection and removal system between the liners (e.g., amount and frequency of precipitation, and amount of liquids in the unit);

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the unit (e.g., the condition of the liners and leachate collection system between the liners);

(6) A detailed assessment describing the effectiveness and feasibility of each of the following potential immediate interim responses for preventing hazardous constituent migration out of the unit by decreasing the volume of leakage into the leak detection system:

(i) The owner or operator limits or terminates receipt of waste;

(ii) The owner or operator provides expeditious repair of the leak(s); or

(iii) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large.

(7) The plan must also include the response the owner or operator will undertake after determining the concentration of hazardous constituents in the liquids in the sump of the leak detection system in accordance with the requirements under paragraph (c)(3) of this section.

(i) If any hazardous constituent concentrations in the leachate exceed health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for preventing hazardous constituent migration out of the unit:

(A) The owner or operator terminates receipt of waste and closes the unit;

(B) The owner or operator provides expeditious repair of the leak(s); or

(C) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large. If as a result of these operational changes the leakage is still above the action leakage rate, the owner or operator must comply with the requirements set forth in paragraph (e) of this section; or

(ii) If all hazardous constituent concentrations in the leachate are below health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for minimizing the head on the bottom liner:

(A) The owner or operator provides expeditious repair of the leak(s); or

(B) The owner or operator institutes operational changes at the unit.

(8) The response action plan must address a range of rapid and extremely large volumes of leakage appropriate for the unit with correlating recommended responses and indicate why other response actions were not chosen. Each response presented must be based on a demonstration incorporating the factors set forth in paragraphs (b) (1) through (7) of this section. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(c)(1) The Regional Administrator will review and approve the response action plan for rapid and extremely large leaks if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constitutent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constitutent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (c)(1) of this section, the Regional Administrator shall consider, but not be limited to considering, the following factors:

(i) The type and amount of hazardous constituents in the leachate between the liners;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementing action of the response action plan;

(iv) Condition of the liners and leachate collection and removal system (e.g., CQA documentation review or review of design for deficiency);

(v) Design of the double liner system, including design features that provide further protection beyond those required under Section 265.221;

(vi) Future planned activities, including remaining active life time period, and closure and post-closure care activities; and

(vii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(4) The Regional Administrator, as part of his review of the plan (initial or modified), will provide the public, through a notice in local newspapers, the opportunity to submit written comments on the response action plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the response action plan within 90 days of its receipt. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new response action plan within 30 days after receiving such written statement. The Regional Administrator will approve or modify the plan within 60 days.

(d) When there is a rapid and extremely large volume of leakage between the liners the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the rapid and extremely large leakage. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Immediately implement the response action plan; and

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (c)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and at other subsequent time periods as specified by the Regional Administrator. The report must describe the effectiveness of the response action in preventing hazardous constituent migration out of the unit in excess of the levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (c)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constitutent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response. The owner or operator must submit a modification plan to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The plan will be processed in accordance with the procedure under paragraph (c)(4) of this section.

(e) Leaks that are less than rapid and extremely large. (1) The owner or operator is required to prepare and submit to the Regional Administrator a response action plan for leaks that exceed the action leakage rate for the top liner but are less than rapid and extremely large. In order to satisfy this requirement, the owner or operator may either:

(i) Submit a response action plan with the permit application identifying actions to be taken when lower levels of leakage exceed the action leakage rate; or

(ii) Submit to the Regional Administrator a request to amend the response action plan within 90 days from the date liquids first exceed the action leakage rate.

(2) For leakage that exceeds the action leakage rate, the response action plan must, at a minimum, include the information set forth in paragraph (b) (1) to (5) of this section. The owner or operator must also include a detailed assessment describing the effectiveness and feasibility of each of the following responses for preventing hazardous constituent migration out of the unit in excess of health-based standards:

(i) The owner or operator terminates receipt of waste and closes the unit;

(ii) The owner or operator institutes operational changes at the unit that will reduce leakage between the liners to prevent hazardous constituents migration out of the unit;

(iii) The owner or operator provides expeditious repair of the leak(s);

(iv) The owner or operator continues to remove and treat the leakage with increased ground-water monitoring activities; or

(v) The owner or operator maintains current operating procedures;

(3) The response action plan must recommend a specific response option for leakage above the action leakage rate for the unit and indicate why other responses actions were not chosen. The response action plan may address a range of leakage with varying responses. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(f)(1) The Regional Administrator will review and approve the response action plan for leakage less than rapid and extremely large if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constitutent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (f)(1) of this section, the Regional Administrator shall consider, but not be limited to considering, the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners or actual type and amount if the action leakage rate is exceeded;

(ii) The mobility and migration potential of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) The rate of leakage, if the response action plan is submitted after the action leakage rate is exceeded, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, accident, or minor leak);

(v) Condition of the liners and leachate collection and removal system (e.g., CQA documentation review or review of design for deficiency) or review of the unit operating record concerning accidents that have occurred);

(vi) Design of the double liner system, including design features that provide further protection beyond those required under § 265.221;

(vii) Future planned activities, including remaining active life time period, and closure and post-closure care activities;

(viii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(4) The Regional Administrator, as part of his review of the plan (initial or modified), will provide the public,

through a notice in local newspapers, the opportunity to submit written comments on the response action plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the response action plan within 90 days of its receipt. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new response action plan within 30 days after receiving such written statement. The Regional Administrator will approve or modify the plan within 60 days.

(g) If liquids leaking into the leak detection system specified under § 265.221(g) exceed the action leakage rate for the top liner but are less than rapid and extremely large, the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the leakage exceeding the action leakage rate. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids; and

(3) Implement the plan if it was previously submitted with the plan pursuant to paragraph (e)(1)(i) of this section, or submit an amended response action plan pursuant to paragraph (e)(1)(ii) of this section.

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (f)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time. If the owner or operator determines that the leachate exceeds health-based standards he must implement any response action approved in the plan.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and annually thereafter. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (f)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constitutent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response.

The owner or operator must submit a modification plan to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The plan will be processed in accordance with the procedure under paragraph (c)(4) of this section.

(h) If the owner or operator determines that the top liner action leakage rate is being exceeded, he may demonstrate for leakage less than rapid and extremely large that the liquid resulted from an error in sampling, analysis, or evaluation, precipitation during construction, or a source other than leakage through the top liner. While the owner or operator may make a demonstration under this paragraph in addition to submitting an application under paragraph (e) of this section, he is not relieved of the requirement to submit an amended plan or to implement the response unless the demonstration made under this paragraph successfully shows that the liquid resulted from a source other than top liner leakage, precipitation during construction, or error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing as soon as practicable, that he intends to make a demonstration under this paragraph;

(2) Within 90 days of notifying the Regional Administrator under paragraph (h)(1) of this section, submit a report to the Regional Administrator that demonstrates that the liquid resulted from a source other than top liner leakage or that the apparent noncompliance with the standards resulted from precipitation during construction, or error in sampling, analysis, or evaluation. The Regional Administrator shall review the demonstration and notify the applicant as to whether or not such a determination is successful. The applicant has 45 days to comment on such a determination. The Regional Administrator shall respond to those comments and make a final decision on the applicant's demonstration.

(3) If the Regional Administrator approves the demonstration in paragraph (h)(2) of this section, then the owner or operator must submit an amended plan to the Regional Administrator to make any appropriate changes to the response action plan for the unit within 90 days of the Regional Administrator's determination under paragraph (h)(2) of this section.

(i) Within 45 days of detecting a significant change in the leakage rate, the owner or operator must submit to the Regional Administrator a report on the leakage that includes the following information:

(1) An assessment of the problem causing the leak that includes a profile of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage;

(2) A description of any change in the response to be implemented as approved in the response action plan;

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

10. New § 265.224 is added to Subpart k to read as follows:

§ 265.224 Construction quality assurance.

Effective 12 months after promulgation of this rule, the owner or operator of each new surface impoundment unit or component constructed at a surface impoundment and listed under § 265.19(b) must conduct a construction quality assurance program in compliance with §§ 265.19 and 265.20.

11. Section 265.226 is amended by revising the section heading and adding new paragraphs (b) and (c) to read as follows:

§ 265.226 Monitoring and inspection.

* * * * *

(b) An owner or operator required to have a leak detection system under this subpart must:

(1) Monitor for and record on a daily basis the presence of liquids in the leak detection system removal sump daily during the active life (including the closure period) and at least weekly during the post-closure period (if applicable);

(2) Analyze the daily monitoring data during the active life under paragraph (b)(1) of this section on a weekly basis and the weekly monitoring data during the post-closure period under paragraph (b)(1) of this section on a quarterly basis to determine if the action leakage rate under paragraph (j) (1) or (2) of § 265.221 is exceeded under the conditions of paragraphs (b)(2) (i), (ii), or (iii) of this section:

(i) The daily monitoring data averaged over one month exceed the action leakage rate during the active life or the weekly monitoring data averaged over three months exceeds the action leakage rate during the post-closure period; or

(ii) The daily rate for any one-day period during a week exceeds 50 gallons per acre per day during the active life or the weekly rate for any one-week period during a quarter exceeds 350 gallons per acre per week during the post-closure period; or

(iii) In lieu of the requirements of paragraphs (b)(2) (i) and (ii) of this section, the Regional Administrator may specify in the permit an alternative method for determining if the action leakage rate under paragraph (j) (1) or (2) of § 265.221 is exceeded.

(3) Establish a monitoring and inspection program that will allow the determination of the following throughout the active life and post-closure care period:

(i) The rate of leakage into the leak detection system sump, and the removal rate;

(ii) The deterioration, malfunction, or improper operation of the leak detection system;

(iii) The effectiveness of additional controls implemented as part of a response action plan when the action leakage rate of the top liner is exceeded; and

(iv) The effectiveness of the bottom liner and leachate detection, collection, and removal system to control leakage below the action leakage rate.

(c) The owner or operator must record all inspection information required in paragraph (b) of this section in the inspection log required under § 265.15 of this part. The recorded information must be in sufficient detail to demonstrate that the leak detection requirements of §§ 265.221 and 265.222 are being complied with.

12. Section 265.254 is revised to read as follows:

§ 265.254 Design and operating requirements.

(a) With respect to waste received from May 8, 1985, until the effective date of this rule, the owner or operator of each new waste pile, each new waste pile at an existing facility, each replacement of an existing waste pile unit, and each lateral expansion of a waste pile unit is subject to the requirements for liners and leachate collection systems or equivalent protection provided in § 264.251 (a) and (b) of this chapter.

(b) With respect to waste received after the effective date of this rule, the owner or operator of each new waste pile, each new waste pile unit at an existing facility, each replacement of an existing waste pile unit, and each lateral expansion of a waste pile unit must install two or more liners and a leachate collection system above and between such liners. The liners and the leachate collection systems must protect human health and the environment. At a minimum, the liners and leachate collection systems must meet the following requirements:

(1) The liners must include:

(i) A top liner designed, operated, and constructed of materials to prevent the migration of any hazardous constituent into such liner during the active life and post-closure care period, and a bottom liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. The bottom liner must be constructed of at least a 3-foot-thick layer of compacted clay or other compacted soil material with a hydraulic conductivity of no more than 1 x 10^{-7} cm/sec; or

(ii) A top liner designed, operated, and constructed of materials to prevent the migration of any hazardous constituent into such liner during the active life and post-closure care period, and a bottom liner consisting of two components. The upper component of the bottom liner must be designed, operated, and constructed to prevent the migration of any hazardous constituent into this component during the active life and post-closure care period. The lower component of the bottom liner must be designed, operated, and constructed to minimize the migration of any hazardous constituent through the upper component if a breach in the upper component were to occur prior to the end of the post-closure care period. The lower component must be constructed of compacted soil material with a hydraulic conductivity of no more than 1 x 10^{-7} cm/sec.

(2) The liners must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon materials capable of providing support to the liners and resistance to pressure gradients above and below the liners to prevent failure of the liners due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(3) The leachate collection system immediately above the top liner must be designed, constructed, maintained, and operated to collect and remove leachate from the waste pile during the active life and post-closure care period. The Regional Administrator will specify design and operating conditions in the permit to ensure that the leachate depth over the top liner does not exceed 30 cm (1 foot).

(4) The leachate collection system between the liners must be designed, constructed, maintained, and operated to detect, collect, and remove liquids that leak through any area of the top liner during the active life and post-closure care period.

(5) The leachate collection systems must be:

(i) Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and any equipment used at the waste pile; and

(ii) Designed and operated to function without clogging during the active life and post-closure care period.

(c) Paragraph (b) of this section will not apply if the owner or operator demonstrates to the Regional Administrator, and the Regional Administrator finds for such waste pile, that alternative design and operating

practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(d) The double liner requirement set forth in paragraph (b) of this section may be waived by the Regional Administrator for any monofill, if:

(1) the monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in § 261.24 of this chapter; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this paragraph, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in § 144.3 of this chapter); and

(C) The monofill is in compliance with generally applicable ground water monitoring requirements for facilities with permits under RCRA § 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(e) The owner or operator of any unit for which construction commences after the date of promulgation of this rule must design, construct, operate, and maintain a leak detection system capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. Any liquid, waste, or waste constituent migrating into the leak detection system is assumed to originate from liquids leaking through the top liner of the unit unless the Regional Administrator finds, based on a demonstration by the owner or operator under § 265.255(c), that such liquid, waste, or waste constituent originated from another source.

(f) The leak detection system required under paragraph (e) of this section shall be part of the leachate collection system between the liners described under paragraphs (b)(4) and (b)(5) of this section. The leachate collection system between the liners shall, in addition to meeting the requirements of paragraphs (b)(4) and (b)(5) of this section, meet the following requirements for leak detection:

(1) The minimum bottom slope must be 2 percent, and the drainage layer material must have the following hydraulic characteristics:

(i) For granular materials, a minimum hydraulic conductivity of 1 cm/sec and a minimum layer thickness of 12 inches; or

(ii) For synthetic drainage layer materials, a hydraulic transmissivity of 5 x 10^{-4} m^2/sec or greater.

(2) Be capable of detecting a leak of no more than 1 gallon per acre per day in the top liner (not including liquids absorbed by the leachate collection system); also, be capable of detecting leakage in excess of 1 gallon per acre per day within 1 day after the leak occurs (not including liquids absorbed by the leachate collection system or bottom liner);

(3) Collect and remove liquids rapidly to minimize the head on the bottom liner; and

(4) Include a sump of appropriate size to efficiently collect liquids and prevent liquids from backing up into the drainage layer. Each unit must have its own sump. The design of the sump and removal system must provide a method for measuring and recording the liquid volume present in the sump and liquids removed so that the leachate flow rate can be determined on a daily basis.

(g) In lieu of the requirements of paragraph (f) of this section, the Regional Administrator may approve an alternative leak detection system if:

(1) The Regional Administrator finds, based on a demonstration by the owner or operator, that there is no potential for migration of hazardous constituents from a unit to ground water or surface water during the active life and post-closure care period of the unit; or

(2) The unit complies with the requirements of paragraphs (c) or (d) of this section; or

(3) The Regional Administrator finds, based on a demonstration by the owner or operator, that an alternative leak detection system or technology will meet the requirements of paragraph (e) of this section. In deciding whether to grant an alternative leak detection system or technology, the Regional Administrator will consider:

(i) The durability and effectiveness of the proposed system or technology;

(ii) The nature and quantity of the wastes; and

(iii) The ability of the system or technology to detect leaks and, in combination with response actions to be taken in compliance with § 265.255, prevent migration of waste out of the unit during the active life and post-closure care period so that ground water and surface water are not contaminated.

(h) The owner or operator of any unit that is required by paragraph (e) of this section to have a leak detection system and that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(i) The owner or operator must establish a top liner action leakage rate during the design of the unit for leak detection systems under paragraph (f) of this section. The action leakage rate is determined by:

(1) Using a standard value of (EPA is proposing to select a final value from the range of 5–20 gallons/acre/day); or

(2) A review by the Regional Administrator of an owner or operator demonstration, and a finding by the Regional Administrator, that a site-specific top liner action leakage rate is appropriate for initiating review of the actual leakage rate to determine if a response action is necessary. The site-specific top liner action leakage rate demonstration must be based on allowing only very small isolated leakage through the top liner that does not affect the overall performance of the top liner. In deciding whether to grant a site-specific action leakage rate, the Regional Administrator will consider at least the following factors:

(i) The design, construction, and operation of the top liner and the leachate collection and removal system above the top liner;

(ii) The attenuative capacity and thickness of any soil component of the top liner; and

(iii) All other factors that would influence the potential for leachate to migrate through the top liner.

The Regional Administrator will approve, modify, or disapprove the demonstration of an alternative site-specific action leakage rate within 60 days of its receipt. If the Regional Administrator does not approve the demonstration, the owner or operator may modify the demonstration or submit a new demonstration for approval.

14. New § 265.255 is added to read as follows:

§ 265.255 Response actions.

(a) Prior to receipt of waste at the unit, the owner or operator must have a

response action plan approved by the Regional Administrator that sets forth the actions to be taken immediately following a finding of rapid and extremely large volumes of leakage between the liners in accordance with the requirements under paragraph (b) of this section. A rapid and extremely large leak is the maximum design leakage rate that the leachate detection, collection, and removal system can remove under gravity flow conditions without the fluid head on the bottom liner exceeding 1 foot in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems. The owner or operator must use an adequate safety margin in determining the rapid and extremely large leak to allow for uncertainties in the design, construction, and operation of the leachate detection, collection, and removal system (e.g., the owner or operator must consider decreases in the flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.) The response action plan must be submitted to the Regional Administrator at least 120 days prior to receipt of waste at the unit.

(b) The response action plan for rapid and extremely large volumes of leakage between the liner must, at a minimum, include the following information:

(1) A general description of the operation of the unit including the expected active life of the unit and whether or not at closure wastes will be decontaminated or removed from the unit or left in place;

(2) A description of the hazardous constituents contained in the unit;

(3) A description of the range of events that may potentially cause rapid and extremely large volumes of leakage into the space between the liners;

(4) A discussion of important factors that can affect leakage into the leachate collection and removal system between the liners (e.g., amount and frequency of precipitation, and amount of liquids in the unit);

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the unit (e.g., the condition of the liners and leachate collection system between the liners);

(6) A detailed assessment describing the effectiveness and feasibility of each of the following potential immediate interim responses for preventing hazardous constituent migration out of the unit by decreasing the volume of leakage into the leak detection system:

(i) The owner or operator limits or terminates receipt of waste;

(ii) The owner or operator provides expeditious repair of the leak(s); or

(iii) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large.

(7) The plan must also include the response the owner or operator will undertake after determining the concentration of hazardous constituents in the liquids in the sump of the leak detection system in accordance with the requirements under paragraph (c)(3) of this section.

(i) If any hazardous constituent concentrations in the leachate exceed health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for preventing hazardous constituent migration out of the unit:

(A) The owner or operator terminates receipt of waste and closes the unit;

(B) The owner or operator provides expeditious repair of the leak(s); or

(C) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large. If as a result of these operational changes the leakage is still above the action leakage rate, the owner or operator must comply with the requirements set forth in paragraph (e) of this section; or

(ii) If all hazardous constituent concentrations in the leachate are below health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for minimizing the head on the bottom liner:

(A) The owner or operator provides expeditious repair of the leak(s); or

(B) The owner or operator institutes operational changes at the unit.

(8) The response action plan must address a range of rapid and extremely large volumes of leakage appropriate for the unit with correlating recommended responses and indicate why other response actions were not chosen. Each response presented must be based on a demonstration incorporating the factors set forth in paragraphs (b) (1) through (7) of this section. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(c)(1) The Regional Administrator will review and approve the response action plan for rapid and extremely large leaks if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constitutent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constitutent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (c)(1) of this section, the Regional Administrator shall consider, but not be limited to considering, the following factors:

(i) The type and amount of hazardous constituents in the leachate between the liners;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementing action of the response action plan;

(iv) Condition of the liners and leachate collection and removal system (e.g., CQA documentation review or review of design for deficiency);

(v) Design of the double liner system, including design features that provide further protection beyond those required under § 265.254;

(vi) Future planned activities, including remaining active life time period, and closure and post-closure care activities; and

(vii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(4) The Regional Administrator, as part of his review of the plan (initial or modified), will provide the public, through a notice in local newspapers, the opportunity to submit written comments on the response action plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator

will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the response action plan within 90 days of its receipt. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new response action plan within 30 days after receiving such written statement. The Regional Administrator will approve or modify the plan within 60 days.

(d) When there is a rapid and extremely large volume of leakage between the liners the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the rapid and extremely large leakage. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Immediately implement the response action plan; and

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (c)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and at other subsequent time periods as specified by the Regional Administrator. The report must describe the effectiveness of the response action in preventing hazardous constituent migration out of the unit in excess of the levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (c)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constitutent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response. The owner or operator must submit a modification plan to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The plan will be processed in accordance with the procedure under paragraph (c)(4) of this section.

(e) Leaks that are less than rapid and extremely large.

(1) The owner or operator is required to prepare and submit to the Regional Administrator a response action plan for leaks that exceed the action leakage rate for the top liner but are less than rapid and extremely large. In order to satisfy this requirement, the owner or operator may either:

(i) Submit a response action plan with the permit application identifying actions to be taken when lower levels of leakage exceed the action leakage rate; or

(ii) Submit to the Regional Administrator a request to amend the response action plan within 90 days from the date liquids first exceed the action leakage rate.

(2) For leakage that exceeds the action leakage rate, the response action plan must, at a minimum, include the information set forth in paragraph (b) (1) to (5) of this section. The owner or operator must also include a detailed assessment describing the effectiveness and feasibility of each of the following responses for preventing hazardous constituent migration out of the unit in excess of health-based standards:

(i) The owner or operator terminates receipt of waste and closes the unit;

(ii) The owner or operator institutes operational changes at the unit that will reduce leakage between the liners to prevent hazardous constituents migration out of the unit;

(iii) The owner or operator provides expeditious repair of the leak(s);

(iv) The owner or operator continues to remove and treat the leakage with increased ground-water monitoring activities; or

(v) The owner or operator maintains current operating procedures;

(3) The response action plan must recommend a specific response option for leakage above the action leakage rate for the unit and indicate why other responses actions were not chosen. The response action plan may address a range of leakage with varying responses. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(f)(1) The Regional Administrator will review and approve the response action plan for leakage less than rapid and extremely large if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (f)(1) of this section, the Regional Administrator shall consider, but not be limited to considering, the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners or actual type and amount if the action leakage rate is exceeded;

(ii) The mobility and migration potential of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) The rate of leakage, if the response action plan is submitted after the action leakage rate is exceeded, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, accident, or minor leak);

(v) Condition of the liners and leachate collection and removal system (e.g., CQA documentation review or review of design for deficiency or review of the unit operating record concerning accidents that have occurred);

(vi) Design of the double liner system, including design features that provide further protection beyond those required under § 265.221;

(vii) Future planned activities, including remaining active life time period, and closure and post-closure care activities;

(viii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(4) The Regional Administrator, as part of his review of the plan (initial or modified), will provide the public, through a notice in local newspapers, the opportunity to submit written comments on the response action plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the response action plan within 90 days of its receipt. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new response action plan within 30 days after receiving such written statement. The Regional Administrator will approve or modify the plan within 60 days.

(g) If liquids leaking into the leak detection system specified under § 265.254(f) exceed the action leakage rate for the top liner but are less than rapid and extremely large, the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the leakage exceeding the action leakage rate. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids; and

(3) Implement the plan if it was previously submitted with the plan pursuant to paragraph (e)(1)(i) of this section, or submit an amended response action plan pursuant to paragraph (e)(1)(ii) of this section.

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (f)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time. If the owner or operator determines that the leachate exceeds health-based standards he must implement any response action approved in the plan.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and annually thereafter. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health-based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (f)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response.

The owner or operator must submit a modification plan to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The plan will be processed in accordance with the procedure under paragraph (c)(4) of this section.

(h) If the owner or operator determines that the top liner action leakage rate is being exceeded, he may demonstrate for leakage less than rapid and extremely large that the liquid resulted from an error in sampling, analysis, or evaluation, precipitation during construction, or a source other than leakage through the top liner. While the owner or operator may make a demonstration under this paragraph in addition to submitting an application under paragraph (e) of this section, he is not relieved of the requirement to submit an amended plan or to implement the response unless the demonstration made under this paragraph successfully shows that the liquid resulted from a source other than top liner leakage, precipitation during construction, or error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing as soon as practicable, that he intends to make a demonstration under this paragraph;

(2) Within 90 days of notifying the Regional Administrator under paragraph (h)(1) of this section, submit a report to the Regional Administrator that demonstrates that the liquid resulted from a source other than top liner leakage or that the apparent noncompliance with the standards resulted from precipitation during construction, or error in sampling, analysis, or evaluation. The Regional Administrator shall review the demonstration and notify the applicant as to whether or not such a determination is successful. The applicant has 45 days to comment on such a determination. The Regional Administrator shall respond to those comments and make a final decision on the applicant's demonstration.

(3) If the Regional Administrator approves the demonstration in paragraph (h)(2) of this section, then the owner or operator must submit an amended plan to the Regional Administrator to make any appropriate changes to the response action plan for the unit within 90 days of the Regional Administrator's determination under paragraph (h)(2) of this section.

(i) Within 45 days of detecting a significant change in the leakage rate, the owner or operator must submit to the Regional Administrator a report on the leakage that includes the following information:

(1) An assessment of the problem causing the leak that includes a profile

of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage;

(2) A description of any change in the response to be implemented as approved in the response action plan;

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

14. New § 265.259 is added to Subpart L to read as follows:

§ 265.259 Construction quality assurance.

Effective 12 months after promulgation of this rule, the owner or operator of each new waste pile unit or component constructed at a waste pile and listed under § 265.19(b) must conduct a construction quality assurance program in compliance with §§ 265.19 and 265.20.

15. New § 265.260 is added to Subpart L to read as follows:

§ 265.260 Monitoring and inspection.

(a) An owner or operator required to have a leak detection system under this subpart must:

(1) Monitor for and record on a daily basis the presence of liquids in the leak detection system removal sump during the active life (including the closure period).

(2) Analyze the daily monitoring data during the active life under paragraph (a)(1) of this section on a weekly basis to determine if the action leakage rate under paragraph (i) (1) or (2) of § 265.254 is exceeded under the conditions of paragraphs (a)(2) (i), (ii), or (iii) of this section:

(i) The daily monitoring data averaged over one month exceed the action leakage rate during the active life or the weekly monitoring data averaged over three months exceed the action leakage rate during the post-closure period; or

(ii) The daily rate for any one-day period during a week exceeds 50 gallons per acre per day; or

(iii) In lieu of the requirements of paragraphs (a)(2) (i) and (ii) of this section, the Regional Administrator may specify in the permit an alternative method for determining if the action leakage rate under paragraph (i) (1) or (2) of § 265.254 is exceeded.

(3) Establish a monitoring and inspection program that will allow the determination of the following throughout the active life and the post-closure care period:

(i) The rate of leakage into the leak detection system sump, and the removal rate;

(ii) The deterioration, malfunction, or improper operation of the leak detection system;

(iii) The effectiveness of additional controls implemented as part of a response action plan when the action leakage rate of the top liner is exceeded; and

(iv) The effectiveness of the bottom liner and leachate detection, collection, and removal system to control leakage below the action leakage rate.

(b) The owner or operator must record all inspection information required in paragraph (a) of this section in the inspection log required under § 265.15 of this part. The recorded information must be in sufficient detail to demonstrate that the leak detection requirements of §§ 265.254 and 265.255 are being complied with.

16. Section 265.278 is revised to read as follows:

§ 265.278 Unsaturated zone monitoring.

An owner or operator subject to this subpart must have in writing, and must implement, an unsaturated zone monitoring plan to discharge the following responsibilities:

(a) The owner or operator must monitor the soil and soil-pore liquid to determine at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period whether hazardous constituents migrate out of the treatment zone.

(1) The owner or operator must specify the hazardous constituents to be monitored in the unsaturated zone monitoring plan. Hazardous constituents are constituents identified in Appendix VIII of Part 261 of this chapter that are reasonably expected to be in, or derived from, the waste that is land treated.

(2) The owner or operator may monitor for principal hazardous constituents (PHCs) in lieu of the constituents specified under paragraph (a)(1) of this section. PHCs are hazardous constituents contained in the wastes to be applied at the unit that are the most difficult to treat, considering the combined effects of degradation, transformation, and immobilization. The owner or operator may establish PHCs if he finds, based on waste analyses, treatment demonstrations, or other data, that effective degradation, transformation, or immobilization of the PHCs will assure treatment to at least equivalent levels for the other hazardous constituents in the wastes.

(b) The owner or operator must install an unsaturated zone monitoring system that includes soil monitoring using soil cores and soil-pore liquid monitoring using devices such as lysimeters. The unsaturated zone monitoring system must consist of a sufficient number of sampling points at appropriate locations and depths to yield samples that:

(1) Represent, to at least a 95% confidence level, the quality of background soil-pore liquid quality and the chemical make-up of soil that has not been affected by leakage from the land treatment area; and

(2) Indicate, to at least a 95% confidence level, the quality of soil-pore liquid and the chemical make-up of the soil below the depth to which the waste is incorporated into the soil.

(c) The owner or operator must establish a background value for each hazardous constituent to be monitored under paragraph (a) of this section.

(1) Background soil values may be based on a one-time sampling at a background plot having characteristics similar to those of the treatment area.

(2) Background soil-pore liquid values must be based on at least quarterly sampling for one year at a background plot having characteristics similar to those of the treatment area.

(3) The owner or operator must express all background values in a form necessary for the determination of statistically significant increases under paragraph (f) of this section.

(4) In taking samples used in the determination of all background values, the owner or operator must use an unsaturated zone monitoring system that complies with paragraph (b)(1) of this section.

(d) The owner or operator must conduct soil monitoring and soil-pore liquid monitoring immediately below the depth to which the waste is incorporated into the soil. The owner or operator must specify the frequency and timing of soil and soil-pore liquid monitoring in the unsaturated zone monitoring plan, based on the frequency, timing, and rate of waste application, and the soil permeability. The owner or operator must express the results of soil and soil-pore liquid monitoring in a form necessary for the determination of statistically significant increases under paragraph (f) of this section.

(e) The owner or operator must use consistent sampling and analysis procedures that are designed to ensure sampling results that provide a reliable indication of soil-pore liquid quality and the chemical make-up of the soil below the treatment area. At a minimum, the owner or operator must implement procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

(f) The owner or operator must determine whether there is a statistically significant change over background values for any hazardous constituent to be monitored under paragraph (a) of this section below the depth to which the waste is incorporated into the soil each time he conducts soil monitoring and soil-pore liquid monitoring under paragraph (d) of this section.

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the value of each constituent, as determined under paragraph (d) of this section, to the background value for that constituent according to a statistical procedure specified in the unsaturated zone monitoring plan.

(2) The owner or operator must determine whether there has been a statistically significant increase below the depth to which the waste is incorporated into the soil within a reasonable time period after completion of sampling.

(3) The owner or operator must determine whether there is a statistically significant increase below the depth to which the waste is incorporated into the soil using a statistical procedure that provides reasonable confidence that migration of hazardous constituents will be identified. The owner or operator must specify in the unsaturated zone monitoring plan a statistical procedure that he finds:

(i) Is appropriate for the distribution of the data used to establish background values; and

(ii) Provides a reasonable balance between the probability of falsely identifying migration from the treatment area and the probability of failing to identify real migration of hazardous constituents.

(g) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant increase of hazardous constituents below the depth to which the waste is incorporated into the soil he must:

(1) Notify the Regional Administrator of this finding in writing within seven days. The notification must indicate what constituents have shown statistically significant increases.

(2) Within 90 days submit to the Regional Administrator for approval a written plan to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment area. The Regional Administrator will approve, modify, or disapprove the plan activities as he deems necessary to protect ground water. Such review will be completed within 60 days of its receipt. When reviewing the plan the Regional Administrator may include any additional activities he deems necessary. If the Regional Administrator does not approve the plan, the owner or operator must make modifications or submit a new response action plan for approval within 30 days. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this plan becomes the approved plan, and a copy will be provided to the owner or operator.

(h) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant increase of hazardous constituents below the depth to which the waste is incorporated into the soil, he may demonstrate that a source other than the land treatment unit caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a written plan to modify operating practices under paragraph (g)(2) of this section, he is not relieved of the requirement to submit a written plan to modify operating practices within the time specified in paragraph (g)(2) of this section unless the demonstration made under this paragraph successfully shows that a source other than the land treatment unit caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing within seven days of determining a statistically significant increase below the depth to which the waste is incorporated into the soil that he intends to make a determination under this paragraph;

(2) Within 90 days submit a report to the Regional Administrator demonstrating that a source other than the land treatment unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days make any appropriate changes to the unsaturated zone monitoring plan at the facility; and

(4) Continue to monitor in accordance with the unsaturated zone monitoring plan.

(i) The owner or operator must keep at the facility his unsaturated zone monitoring plan, and the rationale used in developing or revising this plan.

(j) Prior to receipt of waste at the unit the owner or operator must have at the facility a response action plan approved by the Regional Administrator that sets forth the actions to be taken immediately following a finding, pursuant to paragraph (f) of this section, of widespread leakage of hazardous constituents below the depth to which the waste is incorporated into the soil. The response action plan for widespread leakage must, at a minimum, include the following information:

(1) A general description of the operation of the unit;

(2) A description of the hazardous constituents contained in the unit;

(3) An assessment of potential causes of widespread leakage of hazardous constituents below the depth to which waste is incorporated into the soil;

(4) A discussion of important factors that can affect leakage of hazardous constituents below the depth to which waste is incorporated into the soil;

(5) A description of major mechanisms that will prevent migration of hazardous constituents below the depth to which waste is incorporated into the soil;

(6) A detailed assessment describing the effectiveness and feasibility of the following responses that the owner or operator may implement for any potential widespread leakage below the depth to which waste is incorporated into the soil.

(i) The owner or operator terminates application of waste and closes the unit; or

(ii) The owner or operator institutes operation changes at the unit that will minimize leakage below the depth to which waste is incorporated into the soil so that the operating conditions are met.

(k) For widespread leakage out of the treatment zone the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days following measurement of widespread leakage. The notification must indicate preliminary identification of hazardous constituents that have been detected, and the extent of the area and depth below the treatment zone where constituents have migrated; and

(2) Immediately implement the response action plan.

(l) The Regional Administrator will approve, modify, or disapprove the response action plan activities as he deems necessary to protect ground water and surface water. Such review will be completed within 60 days of its receipt. When reviewing the response action plan the Regional Administrator may include any additional activities he

deems necessary in the plan. If the Regional Administrator does not approve the response action plan or request for amendment, the owner or operator must make modifications or submit a response action plan for approval within 30 days. The Regional Administrator will approve or modify this response action plan in writing within 60 days. If the Regional Administrator modifies the response action plan, this plan becomes the approved response action plan, and a copy will be provided to the owner or operator.

17. New § 265.283 is added to Subpart M to read as follows:

§ 265.283 Inspection.

(a) The owner or operator must establish an inspection program that will allow the determination of the following during the active life and post-closure care period:

(1) The deterioration, malfunction, or improper operation of unsaturated zone monitoring equipment required under § 265.278; and

(2) The effectiveness of additional controls implemented as part of any response action when hazardous constituents that migrate beyond the depth to which the waste is incorporated into the soil statistically exceed background levels.

(b) The owner or operator must record all inspection information required in paragraph (a) of this section in the inspection log required under § 265.15 of this part. The recorded information must be in sufficient detail to demonstrate that the unsaturated zone monitoring requirements are being complied with.

19. Section 265.301 is amended by revising the section heading and adding new paragraphs (f) through (j) to read as follows:

§ 265.301 Design and operating requirements.

* * * * *

(f) The owner or operator of any unit for which construction commences after the date of promulgation of this rule must design, construct, operate, and maintain a leak detection system capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. Any liquid, waste, or waste constituent migrating into the leak detection system is assumed to originate from liquids leaking through the top liner of the unit unless the Regional Administrator finds, based on a demonstration by the owner or operator under § 265.302(d), that such liquid, waste, or waste constituent originated from another source.

(g) The leak detection system required under paragraph (f) of this section shall be part of the leachate collection system between the liners described under paragraphs (a)(4) and (a)(5) of this section. The leachate collection system between the liners shall, in addition to meeting the requirements of paragraphs (a)(4) and (a)(5) of this section, meet the following requirements for leak detection:

(1) The minimum bottom slope must be 2 percent, and drainage layer material must have the following hydraulic characteristics:

(i) For granular materials, a minimum hydraulic conductivity of 1 cm/sec and a minimum layer thickness of 12 inches; or

(ii) For synthetic drainage layer materials, a hydraulic transmissivity of 5 x 10^{-4} m^2/sec or greater.

(2) Be capable of detecting a leak of no more than 1 gallon per acre per day in the top liner (not including liquids absorbed by the leachate collection system); also, be capable of detecting leakage in excess of 1 gallon per acre per day within 1 day after the leak occurs (not including liquids absorbed by the leachate collection system on bottom liner);

(3) Collect and remove liquids rapidly to minimize the head on the bottom liner; and

(4) Include a sump of appropriate size to efficiently collect liquids and prevent liquids from backing up into the drainage layer. Each unit must have its own sump. The design of the sump and removal system must provide a method for measuring and recording the liquid volume present in the sump and liquids removed so that the leachate flow rate can be determined on a daily basis.

(h) In lieu of the requirements of paragraph (g) of this section, the Regional Administrator may approve an alternative leak detection system if:

(1) The Regional Administrator finds, based on a demonstration by the owner or operator, that there is no potential for migration of hazardous constituents from a unit to ground water or surface water during the active life and post-closure care period of the unit; or

(2) The unit complies with the requirements of paragraphs (c) or (d) of this section; or

(3) The Regional Administrator finds, based on a demonstration by the owner or operator, that an alternative leak detection system or technology will meet the requirements of paragraph (f) of this section. In deciding whether to grant an alternative leak detection system or technology, the Regional Administrator will consider:

(i) The durability and effectiveness of the proposed system or technology;

(ii) The nature and quantity of the wastes; and

(iii) The ability of the system or technology to detect leaks and, in combination with response actions to be taken in compliance with § 265.302, prevent migration of waste out of the unit during the active life and post-closure care period so that ground water and surface water are not contaminated.

(i) The owner or operator of any unit that is required by paragraph (f) of this section to have a leak detection system and that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(j) The owner or operator must establish a top liner action leakage rate during the design of the unit for leak detection systems under paragraph (g) of this section. The action leakage rate is determined by:

(1) Using a standard value of (EPA is proposing to select a final value from the range of 5–20 gallons/acre/day); or

(2) A review by the Regional Administrator of an owner or operator demonstration, and a finding by the Regional Administrator, that a site-specific top liner action leakage rate is appropriate for initiating review of the actual leakage rate to determine if a response action is necessary. The site-specific top liner action leakage rate demonstration must be based on allowing only very small isolated leakage through the top liner that does not affect the overall performance of the top liner. In deciding whether to grant a site-specific action leakage rate, the Regional Administrator will consider at least the following factors:

(i) The design, construction, and operation of the top liner and the leachate collection and removal system above the top liner;

(ii) The attenuative capacity and thickness of any soil component of the top liner; and

(iii) All other factors that would influence the potential for leachate to migrate through the top liner.

The Regional Administrator will approve, modify, or disapprove the demonstration of a site-specific action leakage rate within 60 days of its receipt. If the Regional Administrator disapproves the demonstration, the owner or operator may modify the demonstration or submit a new demonstration for approval.

19. Sections 265.301 and 265.302 are amended by redesignating paragraphs (a), (b), (c), and (d) of § 265.302 as paragraphs (k), (l), (m), and (n) of § 265.301, respectively.

20. Section 265.302 is revised to read as follows:

§ 265.302 Response actions.

(a) Prior to receipt of waste at the unit, the owner or operator must have a response action plan approved by the Regional Administrator that sets forth the actions to be taken immediately following a finding of rapid and extremely large volumes of leakage between the liners in accordance with the requirements under paragraph (b) of this section. A rapid and extremely large leak is the maximum design leakage rate that the leachate detection, collection, and removal system can remove under gravity flow conditions without the fluid head on the bottom liner exceeding 1 foot in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems. The owner or operator must use an adequate safety margin in determining the rapid and extremely large leak to allow for uncertainties in the design, construction, and operation of the leachate detection, collection, and removal system (e.g., the owner or operator must consider decreases in the flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.) The response action plan must be submitted to the Regional Administrator at least 120 days prior to receipt of waste at the unit.

(b) The response action plan for rapid and extremely large volumes of leakage between the liner must, at a minimum, include the following information:

(1) A general description of the operation of the unit including the expected active life of the unit and whether or not at closure wastes will be decontaminated or removed from the unit or left in place;

(2) A description of the hazardous constituents contained in the unit;

(3) A description of the range of events that may potentially cause rapid and extremely large volumes of leakage into the space between the liners;

(4) A discussion of important factors that can affect leakage into the leachate collection and removal system between the liners (e.g., amount and frequency of precipitation, and amount of liquids in the unit);

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the unit (e.g., the condition of the liners and leachate collection system between the liners);

(6) A detailed assessment describing the effectiveness and feasibility of each of the following potential immediate interim responses for preventing hazardous constituent migration out of the unit by decreasing the volume of leakage into the leak detection system:

(i) The owner or operator limits or terminates receipt of waste;

(ii) The owner or operator provides expeditious repair of the leak(s); or

(iii) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large.

(7) The plan must also include the response the owner or operator will undertake after determining the concentration of hazardous constituents in the liquids in the sump of the leak detection system in accordance with the requirements under paragraph (c)(3) of this section.

(i) If any hazardous constituent concentrations in the leachate exceed health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for preventing hazardous constituent migration out of the unit:

(A) The owner or operator terminates receipt of waste and closes the unit;

(B) The owner or operator provides expeditious repair of the leak(s);

(C) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large. If as a result of these operational changes the leakage is still above the action leakage rate, the owner or operator must comply with the requirements set forth in paragraph (e) of this section; or

(ii) If all hazardous constituent concentrations in the leachate are below health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for minimizing the head on the bottom liner:

(A) The owner or operator provides expeditious repair of the leak(s); or

(B) the owner or operator institutes operational changes at the unit.

(8) The response action plan must address a range of rapid and extremely large volumes of leakage appropriate for the unit with correlating recommended responses and indicate why other response actions were not chosen. Each response presented must be based on a demonstration incorporating the factors set forth in paragraphs (b)(1) through (7) of this section. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(c)(1) The Regional Administrator will review and approve the response action plan for rapid and extremely large leaks if he determines that such plan prevents to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (c)(1) of this section, the Regional Administrator shall consider, but not be limited to the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review or review of design for deficiency);

(v) Design of the double liner system, including design features that provide further protection beyond those required under § 265.301;

(vi) Future planned activities, including remaining active life time period, and closure and post-closure care activities; and

(vii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator must also identify additional physical and chemical properties to be tested for.

(4) The Regional Administrator, as part of his review of the plan (initial), will provide the public, through a notice in local newspapers, the opportunity to submit written comments on the response action plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the response action plan within 90 days of its receipt. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new response action plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify the plan within 60 days.

(d) When there is a rapid and extremely large volume of leakage between the liners the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the rapid and extremely large leakage. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Immediately implement the response action plan; and

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (c)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and at other subsequent time periods as specified by the Regional Administrator. The report must describe the effectiveness of the response action in preventing hazardous constituent migration out of the unit in excess of levels above EPA-approved health board standards for ground water protection. At a minimum, the report must address the factors set forth in paragraph (c)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response. The owner or operator must submit a modification plan to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The plan will be processed in accordance with the procedure under paragraph (c)(4) of this section.

(e) Leaks that are less than rapid and extremely large.

(1) The owner or operator is required to prepare and submit to the Regional Administrator a response action plan for leaks that exceed the action leakage rate for the top liner but are less than rapid and extremely large. In order to satisfy this requirement, the owner or operator may either:

(i) Submit a response action plan with the permit application identifying actions to be taken when lower levels of leakage exceed the action leakage rate; or

(ii) Submit to the Regional Administrator a request to amend the response action plan within 90 days from the date liquids first exceed the action leakage rate.

(2) For leakage that exceeds the action leakage rate, the response action plan must, at a minimum, include the information set forth in paragraph (b) (1) to (5) of this section. The owner or operator must also include a detailed assessment describing the effectiveness and feasibility of each of the following responses for preventing hazardous constituent migration out of the unit in excess of health-based standards:

(i) The owner or operator terminates receipt of waste and closes the unit;

(ii) The owner or operator institutes operational changes at the unit that will reduce leakage between the liners to prevent hazardous constituents migration out of the unit;

(iii) The owner or operator provides expeditious repair of the leak(s);

(iv) The owner or operator continues to remove and treat the leakage with increased ground-water monitoring activities; or

(v) The owner or operator maintains current operating procedures.

(3) The response action plan must recommend a specific response action for leakage above the action leakage rate for the unit and indicate why other responses actions were not chosen. The response action plan may address a range of leakage with varying responses. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(f)(1) The Regional Administrator will review and approve the response action plan for leakage less than rapid and extremely large leaks if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (f)(1) of this section, the Regional Administrator shall consider, but not be limited to considering the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners or the actual type and amount if the action leakage rate is exceeded;

(ii) The mobility and migration potential of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) The rate of leakage, if the response action plan is submitted after the action leakage rate is exceeded, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, accident, or minor leak);

(v) Condition of the liners and leachate collection and removal system (e.g., CQA documentation review,

review of design for deficiency, or review of the unit operating record concerning accidents that have occurred);

(vi) Design of the double liner system, including design features that provide further protection beyond those required under § 265.301;

(vii) Future planned activities, including remaining active life time period, and closure and post-closure care activities;

(viii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(4) The Regional Administrator, as part of his review of the plan (initial or modified), will provide the public, through a notice in local newspapers, the opportunity to submit written comments on the response action plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the response action plan within 90 days of its receipt. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new response action plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify the plan within 60 days.

(g) If liquids leaking into the leak detection system specified under § 265.301(g) exceed the action leakage rate for the top liner but are less than rapid and extremely large, the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the leakage exceeding the action leakage rate. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids; and

(3) Implement the plan if it was previously submitted with the plan pursuant to paragraph (e)(1)(i) of this section, or submit an amended response action plan pursuant to paragraph (e)(1)(ii) of this section.

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (f)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time. If the owner or operator determines that the leachate exceeds health-based standards he must implement any response action approved in the plan.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and annually thereafter. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (f)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response. The owner or operator must submit a modification plan to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The plan will be processed in accordance with the procedure under paragraph (c)(4) of this section.

(h) If the owner or operator determines that the top liner action leakage rate is being exceeded, he may demonstrate for leakage less than rapid and extremely large that the liquid resulted from an error in sampling, analysis, or evaluation, precipitation during construction, or a source other than leakage through the top liner. While the owner or operator may make a demonstration under this paragraph in addition to submitting an application under paragraph (e) of this section, he is not relieved of the requirement to submit an amended plan or to implement the response unless the demonstration made under this paragraph successfully shows that the liquid resulted from a source other than top liner leakage, precipitation during construction, or error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing as soon as practicable, that he intends to make a demonstration under this paragraph;

(2) Within 90 days of notifying the Regional Administrator under paragraph (h)(1) of this section, submit a report to the Regional Administrator that demonstrates that the liquid resulted from a source other than top liner leakage or that the apparent noncompliance with the standards resulted from precipitation during construction, or error in sampling, analysis, or evaluation. The Regional Administrator shall review the demonstration and notify the applicant as to whether or not such a determination is successful. The applicant has 45 days to comment on such a determination. The Regional Administrator shall respond to those comments and make a final decision on the applicant's demonstration.

(3) If the Regional Administrator approves the demonstration in paragraph (h)(2) of this section, then the owner or operator must submit an amended plan to the Regional Administrator to make any appropriate changes to the response action plan for the unit within 90 days of the Regional

Administrator's determination under paragraph (h)(2) of this section.

(i) Within 45 days of detecting a significant change in the leakage rate, the owner or operator must submit to the Regional Administrator a report on the leakage that includes the following information:

(1) An assessment of the problem causing the leak that includes a profile of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage;

(2) A description of any change in the response to be implemented as approved in the response action plan;

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

21. New § 265.303 is added to Subpart N to read as follows:

§ 265.303 Monitoring and inspection.

(a) An owner or operator required to have a leak detection system under this subpart must:

(1) Monitor for and record on a daily basis the presence of liquids in the leak detection system removal sump during the active life (including the closure period) and at least weekly during the post-closure period (if applicable);

(2) Analyze the daily monitoring data during the active life under paragraph (a)(1) of this section on a weekly basis and the weekly monitoring data during the post-closure period under paragraph (a)(1) of this section on a quarterly basis to determine if the action leakage rate under paragraph (j) (1) or (2) of § 265.301 is exceeded under the conditions of paragraphs (a)(2) (i), (ii), or (iii) of this section:

(i) The daily monitoring data averaged over one month exceeds the action leakage rate during the active life or the weekly monitoring data averaged over three months exceed the action leakage rate during the post-closure period; or

(ii) The daily rate for any one-day period during a week exceed 50 gallons per acre per day during the active life or the weekly rate for any one-week period during a quarter exceeds 350 gallons per acre per week during the post-closure period; or

(iii) In lieu of the requirements of paragraphs (a)(2) (i) and (ii) of this section, the Regional Administrator may specify in the permit an alternative method for determining if the action leakage rate under paragraph (j) (1) or (2) of § 265.301 is exceeded.

(3) Establish a monitoring and inspection program that will allow the determination of the following throughout the active life and post-closure care period:

(i) The rate of leakage into the leak detection system sump, and the removal rate;

(ii) The deterioration, malfunction, or improper operation of the leak detection system;

(iii) The effectiveness of additional controls implemented as part of a response action plan when the action leakage rate of the top liner is exceeded;

(iv) The effectiveness of the bottom liner and secondary leachate detection, collection, and removal system to control leakage below the action leakage rate; and

(b) The owner or operator must record all inspection information required in paragraph (a) of this section in the inspection log required under § 265.15 of this part. The recorded information must be in sufficient detail to demonstrate that the leak detection requirements of §§ 265.301 and 265.302 are being complied with.

22. New § 265.304 is added to Subpart N to read as follows:

§ 265.304 Construction quality assurance.

Effective 12 months after promulgation of this rule, the owner or operator of each new landfill unit or component constructed at a landfill and listed under § 265.19(b) must conduct a construction quality assurance program in compliance with §§ 265.19 and 265.20.

23. Section 265.310 is amended by adding a new paragraph (b)(5) to read as follows:

§ 265.310 Closure and post-closure care.

* * * * *

(b) * * *

(5) Maintain and monitor the leak detection system in accordance with §§ 265.301 (f) and (g), 265.303 (a) and (b), and comply with all other applicable leak detection requirements of this subpart.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: Sections 1006, 2002, 3004, 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, 6924, 6925, 6927, and 6974).

2. Section 270.17 is amended by revising paragraphs (b) and (c) to read as follows:

§ 270.17 Specific Part B information requirements for surface impoundments.

* * * * *

(b) Detailed plans and an engineering report describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of §§ 264.221 and 264.222. This submission must address the following items as specified in §§ 264.221 and 264.222:

(1)(i) The liner system (except for an existing portion of a surface impoundment), if the surface impoundment must meet the requirements of § 264.221(a) of this chapter. If an exemption from the requirement for a liner is sought as provided by § 264.221(b) of this chapter, submit detailed plans and engineering and hydrogeological reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner system and the leachate collection and removal system, if the surface impoundment must meet the requirements of § 264.221(c) of this chapter. If an exemption from the requirements for double liners and a leachate collection and removal system is sought as provided by § 264.221 (d), (e), or (f) of this chapter, submit appropriate information;

(iii) The leak detection system, if the surface impoundment must meet the requirements of § 264.221(g) of this chapter. If approval of an alternative leak detection system is sought as provided by § 264.221(i) of this chapter or the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(2) Prevention of overtopping; and

(3) Structural integrity of dikes;

(4) Determine if whether a granular or synthetic media meets the minimum requirements of § 264.221(h)(1) (i) and (ii) owner or operators must provide results from hydraulic conductivity tests conducted on saturated samples of the drainage media supporting the value used in the design.

(c) A description of how each surface impoundment, including the double liner system, leachate detection, collection, and removal system, cover systems, and appurtenances for control of overtopping, will be inspected in order to meet the requirements of § 264.226 (a), (c), and (e). This information should

be included in the inspection plan submitted under § 270.14(b)(5);

* * * * *

3. Section 270.18 is amended by revising paragraphs (c) and (d) to read as follows:

§ 270.18 Specific Part B information requirements for waste piles.

* * * * *

(c) Detailed plans and an engineered report describing how the waste pile is or will be designed, constructed, operated, and maintained to meet the requirements of §§ 264.251 and 264.252. This submission must address the following items as specified in §§ 264.251 and 264.252:

(1)(i) The liner system (except for an existing portion of a waste pile), if the waste pile must meet the requirements of § 264.251(a) of this chapter. If an exemption from the requirement for a liner is sought as provided by § 264.251(b) of this chapter, submit detailed plans and engineering and hydrogeological reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner system and the leachate collection and removal system, if the waste pile must meet the requirements of § 264.251(c) of this chapter. If an exemption from the requirements for double liners and a leachate collection and removal system is sought as provided by § 264.251 (d), (e), or (f) of this chapter, submit appropriate information;

(iii) The leak detection system, if the waste pile must meet the requirements of § 264.251(g) of this chapter. If approval of an alternate leak detection system is sought as provided by § 264.251(i) of this chapter or the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding units associated with run-on and run-off control systems;

(5) Control of wind dispersal of particulate matter where applicable;

(6) Determine if whether a granular or synthetic media meets the minimum requirements of § 264.251(h)(1) (i) and (ii) owner or operators must provide results from hydraulic conductivity tests conducted on saturated samples of the drainage media supporting the value used in the design.

(d) A description of how each waste pile, including the double liner system, leachate detection, collection, and removal systems, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.254 (a), (b), and (d). This information should be included in the inspection plan submitted under § 270.14(b)(5).

* * * * *

4. Section 270.20 is amended by adding new paragraphs (j) and (k) to read as follows:

§ 270.20 Specific Part B information requirements for land treatment facilities.

* * * * *

(j) A response action plan that meets the requirements of § 264.278(i).

(k) A description of how each land treatment unit will be inspected in order to meet the requirements of § 264.284.

5. Section 270.21 is amended by removing paragraph (c) and redesignating paragraphs (d), (e), (f), (g), (h), (i), and (j) as (c), (d), (e), (f), (g), (h), and (i), respectively.

6. Section 270.21 is amended by revising paragraphs (b) and (c) to read as follows:

§ 270.21 Specific Part B information requirements for landfills.

* * * * *

(b) Detailed plans and an engineering report describing how the landfill is or will be designed, constructed, operated, and maintained to meet the requirements of §§ 264.301 and 264.302. This submission must address the following items as specified in §§ 264.301 and 264.302:

(1)(i) The liner system (except for an existing portion of a landfill), if the landfill must meet the requirements of § 264.301(a) of this chapter. If an exemption from the requirement for a liner is sought as provided by § 264.301(b) of this chapter, submit detailed plans and engineering and hydrogeological reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner system and the leachate collection and removal system, if the landfill must meet the requirements of § 264.301(c) of this chapter. If an exemption from the requirements for double liners and a leachate collection and removal system is sought as provided by § 264.301 (d), (e), or (f) of this chapter, submit appropriate information;

(iii) The leak detection system, if the landfill must meet the requirements of § 264.301(g) of this chapter. If approval of an alternative leak detection system is sought as provided by § 264.301(i) of this chapter or the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding facilities associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable;

(6) Determine if whether a granular or synthetic media meets the minimum requirements of § 264.301(h)(1) (i) and (ii) owner or operators must provide results from hydraulic conductivity tests conducted on saturated samples of the drainage media supporting the value used in the design.

(c) A description of how each landfill, including the double liner system, leachate detection, collection, and removal systems, and cover systems, will be inspected in order to meet the requirements of § 264.303 (a), (b), and (d). This information should be included in the inspection plan submitted under § 270.14(b)(5).

* * * * *

7. Section 270.41(a)(5) is amended by adding new paragraphs (ix) and (x):

§ 270.41 Major modification or revocation and reissuance of permits.

(ix) When modification of a construction quality assurance plan is required under § 264.20(e)(ii).

(x) When modification of a response action plan is required under §§ 264.222, 264.252, 264.278(k) and 264.302.

* * * * *

(a) * * *

(5) * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. 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).

2. Section 271.1(j) is amended by adding the following entry to Table 1 in

chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
			* * *
[Insert date of publication].	Liner and Leak Detection Rule.	52 FR [Insert Federal Register Page Numbers].	There are three (3) effective dates corresponding to various provisions of the proposal, i.e. 6 months, 12 months, and 24 months after publication of the final rule. The specific provisions are listed below with their corresponding effective dates: § 264.15 (b)(1) and (b)(4)—12 months. § 264.19 and § 264.20—12 months. § 264.73(b)(6)—6 months. § 264.117(a)(1)(ii)—6 months. § 264.118 (b)(1) and (b)(2)(ii)—6 months. § 264.221 (c) and (f)—24 months. § 264.221 (g), (h), (i), (j), (k) and (l)—6 months. § 264.222—6 months. § 264.223—12 months. § 264.226 (c), (d), and (e)—6 months. § 264.228(b)(4)—6 months. § 264.251 (a), (c), (d), (e), (f), (g), (h), (i), (j), and (k)—6 months. § 264.252—6 months. § 264.253—6 months. § 264.254 (b), (c), and (d)—6 months. § 264.278 (a), (b)(1), (b)(2), (d), (i), (j), and (k)—6 months. § 264.284—6 months. § 264.301 (c), (f), (g), (h), (i), (j), and (k)—6 months. § 264.302—6 months. § 264.303 (b), (c), and (d)—6 months. § 264.304—12 months. § 264.310(b)(6)—6 months. § 265.15 (b)(1) and (b)(4)—12 months. § 265.19 and § 265.20—12 months. § 265.73(b)(6)—6 months. § 265.117(a)(1)(ii)—6 months. § 265.118 (c)(1) and (c)(2)(ii)—6 months. § 265.221 (f), (g), (h), (i), and (j)—6 months. § 265.222—6 months. § 265.224—12 months. § 265.226 (b) and (c)—6 months. § 265.254 (a), (b), (c), (d), (e), (f), (g), (h), and (i)—6 months. § 265.255—6 months. § 265.259—12 months. § 265.260—6 months. § 265.278 (a), (b), (c), (d), (e), (g), (h), (i), (j), (k), and (l)—6 months. § 265.283—6 months. § 265.301 (f), (g), (h), (i), and (j)—6 months. § 265.302—6 months. § 265.304—12 months. § 265.310—6 months. § 270.17 (b)(1)(i) and (b)(1)(ii)—24 months. § 270.17(b)(1)(iii)—6 months. § 270.17 (b)(2), (b)(3), (b)(4), and (c)—24 months. § 270.18 (c)(1)(i) and (c)(1)(ii)—24 months. § 270.18(c)(1)(iii)—6 months. § 270.10 (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), and (d)—24 months. § 270.20 (j) and (k)—6 months. § 270.21 (b)(1)(i), and (b)(1)(ii)—24 months. § 270.21(b)(1)(iii)—6 months. § 270.2 (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (c)—24 months. § 270.41(iii)—12 months.

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May 29, 1987

Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 2 and 380

Regulations Implementing the National Environmental Policy Act of 1969; Notice of Proposed Rulemaking

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 380

[Docket No. RM87-15-000]

Regulations Implementing the National Environmental Policy Act of 1969

May 14, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise its regulations that govern the collection, evaluation, and dissemination of environmental information. The proposed regulations would replace and elaborate on existing Commission regulations under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and adopt many of the NEPA regulations promulgated by the Council on Environmental Quality, 40 CFR Parts 1500–1508, as amended.

DATE: Written comments on this proposed rule must be filed with the Commission by July 28, 1987.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lynn S. Lichtenstein, 825 North Capitol St. NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations that govern the collection, evaluation, and dissemination of environmental information about Commission actions, including any actions relating to non-Federal projects within the Commission's jurisdiction, as provided in the Department of Energy Organization Act, Natural Gas Act, Federal Power Act, the Public Utility Regulatory Policies Act of 1978, the Natural Gas Policy Act of 1978, and the Interstate Commerce Act. The proposed regulations would replace and elaborate on existing Commission regulations under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and adopt many of the NEPA regulations promulgated by the Council on Environmental Quality, 40 CFR Parts 1500–1508, as amended.

II. Background

Section 102(2)(C) of NEPA provides in part that all Federal agencies must include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement on—

(i) The environmental impact of the proposed action;

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) Alternatives to the proposed action;

(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented.

Section 102(2) of NEPA also requires that if agency planning and decisionmaking may affect the human environment, the agency should utilize a systematic, interdisciplinary approach to the natural and social sciences and the environmental design arts to protect unquantified environmental amenities. NEPA also requires that an agency consult with other Federal agencies with jurisdiction by law or special expertise when preparing an environmental statement, now commonly known as an Environmental Impact Statement.

On December 18, 1972, the Federal Power Commission, predecessor to the Federal Energy Regulatory Commission, issued Order No. 415–C to comply with the NEPA mandate that Federal agencies preserve the natural, cultural, historic, aesthetic, and biologic environments by requiring calculation and reporting of the probable environmental impact of Federal actions and programs and by prescribing any available means for preventing or mitigating environmental damage. This order was codified at 18 CFR 2.80 through 2.82. Appendices to these sections described information to be supplied by applicants.

On November 29, 1978, the Council on Environmental Quality (CEQ) published in the **Federal Register** its regulations implementing section 102(2) of the NEPA, 40 CFR Part 1500–1508. The CEQ regulations consist of processes for agency cooperation in researching and solving environmental problems and provide methods of writing Environmental Impact Statements and Environmental Assessments, receiving comments, developing records of decision, and handling information.

The Commission issued a Notice of Proposed Rulemaking in RM 79–69–000 on August 20, 1979.[1] The Commission proposed to adopt by reference many CEQ provisions and set forth detailed procedures to implement and elaborate on the policies and procedures of the CEQ. Since that time, there have been many changes in Commission regulations, such as the advent of blanket certificate applications in the gas area. In addition, new statutes have been added to those the Commission administers such as the Natural Gas Policy Act of 1978 and the Electric Consumer Protection Act of 1986. Overall, however, Commission practice in the years since the NOPR was issued has essentially coincided with the procedures set forth in the CEQ regulations.

As the Commission's procedures for environmental analysis have largely followed these provisions, the Commission believes it desirable to continue and broaden the approach it took in its original proposal. Thus, the Commission here again proposes to adopt or implement most of the CEQ regulations. At the same time, it is also proposing provisions that will, in effect, modify or clarify some of those regulations in tailoring them to the Commission's proceedings. These provisions have to do with specific Commission practices such as its hearing process.

The Commission is reproposing the regulation rather than issuing it as a final rule due to the lapse of time and the changes in Commission jurisdiction since the NOPR was published. Interested persons should have another opportunity to comment in view of these changes and with the benefit of the eight additional years of experience with Commission implementation of NEPA.

III. Discussion

1. General

In 1979, in its original proposal, the Commission proposed to adopt the bulk of the regulations issued by CEQ to implement § 102(2) of the National Environmental Policy Act. Most of the deviations from the CEQ regulations concerned "form more than substance." 44 FR 50052, 50054 (August 27, 1979). With the benefit of its experience since that proposal, the Commission now again proposes to follow the same approach, that is, adopting most of the CEQ provisions, with some modifications and additions designed to

[1] 44 FR 50052 (August 27, 1979). The Commission is proposing to terminate this docket and incorporate the record in docket RM 87–15–000.

facilitate Commission responsibilities and practice.

Subpart A of proposed Part 380 expresses the Commission's general approach to implementing NEPA and its goals. With certain specific exceptions, discussed in Section IV, below, the Commission proposes in this subpart to adopt the operative provisions of the CEQ regulations. Exceptions are specified in § 380.3. The Commission proposes to follow the CEQ procedures concerning early and efficient review of environmental issues, public notice and participation, scoping, interagency cooperation, comments, and timing of decision on proposals.

The current proposal retains, for the most part, those parts of the original NOPR that deal with the EA/EIS process and lead and cooperating agencies (Part 1501); comments procedures (Part 1503); the record of decision in cases requiring an EIS and implementation (Part 1505); and the definition of terms (Part 1508). In addition, the current proposal adopts most of Part 1506, which includes limitations on actions, public involvement, and the timing of agency action; and portions of Part 1507, mainly agency capability to comply.

The rulemaking would revoke the Commission's existing NEPA regulations and Appendix A and retain Appendix B which specifies the components of an Environmental Report for certain projects under the Natural Gas Act. That Appendix would be transferred to new Part 380, the NEPA regulations. Appendix B would be retitled Appendix A and amended to eliminate the so-called "abbreviated report" whereby an applicant was allowed to make a showing that a project had no significant environmental impact and thus avoid filing an ER. (See discussion under section 3 below, Environmental Information.)

The CEQ regulations provide for a consideration of Cumulative environmental impacts. Cumulative impact is defined in 40 CFR 1508.7 as "the impact which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions . . . ." Actions have a significant effect on the environment if they have a cumulatively significant impact on the environment. (40 CFR 1508.27(b)(7).) In determining the scope of an EIS, actions which, when viewed cumulatively, could have significant impacts, should be studied together. (40 CFR 1508.25.) Environmental Impact Statements must include a consideration of the cumulative impact of an action. (40 CFR 1502.16 and 1508.8 and proposed § 380.9(g).) Environmental Assessments must also evaluate the potential for cumulative impacts. (40 CFR 1508.8 and 1508.9.)

Section 380.3(a) of the proposed rule would adopt specified portions of the CEQ regulation, 40 CFR Parts 1500–1508. The Commission believes that several interpretive clarifications are necessary and appropriate with regard to the adoption of certain of the specified portions of those CEQ regulations. First, § 1508.7 defines the term "cumulative impact" and several sections apply that term, including for example § 1508.25(a)(2) Scope ("Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement") and § 1508.27(b)(10) Significantly ("Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment"). Currently, when the Commission reviews comments and other available information to determine the cumulative adverse environmental impacts on target resources from the construction and operation of two or more pending hydroelectric projects at sites on a given waterway or in a given basin, and when there is such a potential, the Commission proceeds to perform an EA on those projects to determine whether the licensing action is a major federal action significantly affecting the human environment. Where the Commission determines that there is not such a reasonable potential, the Commission proceeds to consider the individual projects in accordance with the applicable requirements of NEPA. The Commission has utilized this general approach with a series of waterways and basins, leading to multi-project EIS's for the Ohio River Basin, the Upper Snake River, the Owens River, the Snohomish River, and the Salmon River, as well as individual project reviews pursuant to NEPA where multi-project EIS's were not determined necessary. The Commission believes that this general approach under current practice satisfies the letter and the spirit of the several cited sections of the CEQ regulations addressing cumulative impact.

Second, § 1506.2, Elimination of Duplication with State and Local Procedures, addresses potential action to minimize or eliminate such duplication. As discussed above, the FPA (as amended by the Electric Consumer Protection Act of 1986) now specifies certain procedures for the participation by states and specified state agencies in the licensing process and the consideration by the Commission of specified state comprehensive plans. The Commission believes that these new statutory mandates in the licensing process under the Electric Consumer Protection Act of 1986 establish requirements which will address, in part, the objectives of § 1506.2. Consequently, the Commission would intend to apply the statutory provisions under the 1986 Act, where applicable, to satisfy the requirements of § 1506.2 upon its adoption by § 380.3(a) of the proposed rule.

Third, as a general matter, the Commission would intend, of course, to apply to provisions of any section of the CEQ regulations adopted in whole or in part by § 380.3 of the proposed rule with any appropriate interpretation or in any necessary manner to be consistent with any applicable statutory requirement contained in the several organic statutes providing the Commission's independent regulatory authority, such as the Department of Energy Organization Act, the Natural Gas Act, the Natural Gas Policy Act, the Federal Power Act, the Interstate Commerce Act, and the Public Utility Regulatory Policies Act. In that regard, the Commission is satisfied that the adoption of the specified sections of the CEQ regulations in whole or in part by § 380.3 of the proposed rule has the intended legal effect of adopting the current rules and their interpretation as specified in § 380.3. The Commission certainly would intend to review subsequently and consider separately any future amendments or later interpretations of the specified CEQ regulations and where appropriate the Commission would propose any amendments to the proposed rule it concludes are necessary to implement fully the letter and the spirit of the National Environmental Policy Act.

Some comments to the 1979 NOPR raised issues of significance for the overall rulemaking. A few contended that the Commission's existing NEPA regulations (§§ 2.80–2.82) were workable and preferable to the proposed new regulations. They claimed that regulations that are styled after the CEQ guidelines will produce more paperwork, regulatory delays, and costs to consumers, without corresponding improvement in decisionmaking. The Commission here again proposes to adopt the bulk of the CEQ regulations because those regulations articulate the environmental review process used in most Federal agencies and are designed to enhance Federal decisionmaking. In addition, the Commission has come to use most of these procedures since the original Notice of Proposed Rulemaking was published in this proceeding. The

Commission believes that major paper work would not be increased by the currently proposed regulations as most of the information they require or reference must be submitted under current procedures.

Several comments dealt with the Commission's method of adopting the CEQ regulations. One commenter stated that the incorporation of several sections of the CEQ regulations by reference was confusing, was redundant, and would result in contradictions. For example, many of the adopted sections referred to provisions that were not proposed for adoption. The Commission agrees and has revised the proposed regulation to avoid this problem. The sections that are adopted, implemented, and modified are specifically stated. References to sections not adopted have been removed. For further clarity, the Commission intends to recodify the sections of the CEQ regulations it is adopting in the final rule. In the event that it does so, references to "agencies" throughout those regulations will be replaced by "the Commission" or "the agency."

Another commenter stated that the proposed regulations violated CEQ mandates not to paraphrase CEQ regulations, to use the same sequence of procedures as CEQ, not to quote CEQ verbatim, and to cross-reference relevant sections to the CEQ regulations. The Commission believes that the regulations, as reproposed here, no longer involve paraphrasing and verbatim quotation. Most are simply adopted, and the remaining portions either implement specific CEQ regulations or provide for particular Commission practices. Where appropriate, these sections are cross-referenced to CEQ regulations.

It was suggested that the Commission create separate provisions for each category of action within its jurisdiction, which provisions would specify when the NEPA process begins and describe each decision point, the nature of what is decided at each decision point, and what data and analysis is required at each point. Since Commission "actions" under NEPA involve primarily regulatory decisions on numerous, diverse applications by non-Federal entities, it was felt that implementation of this proposal would necessitate an extremely lengthy and complex set of regulations. The reproposed rule thus deals with these issues generically. Proposed § 380.7 identifies decision points that are relevant for most actions within Commission jurisdiction. Other portions of the CEQ regulations also describe the NEPA process, especially 40 CFR 1506.10, which states when decisions on proposals may be made.

A number of comments focused on various aspects of the NEPA process. One commenter suggested that the initial notice of a filed application contain staff's recommendation on the need for an EA or EIS. The usual environmental analysis needs are now proposed in §§ 380.4-380.6. Where a particular action requires a level of environmental analysis different from that generally provided for that type of action, more time may be needed to make that determination.

One commenter questioned whether proposed § 3d.12(b)(2), stating that staff would determine whether a particular action required an EA or EIS, was consistent with the general category of environmental review in which that type of action had been placed. Although this language has been eliminated from the current proposal, the Commission does not believe these provisions are inconsistent. Even though certain types of actions have been proposed for inclusion in the categorical exclusion class because they usually have minimal or no effect, the Commission or staff may determine that a particular case may be a major Federal action significantly affecting the human environment and that the applicant should therefore file an ER. The staff may also determine, based on an ER or other information, that an action that usually requires only an EA will, in that instance, necessitate preparation of an EIS. Conversely, an action that would usually require an EIS under the proposed rule may exhibit characteristics that suggest it might not be a major Federal action. This would warrant preparation of an EA to ascertain the real need for an EIS for that action.

While the arrangement of all actions into three general classes of review under §§ 380.4, 380.5, and 380.6 would give applicants some guidance useful in estimating processing time for applications and would reduce the burden on the Commission of preparing environmental documents for certain actions, it would not relieve the Commission of the responsibility of evaluating projects to decide whether they may have significant environmental effects. Moreover, the requirements of the Endangered Species Act, the National Historic Preservation Act, and the Coastal Zone Management Act and other statutes are separate from NEPA requirements and must still be addressed for categorically excluded projects. Therefore, the Commission has added clarifying wording to the original proposal (in section 3d.12(a)(1)) identifying the applicant's responsibility to supply the staff with the information necessary to discharge the Commission's responsibilities under NEPA. (Proposed § 380.8(a)(2).) The Commission and staff would evaluate all information submitted and the actions proposed in accordance with § 380.6(b) to confirm that the level of environmental analysis was appropriate.

One commenter requested that the rulemaking define "major Federal action significantly affecting the quality of the human environment." The elements of that term of art are contained in the CEQ regulations that are now proposed to be adopted by the Commission. (*See* 40 CFR 1508.14, 1508.18, and 1508.27.)

One commenter indicated its support for Commission use of a "third party contractor" procedure for EIS's, such as that utilized by the EPA (*See* 40 CFR 6.510(b)(3)(1986)). Under such a procedure, a contractor selected and approved by the agency is authorized to prepare a one-step EIS without the customary preparation of an ER by the applicant. Such a procedure is authorized under 40 CFR 1506.5(c). The Commission has used it occasionally and may do so in the future.

2. Environmental Decisionmaking

a. Agency Consideration of Environmental Issues

The proposed regulations implement §§ 1505.1(b)–(e) and 1502.9(c)(3) of the CEQ regulations. Section 380.7 would commit the Commission to addressing environmental considerations at appropriate major decision points in its decisionmaking processes. It pledges that relevant environmental documents will accompany a proposal through agency review processes, will be part of the record in rulemaking, and will accompany proposed rules. The documents may also be admissible in evidence in trial-type proceedings. Finally, it states that alternatives considered by the Commission will include alternatives described in the environmental documents.

The Commission prefers not to establish time limits within which it must decide whether a project is a major Federal action significantly affecting the quality of the human environment. The time required to prepare an EA may very considerably, depending on the sufficiency of the initial application and the complexity of the project or action proposed. The CEQ regulations do not

require specific deadlines with respect to this kind of NEPA decision.

The Commission proposes to adopt § 1505.2 of the CEQ regulations, Record of decision in cases requiring environmental impact statement, with one modification. The record of decision, both for applications to the Commission and issuance of rules, is a Commission Order. Pursuant to § 1505.2 (a) and (b), an order memorializing a decision for which an EIS is required would contain a statement of the decision and identify the alternatives considered, specifying the one or ones considered to be environmentally preferable and the factors balanced in making the decision. In addition, the order would state whether all practicable means to avoid or minimize environmental harm from the alternatives chosen had been adopted and, if not, why not. Finally, the Commission may include a monitoring and enforcement program in the order for any mitigation. (40 CFR 1505.2(c) as modified by proposed § 380.3(b).)

The Commission believes that the requirements of § 1505.2 could be satisfied by either including relevant sections of the EIS in its order or incorporating them by reference in the order. The Commission notes that this is in keeping with CEQ regulations that encourage combining environmental documents with agency documents and the use of incorporation by reference to reduce paperwork and delay. (40 CFR 1500.4, 1500.5, and 1506.4.)

b. Prohibition Against Actions

The original proposal stated that the Commission would not undertake or permit any step which would have an adverse environmental impact or restrict the choice of reasonable alternatives until the EA/EIS process is completed and a decision issued. The intent and language of § 1506.1 of the CEQ regulations, here proposed for adoption, is the same.

In accordance with § 1506.1 of the CEQ regulations, the previously proposed rule prohibited any steps toward completion of a proposed action which could either foreclose viable alternatives to the proposed action or cause an adverse environmental impact until the EA/EIS process was concluded. (*See* § 3d.12(a)(2)(vi).)

One commenter contended that the Commission has no authority to declare unlawful acts that are otherwise lawful. The Commission could disapprove an application that proposed to undertake an action or project within the Commission's jurisdiction, but, according to the commenter, it was powerless to prohibit an applicant from performing nonjurisdictional actions that might have been in furtherance of the proposed project. The commenter cites as an example construction activities adjacent to hydroelectric project lands; such activity may adversely affect the public interest, but the Commission, it stated, has no jurisdiction over the activity pursuant to the Federal Power Act or NEPA.

The Commission can act directly or indirectly to enjoin or otherwise stop unauthorized activities directly related to a project or action within its jurisdiction. Under section 7(c) of the Natural Gas Act, a natural gas company may not, *inter alia*, construct facilities prior to Commission authorization. The Commission views the beginning of construction as any clearing or grading of potential rights-of-way or sites or stringing of pipeline. The Commission may bring an action to enjoin such activity under section 20 of the NGA or otherwise seek to enforce compliance with the Act. Under section 23 of the Federal Power Act, it is unlawful for any person to construct or operate a hydroelectric project without a license. The Commission may enjoin these actions under section 314 of the FPA or otherwise seek compliance with the Act. (*See also* sections 315 and 316, FPA.) In addition, persons who violate terms or conditions of licenses, permits, or exemptions or who do not comply with Commission rules and regulations and certain orders under the Federal Power Act face civil penalties and, following a compliance order, revocation. (Electric Consumer Protection Act of 1986, Pub. L. 99–495, sec. 12, 100 Stat. 1243, 1255–1257 (1986).)

Moreover, since ultimate approval of the project is the Commission's to give, any applicant that takes steps to further an unapproved project or action and in the process endangers the environment and contravenes the purposes of NEPA, does so at its financial peril because the Commission may withhold or condition its approval. Any argument made by an applicant that its project should be approved because of prior expenditures of funds or resources would be disregarded by the Commission in making its decision on the merits of the proposal. Thus, a step taken by an applicant toward completion of a proposed action may affect the treatment given the relevant certificate or license application.

The Commission discourages and may seek to prohibit any steps taken in furtherance of a project before completion of the EA/EIS process, if such a step would affect the environment adversely or foreclose any reasonable alternative. It thus proposes to adopt the CEQ regulation at 40 CFR 1506.1.

Another commenter expressed a desire to be able to take steps that the commenter believed would have no environmental impact, regardless of the alternatives that may be foreclosed, contingent on a favorable Commission decision on the application. The Commission believes that any postitive steps in furtherance of an action that foreclose alternatives are in derogation of the NEPA process since no action is also an alternative. The Commission may be unable to prohibit all steps from proceeding in conjunction with environmental review but, as noted above, without Commission authorization an applicant may be facing enforcement actions and putting its investment at risk.

Two commenting utilities requested that the Commission's regulations expand on § 1501.6 of the CEQ regulations concerning cooperating agencies in order to permit such agencies to make final decisions on a project, conditioned on the later development of a final EIS by the lead agency. Section 1501.6 encourages interagency cooperation, and the Commission again proposes to follow these CEQ procedures. The CEQ provisions do not permit actions to be approved and embarked upon by any agency or party until the NEPA process is completed. This principle, completion of the process prior to final approval, is of central importance to the fulfillment of the NEPA mandate. The Commission declines, therefore, to follow these commenters' suggestions.

c. Timing of Decisions

The Commission proposes here to adopt 40 CFR 1506.10. This section specifies minimum time periods for decisions on proposed actions—90 days after publication of notice of a draft EIS and 30 days after publication of notice of a final EIS. The 30 day time period may be waived in rulemaking and a decision on a final rule may be published simultaneously with the notice of availability of an FEIS. In addition, under this provision, the Commission could publish notice of availability of a final EIS at the time it issues its final decision on the application itself in cases where the right to a rehearing is afforded the public, that is, in cases involving applications. 40 CFR 1506.10(b). The timing provisions, § 3d.13(i) and (j) in the original version, were the same except that they did not allow decisions and notices of FEIS's for applications to be issued simultaneously.

One commenter proposed that the time limits of § 1506.10 of the CEQ regulations, now proposed to be adopted, which prescribe a minimum amount of time that the Commission may allow between the preparation of certain documents and the ultimate Commission decision on the project or action, should also represent the maximum time period. The time limits provided in that section conform to existing Commission procedures and, of course, the CEQ regulations. These timing provisions are designed to afford the public a minimum period during which it can avail itself of review and comment. They are not designed to be time limits on environmental analysis.

d. Application Denials

The Commission has addressed the circumstances in which applications are not granted in several sections of the proposed regulations. First, an application may be rejected or dismissed. The Commission may reject or dismiss an application for a number of reasons, including failure to comply with Commission rules and regulations, failure to provide sufficient information, and failure to prosecute the application in a timely manner. The Commission believes that in these cases, its actions are merely procedural. It is functioning to keep business before it moving in an orderly manner rather than making substantive decisions regarding projects. Rejection of an application is included in the Categorical Exclusions category, proposed § 380.6(a)(1). No environmental review is necessary if an application is rejected because the applicant has not placed a *bona fide* proposal before the Commission which merits environmental analysis. Rejections were included in the previously proposed Categorical Exclusions section, § 3d.11(a)(1).

Second, the Commission may deny an application after a consideration of the merits of the application. These occasions were not addressed in the previous NOPR. The Commission may deny an application because of one or more nonenvironmental factors. For example, a project may be uneconomical or unsafe. There would be no reason to conduct an environmental review for a project which cannot be built or maintained due to lack of funds or unacceptable risks to life or health. Therefore, if based on a review of the merits the Commission finds that a project is not viable, the Commission believes it may deny the application without environmental study, as put forward in proposed § 380.7(e).

The Commission may perform an EA for a project, either because it is required in proposed § 380.4 or because the staff or Commission believe one is warranted (§ 380.6(b)), which shows that the project will have significant adverse environmental impacts and that measures in mitigation are either non-existent or impractical. In such a situation, the Commission, if appropriate, can determine to deny the proposal on the merits under its substantive statutory authority. Further environmental study would be unwarranted.

The purpose of NEPA and the CEQ regulations is to examine the environmental effects of actions and projects proposed by applicants. In an application is not approved and a project is not built, there is no need for further study. Accordingly, the Commission is proposing to deny applications without doing an EIS in these circumstances because it is not required. "A court may only order [preparation of an EIS] if it finds that the project may have a significant effect on the human environment." *Fritiofson v. Alexander*, 772 F.2d 1225, 1248 (5th Cir. 1985). (*See also, Cabinet Mountains/ Scotchman's Peak Grizzly Bears v. Peterson*, 685 F.2d 678, 682 (D.C. Cir. 1982). "NEPA's EIS requirement is governed by the rule of reason . . . and an EIS must be prepared only when significant environmental impacts will occur as a result of the proposed action." If the proposal is disapproved based on an EA, an EIS should not be performed because there will be no significant effects on the environment since the status quo is not changed. However, if the Commission does perform an EA which shows that a project would have significant adverse environmental effects, but the Commission has not determined to disapprove the project, an EIS would be prepared.

In the record of decision (Commission order), the Commission will provide its reasons for its determination not to do an EIS. The Commission believes that performing an EA and providing its conclusions on the record, satisfies the requirements of NEPA. *Rhone-Poulenc, Inc., etc. v. F.D.A.*, 636 F.2d 750, 754–755 (D.C. Cir. 1980).

Of course, any decision made by the Commission or its designee on an application must be supported by substantial evidence. (Section 313(a), Federal Power Act and section 19(b), Natural Gas Act.) Thus, Commission orders and decisions in matters set for hearing must be based on evidence which will meet this standard. The Commission believes that an EA, even without an EIS, may in appropriate circumstances constitute substantial evidence sufficient to meet the requirements of the Federal Power Act and the Natural Gas Act. The Commission may grant an application after performing an EA if the EA shows that there would be no significant adverse environmental impact. In like manner, the Commission may deny an application on the basis of an EA which showed there would be significant adverse environmental impact from the proposed project.

If the Commission denies an application without performing an EA and the denial may result in a change in the status quo, it will examine whether or not the environmental effects will be significant. If, upon examination of the effects of a denial where the status quo is changed, the Commission believes that the denial would not have significant effects, it will set forth the factual considerations underlying its conclusion. *Arizona Public Service Company v. Federal Power Commission*, 490 F.2d 783, 783–785 (D.C. Cir. 1974).

3. Environmental Information

In accordance with the CEQ regulations (§ 1506.5(a)) proposed § 380.8 sets forth, either directly or by reference, the types of environmental information that would have to be supplied by applicants. The type of information varies with the scope and complexity of the project. If an EA or EIS is required for a proposed action or project, a non-Federal applicant must submit an Environmental Report (ER). The Commission also proposes in § 380.8(a)(3), that environmental information may be required for projects that do not normally require an EA or an EIS and are not included in § 380.6(a)(24) or (28). In addition, applicants could be required under § 380.8(b) to conduct studies which would be necessary or relevant to determine the impact of their proposal and would be required to consult with government agencies during the planning stages of the proposed action.

Current Appendix A has served an increasingly limited role as the Commission has revised its hydropower project licensing procedures to vary the ER requirements according to the type of project application. Specific ER requirements for these projects can now be found in Part 4 of this chapter. This Appendix would thus be eliminated.

Appendix B, which would be transferred to this part from existing Part 2 of the regulations and retitled Appendix A, would now apply to all gas projects for which an EA or EIS would be done except prior notice filings under

§ 157.208. The revised Appendix B would no longer permit "abbreviated reports" under which an applicant could show its project has no significant environmental effect and thus avoid filing a report. The previous proposal contained almost identical provisions except that it also retained current Appendix A.

As stated above, the existing NEPA provisions in Part 2 of the Commission's regulations contain two appendices detailing the format of an applicant's ER to the Commission, one each for hydroelectric and gas projects. Nine commenters favored retention of the so-called "abbreviated reports" in those appendices because they permit applicants for Commission authorization to make a showing that a proposed action will not have a significant environmental impact. Such a showing, if accepted by the Commission, would theroretically terminate any further environmental review of the action. Commenters reasoned that elimination of this provision would increase the burden on utilities and add to processing delays at the Commission. Commission staff would still have the ability, it was argued, to determine the sufficiency of the applicant's argument.

The Commission does not believe that the abbreviated reports formerly permitted in Appendices A and B are commensurate with the purposes of the proposed new NEPA regulations. The Commission prefers that the environmental information submitted by any applicant conform to the requirements that pertain to the type of project for which authorization is sought and that that information be evaluated by its staff. (Appendix A has, in any event, been superseded by the ER requirements in Part 4 of this chapter.) The Commission, therefore, again proposes to revoke the abbreviated report provisions now contained in Appendices A and B.

One commenter argued that proposed § 3d.12(c), content of an ER for specific proposals, now § 380.8(c)(1), required some reorganization, primarily to establish less burdensome environmental reporting requirements for various post-licensing actions relating to water power projects. ER requirements for hydropower projects are now quite specific. Applicants for the amendment or surrender of a license are now subject to the ER requirements of 18 CFR 4.201 (b) and (c). Where amendments involve a new facility with a total installed capacity of 1.5 MW or less or a constructed facility with a total installed capacity of 5 MW or less, only a short-form ER pursuant to § 4.61(d) is required. The commenter contended that an applicant should be permitted to tailor a simplified ER to suit the proposed action. The Commission believes that the short-form ER in § 4.61(d) achieves this purpose. As previously stated, every ER should be commensurate with the scope of the proposed action.

According to one comment, the ER provisions for amendments to a license (§ 3d.12(c)(1)(iii)) did not make clear which type of ER should be submitted for such amendments as sales and leases of land or grants of easements solely for telephone lines, pipelines, or recreation facilities. The Commission's experience indicates that use of project lands for such purposes will normally have so little environmental impact that no ER is necessary. A categorical exclusion, § 380.6(a)(19), has been added to describe a variety of authorized uses of project lands that would not require an EA or EIS under the reproposed regulations.

The ER requirements for all projects proposed pursuant to section 7 of the Natural Gas Act (formerly applicable only to section 7(c)), currently Appendix B, contain information requests which, in the opinion of one commenter, would not coincide with the proposed EIS format and would not otherwise lead to better decisionmaking. The Commission now proposes to use the EIS format shown in proposed § 380.9, which is the format contained in the CEQ regulation at 40 CFR 1502.10 with some modifications. The information requested in Appendix B in the provision entitled "Components to an Environmental Report" is relevant and important to the preparation of an EIS. The requirements in Appendix B can provide much of the data on which the judgments and assessments of an EIS must be based. The information that would be provided under Appendix B for natural gas projects would be used in the preparation of each relevant EIS and EA. (Appendix B would become Appendix A in this proposal.)

Several commenters stated that the provision, now proposed at § 380.8(b)(2), which required an applicant to make "any" studies that staff considers necessary or relevant to determine the environmental impact of the proposal, was too vague and open-ended. Commenters requested a definition or description of the studies that may be required under this provision. The Commission staff currently has this authority under 18 CFR 2.82, Appendix B to 2.82, and 157.14(b). The Commission believes the staff needs latitude to determine what additional information that is not contained in an application is necessary for a sound decision on environmental issues. Because there are innumerable site-specific variables, the Commission believes it is not possible to provide a comprehensive definition or description of such studies.

The commenter also requested establishment of a firm deadline for requesting further environmental studies. The Commission staff is encouraged to act expeditiously to obtain all necessary information that may not be provided in an initial application. The Commission believes, however, the time at which data requests are sent to applicants for environmental studies or other necessary information may vary, depending on the nature or complexity of the application and the workload of the Commission staff. It would thus be difficult to establish hard and fast deadlines.

All commenters agreed that the studies requested by the staff must be necesary and relevant to the environmental determinations. Two commenters indicated that the consultation requirements (now in proposed § 380.8(b)(3)) were unrealistic and burdensome. It was argued that applicants cannot identify all environmental impacts before submitting an application, even with the assistance of Federal, state, and local agencies. The commenters contended that the consultation process would delay applications and result in poor quality work, partly because agencies would not act or respond to consultation requests until an application has actually been filed with the Commission.

The Commission believes that pre-application consultation by applicants on environmental issues greatly facilitates both the processing of the application and the consultation required of the Commission under section 102(2)(C) of NEPA. Revisions in the Commission's hydropower project regulations, for example, provide for such pre-application consultation. (*See, for example,* 18 CFR 4.38.) Another example is that applicants for new licenses under section 15 of the Federal Power Act are required to consult with fish and wildlife agencies two years before expiration of an existing license. (Electric Consumer Protection Act of 1986, Pub. L. No. 99–495, section 4, 100 Stat. 1243, 1246 (1986).)

Such requirements permit the applicant to summarize its attempts to consult with an agency if it proves impossible to obtain advice from the agency within a reasonable time. Proposed § 380.8(b)(3) would not impose

any procedural requirements for consultation; nor does it mandate that an applicant wait indefinitely until an agency acts before submitting an application. The provision merely requires a good faith effort. The Commission believes the applicant that incorporates the information and advice supplied by agencies in its ER benefits from pre-application consultation because it assists in expediting Commission decision-making.

Proposed § 380.8(b)(4) would require that an applicant submit applications for all related Federal and state approvals as early as possible in planning its project or action. Some commenters believe this requirement to be unrealistic because other agencies will wait for the Commission to issue a license before taking any action. It is also argued that the provision forces an applicant to get state approval before filing an application, with duplication of effort and conflicts of law as a result. The Commission emphasizes that this provision does not require approval by a state or Federal agency where otherwise not required by law. The Commission merely prefers that, if other federal or state approvals are required, the applicant apply to that agency in the early planning stages. The objective of the provision is to facilitate early identification and review of environmental problems. It does not hold in abeyance the applicant's ability to submit an application or the Commission's power to process the application.

One commenter contends that the requirement in proposed § 380.8(b)(5) that the applicant notify the Commission staff of all other Federal actions required for completion of the proposed action or project was unnecessary and conflicted with the Commision's obligation under § 1501.2 of the CEQ regulations to advise the applicant. The authorization of a project within the Commission's jurisdiction is a joint effort of the Commission, the applicant, and any other agency that may have approval authority, special expertise, or some other interest in the project. The Commission wants to be fully apprised of any Federal actions that could delay approval and development of a proposed action or project. The Commission's familiarity with the procedures and requirements of other agencies is extensive, but it is not exhaustive. Since the applicant will be primarily responsible for apprising itself of all governmental requirements that affect its proposal, the Commission believes this requirement is not burdensome.

4. Environmental Documents

Section 380.9 proposes the format for EIS's that is used by the staff. It is substantially similar to that in 40 CFR 1502.10. It does not, however, include an index or an abstract, and it adds staff conclusions to the document. The EIS as previously proposed, § 3d.21, contained the same subjects, but had separate chapters for the environmental impacts of the proposed action and analysis of alternatives.

Several commenters addressed issues relating to the content of an EIS and the procedures for the development, circulation, and approval of an EIS. One commenter indicated that former § 3d.13(d) (here replaced by proposed 40 CFR 1506.3) that permitted adoption of an EIS prepared by another Federal agency, could result in the exclusion of interested parties from the EIS process because any adopted EIS that covered actions that were substantially similar to the action proposed to the Commission would not be recirculated, except possibly as a final EIS. One aim of both CEQ and Commission NEPA regulations is to minimize duplication and excess paper work. Presumably, if the actions are substantially similar, interested parties have already participated in the NEPA process. In any event, the Commission recognizes its responsibilities to parties in its own proceedings, and would provide opportunity for comment when the factual base or conclusions of another agency's EIS indicated the need for further review. The Commission might supplement the adopted EIS in that case.

Commenters argue that the proposed separation of the EIS sections that deal with the impact of the proposed action from the analysis of alternatives to the proposed action would predispose the decisionmaker toward the applicant's proposal. The EPA contended that an EIS should give equal attention to all alternatives, including the proposal. In addition, the Sierra Club, believing that format changes proposed by the Commission were substantial, stated that the Commission's failure to adopt certain CEQ provisions on the content of an EIS went beyond mere alteration of the format.

The Commission agrees with the commenters that equal and substantial attention should be given to all reasonable alternatives to a proposed project. It proposes here to adopt § 1502.14(b), which requires an agency to devote substantial treatment to all alternatives including the proposed action, and § 1502.14(c), which requires consideration of reasonable non-jurisdictional alternatives. The Commission nevertheless notes that it generally analyzes the proposals of others and decides between the alternatives of approving or disapproving an action or project.

Although the Commission does not agree that the EIS format proposed in the original NOPR would have dictated Commission decisionmaking and predisposed the Commission to certain conclusions, in the reproposed rule the proposed action and alternatives to it would be presented in one section of the EIS and all alternatives, including the proposed action, would be analyzed together. (*See* § 380.9(e).) In addition, one request that the EIS format include discussion of energy requirements and conservation potentials of the alternatives to the proposed action would be accommodated by the adoption of 40 CFR 1502.16(e) as proposed here.

The Commission does not agree with the comment that concluded that proposed § 3d.10(a)(5) (alternatives to be considered) limited Commission consideration to those alternatives mentioned in an EIS to the exclusion of record evidence in a hearing. That provision is replaced here by § 380.7(b)(2). The Commission believes that hearings would not normally range beyond the alternatives presented in an EIS but, if they did, the Commission would usually prepare a supplement to the EIS. Section 1502.9(c)(1)(ii) of the CEQ regulations provides for such a practice and the Commission proposes to follow that practice.

One commenter requested clarification of the evidentiary basis for utilizing an EIS prepared by another Federal agency under what is now 40 CFR 1506.3, adoption [of another agency's EIS]. If the EIS that the Commission wishes to adopt is in draft form, the Commission would specify that it is a draft at the time it is circulated for comment. When adopting an EIS in draft or final form, the Commission would independently review the document to ensure that comments and suggestions are satisfied. In the event that issues contained in the EIS in another agency are contested, the Commission could use expert testimony that is competent and credible to support it.

An EIS may be prepared by a consultant. One commenter recommends that such consultant be certifiably free of any interest as an intervenor in a contested proceeding. The Commission, as a matter of course, evaluates consultants for conflicts of interest. In addition, § 1506.5(c) of the CEQ regulations, here proposed for

adoption, requires contractors to execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project.

5. Classification of Actions

In Subpart B, the Commission proposes to implement the CEQ regulations (*see* § 1507.3(b)(2)) by establishing classes of actions which normally require an Environemental Assessment, an Environmental Impact Statement, or neither of these (the Categorical Exclusions class). The Commission notes that actions which would not usually be the subject of environmental analysis, those in proposed § 380.6 (a), may become so if the Commission or the staff believe such analysis is warranted. (*See* § 380.6(b). In like manner, actions which normally require an EIS may be found not to do so in particular circumstances. § 380.5 (b) and (c).

Most comments dealt at length with the kind of actions or projects that should require an EA or an EIS and which kinds of actions should be excluded from these levels of environmental analysis. Nearly all categories of actions in proposed § 3d.10 (b) and (c) and § 3d.11 were identified by commenters as candidates for greater or lesser environmental review within the NEPA process. As a result of the comments and further staff review, some of the actions have been described more precisely and the level of environmental review for some actions has been changed.

a. Environmental Assessments

Section 380.4 identifies actions the Commission believes may constitute major Federal actions that significantly affect the quality of the human environment. The EA enables the staff to consider the effects of these actions in an efficient manner and to decide whether they may be significant. If an action will have a significant effect on the quality of the human environment, an EIS will be performed as long as the project may be approved. If the EA indicates a project will not have significant environmental impact, including instances where mitigating measures are responsible for the lack of adverse impact, the Commission will make a Finding of No Significant Impact. Where an EA shows a project has significant adverse consequences and the project is not approved, the Commission is proposing not to perform an EIS. The Commission believes that an EIS is not required in these circumstances. (Proposed §§ 380.5(c) and 380.7(e)(1).) (*See* discussion above under 2.d, Application denials.)

There are several proposed additions to the Environmental Assessment class (§ 380.4). Prior notice filings under § 157.208 by blanket certificate holders for gas projects that exceed automatically authorized dollar amounts have been added. (*See* § 380.4(b)). These projects are thought to be of sufficient magnitude to warrant environmental study. They were not part of the Commission's regulations at the time the previous NOPR was issued. An EA would also be done for the construction of LNG peaks having facilities, (§ 380.4(a)); for exemptions for small hydroelectric power projects of 5 MW or less (§ 380.4(h)); and for additional project works at licensed projects (§ 380.4(i)). Applications for new licenses under section 15 of the Federal Power Act would receive an Environmental Assessment under § 380.4(k).[2]

An EA (rather than an EIS) would be done for major unconstructed hydropower projects with a total installed capacity of 20 MW or less. The same is true for onshore/offshore pipelines other than those involving major construction on right-of-way where there is no existing pipeline.

There have also been some modifications of actions in this class. Only curtailments having a major effect on an entire pipeline system would usually have an EA (§ 380.4(e)), and only some abandonments or reductions of natural gas service (§ 380.4(c)) as opposed to all of these actions, as previously proposed.

Surrender of hydropower project licenses and minor amendments to licensed and exempted hydroelectic project facilities, would no longer require an EA. Nor would exemptions for small conduit hydroelectric facilities.

With respect to all of the actions listed in § 380.4, the Commission emphasizes that an EA should be commensurate with the scope of the actual project under study. Some of the actions and projects are obviously more extensive than others. By requiring an ER and an EA under this section, the Commission will have an opportunity to determine which projects or actions may create problems for the environment, without imposing an undue burden on applicants or creating unreasonable delays.

Two commenters contended that applicants should be permitted to prepare an EA, with Commission staff independently evaluating it. Section 1506.5(b) of the CEQ regulations, proposed for adoption here, permits agencies to allow applicants to prepare an EA. At the same time, however, it requires the agency to make its own evaluation of the environmental issues and be responsible for the scope and content of the Environmental Assessment. The Commission believes that an independent evaluation by its staff would generally consume an amount of time and resources equal to preparation of an EA and that preparation of environmental documents by parties with a vested interest in Commission approval is undesirable. Thus, while it proposes to adopt § 1506.5(b), Commission practice would continue to be preparation of EA's by its staff and not by applicants.

The Sierra Club understood proposed § 3d.20(b), staff determination of whether to prepare an EIS after completion of an EA, to indicate that the Commission would, in an EA, determine the significance of an action or project on the basis of its magnitude, including the extent of Commission control or influence over the proposed action. As the commenter pointed out, it is the significance of the environmental impact that determines whether the Commission will prepare an EIS. The magnitude of a project is, of course, relevant to any EA determination, but the originally proposed provision placed undue emphasis on it. In any event, the Commission believes the standards for assessing whether projects not classified or those over which there is some doubt are major Federal actions significantly affecting the quality of the human environment are sufficiently detailed in the definitions proposed to be adopted. (*See* 40 CFR 1508.18 and 1508.27.) It has thus deleted former § 3d.20(b).

Under the previously proposed rule, a variety of actions normally required the preparation of an EA by the Commission, based in part on the information submitted by the applicant in its ER. Several commenters advocated the removal of many of these actions from the EA category to the categorical exclusion category (now under § 380.6).

One commenter suggested that proposed § 3d.10(b)(1) (construction and abandonment of gas facilities) should apply only to "significant" construction and "major" abandonment of various

[2] In Confederated Tribes and Bands of the Yakima Indian Nation, v. F.E.R.C., 746 F. 2d 466 (9th Cir. 1984), the court held that the Commission unreasonably failed to prepare an EIS in the relicensing proceeding involved there. The Commission believes that performance of an Environmental Assessment would enable it to determine whether an EIS is necessary or whether there would be no significant impact on the environment for applications for relicensing.

gas facilities. The Commission believes that, in general, construction and abandonment of gas facilities are the kinds of actions which may have significant effects on the quality of the human environment. It believes that, for the most part, they should be retained in the EA category. The decision to evaluate such actions is based on the Commission's experience and understanding of such projects or actions and its estimation of the likelihood of environmental damage. For example, the environmental significance of the construction of a metering facility will depend more on its location, in a wetlands area, for example, than on its size or cost.

Several commenters favored categorical exclusions for the certification for sale or transportation of natural gas and for natural gas curtailment plans. Where the Commission believes these actions may significantly affect the quality of the human environment, it has retained the requirement that an EA be prepared in the current proposed regulation. Actions which the Commission does not believe will have significant effects on the human environment have been placed in the categorical exclusions class. Such actions are gas curtailment plans that do not have a major effect on an entire pipeline system (proposed § 380.6(a)(25)) and the sale, exchange, and transportation of natural gas that does not involve construction of facilities. (Proposed § 380.6(a)(27).) These actions are believed to have minimal effects on the environment.

The provision that required an EA for abandonment or reduction of natural gas service, originally § 3d.10(b)(3), has been modified. Abandonment of service is now proposed for the Categorical Exclusion Class. Abandonments in place of minor natural gas pipelines and by removal of minor surface facilities and abandonments pursuant to blanket certificates are also proposed for the Categorical Exclusions class. (*See* proposed § 380.6(a)(21), (28), and (29).)

There have also been some additions proposed for the EA category for natural gas projects. Onshore and offshore pipeline projects that do not involve major construction on right-of-way where there is no existing natural gas pipeline would now require an EA instead of an EIS. Liquefied natural gas peakshaving facilities have been added to the types of gas projects that would require an EA. (*See* proposed § 380.4(a).)

Some commenters also recommended the categorical exclusion of hydroelectric projects or actions described in previously proposed § 3d.10(b) (6) through (10), licensing of minor hydroelectric projects and major hydroelectric projects—existing dams, surrender and modification of licenses, and exemptions for small conduit hydroelectric facilities. The Commission has reviewed the comments and believes that retention of the EA requirements for the licensing actions is desirable. (Proposed § 380.6(f).) Hydroelectric projects, "with less than 5mW of installed capacity" though small, may have a significant impact on their environs. (Based on its experience with such projects, the Commission requires from applicants a small, streamlined ER such as that under § 4.61(d)(2) of its regulations.) It is difficult to anticipate the nature of the impact of any particular action. The EA requirements would provide the Commission with the opportunity to make a threshold determination about the need for more extensive study.

Section 3d.10(b)(8) dealt with actions for which some commenters doubted the need for any environmental review—the surrender of hydropower project licenses and modifications in project facilities, operations, or boundaries. The Commission believes that such actions may represent a lesser threat to the environment than some of the other actions in original § 3d.10(b). Thus, these actions have been proposed for the categorical exclusions category. (*See* proposed § 380.6(a)(13).) Applicants for surrender or amendment of hydroelectric project licenses must still file an ER, however. The ER is commensurate with the size of the project. *See* § 6.1 of this chapter.

The Commission realizes that some of these actions may have a significant impact. Surrender of a license involving a small project may require monitoring of the clean-up, safety conditions, and any possible threats to health. Modifications of a project or the way in which it operates may result in major changes in land or water use that the Commission must evaluate. In appropriate circumstances, the Commission would do an EA or EIS for such a project pursuant to proposed § 380.6(b).

Section 3d.10(b)(9) dealt with exemptions for small conduit hydroelectric facilities. The Commission agrees with the commenters that these actions will not normally involve a significant impact on the human environment. The facilities involve man-made conduits with an installed capacity of 15 MW or less. The facilities are not part of a dam and do not rely on the construction of dams. Thus, these actions are proposed here as part of the categorical exclusions class. (*See* proposed § 380.6(a)(14).) Again, however, application for such an exemption requires the filing of an ER under § 4.92(e) of this chapter.

The Commission proposes to retain licenses for transmission lines in the EA category. This requirement pertains to both construction of such lines and maintenance of existing lines. The Commission believes an ER and an EA are appropriate when licensing constructed lines because maintenance of rights-of-way has continuing impacts on the environment. The Commission would require an ER under § 380.8(c)(1) in accordance with the requirements of § 4.71 of this chapter. For constructed lines and those to be connected to a licensed hydroelectric project with an installed generating capacity of 5 MW or less, this would be a short-form ER under § 4.61(d)(2).

The EA requirement for electrical interconnections and wheeling under four sections of the Federal Power Act, now described in § 380.4(1), was originally proposed only for such actions that would entail "substantial new construction." Definition of this term was requested. In the reproposed rule, in an interconnection or wheeling transaction conducted pursuant to the enumerated sections of the Federal Power Act involves the construction of a new substation or expansion of an old one, or a new transmission line that operates at more than 115 kilovolts (KV) and meets certain other specified criteria, an EA would be required. Language has been added at § 380.6(a)(17) of the reproposed rule setting forth which such actions would not require an EA. The Commission would obtain sufficient information on interconnection and wheeling projects that are categorically excluded to require an EA where appropriate.

b. Environmental Impact Statements

Section 380.5(a) contains projects or actions that the Commission believes are normally major Federal actions that significantly affect the quality of the human environment. Commission staff may decide that a particular project or action that would ordinarily require an EIS may not, for some reason, be such a major Federal action. In that case, an EA would first be prepared to ascertain the need for an EIS. In most cases, however, it is proposed that preparation of an EIS would automatically follow application for authorization for any liquefied natural gas import/export facility, a major pipeline project on right-of-way where there is no existing natural gas pipeline, a new gas storage field, or a new unconstructed

hydroelectric power project with a total installed capacity of more than 20 MW.

The Commission is proposing to add certificate applications to develop underground natural gas storage facilities (except where depleted oil or natural gas producing fields are used) to the actions that would require an EIS. (Proposed §380.5(a)(2).) Only major pipeline construction projects utilizing right-of-way where there is no existing natural gas pipelines are proposed to require an EIS, however, rather than all major new onshore/offshore gas pipeline projects. Other pipeline projects would receive an EA. Unconstructed hydroelectric projects with a total installed capacity of more than 20 MW are proposed in the EIS class rather than all major unconstructed hydroelectric projects. Other unconstructed hydroelectric projects would receive an EA.

The Commission believes that where a pipeline has already been constructed the significant effects on the environment have generally already taken placed. Any new construction in the same right-of-way as the existing pipeline is much less likely to have significant effects. It is thus proposing here to perform an EA rather than an EIS for projects to be built on existing right-of-way with constructed pipeline. An EIS will be performed for major pipeline projects to be built on new right-of-way or on existing right-of-way without constructed pipeline.

The Commission has reviewed the EIS's it has done for applications for hydroelectric project licenses from approximately 1972 to the beginning of 1987. Of a total of 46 EIS's, only 12, about 26 percent, involved projects with a total installed generating capactity of 20 MW or less. The Commission concludes, therefore, that in the vast majority of applications for which an EIS will be performed, the generating capacity will exceed 20 MW. It has thus used this criterion in defining applications for which it will usually perform EIS's.

Commenters argue that the original proposed regulation would create confusion about when an EIS must be prepared because it would require (in § 1502.5(b) and (c)) an EIS earlier than the Supreme Court appears to do in *Aberdeen and Rockfish Railroad Company v. SCRAP.*[3] In *SCRAP II*, with regard to an application by a non-Federal party, the Supreme Court stated "... the time at which the agency must prepare the final statement is the time at which it makes a recommendation or report on a proposal for federal action." [4] Section 1502.5(b) states that an EA or EIS shall be commenced "no later than immediately after [an] application is received." Section 1502.5(c) states that for adjudication, a final EIS "shall normally precede the final staff recommendation" and that portion of the hearing relating to the impact study. The CEQ regulations at issue here were promulgated in 1978, subsequent to *SCRAP II*. The Commission does not believe they contradict *SCRAP II*. Preparing a final EIS and making a recommendation on a proposal are lengthy processes and commonly proceed simultaneously. Section 1502.5(b) merely provides that environmental study should be begun as soon as possible, and definitely when an application is received by the agency. The recommendation or report process would begin at the same time. Section 1502.5(c) addresses the needs of adjudication. Adjudication must be based on evidence, and if the agency has not completed the NEPA process, it may not yet have decided upon its evidence and may not be ready to proceed to trial. The Commission's current practice is to prepare an Environmental Assessment (EA) or an EIS as early as possible in its proceedings, so that such documents are available for hearings and contested cases. This would continue to be Commission practice under Part 380. The Commission does not believe *SCRAP II* creates any inconsistency with practice.

One commenter stated that the word "major" in proposed § 3d.10(c)(2), that described new onshore/offshore natural gas pipeline projects requiring EIS's (now § 380.5(a)(3)), should be defined according to Commission precedent. Such projects, it was argued, have little environmental impact and an EIS is therefore unnecessary. The Commission does not believe that onshore/offshore pipeline projects are likely to have minimal environmental impact. The potential threat to sea life and freshwater swamps makes environmental review advisable for such projects. However, such a pipeline project may not always be as hazardous to its environment as the other types of actions described in § 380.5(a). Experience indicates that some onshore/offshore projects should have an EIS. While there do not appear to be any convenient engineering or environmental criteria for drawing a "bright line" distinction between "major" and non-major pipeline projects, the industry must be aware that pipeline projects involving extensive construction or sensitive environmental areas will almost certainly require an EIS. Moreover, there is no difference in ER filing requirements for pipeline projects receiving an EIS and those receiving an EA. (*See* § 380.8(a)(1) and (c)(2)(i).)

c. Categorical Exclusions

Under § 380.6(a), various actions and projects of non-Federal applicants and many actions or functions performed by the Commission itself are proposed as not normally constituting major federal actions significantly affecting the quality of the human environment. This would not, however, foreclose environmental review if unusual circumstances indicated that any of the actions presumed not to cause any significant direct or indirect environmental impact might, in fact, have such effects. (*See* § 380.6(b).)

The Categorical Exclusions section (§ 380.6(a)), has undergone some revision since the previous NOPR. Three sections have been deleted: § 3d.11(a)(12), (15), and (23), review or approval of study proposals required by a license or preliminary permit for a hydroelectric project, water resource appraisal studies and plans for displacement of fuel oil by natural gas. Number 12, study proposals, is part of the preliminary permit process. Water, resource appraisal studies, number 15, are no longer prepared. Number 23, displacement of fuel oil by natural gas, is no longer monitored by the Commission.

There are a number of additions proposed for the Categorical Exclusions section. These actions, it is felt, have minor or no adverse effects on the environment. The first is the establishment of fees to be paid by an applicant under section 30(c) of the Federal Power Act. (Proposed § 380.6(a)(11).) Other additions in the hydroelectric area are the surrender of hydroelectric licenses, preliminary permits, and exemptions; amendments to licenses, preliminary permits, and exemptions, except amendments for additional project works (§ 380.6(a)(13)); and exemptions for small conduit hydroelectric facilities (§ 380.6(a)(14)). Similarly, changes in land rights for water power project lands for utilities, small structures, erosion measures, and some other uses have also been proposed for inclusion in § 380.6(a). (*See* proposed § 380.6(a)(19).) (These actions were discussed in the Environmental Assessments section, 5.a above.)

[3] 422 U.S. 289, 95 S. Ct. 2336 (1975) [SCRAP II].

[4] *Id.* at 2356.

Exemptions for hydroelectric and gas projects are proposed to be added to several types of procedural actions that were previously categorically excluded. These include withdrawals of applications (§ 380.6(a)(10)) and approval of filings made in compliance with certificates, preliminary permits, exemptions, and licenses (§ 380.6(a)(30)). Transfers of exemptions under Part I of the FPA are also proposed to be excluded. (*See* § 380.6(a)(8).)

Electrical connections and wheeling under sections 202(b), 210, 211, and 212 of the Federal Power Act where there is no new substation, no line operating at more than 115 KV on more than 10 miles of right-of-way, and no new line on more than one mile of new right-of-way are also proposed as categorical exclusions. (*See* § 380.6(a)(17).)

With regard to gas, a number of actions would be added to the categorical exclusion section. (*See* § 380.6(a)(20), (27), (28), and (29).) These are exemptions under section 1(c) of the Natural Gas Act; the sale, exchange, and transportation of natural gas which does not involve construction; abandonment in place of minor natural gas pipeline and abandonment by removal of minor surface facilities; and abandonment of service under a gas contract.

Lastly, a categorical exclusion for actions having only socio-economic effect is proposed as § 380.6(a)(31). This exclusion is in keeping with § 1508.14 of the CEQ regulations which provides that "economic or social effects are not intended by themselves to require preparation of an environmental impact statement."

Numerous commenters, largely representatives of regulated industries, advocated expansion of the list of projects excluded from the need for issuance of environmental documents under the NEPA process. Many of the actions or projects that commenters wanted removed from the EA category (§ 380.4), discussed previously, are the same projects or actions that commenters also suggested be categorically excluded.

A natural gas pipeline company requested exclusion of natural gas interconnection and transmission facility projects, such as pipeline loops and added compression facilities within, or adjacent to, existing rights-of-way. Such projects, it was argued, rarely have a significant environmental impact. The Commission believes that the construction of such facilities may violate noise standards, change land uses, disturb previously unknown or unnoticed historical or archaeological sites, or jeopardize erodible soils. Pipeline loops can conceivably involve up to hundreds of miles of new construction. The Commission thus proposes to continue to require an EA for such projects under § 380.4(a).

One commenter argued that licenses for constructed major or minor hydroelectric projects, licenses for constructed transmission lines, and approval or modification of hydroelectric project boundaries should be excluded. Modifications in licensed hydroelectric project facilities, mode of operation, and boundaries are proposed here as categorical exclusions. (*See* § 380.6(a)(13).) The Commission believes that the other projects mentioned may have environmental effects that should be assessed prior to authorization. These projects or actions are thus reproposed here as requiring an EA. (All of these actions were discussed above in the Environmental Assessments section.)

A natural gas utility argues for the exclusion of the replacement of existing pipelines and appurtenant facilities. The Commission believes that some replacements are already excluded by virtue of § 2.55(b) of this chapter, which excludes facilities which replace deteriorated ones from the definition of "facilities" under section 7(c) of the Natural Gas Act, as long as the replacement has a substantially equivalent designed delivery capacity. With regard to other replacements, the Commission believes that although substituting a new pipeline for an old pipeline may appear to leave the land in the same condition, removal of the old line and retrenching could seriously disturb the environment and should be assessed for any impact.

A commenter also advocated categorical exclusion of natural gas transportation and exchange arrangements, including those entered into pursuant to section 311(a) of the NGPA, provided that no major construction of facilities is proposed. The Commission believes that these actions will not usually have adverse environmental impacts and thus proposes § 380.6(a)(27) excluding the sale, exchange and transportation of natural gas and do not require construction of facilities.

It was further contended that individual natural gas projects that would qualify as budget-type certificate projects under § 157.7 (b), (c), (d), (e) or (g) should be excluded. Filings under these sections are no longer accepted by the Commission and most certificates issued have expired. The essence of the old budget-type program was transferred to the Order 234 blanket program under 18 CFR 157.200–157.218. This program was the subject of an EA and has its own environmental procedures that the Commission believes are in harmony with the procedures in this rule. References to the Order 234 and Order 436 programs have been added at §§ 380.4(b), 380.6(a) (21) and (22), and 380.8(c)(2)(ii). The Commission proposes to retain preparation of an EA for facilities which require a prior notice filing under § 157.208 because their costs exceed a specified limit. Other actions under the blanket programs, such as gas sales for resale, construction of certain sales taps, new delivery points, transportation, and increases in storage capacity, have been proposed as categorical exclusions. (*See* § 380.6(a) (21) and (22).)

As previously stated, the Commission proposes to place abandonment in place of minor natural gas pipeline and by removal of minor surface facilities and abandonment of service under a contract in the categorical exclusions class. Minor surface facilities include valves, metering, and related equipment including underground connections to pipelines. The Commission believes removal of these facilities would have no significant impact and would generally improve the appearance of the facilities' site. By minor natural gas pipeline, the Commission means short segments of buried pipeline of six inches outside diameter or less. The Commission believes that abandonment in place of such pipeline would have no significant environmental impact. These actions are thus proposed under § 380.6(a)(28). Where service under a supply contact is abandoned, facilities are only infrequently abandoned. Such facilities consist of wells, wellhead equipment, and gathering pipelines and are under the jurisdiction of other state and Federal agencies. Abandonment under a gas supply contract does not affect the pipelines' responsibility to serve its customers and, therefore, has no environmental impact. For example, abandonment of first sales to interstate pipelines and pipeline to pipeline sales are covered in this exclusion. Abandonment of service under a supply contract is proposed in § 380.6(a)(29) for the categorical exclusions class.

Section 380.6(a)(24), which would place approval of taps, meters, and regulating facilities within existing rights-of-way in the categorical exclusions class, has always been qualified by the condition that land use in the vicinity of the project must have remained unchanged since the original facilities were installed. One commenter argues that this condition should be deleted because construction in a right-

of-way is limited to small facilities with no environmental impact. The Commission believes that construction of small facilities, even in existing rights-of-way, may have effects on land use and historical or archaeological sites. In addition, if significant nonjurisdictional facilities are associated with minor facilities under Commission review, they must be included in the NEPA evaluation.

The EPA argued that the categorical exclusion now proposed in § 380.6(a)(7) for actions relating to the reservation and classification of United States lands as water power sites, as well as other actions under section 24 of the Federal Power Act, is not appropriate because such actions constitute major land use decisions. The reservation of the Federal lands under section 24 is automatic at the time an applicant applies for a preliminary permit or a license for a particular site for purposes of power generation. The reservation preserves the status quo; it does not allow the applicant to proceed with its project. The Commission then evaluates the environmental impact of the project when it receives an application for a license.[5]

The Sierra Club strongly attacked the exclusion of preliminary permits, now in proposed § 380.6(a)(9), arguing that ground disturbances pursuant to feasibility studies may have significant effects on the environment. It was argued that an application for a permit should contain an Environmental Report (ER), including comparative studies of alternatives, and be followed by an EA prepared by the Commission.[6]

The Commission continues to believe that preliminary permits are among those actions that rarely entail significant environmental impacts and has thus again placed them under Categories Exclusions. The proposed Categories Exclusions in § 380.6(a) are not absolute. Under paragraph (b) of that section, the Commission would prepare an EA or EIS when there are circumstances that it determines involve significant environmental impacts. In the case of preliminary permits, those circumstances can be detected by Commission staff by means of the work plan for new dam construction contained in Exhibit 2 of the preliminary permit application (18 CFR 4.81(c)). But because it believes the vast majority of preliminary permits do not entail studies that have any significant impact on the environment, the Commision does not propose to prepare an EA or EIS for each such application.

6. Public Participation

a. Scoping and Public Notice

The Commission proposes to adopt many of the provisions of the CEQ regulations providing for public participation in the NEPA process. The Commission will follow the procedures for "scoping" or determining the issues to be included in an EIS that are set out in 40 CFR 1501.7. The Commission also proposes to follow the provisions for public notice, meetings, and availability of documents of 40 CFR 1506.6, with some modifications as noted below. These provisions are largely the same as those contained in the previous proposal.

Many commenters requested further elaboration of the Commission's scoping procedures in the new rule, based on the provisions of § 1501.7 of the CEQ regulations. The Commission proposes adopting the CEQ scoping procedure. The Commission believes the steps and tasks involved in this procedure are adequately spelled out in the CEQ regulations, 40 CFR 1501.7 and 1508.25.

The CEQ regulations do not require public participation or public comment on Environmental Assessments. However, the Commission uses certain procedures when it believes that the analyses at issue may benefit from public comment. On occasion, the Commission conducts scoping meetings on EA's and may issue a notice of intent to prepare an EA. The Commission may also request comments on an EA once it has been completed.

Under § 1506.6(b) of the CEQ regulations, which is proposed for adoption, the Commission would give notice of the availability of all EA's. Often, the Commission would give notice of the availability of an EA in a Commission order. (*See* proposed § 380.22.) Environmental Assessments are "public documents" (40 CFR 1508.9(a)) and may be requested by members of the public.

Ordinarily, it would be inappropriate to develop a scoping procedure for use before the applicant submits an ER, as one commenter proposed. When Commission staff undertakes the scoping process, it would prefer to do so based on a wide range of available information about the project, much of which can be provided by the ER.

The public involvement provisions of § 3d.13(f) were not quite as broad as those of § 1506.6 which would replace it. That section provides that notice of NEPA-related matters must be given by mail to all who ask for it in individual actions and may be given, in matters of local concern, to community organizations, through newsletters, by direct mail to affected property owners, and by posting on and off the site. Other notice provisions, measures regarding public meetings, and the availability of documents are substantially the same as the previously proposed § 3d.13(f).

Sectioin 380.22 would add another possible means of notice for actions of local concern to those specified in the CEQ regulation, § 1506.6. In the ordinary course of business the Commission often given notice of availability of Environmental Assessments (EA) and of Findings of No Significant Impact (FONSI) in the orders it issues concerning applications. (A FONSI may be incorporated in an order rather than appearing as a separate document.) The Commission wishes to continue this practice, and so includes this section in the proposed regulation.

The original proposal § (3.d13(i)) contained a provision allowing the Commission to publish EIS'S 15 days after filing with the EPA if there was no publication by EPA during that time. The current proposal retains this provision. (Proposed § 380.23.)

One commenter contended that the publication-of-notice of NEPA-related events in proposed § 3d.13(f) are an entirely new and unnecessary addition to the regulations. (The corresponding sections here are 40 CFR 1506.6(a) and (b), which are proposed for adoption.) The Commission does not believe this to be the case. The Commission already publishes notice of hearings and public meetings, notices of intent to prepare environmental documents and, on occasion notices of the availability of environmental documents. Under the reproposed rules, such publication would occur as set out in 40 CFR 1506.6(b) and proposed §§ 380.7(e) and 380.22.

The provisions in proposed § 3d.13(f) that dealt with when hearings or meetings would be held on environmental issues caused some commenters to request a clarification of the distinction between the two. This provision would be replaced by 40 CFR 1506.6(c) which is proposed for adoption. The Commission believes that hearings and meetings are used interchangeably in this section.

When the Commission holds a hearing or meeting, it will publish notice

[5] The actual reservation of public lands is the responsibility of the Department of the Interior.

[6] Preliminary permits have been the subject of two recent lawsuits, Washington State Department of Fisheries v. FERC, 801 F.2d 1516 (9th Cir. 1986) and National Wildlife Federation v. FERC, 801 F.2d 1505 (9th Cir. 1986). In both cases the petitioner contended, *inter alia*, that the Commission should have prepared an EA or an EIS. The court did not reach these claims in either case, but remanded on other grounds. (*See* National Wildlife at 1515.)

describing the nature of the hearing or meeting, and the issues, controversies, or statutory requirements involved and will make available to the public or the interested parties the underlying environmental documents, if any, that may be discussed. Circulation of an EIS includes service on all parties to a contested proceeding under Rule 2010 of the Commission's Rules of Practice and Procedure. 18 CFR 385.2010 (1986). In accordance with comments and following 40 CFR 1506.6(c)(2), if a draft EIS will be discussed at a hearing or meeting, the Commission will usually circulate it to the public and to the parties in any proceeding, at least 15 days in advance of the meeting or hearing.

b. Intervention

Section 380.20(a) proposes to allow a motion for intervention in trial-type proceedings based on the environmental issues or sufficiency of a draft EIS. The newly proposed section is substantially the same as the old, § 3d.10(e). Section 380.20 then states the responsibilities of persons who intervene in trial-type proceedings. (Proposed § 380.20(b)(3).) Intervenors would be required to file timely comments in cases not yet set for hearing. Where a matter was set for hearing, an intervenor could present evidence and participate in accordance with the Commission's Rules of Practice and Procedure. Facts and opinions on environmental issues could not be considered if they were not admitted into evidence and made part of the record of the proceeding. (*See* § 380.20(b)(3)(ii)(B).) Such facts and opinions may, however, have been expressed as comments on draft environmental documents. In that case, they would be entered in the record to the extent they were reflected in the final environmental document and that document was submitted in evidence.

Subparagraph (c) states that the procedure for resolving a contested environmental issue that is the subject of trial-type proceedings will be the Commission's own adjudicatory process. Those who wish to contest an environmental issue that is the subject of a trial-type hearing can do so as parties either under the intervention procedure proposed in these regulations or under the Commission's Rules of Practice and Procedure, 18 CFR 385.214. The CEQ would stand in the same position as any other person in this type of proceeding and should intervene and submit evidence on the record if it wished its conclusions and opinions to have probative value. If it did not choose to become a party, then its opinions and conclusions could not be considered unless submitted by a person who was a party and admitted as evidence or unless they were otherwise officially noticeable. (*See* §§ 380.20(b)(3)(ii)(B) and 380.20(c).)

It is important for all agencies and members of the public to understand the fundamental differences between the opportunity to comment on proposed Commission actions or to petition the Commission to adopt certain policies, and the more stringent responsibilities and requirements imposed on persons who intervene in contested on-the-record proceedings in order to demonstrate that the Commission should or must adopt a particular course of action. The procedure for intervention is governed by the Commission's Rules of Practice and Procedure at § 385.214 (Rule 214). Proposed § 380.20 would allow a timely motion for intervention upon publication of a DEIS if it is ultimately issued as a final rule.

The EPA desired that Federal agencies be afforded automatic intervention in contested proceedings. The Commission believes that such a provision may not be appropriate because the process of intervention and the resulting litigation is only meaningful if the contesting parties are willing and able to supply record evidence. This may include personal participation in a hearing by the intervenor or a representative of the intervenor group.

c. Availability of NEPA Documents

Section 380.21 proposes to implement CEQ regulation § 1506.6(e) by specifying that information and documents concerning the NEPA process will be available to the public through the Commission's Public Reading Room and Public Reference Branch.

The Commission does not propose to create a separate repository devoted exclusively to environmental documents as requested by one commenter. Environmental documents would be available from the Public Reading Room and Public Reference Branch according to the docket numbers of the actions involved and as indicated in these regulations and the Commission's public notices. (*See* proposed § 380.21.).

7. Resolution of Interagency Disagreements

The current proposal adopts the CEQ provision for the resolution of lead agency disputes, 40 CFR 1501.5. With regard to substantive environmental disputes between the Commission and other Federal agencies, the Commission does not propose to adopt the procedures of Part 1504 of the CEQ regulations which provide for the referral of such disputes to CEQ for a recommendation.

The original proposal established its own procedures for resolution of disputes, § 3d.14. The net effect of these procedures was to refer lead agency disputes to the CEQ under 40 CFR 1501.5. Environmental disputes related to Commission actions or proceedings pursuant to its regulatory decisionmaking functions were to be resolved exclusively by Commission decision and any judicial review thereof. CEQ recommendations were to be entered in the record as advisory only if CEQ were not a party to the proceeding.

The initial proposed rulemaking did not adopt the Part 1504 procedures of the CEQ because that Part appeared to indicate that the Commission's determinations on environmental issues could become subject to binding decisions reached outside Commission proceedings. Binding resolution of disputed issues by CEQ would be inconsistent with the Commission's primary jurisdictional statutes and its Rules of Practice and Procedure.

In the intervening period between that NOPR and this one, no Commission matters have been referred to the CEQ by another agency, nor has the Commission referred any environmental disputes to the CEQ. The Commission believes that the referral process may be incompatible with both its adjudicatory and rulemaking processes and so, again, does not propose Part 1504 for adoption.

The EPA objected to the provision in former § 3d.14, here proposed § 380.20, that required commenters to intervene formally in contested Commission proceedings in order to influence decisions on issues set for hearing. This requirement, according to the EPA, is contrary to NEPA and section 309 of the Clean Air Act which gives EPA the right to comment on any agency action. The Commission wishes to avoid misunderstandings about its proceedings or the purposes of its intervention provisions.

There are a variety of means by which agencies or members of the public may participate in agency decisionmaking without any special qualification. These include commenting on rulemakings under the Administrative Procedure Act and commenting on any draft EIS, whether prepared for an adjudication, such as a contested or uncontested licensing proceeding, or a rulemaking. Comments on an EA are sometimes solicited, and there are opportunities to participate in scoping meetings as well. Federal and state agencies may be asked to consult with the Commission and applicants regarding projects in

which the agencies have an interest by jurisdiction or special expertise. The EPA may participate to the fullest extent in any and all of these procedures.

The submission of comments for consideration by the Commission or its staff described above, however, is very different from the procedures surrounding participation in a contested, trial-type proceeding. The Commission makes any decision that results from a trial-type proceeding based on a formal record and, if environmental issues are formally contested, parties must intervene and subject their evidence to cross-examination in order to ensure that such evidence or opinion is properly considered by an Administrative Law Judge. A regulatory agency is bound to provide due process to all parties. In a contested on-the-record proceeding, an agency of the United States will enjoy a position no different than that of other parties. In such a proceeding, no weight will be given the agency's evidence unless it is formally entered into the record. (*See* § 380.20(b)(3)(ii)(B).) EPA may, if it wishes, intervene under existing Commission regulations, or under the additional right of intervention proposed here if it is promulgated as a final rule.

The EPA also requested a provision describing how lead agencies may request Commission participation as cooperating agency and a description of the conditions under which the Commission would choose to serve as a cooperating agency. The Commission here proposes to follow the provisions governing cooperating agencies in the CEQ regulations, 40 CFR 1501.6 and 1508.5. An agency may request Commission participation simply by writing to the Secretary of the Commission. A responsible officer of the agency will determine whether the Commission's interests in a project are sufficient to justify participation as a cooperating agency. Normally, other agencies will request to be cooperating agencies or to participate as parties in Commission proceedings to approve applications.

One commenter requested a description of the point at which the Commission would decide a disagreement between itself and another agency is unsolvable, so that it may be referred to CEQ. Although the Commission is not proposing to adopt Part 1504, there may be occasions on which it would consider participation in the referral process beneficial. The Commission believes that such decisions must be made on a case by case basis.

The same commenter requested that the Commission establish a maximum time for attempting resolution of any interagency disagreement. Such a time period would arguably help avoid delays in the Commission's decisionmaking processes. If such disagreements are not settled prior to hearing on applications, they will ultimately be decided by the Commission. Schedules for matters set for hearing are determined by the Commission or the Presiding Administrative Law Judge.

8. Miscellaneous

a. Monitoring

Section 1505.3 of the CEQ regulations, which was originally proposed for adoption by reference and is also proposed for adoption here, states that an agency may monitor the implementation of its decision. One commenter requested clarification of the term "monitoring." The Commission customarily reviews on a case-by-case basis many of the non-Federal projects that it has previously authorized. Commission authorization is frequently conditional and licenses or certificates often require that reports be filed with the Commission after a project becomes operational. There is post-certification review for natural gas projects. In addition, there is ongoing cooperation with other Federal agencies, such as the Bureau of Land Management, that share an interest in, or jurisdiction over, a particular project. The Commission believes the monitoring function of both §§ 1505.2 and 1505.3 of the CEQ regulations is present in many of the Commission's regulations and procedures.

b. National Historic Preservation Act

The Advisory Council for Historic Preservation (ACHP) requested that a section be included in the NEPA regulations describing the Commission's responsibilities under the National Historic Preservation Act (NHPA). The ACHP has recently revised its regulations governing agencies' compliance with section 106 of the NHPA.[7] Insofar as NHPA compliance may be handled through the NEPA process, the Commission would do so under these reproposed regulations.

The Commission currently includes requests for information on historic sites in its various Environmental Report (ER) requirements and it consults with the Advisory Council when approving any project that may affect a historic site included in or eligible for inclusion in the National Register of Historic Places or that may affect any other cultural site. It should be noted, however, that NHPA requirements are separate from those of NEPA and may necessitate other or additional actions on the part of applicants and the Commission to ensure their fulfillment.

c. Supplemental DEIS's and FEIS's

Section 380.7(d) outlines the procedures by which supplemental draft and final EIS's performed or adopted by the agency could become part of the record in accordance with § 1502.9(c)(3) of the CEQ regulations. For rulemaking proceedings, such status would be automatic where the rulemaking proceeding was ongoing. If the record had closed, then those seeking review might introduce them under the procedures provided for judicial review such as section 19(b) of the NGA, section 313(b) of the FPA, and section 506 of the NGPA.

In adjudicated matters, if the proceeding were still pending, a supplemental draft EIS or final EIS might be admissible in evidence. If the evidentiary record has been closed, a party may move to reopen the record, the presiding officer could reopen it *sua sponte* prior to the service of an initial or revised initial decision, or the Commission could reopen the record after service of the initial or revised initial decision. 18 CFR 385.716.

d. Finding of No Significant Impact

Some commenters requested more information about a Finding of No Significant Impact (FONSI). A FONSI is an environmental document, as defined in § 1508.13 of the CEQ regulations. It is a product of the EA procedures and briefly presents the reasons why an action would not have a significant impact on the human environment. A FONSI incorporates or contains a summary of the EA. A FONSI may be combined with another agency document under the CEQ regulations, 40 CFR 1506.4, so that a FONSI may be issued as part of a Commission Order.

e. Non-Jurisdictional Facilities

The Commission recognizes that it is responsible for assessing impacts on non-jurisdictional facilities in conjunction with those over which it has jurisdiction. (*See Alice Henry v. Federal Power Commission*, 513 F. 2d 395 (D.C. Cir. 1975).) For purposes of environmental analysis, the Commission must consider all of the facilities that are integral to a proposal. In *Alice Henry* the court held that the Commission had to consider the environmental effects of an entire coal

[7] "Protection of Historic Properties," 51 FR 31115 (September 2, 1986).

gasification proposal, including the plant, pipeline to transport the gas, and a tap and valve facility, for purposes of NEPA. Only the tap and valve facility came within the Commission's jurisdiction. *Id.* at 405–407. The CEQ regulations which the Commission is proposing to adopt provide that "parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement." 40 CFR 1502.4(a). Actions that are interdependent parts of a larger action and depend on the larger action for their justification should be evaluated together. 40 CFR 1508.25(a)(iii). The Commission believes that these principles apply generally to the conduct of environmental analysis undertaken under NEPA and that, therefore, on occasion, it may be required to evaluate the effects of non-jurisdictional facilities when preparing EA's and EIS's.

IV. Treatment of Certain CEQ Regulations

Some portions of the CEQ regulations are not proposed for adoption. Some require implementing action which is taken herein, and some, the Commission believes, are inappropriate or contrary to Commission practice or authority.

Section 1501.2(d)(2) and the second sentence of § 1502.5(b) are not proposed for adoption because they would conflict with other statutes and regulations. These sections, in effect, either call for or encourage agency consultation with other Federal agencies prior to the receipt of applications for projects. Specific consultation requirements for the Commission are contained in statutes such as section 10(a)(3) of the FPA (as amended by the Electric Consumer Protection Act of 1986, Sec. 3(b)(4), 100 Stat. 1243, 1244), which states that the Commission "shall solicit recommendations from state and federal fish and wildlife agencies and Indian tribes upon receipt of an application for a license." Section 30 of the Federal Power Act requires the Commission to consult with Federal fish and wildlife agencies in making a determination on an application for an exemption for a small conduit hydroelectric facility or a small hydroelectric power project. The Commission's regulations both in this proposed rule and elsewhere (*see* § 4.38 of this chapter) require or encourage applicants to consult with Federal agencies as early as possible in their planning processes. Applicants present this information as part of their application. Commission consultation is triggered by the receipt of applications. The Commission believes that Section 102(2)(C) of NEPA does not require more than this and that pre-application consultation by the Commission would conflict with the existing regulatory scheme. Finally, § 1502.10, Recommended format, is not proposed for adoption because the staff has evolved a format for EIS's which is proposed in § 380.9. Section 1502.11(e), which requires an abstract, has not been included because it is not used and its purpose is fulfilled by the summary in proposed § 380.9(b). Section 1506.7, Further guidance, has been omitted because it refers solely to actions to be taken by CEQ.

The Commission proposes to implement some CEQ provisions. These are § 1502.9(c)(3) (how to make a supplemental EIS part of the record, § 380.7(d)); § 1505.1 (environmental decisionmaking, by the regulation as a whole and by § 380.7); § 1506.6(e) (where to get environmental information, § 380.21); and § 1507.3(b) (environmental study categories, §§ 380.4, 380.5, and 380.6).

Some of the provisions of the CEQ regulations are proposed to be adopted, but with modifications as noted in § 380.3(b). These provisions include § 1501.4(e) (preparation of a FONSI). The proposed language states that the Commission may prepare a Finding of No Significant Impact on the basis of an Environmental Assessment or conclude the analysis with the Environmental Assessment if the analysis shows the action has adverse environmental effects and the action is not approved. This provides the agency with three possible courses of action when an EA has been performed rather than the two that are contained in the CEQ regulations. Under the CEQ regulations, an EA must be followed either by a FONSI or an Environmental Impact Statement (40 CFR 1501.4(e)). The Commission believes that a third procedure is warranted.

Section 1502.7, Page limits, is modified to refer to the EIS format as proposed in § 380.9 instead of the format contained in 40 CFR 1502.10.

Section 1502.13, Purpose and need of EIS, is modified to reflect the fact that for most applications the purpose which the staff is evaluating is the purpose as given by the applicant.

In § 1502.14(e) (identification of preferred alternative) the wording has been changed to reflect the fact that the Environmental Impact Statement contains the staff's preferences regarding alternatives rather than the agency's. The Commission or its designees would specify their choice upon consideration of the EIS and other relevant information.

Section 1505.2(c) has been modified to make the inclusion of monitoring and enforcement programs in the record of decision discretionary rather than mandatory. As stated previously, the Commission believes the monitoring function is present in many of the Commission's regulations and procedures.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, requires certain analyses of proposed agency rules that will have a "significant economic impact on a substantial number of small entities." Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the reproposed NEPA regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. These rules are procedural in nature and, moreover, insofar as they affect members of the public and impose obligations on them, merely reflect requirements already in place in existing statutes and regulations.

VI. Paperwork Reduction Act Statement

The reproposed rule, for the most part, either reiterates or references reporting and filing requirements that are already in existence. The OMB control numbers for these requirements start with the designation 1902– and are as follows: for § 2.80 and § 2.82, 0128; for Part 4, Subpart D, 0073; for Part 4, Subpart E, 0058; for Part 4, Subpart F, 0058; for Part 4, Subpart G, 0115; for Part 4, Subpart H, 0115; for § 4.81, 0073; for Part 4, Subpart J, 0115; for Part 4, Subpart K, 0115; for Part 4, Subpart L, 0058 and 0115. The control number for § 157.208 is 1902–0060.

The proposed rule will be submitted to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act, 44 U.S.C. 3501–3504 and OMB's regulations, 5 CFR 1320.13 (1985). Comments on the information collection requests of this proposed rule can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VII. Comment Procedure

The Commission invites interested parties to submit written comments on the matters proposed in this notice. An original and 14 copies of such comments must be filed with the Commission no

later than July 28, 1987. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM87-15-000.

Written comments will be placed in the public files of the Commission and will be available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects

18 CFR Part 2

Environmental impact statements.

18 CFR Part 380

Environment, National Environmental Policy Act.

In consideration of the foregoing, the Commission proposes to amend Subchapters A and W of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission. Commissioner Stalon concurred with a separate statement to be issued later.

Lois D. Cashell,

Acting Secretary.

PART 2—[AMENDED]

1. In Part 2, the authority citation continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 792-825r (1982); Natural Gas Act, 15 U.S.C. 717-717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645 (1982); and the National Environmental Policy Act, 16 U.S.C. 4321-4361 (1978), unless otherwise indicated.

2. Part 2 of Subchapter A is amended by amending §2.80(b) to remove all but the first sentence of paragraph (b); by removing §§ 2.80(c), 2.81, 2.82, and Appendix A; and by redesignating Appendix B as Appendix A of Part 380. Redesignated Appendix A is amended by removing the first paragraph of numbered guideline (8); by removing from numbered guideline (2) the words "the Commission's Order No. 415-C (issued December 18, 1972) amending §§ 2.80-2.82," and inserting in lieu thereof the words "Part 380"; by removing from numbered guideline (3) in Redesignated Appendix A the term "§ 2.82(a)", and inserting in lieu thereof the term "§ 380.8" in both places; and by revising the title of Redesignated Appendix A to read "Appendix A—Guidelines for the Preparation of Environmental Report for Applications under the Natural Gas Act, as specified in § 308.8."

3. Subchapter W is amended by adding a new Part 380 to read as follows:

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

Subpart A—General Provisions

Sec.
380.1 Purpose and definitions.
380.2 Adoption of CEQ regulations as noted.
380.3 Portions of CEQ regulations adopted, modified, or implemented.

Subpart B—Environmental Assessments, Environmental Impact Statements, and Categorical Exclusions

380.4 Actions that require an Environmental Assessment.
380.5 Actions that require an Environmental Impact Statement.
380.6 Categorical exclusions.

Subpart C—Environmental Decisionmaking, Environmental Information, and Environmental Impact Statement Format

380.7 Environmental decisionmaking.
380.8 Environmental information to be supplied by applicant.
380.9 Format for Environmental Impact Statement.

Subpart D—Additional Provisions

380.20 Participation in Commission proceedings.
380.21 Public access to information and documents.
380.22 Additional discretionary means of Notice of Availability of an Environmental Assessment or a Finding of No Significant Impact.
380.23 Additional means of notice of availability of an EIS.

Authority: National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347; Department of Energy Organization Act; 42 U.S.C. 7101-7352; Executive Order 12009, 3 CFR 142 (1978).

Subpart A—General Provisions

§ 380.1 Purpose and definitions.

(a) The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) In addition to the definitions in 40 CFR Part 1508, the terms listed below have the following definitions:

(1) DEIS—Draft Environmental Impact Statement.

(2) FEIS—Final Environmental Impact Statement.

(3) FONSI—Finding of No Significant Impact.

(4) Environmental Report or ER—that part of an application submitted to the Commission by an applicant for authorization of a proposed action which includes information concerning the environment, the applicant's analysis of the environmental impact of the action, or alternatives to the action required by this or other applicable statutes or regulations.

§ 380.2 Adoption of CEQ regulations as noted.

The Federal Energy Regulatory Commission hereby adopts the regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of NEPA, 40 CFR Parts 1500-1508, with the exceptions, modifications and additions in this part.

§ 380.3 Portions of the CEQ regulations adopted, modified, or implemented.

(a) The following portions of the CEQ regulations, 40 CFR Parts 1500-1508 are adopted:

§ 1500.2 (Policy)
§ 1500.5 (Reducing delay)
§ 1501.1 (Purpose)
§ 1501.2 (Apply NEPA early in the process), (a), (b), (c), (d)(1), and (d)(3)
§ 1501.3 (When to prepare an environmental assessment)
§ 1501.5 (Lead agencies)
§ 1501.6 (Cooperating agencies)
§ 1501.7 (Scoping)
§ 1501.8 (Time limits)
§ 1502.1 (Purpose [of Environmental Impact Statement])
§ 1502.2 (Implementation)
§ 1502.3 (Statutory requirements for statements)
§ 1502.4 (Major federal actions requiring the preparation of environmental impact statements)
§ 1502.6 (Interdisciplinary preparation)
§ 1502.8 (Writing)
§ 1502.9 (Draft, final, and supplemental statements), (a), (b), (c)(1), (c)(2), and (c)(4)
§ 1502.11 (Cover sheet), (a), (b), (c), (d), and (f)
§ 1502.12 (Summary)
§ 1502.15 (Affected environment)
§ 1502.16 (Environmental consequences)
§ 1502.17 (List of preparers)
§ 1502.18 (Appendix)
§ 1502.19 (Circulation of the EIS)
§ 1502.20 (Tiering)
§ 1502.21 (Incorporation by reference)
§ 1502.22 (Incomplete or unavailable information), (a) and (b)

§ 1502.23 (Cost-benefit analysis)
§ 1502.24 (Methodology and scientific accuracy)
§ 1502.25 (Environmental review and consultation requirements)
Part 1503 (Commenting)
§ 1505.3 (Implementing the decision)
§ 1506.1 (Limitations on actions during NEPA process)
§ 1506.2 (Elimination of duplication with State and local procedures)
§ 1506.3 (Adoption of other agencies' environmental documents)
§ 1506.4 (Combining documents)
§ 1506.5 (Agency responsibility)
§ 1506.6 (Public involvement), (a), (b), (c), (d), and (f)
§ 1506.8 (Proposals for legislation)
§ 1506.9 (Filing requirements)
§ 1506.10 (Timing of agency action)
§ 1506.11 (Emergencies)
§ 1507.3 (Agency procedures), (c), (d), and (e)
Part 1508 (Definitions)

(b) The following portions of the CEQ regulations, 40 CFR Parts 1500–1508, are adopted with modifications:

(1) *Reducing paperwork* (§ 1500.4). Agencies shall reduce excessive paperwork by:

(i) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§§ 1501.7(b)(1) and 1502.7).

(ii) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(iii) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(iv) Writing environmental impact statements in plain language (§ 1502.8).

(v) Following a clear format for environmental impact statements (§ 380.9).

(vi) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1501.16).

(vii) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(viii) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(ix) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those or narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20).

(x) Incorporating by reference (§ 1502.21).

(xi) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(xii) Requiring comments to be as specific as possible (§ 1503.3).

(xiii) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(c)).

(xiv) Eliminating duplication with State and local procedures, by providing for joint preparation (§ 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(xv) Combining environmental documents with other documents (§ 1506.4).

(xvi) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).

(xvii) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).

(2) *Whether to prepare an environmental impact statement* (§ 1501.4). In determining whether to prepare an environmental impact statement the Federal agency shall:

(i) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(A) Normally requires an environmental impact statement, or

(B) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(ii) If the proposed action is not covered by paragraph (b)(2)(i) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(iii) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(iv) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(v) Prepare a finding of no significant impact (§ 1508.13), if the agency determines on the basis of the environmental assessment that the action will not have a significant effect on the human environment or conclude the environmental analysis with the environmental assessment if the agency does not approve the proposal.

(A) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6.

(B) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may being. The circumstances are:

(1) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(2) The nature of the proposed action is one without precedent.

(3) *Page limits* (§ 1502.7). The text of final environmental impact statements (e.g., paragraphs (d) through (g) of § 380.9) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

(4) *Purpose and need* (§ 1502.13). The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action or, for applications other than optional certificates for facilities under §§ 157.100–157.106 of this chapter, the purpose and need, as stated by the applicant, which the agency is evaluating.

(5) *Alternatives including the proposed action* (§ 1502.14). This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the affected environment (§ 1502.15) and the environmental consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(i) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(ii) Devote substantial treatment to each alternative consider in detail including the proposed action so that

reviewers may evaluate their comparative merits.

(iii) Include reasonable alternatives not within the jurisdiction of the lead agency.

(iv) Identify the agency staff's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(v) Include appropriate mitigation measures not already included in the proposed action or alternatives.

(6) *Record of decision in cases requiring environmental impact statements* (§ 1505.2). At the time of the decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6 (c) and (d), and part II, section 5(b)(4), shall:

(i) State what the decision was.

(ii) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(iii) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program may be adopted and summarized where applicable for any mitigation.

(7) *Agency ability to comply* (§ 1507.2). Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(i) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(ii) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(iii) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(iv) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(v) Comply with the requirements of section 102(2)(H) that the agency initiates and utilize ecological information in the planning and development of resource-oriented projects.

(vi) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act.

(c) The following portions of the CEQ regulations, 40 CFR Parts 1500–1508, are implemented by these regulations:

Section 502.9(c)(3), procedures for introducing supplemental EIS's into the record, by § 380.7(d);

Section 1505.1(a)–(e), agency decisionmaking procedures, paragraph (a) by this regulation and paragraphs (b)–(e) by § 380.7;

Section 1506.6(e), where to get information on the NEPA process, by § 380.21;

Section 1507.3(b), classes of actions, by §§ 380.4, 380.5 and 380.6.

Subpart B—Environmental Assessments, Environmental Impact Statements, and Categorical Exclusions

§ 380.4 Actions that require an Environmental Assessment.

An Environmental Assessment will be prepared for the actions identified in this section.

(a) Except as identified in §§ 380.5(a) and 380.6(a) of this part and § 2.55 of this chapter, authorization under section 7 of the Natural Gas Act for the construction, replacement, or abandonment of compression, processing, or interconnecting facilities, onshore and offshore pipelines, metering facilities, LNG peak-shaving facilities, or other facilities necessary for the sale, exchange, storage, or transportation of natural gas;

(b) Prior notice filings under § 157.208 of this chapter for the rearrangement of any facility specified in §§ 157.202 (b)(3) and (6) or the acquisition, construction, or operation of any eligible facility as specified in § 157.202 (a)(2) and (3);

(c) Abandonment or reduction of natural gas service under section 7 of the Natural Gas Act not excluded under § 380.6(a)(21) or (29);

(d) Except as identified in § 380.5(a) of this section, conversion of existing depleted oil or natural gas fields to underground storage fields under section 7 of the Natural Gas Act;

(e) New natural gas curtailment plans or any amendment to an existing curtailment plan under section 7 of the Natural Gas Act and sections 401–404 of the Natural Gas Policy Act of 1978 that has a major effect on an entire pipeline system;

(f) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for construction of any water power project—existing dam;

(g) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for construction of any unconstructed water power project (new dam) with a total installed capacity of 20 MW or less;

(h) Exemptions under section 405 of the Public Utility Regulatory Policies Act of 1978, as amended, and §§ 4.30(b)(27) and 4.101–4.108 of this chapter for small hydroelectric power projects of 5 MW or less;

(i) Licenses for additional project works at licensed projects under Part I of the Federal Power Act whether or not these are styled license amendments or original licenses;

(j) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for transmission lines only;

(k) Applications for new licenses under section 15 of the Federal Power Act;

(l) Approval of electric interconnections and wheeling under sections 202(b), 210, 211, and 212 of the Federal Power Act, not excluded under § 380.6(a)(17);

(m) Regulations or proposals for legislation not excluded under § 380.6(a)(2);

§ 380.5 Actions that require an Environmental Impact Statement.

(a) Except as provided in paragraphs (b) and (c) of this section, an EIS will be prepared as specified in § 380.9 of this part for:

(1) Authorization under sections 3 or 7 of the Natural Gas Act for construction

and operation of jurisdictional liquefied natural gas import/export facilities used wholly or in part to liquefy, store, or regasify liquefied natural gas transported by water;

(2) Certificate applications under section 7 of the Natural Gas Act to develop an underground natural gas storage facility except where depleted oil or natural gas producing fields are used;

(3) Major pipeline construction projects under section 7 of the Natural Gas Act using right-of-way where there is no existing natural gas pipeline; and

(4) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for construction of any unconstructed water power project with a total installed capacity of more than 20 MW.

(b) If the Commission or its staff believes that a proposed action identified in § 380.5(a) may not be a major Federal action significantly affecting the quality of the human environment, an EA rather than an EIS will be prepared.

(c) An EIS will not be required if an EA indicates that a proposal has adverse environmental effects and the proposal is not approved.

§ 380.6 Categorical exclusions.

(a) *General rule.* Except as stated in paragraph (b) of this section, an EA or an EIS will not be prepared for:

(1) Procedural, ministerial, or internal administrative and management actions, programs, or decisions, including procurement, contracting, personnel actions, correction or clarification of filings or orders, and acceptance, rejection and dismissal of filings;

(2)(i) Reports or recommendations of legislation not initiated by the Commission; and

(ii) Proposals for legislation and promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or regulations being amended;

(3) Compliance and review actions, including investigations (jurisdictional or otherwise), conferences, hearings, notices of probable violation, show cause orders, and adjustments under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA);

(4) Review of grants or denials by the Department of Energy (DOE) of any adjustment request, and review of contested remedial orders issued by DOE;

(5) Information gathering, analysis, and dissemination;

(6) Conceptual or feasibility studies;

(7) Actions concerning the reservation and classification of United States lands as water power sites and other actions under section 24 of the Federal Power Act;

(8) Transfers of water power project licenses and transfers of exemptions under Part I of the Federal Power Act and Part 9 of this chapter;

(9) Issuance of preliminary permits for water power projects under Part I of the Federal Power Act and Part 4 of this chapter;

(10) Withdrawals of applications for certificates under the Natural Gas Act, or for water power project preliminary permits, exemptions, or licenses under Part I of the Federal Power Act and Part 4 of this chapter;

(11) Actions concerning annual charges or headwater benefits charges for water power projects under Parts 11 and 13 of this chapter and establishment of fees to be paid by an applicant for a license or exemption required to meet the terms and conditions of section 30(c) of the Federal Power Act;

(12) Approval, for water power projects under Part I of the Federal Power Act, of "as built" or revised drawings or exhibits that propose no changes to project works or operations or that reflect changes that have previously been approved or required by the Commission;

(13) Surrender of water power licenses, preliminary permits, and exemptions, and amendments to licenses, preliminary permits, and exemptions under Part I of the Federal Power Act and Parts 4 and 6 of this chapter, except as provided in § 380.4(i);

(14) Exemptions for small conduit hydroelectric facilities as defined in § 4.30 (b)(26) of this part under Part I of the Federal Power Act and Part 4 of this chapter;

(15) Electric rate filings submitted by public utilities, establishment of just and reasonable rates, and confirmation, approval, and disapproval of rate filings submitted by Federal power marketing agencies under sections 205 and 206 of the Federal Power Act;

(16) Approval of actions under sections 4(b), 203, 204, 301, 304, and 305 of the Federal Power Act relating to issuance and purchase of securities, acquisition or disposition of property, merger, interlocking directorates, jurisdictional determinations, and accounting orders;

(17) Approval of electrical interconnections and wheeling under sections 202(b), 210, 211, and 212 of the Federal Power Act, that would not entail:

(i) Construction of a new substation or expansion of the boundaries of an existing substation;

(ii) Construction of any transmission line that operates at more than 115 kilovolts (KV) and occupies more than ten miles of an existing right-of-way; or

(iii) Construction of any transmission line more than one mile long if located on a new right-of-way;

(18) Approval of changes in land rights for water power projects under Part I of the Federal Power Act and Part 4 of this chapter, if no construction or change in land use is either proposed or known by the Commission to be contemplated for the land affected;

(19) Approval or proposals under Part I of the Federal Power Act and Part 4 of this chapter to authorize use of water power project lands or waters for gas or electric utility distribution lines, telephone lines, storm drains, sewer lines not discharging into project waters, or water mains; piers, landings, boat docks, or similar structures and facilities; landscaping; or embankments, bulkheads, retaining walls, or similar shoreline erosion control structures;

(20) Action on applications for exemption under section 1(c) of the Natural Gas Act;

(21) Approvals of blanket certificate applications and prior notice filings under § 157.204 and § 157.209 through § 157.218 of this chapter;

(22) Approvals of blanket certificate applications under § 284.221 or § 284.224 of this chapter;

(23) Producers' applications for the sale of gas filed under § 157.23–157.29 of this chapter;

(24) Approval of taps, meters, and regulating facilities located within a right-of-way where there is existing natural gas pipeline under section 7 of the Natural Gas Act, company records show the land use of the vicinity has not changed since the original facilities were installed, and no significant non-jurisdictional facilities would be constructed in association with construction of the interconnection facilities (*See* § 380.8(a)(2) and (c)(2)(iii) for applicants' responsibility to file environmental information);

(25) Review of natural gas rate filings, including any curtailment plans other than those specified in § 380.4(e), and establishment of just and reasonable rates for transportation and sale of natural gas under sections 4 and 5 of the Natural Gas Act and sections 401–404 of the Natural Gas Policy Act of 1978;

(26) Review or approval of oil pipeline rate filings under Parts 340 and 341 of this chapter;

(27) Sale, exchange, and transportation of natural gas under sections 4, 5 and 7 of the Natural Gas

Act that requires no construction of facilities;

(28) Abandonment in place of minor natural gas pipeline, or abandonment by removal of minor surface facilities such as metering stations, valves, taps, and other tap-related facilities, under section 7 of the Natural Gas Act (*see* §§ 380.8(a)(2) and (c)(2)(iii) for applicants' responsibility to file environmental information);

(29) Abandonment of service under any gas supply contract pursuant to section 7 of the Natural Gas Act;

(30) Approval of filings made in compliance with the requirements of a certificate for a natural gas project under § 7 of the Natural Gas Act or a preliminary permit, exemption, license, or license amendment order for a water power project under Part I of the Federal Power Act;

(31) Any actions that exclusively involve socio-economic impacts.

(b) *Exceptions to categorical exclusions.* In accordance with its duty of independent assessment under 40 CFR 1506.5 and the provisions of § 1508.4, the Commission and its staff will independently evaluate environmental information and, where it is determined that an action may be a major Federal action significantly affecting the quality of the human environment, the Commission or its staff—

(1) May require an ER or other environmental information and

(2) Will prepare an EA or an EIS.

Subpart C—Environmental Decisionmaking, Environmental Information, and Environmental Impact Statement Format

§ 380.7 Environmental decisionmaking.

(a) *Decision points.* For the actions set forth in §§ 380.4 and 380.5 and for other actions which may have a significant affect on the quality of the human environment, environmental considerations will be addressed at appropriate major decision points. Major decision points in adjudication are the approval or denial of proposals by the Commission or its designees in matters not set for hearing and the initial and subsequent decisions of an ALJ or the Commission in matters set for hearing. In rulemaking, major decision points are the Commission's decision to issue a Notice of Proposed Rulemaking and the issuance of a final rule.

(b) *Environmental documents to be considered.* (1) Any ER, EA, FONSI, DEIS, comment on an EIS, response to comments, FEIS, and supplemental EIS, to the extent a supplemental EIS is available, will accompany the proposal, including applications for certificates, licenses and exemptions, and any proposed rules and legislation other than those identified in § 380.6(a)(2) through existing agency review processes so that all levels of the Commission may use them in making decisions.

(2) The Commission and its designees will consider the alternatives described in the DEIS or FEIS or other relevant environmental documents in deciding whether or not to approve actions.

(c) *Environmental documents as part of the record.* The Commission will include EIS's, EA's, and FONSI's as part of the record in rulemaking and adjudicatory proceedings as follows:

(1) In informal rulemaking proceedings a draft EIS or an EA with a FONSI will be part of the record and will be included or notice of its availability given in the notice of proposed rulemaking. A final EIS will be part of the record and notice of its availability may be published prior to or simultaneously with a decision on the final rule.

(2) In adjudicatory proceedings an EIS, an EA, or a FONSI will be included as evidence if offered and admissible.

(d) *Supplemental Draft Environmental Impact Statement and Final Environmental Impact Statement as part of the record.* A supplemental draft EIS and supplemental final EIS will become part of the record—

(1) In informal rulemaking proceedings as long as the rulemaking proceeding is pending at the Commission or pursuant to section 19(b) of the Natural Gas Act, section 313(b) of the Federal Power Act, or section 506 of the Natural Gas Policy Act of 1978;

(2) In adjudicated proceedings either during the proceeding, in accordance with paragraph (c)(2) of this section, or pursuant to the procedures set forth in section 385.716 of this chapter.

(e) *Application denials.* Notwithstanding sections 380.4, 380.5, and 380.6 or any other sections of this part, the Commission may deny an application without performing an Environmental Impact Statement or without undertaking environmental analysis.

§ 380.8 Environmental information to be supplied by applicant.

(a) An applicant must submit information as follows:

(1) For any proposed action identified in §§ 380.4, 380.5(a), 380.6(a)(24) or 380.6(a)(28), an ER with the proposal as prescribed in paragraph (c) of this section;

(2) For any proposal not identified in section (a)(1) of this section, any enviromental information that the Commission may determine is necessary for compliance with these regulations.

(b) An applicant must also make a good faith effort to:

(1) Provide all necessary or relevant information to the Commission;

(2) Conduct any studies that the Commission staff considers necessary or relevant to determine the impact of the proposal on the human environment and natural resources;

(3) Consult with appropriate Federal, regional, state, and local agencies during the planning stages of the proposed action to ensure that all potential environmental impacts are identified (with regard to hydropower projects, specific requirements are contained in § 4.38 of this chapter and in section 4(a) of the Electric Consumer Protection Act, Pub. L. No. 99–495, 100 Stat. 1243, 1246 (1986)).

(4) Submit applications for all Federal and state approvals as early as possible in the planning process; and

(5) Notify the Commission staff of all other Federal actions required for completion of the proposed action so that the staff may coordinate with other interested Federal agencies.

(c) *Content of an applicant's ER for specific proposals.* (1) Hydropower and other electric power projects. The information required for applications under Part 4 of this chapter, as applicable.

(2) Natural gas projects.

(i) For any application filed under the Natural Gas Act for any proposed action identified in § 380.4 or 380.5(a), except § 380.4(b)—the information identified in Appendix A of this part.

(ii) For prior notice filings under § 157.208, the report described by § 157.208(c)(11).

(iii) For any proposed action listed in § 380.6(a) (24) or (28):

(A) A brief description of the reasons the applicant believes the proposal qualifies for categorical exclusion, and

(B) Any environmental information the Commission or its staff may determine is necessary for compliance with these regulations or other Federal laws such as the Endangered Species Act, the National Historic Preservation Act, or the Coastal Zone Management Act.

§ 380.9 Format for Environmental Impact Statement.

The following standard format for Environmental Impact Statements will be used unless there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for proposed action.

(e) Alternatives including the proposed action and no-action alternative (sections 102(2)(C)(iii) and 102(2)(E) of the National Environmental Policy Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the National Environmental Policy Act).

(h) Staff's conclusions, including summaries of—

(1) The significant environmental impacts of the proposed action;

(2) Any alternative to the proposed action that would have a less severe environmental impact or impacts and the action preferred by the staff;

(3) Any mitigative measures proposed by the applicant, as well as additional mitigation measures that might be more effective;

(4) Any significant environmental impacts of the proposed action that cannot be mitigated; and

(5) References to any pending, completed, or recommended studies that might provide base-line data or additional data on the proposed action.

(i) List of preparers.

(j) List of agencies, organizations, and persons to whom copies of the statements are sent.

(k) Literature cited.

(l) Appendices (if any).

Subpart D—Additional Provisions

§ 380.20 Participation in Commission proceedings.

(a) *Motion to intervene.* (1) Any person may file a motion to intervene in a Commission proceeding other than a rulemaking after publication of a notice of availability of a DEIS as prescribed in § 385.214(b) (1) and (2) and (c) of this chapter.

(2) A motion to intervene submitted pursuant to this paragraph must be filed within the time period for submitting comments prescribed in the notice of availability of the DEIS and must specify grounds for intervention related to the environmental issues in, or the sufficiency of, the DEIS.

(3) Any person that is granted intervention after petitioning under this paragraph accepts the record as developed by parties to that proceeding as of the time that intervention is granted.

(4) The right to move to intervene prescribed in this section will be limited to the environmental issues or sufficiency of the DEIS.

(b) *Rights and obligations of participants in proceedings.*—(1) *Informal rulemaking.* Any person may submit comments on the environmental aspects of any informal notice and comment rulemaking conducted by the Commission pursuant to 5 U.S.C. 553. Such comments must be submitted in the manner and at such time as the Commission prescribes in each rulemaking.

(2) *Draft EIS.* Any person may submit comments on a draft EIS. Such comments must be submitted in the manner and at such time as the Commission prescribes in the notice of availability of the draft EIS.

(3) *Intervenors in on-the-record proceedings.*—(i) *Issues not set for hearing.* In any on-the-record proceeding, an intervenor that takes a position on any environmental issue that has not yet been set for hearing must file a timely motion with the Secretary containing an analysis of its position on such issue and specifying any differences with the position of Commission staff or an applicant upon which the intervenor wishes to be heard.

(ii) *Issues set for hearing.* (A) In any on-the-record proceeding, any intervenor that takes a position on an environmental issue set for hearing may offer evidence for the record in support of such position and otherwise participate in accordance with the Commission's Rules of Practice and Procedure. Any intervenor must specify any differences from the staff's and the applicant's positions.

(B) To be considered, any facts or opinions on an environmental issue set for hearing must be admitted into evidence and made part of the record of the proceeding.

(c) *Contested issues in Commission proceedings.* Any environmental issue that is set for hearing under the Commission's primary jurisdictional statutes will be adjudicated exclusively by Commission decision and any judicial review of such decision provided by law. Any person wishing to participate in an on-the-record evidentiary proceeding as part of the Commission decisionmaking process may seek to intervene in the proceeding as an interested party under §§ 380.20(a) or 385.214 of this chapter.

§ 380.21 Public access to information and documents.

(a) *Information.* The Commission will make information or status reports on an EIS and other elements of the NEPA process available to interested persons through the Commission's Public Reading Room and Public Reference Section.

(b) *Documents.* (1) The Commission will make EIS's the comments received, and other environmental documents available to the public through the Commission's Public Reading Room and Public Reference Section, 825 North Capitol Street, NE., Room 1000, Washington, DC 20426.

(2) Materials made available will include interagency memoranda to the extent that those memoranda transmit comments of Federal agencies, on the environmental impact of the proposed action. Materials will be provided to the public without charge to the extent practicable, or at a fee that is not more than the actual cost of reproducing copies.

(3) A copy of an EIS or EA may be made available for inspection at the Commission's regional office for the region in which the proposed action would occur.

§ 380.22 Additional discretionary means of notice of availability of an Environmental Assessment or a Finding of No Significant Impact.

In addition to the means of notice specified in 40 CFR 1506.6(b)(3) for actions with effects primarily of local concern, the Commission may give notice of availability of an EA or a FONSI in a Commission order.

§ 380.23 Additional means of notice of availability of an EIS.

If the EPA fails to publish notice of availability of an EIS under 40 CFR 1506.10(a) within 15 days of the filing of the EIS with EPA pursuant to 40 CFR 1506.9, the Commission will publish such notice. The minimum time periods set forth in 40 CFR 1506.10 will be calculated from the date of publication of this notice.

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federal register

Friday
May 29, 1987

Part IV

Environmental Protection Agency

40 CFR Parts 795, 796 and 799
Solid Waste Chemicals; Proposed Test Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795, 796 and 799

[OPTS-42088A; FRL 3208-9]

Solid Waste Chemicals; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing that manufacturers and processors of 73 chemicals be required under section 4 of the Toxic Substances Control Act (TSCA) to perform testing for human health effects and/or chemical fate in support of EPA's hazardous waste regulatory program under the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. The proposed health effects testing is a subchronic toxicity study via oral gavage. The proposed fate testing includes one or more of the following tests to determine: (1) Adsorption characteristics, (2) hydrolysis rates, and (3) anaerobic biodegradation rates.

DATES: Submit written comments on or before July 28, 1987. If persons request an opportunity to submit oral comment by July 13, 1987, EPA will hold a public meeting on this rule in Washington, D.C. For further information on arranging to speak at the meeting, see Unit VIII of this preamble.

ADDRESS: Submit written comments, identified by the document control number (OPTS-42088A), in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule under section 4(a) of TSCA to obtain needed human health effects and chemical fate data for 73 chemicals that have been identified as hazardous constituents under Appendix VIII of 40 CFR Part 261.

I. Introduction

A. Background

Section 4 of TSCA authorizes EPA to require testing of chemicals whose manufacture, processing, distribution in commerce, use or disposal may present an unreasonable risk to human health or the environment but for which existing data are inadequate to reasonably determine or predict such effects.

EPA's Office of Solid Waste (OSW) identified a need for health effects and/or chemical fate data on 73 chemicals in support of its effort under section 3001 of the Resource Conservation and Recovery Act (RCRA) to identify those wastes which may pose a substantial hazard to human health and the environment if improperly managed. Those chemicals subject to this proposed TSCA section 4 test rule are listed in Table 1 below.

BILLING CODE 6560-50-M

Table 1 -- HAZARDOUS WASTE CONSTITUENTS SUBJECT TO TESTING[1]

CHEMICAL	CAS NO.	Subchronic Toxicity Testing		Hydrolysis Testing		Biodegradation Testing		Soil Sorption Testing	
		No data	Insuf. data	No data	Insuf. data	No data	Insuf. data	No data	Insuf. data
Acetamide, N-(aminothioxomethyl)	591-08-2	X				X		X	
Acetamide, 2-fluoro	640-19-7	X					X		
Acetophenone	98-86-2					X			
Ammonium vanadate	7803-55-6					X		X	
Benzal chloride	98-87-3					X			
p-Benzoquinone	106-51-4	X				X			
2,2'-Bioxirane	1464-53-5				X	X			
Bis(2-chloroethoxy)methane	111-91-1	X			X	X			
Bis(2-chloroisopropyl)ether	108-60-1			X		X			
Bromoacetone	598-31-2	X		X		X		X	
4-Bromobenzylcyanide	16532-79-9	X		X		X		X	
Bromoform	75-25-2				X		X		
1-Bromo-4-phenoxy benzene	101-55-3	X				X			
Carbonyl fluoride	353-50-4	X				X		X	
Chloral	75-87-6					X		X[2]	
2-Chlorobenzotrichloride	2136-89-2	X		X		X		X	
4-Chlorobenzotrichloride	5216-25-1	X			X	X		X	

Table 1 -- HAZARDOUS WASTE CONSTITUENTS SUBJECT TO TESTING (Con't)

CHEMICAL	CAS NO.	Subchronic Toxicity Testing		Hydrolysis Testing		Biodegradation Testing		Soil Sorption Testing	
		No data	Insuf. data	No data	Insuf. data	No data	Insuf. data	No data	Insuf. data
2-Chloroethyl vinyl ether	110-75-8	X			X	X			
Chlornaphazine	494-03-1	X				X		X	
1-(o-Chlorophenyl)thiourea	5344-82-1	X				X		X	
Cyanogen bromide	506-68-3	X		X		X		X	
2,4-D	94-75-7			X		X			
Daunomycin	20830-81-3	X				X		X	
Dibromomethane	74-95-3			X		X			
Dibutyl phthalate	84-74-2						X		
1,2-Dichlorobenzene	95-50-1			X			X		
1,3-Dichlorobenzene	541-73-1					X			
1,4-Dichlorobenzene	106-46-7						X		
1,1-Dichloroethane	75-34-3			X			X		
1,3-Dichloropropanol	96-23-1	X					X	X	
2,3-Dichloropropanol	616-23-9					X			
o,o-Diethyl-S-methyldithiophosphate	3288-58-2	X		X		X			
Dihydrosafrole	94-58-6			X		X			
a,a-Dimethylphenethylamine	122-09-8	X				X			

Table 1 -- HAZARDOUS WASTE CONSTITUENTS SUBJECT TO TESTING (Con't)

CHEMICAL	CAS NO.	Subchronic Toxicity Testing		Hydrolysis Testing		Biodegradation Testing		Soil Sorption Testing	
		No data	Insuf. data	No data	Insuf. data	No data	Insuf. data	No data	Insuf. data
Dimethyl phthalate	131-11-3						X		
4,6-Dinitro-o-cyclohexylphenol	131-89-5	X		X		X		X	
2,6-Dinitrotoluene	606-20-2						X		
Endrin	72-20-8			X			X		
Ethylene-bis-dithiocarbamic acid	111-54-6	X				X		X	
Ethylmethacrylate	97-63-2			X		X			
Glycidylaldehyde	765-34-4			X		X			
Hexachlorophene	70-30-4					X			
Hexaethyl-tetra-phosphate	757-58-4	X				X			
Isosafrole	120-58-1			X		X			
Maleic anhydride	108-31-6				X	X		X	
Maleic hydrazide	123-33-1			X			X		X
Malononitrile	109-77-3	X				X		X	
Methacrylonitrile	126-98-7			X		X			
Methanethiol	74-93-1						X		X
Methyl chloride	75-87-3				X	X			

Table 1 -- HAZARDOUS WASTE CONSTITUENTS SUBJECT TO TESTING (Con't)

CHEMICAL	CAS NO.	Subchronic Toxicity Testing		Hydrolysis Testing		Biodegradation Testing		Soil Sorption Testing	
		No data	Insuf. data	No data	Insuf. data	No data	Insuf. data	No data	Insuf. data
Methyl chlorocarbonate	79-22-1	X				X		X	
1-Naphthylamine	134-32-7						X		
Nicotine	54-11-5					X			
p-Nitroaniline	100-01-6						X		
p-Nitrophenol	100-02-7	X				X			
Paraldehyde	123-63-7					X			
Pentachlorobenzene	608-93-5			X			X		
Pentachloroethane	76-01-7			X		X			
Phenacetin	62-44-2			X		X			
n-Phenylthiourea	103-85-5			X		X		X	
Phosgene	75-44-5		X	X		X		X	
Phthalic anhydride	85-44-9					X			X
2-Picoline	109-06-8						X		
1-Propanamine	107-10-8	X				X			
Propanenitrile	107-12-0			X		X			
Propanenitrile, 3-chloro	542-76-7	X				X			
Saccharin	81-07-2			X		X			

Table 1 -- HAZARDOUS WASTE CONSTITUENTS SUBJECT TO TESTING (Con't)

CHEMICAL	CAS NO.	Subchronic Toxicity Testing		Hydrolysis Testing		Biodegradation Testing		Soil Sorption Testing	
		No data	Insuf. data	No data	Insuf. data	No data	Insuf. data	No data	Insuf. data
1,2,4,5-Tetrachlorobenzene	95-94-3			X		X			
Tetraethyldithiopyrophosphate	3689-24-5			X		X			
Thiosemicarbazide	79-19-6			X		X		X	
o-Toluidine hydrochloride	636-21-5					X		X	
Trichloromethanethiol	594-42-3	X		X		X		X	
Trypan blue	72-57-1					X		X	

[1]"X" indicates that the test is needed.

[2]Sorption should be measured for the hydrated species of this chemical.

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The nonconfidential TSCA Inventory names for the chemicals in Table 1 are listed in the following Table 2.

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Table 2 -- TSCA INVENTORY CHEMICAL NAMES

COMMON CHEMICAL NAME	CAS NO.	TSCA INVENTORY NAME
Acetamide, N-(aminothioxomethyl)	591-08-2	Acetamide, N-(aminothioxomethyl)
Acetamide, 2-fluoro	640-19-7	Acetamide, 2-fluoro-
Acetophenone	98-86-2	Ethanone, 1-phenyl-
Ammonium vanadate	7803-55-6	Vanadate, (VO31-), ammonium
Benzal chloride	98-87-3	Benzene, (dichloromethyl)-
p-Benzoquinone	106-51-4	2,5-Cyclohexadiene-1,4-dione
2,2'-Bioxirane	1464-53-5	2,2,'-Bioxirane
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-
Bis(2-chloroisopropyl)ether	108-60-1	Propane, 2,2'-oxybis[1-chloro-
4-Bromobenzylcyanide	16532-79-9	Benzeneacetonitrile, 4-bromo-
Bromoform	75-25-2	Methane, tribromo-
1-Bromo-4-phenoxy benzene	101-55-3	Benzene, 1-bromo-4-phenoxy-
Carbonyl fluoride	353-50-4	Carbonic difluoride
Chloral	75-87-6	Acetaldehyde, trichloro-
2-Chlorobenzotrichloride	2136-89-2	Benzene, 1-chloro-2-(trichloromethyl)-
4-Chlorobenzotrichloride	5216-25-1	Benzene, 1-chloro-4-(trichloromethyl)-
2-Chloroethyl vinyl ether	110-75-8	Ethene, (2-chloroethoxy)-

Table 2 -- TSCA INVENTORY CHEMICAL NAMES

COMMON CHEMICAL NAME	CAS NO.	TSCA INVENTORY NAME
1-(o-Chlorophenyl)thiourea	5344-82-1	Thiourea, (2-chlorophenyl)-
Cyanogen bromide	506-68-3	Cyanogen bromide
2,4-D	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-
Dibromomethane	74-95-3	Methane, dibromo-
Dibutyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
1,2-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-
1,3-Dichlorobenzene	541-73-1	Benzene, 1,3-Dichloro-
1,4-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-
1,1-Dichloroethane	75-34-3	Ethane, 1,1-dichloro-
1,3-Dichloropropanol	96-23-1	2-Propanol, 1,3-dichloro-
2,3-Dichloropropanol	616-23-9	1-Propanol, 2,3-dichloro-
Dihydrosafrole	94-58-6	1,3-Benzodioxole, 5-propyl-
a,a-Dimethylphenethylamine	122-09-8	Benzeneethanamine, .alpha., .alpha.-dimethyl-
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-
Ethylmethacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
Hexachlorophene	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-

Table 2 -- TSCA INVENTORY CHEMICAL NAMES

COMMON CHEMICAL NAME	CAS NO.	TSCA INVENTORY NAME
Maleic anhydride	108-31-6	2,5-Furandione
Maleic hydrazide	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-
Malononitrile	109-77-3	Propanedinitrile
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-
Methanethiol	74-93-1	Methanethiol
Methyl chlorocarbonate	79-22-1	Carbonochloridic acid, methyl ester
1-Naphthylamine	134-32-7	1-Naphthalenamine
Nicotine	54-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-
p-Nitroaniline	100-01-6	Benzenamine, 4-nitro-
p-Nitrophenol	100-02-7	Phenol, 4-nitro-
Paraldehyde	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
Pentachlorobenzene	608-93-5	Benzene, pentachloro-
Pentachloroethane	76-01-7	Ethane, pentachloro-
n-Phenylthiourea	103-85-5	Thiourea, phenyl-
Phosgene	75-44-5	Carbonic dichloride
Phthalic anhydride	85-44-9	1,3-Isobenzofurandione
2-Picoline	109-06-8	Pyridine, 2-methyl-
1-Propanamine	107-10-8	1-Propanamine

Table 2 -- TSCA INVENTORY CHEMICAL NAMES

COMMON CHEMICAL NAME	CAS NO.	TSCA INVENTORY NAME
Propanenitrile	107-12-0	Propanenitrile
Propanenitrile, 3-chloro	542-76-7	Propanenitrile, 3-chloro
Saccharin	81-07-2	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-
Thiosemicarbazide	79-19-6	Hydrazinecarbothioamide
o-Toluidine hydrochloride	636-21-5	Benzenamine, 2-methyl-, hydrochloride
Trichloromethanethiol	594-42-3	Methanesulfenyl chloride, trichloro-
Trypan blue	72-57-1	2,7-Napthalenedisulfonic acid, 3,3'-[3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo) bis[5-amino-4-hydroxy-, tetrasodium salt

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B. Test Rule Development Under TSCA

Under section 4(a) of TSCA, EPA shall by rule require testing of a chemical substance or mixture to develop appropriate test data if the Agency finds that:

(A)(i) The manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) There are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonable be determined or predicted, and

(iii) Testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) A chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) There are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) Testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release information to determine whether there is or may be substantial production and significant or substantial human exposure or substantial release to the environment. For the findings under section 4(a)(1)(A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the finding under sections 4(a)(1) (A)(iii) and (B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules as published in the Federal Register of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed at 45 FR 48524 and 46 FR 30300, and the section 4(a)(1)(B) findings are discussed at 46 FR 30300.

C. Overview of the Solid Waste Disposal Act, as Amended by the Resource Conservation and Recovery Act

On October 12, 1976, Congress enacted the Resource Conservation and Recovery Act, (RCRA), an amendment to the Solid Waste Disposal Act, to protect human health and the environment and to conserve material and energy resources. The Congress declared the national policy of the United States to be that, wherever feasible, the generation of hazardous wastes is to be reduced or eliminated as expeditiously as possible. Further, the waste that is generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.

Subtitle C of RCRA provides for comprehensive Federal regulation of all hazardous wastes. In particular, RCRA provides that EPA will promulgate regulations regarding the generation, transportation, and treatment, storage, or disposal of hazardous wastes. In addition, RCRA requires that EPA develop and promulgate criteria for identifying and listing hazardous wastes, taking into account toxicity, persistence and degradability in nature, potential for accumulation in tissue, other related factors such as flammability and corrosiveness, and other hazardous characteristics.

1. *Identifying and listing hazardous waste.* Under the existing regulations, a solid waste is defined as a hazardous waste if it exhibits one or more of the hazardous waste characteristics, is listed as a hazardous waste, is a mixture containing one or more of the listed hazardous wastes, or is derived from treating, storing, or disposing of a listed waste. The hazardous waste characteristics cited in Subpart C of 40 CFR Part 261—ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity—were developed to be self-implementing, i.e., each person that generates a solid wase must either test or evaluate that waste against the four characteristics to determine whether it is hazardous. The Agency has the burden of determining which wastes should be listed. EPA has published three separate hazardous waste lists in Subpart D of 40 CFR Part 261—wastes from nonspecific sources, wastes from specific sources, and a list of commercial chemical products that are hazardous wastes when they are discarded or intended for discard. Most of these wastes have been listed because they are capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed (see 40 CFR 261.11(a)(3)). In making this determination, EPA must first determine whether the waste contains one or more of the hazardous constituents identified in Appendix VIII of Part 261. In addition, EPA also considers one or more of the following factors: (i) The nature of the toxicity presented by the constituent; (ii) the concentration of the constituent in the waste; (iii) the potential of the constituent to migrate from the waste, such as by leaching or volatilization, under improper management; (iv) the quantities of waste generated; (v) an analysis of the persistence, potential for and rate of degradation, and degree of bioaccumulation of the constituent or any toxic degradation product of the constituent; and (vi) other factors such as plausible types of improper management to which the waste could be subjected, nature and severity of damage that has occurred as a result of the improper management of waste containing the hazardous constituent, and action taken by other governmental agencies or regulatory programs.

2. *EPA's concentration-based listing program under RCRA.* As indicated above, most wastes have been listed based on the potential for the hazardous constituents present in the waste to migrate from the waste at levels of regulatory concern. In listing wastes, the Agency has not chosen to set levels for the hazardous constituents identified in the waste below which the waste would no longer be considered hazardous under Subtitle C of RCRA. Rather, once a waste is listed, it remains subject to control under Subtitle C of RCRA even if the waste only contains *de minimis* levels of the hazardous constituents. To be excluded from regulation, the generator of the waste must submit a delisting petition pursuant to RCRA section 3001(f) and 40 CFR 260.20 and 260.22; this can be a resource-intensive process. Mixtures of solid wastes and listed hazardous wastes and residues derived from the treatment, storage, or disposal of listed hazardous wastes also present similar problems, i.e., these mixtures and residues are subject to regulatory control regardless of the level of toxic constituents in the waste, unless the waste has been delisted.

The Agency considers this to be a problem for the regulated community,

the Agency, and the public. In particular, limited resources for the management of hazardous wastes are being used to control slightly toxic on nonhazardous waste; in addition, the Agency's limited resources are being used to process delisting petitions, with limited environmental benefit. To address this problem, the Agency is considering redefining the existing listings by setting concentration limits (either in the waste or the leachate from the waste) below which the waste would not be defined as the listed waste. (Of course, these wastes may still be hazardous if they exhibit one or more of the hazardous waste characteristics.) The Agency considers the "concentration-based listing" effort (which has also been referred to as relisting) to be an important function so that EPA may better characterize the nature of the wastes being listed as hazardous under RCRA.

For many of the constituents, the Agency is unable to characterize the toxicity and/or set concentration limits for the constituents because data either are not available or the available data are inadequate. Thus, in order to accomplish the concentration-based listing program s objectives, a minimum data set on all hazardous waste constituents is needed.

Information required for the concentration-based listing program includes the health effects of extended exposure to individual waste constituents. For this purpose, the information can be supplied by a well-conducted oral 90-day subchronic study. The concentration-based listing program will also take into account the potential of the constituent to persist, degrade, or bioaccumulate as well as its potential to migrate from the waste site by leaching. The chemical fate data needed for this program include the anaerobic biodegradation rates, and the potential of the toxic constituents to adsorb to soil to determine their ability to migrate from the site to nearby drinking water sources. In addition, the overall rate of hydrolysis of the chemicals in water as a function of pH must be known.

EPA has developed a quantitative modeling procedure to evaluate potential exposure due to ground water contamination. This procedure uses a fate and transport model to back-calculate from a point of potential exposure at a distance downgradient to a point of release from a land disposal unit.

Several factors are considered in the model, including the toxicity, mobility, and persistence of constituents in the waste. The toxicity of a constituent is considered by specifying a health-based limit at the point of measurement and back-calculating the maximum acceptable concentration that will not exceed the specified limit. The mobility of constituents is considered through incorporation of sorption as a delay mechanism to travel in the ground water model. The persistence of constituents is incorporated into the ground water model for organics by considering hydrolysis and anaerobic biodegradation.[1]

To this end, a method was developed by EPA to measure anaerobic biodegradation in ground water samples of differing temperature and pH. Where possible, first-order degradation rates reported from the studies will be used in the models to reflect biodegradation in typical systems. Also, the range of environmental conditions investigated will be used to adjust the rate constants for the wide range of environmental conditions of interest to the Agency. The exact choice of rate constants and the final use of the information will be consistent with the Agency's risk-based approach to regulating the chemicals and will reflect the uncertainty (including experimental error) in the tests and test results, and other factors including the possible formation of toxic degradation products.

The chemicals subject to this proposed rule (see unit I.A. of this preamble) are those that the Agency is unable to evaluate for purposes of the concentration-based listing program. The chemicals subject to this proposed rule have been found by the Agency either to have no subchronic or chemical fate data, or the available data are not adequate to make a determination on the toxicity and/or fate of the chemicals.

Therefore, in order to obtain the data which will allow EPA to proceed with the concentration-based listing effort, the Agency is proposing that manufacturers and processors of the chemicals listed in Table 1 test these chemicals as indicated in the Table.

Some chemicals listed in this rule have been the subject of previous section 4 rulemaking activity. In a final test rule published on Monday, April 7, 1986 (51 FR 11728), the Agency concluded that there are insufficient data available to either reasonably determine or predict the chemical fate of 1, 2- and 1, 4-dichlorobenzene. Testing was required for sediment adsorption, but not for anaerobic biodegradation or hydrolysis, as is proposed in this rule. This is because the chlorinated benzenes final test rule focused on exposure from release to the environment each year via manufacturing, processing and/or use activities, rather than exposure via disposal, as is the case with the present rule.

A Decision Not to Test (DNT) 1,2,4,5-tetrachlorobenzene was published on July 24, 1986 (51 FR 26595)., At that time, 1,2,4,5-tetrachlorobenzene and the two chlorinated benzenes discussed in the previous paragraph were listed as hazardous constituents under Subtitle C or RCRA. Because of this, the Agency assumed proper disposal under RCRA and did not require testing for 1,2,4,5-tetrachlorobenzene, after evaluating potential for exposure via manufacturing, processing and/or use activities. Chemical fate data is now needed for these chlorinated benzenes so that the Agency may proceed with its concentration-based listing effort.

II. TSCA Section 4(a) Findings

The proposed human health effects and chemical fate testing is based on the authority of section 4(a)(1)(A) of TSCA. EPA finds that the disposal of these chemicals may present an unreasonable risk of injury to health or the environment; that there are insufficient data and experience to determine or predict the effects of disposal on health or the environment; and that testing is necessary to develop these data.

1. *Subject chemicals may present an unreasonable risk of injury to health or the environment.* All of the chemicals subject to this proposed test rule have been identified as toxic constituents under Appendix VIII of 40 CFR Part 261 (see Unit I.C.1. of this preamble). All of the chemicals covered by this proposed test rule have as their primary hazardous property either acute or chronic toxicity; chemicals listed solely because they are flammable, reactive, or corrosive have not been included in this rule.

Therefore, EPA believes that these chemicals meet the requirements for testing under section 4(a)(1)(A)(i) of TSCA. By virtue of these chemicals being identified as "hazardous constituents," the nature of potential toxicity, the presence of these chemicals in the treatment, storage, or disposal facilities, evidence that existing land fills leak, and the potential for human exposure to these chemicals during

[1] The ground water model, as proposed, did not consider biodegradation in calculating the maximum acceptable concentration. See 51 FR 1602, January 14, 1986 and 51 FR 21648, June 13, 1986. However, among other things, the Agency received numerous comments suggesting that biodegradation be considered in determining the level at which the toxicant presents a human health concern. Therefore, the Agency is considering modifying the fate and transport model to incorporate anaerobic biodegradation and, consequently, is proposing that this type of testing be conducted.

treatment, storage, and disposal activities and through possible leaching or volatilization, the Agency has determined that the disposal of these chemicals may present an unreasonable risk of injury to human health.

2. *Insufficient data to determine or predict.* All of the chemicals included in this proposed rule have been the subject of a thorough search of the published literature and all standard on-line data bases used by different EPA program offices, including TSCATS, which identifies data submitted under TSCA section 8(d). Data submitted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has been reviewed, and EPA also has contacted other Federal agencies for relevant information. The literature search focused on locating any toxicity, chemical fate, or transport data or information on each chemical that would be adequate to support the Agency's concentration-based listing effort for that chemical. The chemicals designated for testing in Table 1 (see Unit I.A. of this preamble) are those for which no acceptable data were found. Specific reasons why data were considered to be inadequate can be found in the health effects and chemical fate Literature Search Results and Critique documents in the public docket for this rule. In general, no biodegradation data were available that could be considered equivalent to data obtained using the biodegradation test protocol that is proposed with this rule. That protocol specifies that multiple samples of subsurface materials be collected for test media that could be used to represent the subsurface environmental conditions throughout the country which are of interest to the Agency. The Agency encourages the submission of any data *equivalent* to the testing proposed in this rule in response to this proposal.

Therefore, under section 4(a)(1)(A)(ii) of TSCA, the Agency has determined that, for each chemical examined, there are insufficient data upon which the effects of disposal of the subject chemicals on human health can be reasonably determined or predicted.

3. *Testing is necessary.* EPA believes that the testing of the subject chemicals is necessary to determine or predict the effects of disposal of these chemicals on human health so that the Agency can establish concentration levels below which a waste would no longer be considered hazardous under Subtitle C of RCRA.

In the concentration-based listing effort, the Agency will use health effects and chemical fate data on each of the waste constituents to predict the concentration limit that would be the basis for defining the waste as hazardous under Subtitle C of RCRA.

Therefore, EPA finds under section 4(a)(1)(A)(iii) of TSCA that the testing of the chemicals included in this proposed rule is needed, and that the proposed health effects and chemical fate studies are capable of developing the necessary information to assess the effects of disposal.

III. Proposed Rule

A. Proposed Testing and Test Standards

On the basis of the findings given in Unit II of this preamble, EPA is proposing health effects testing and/or specific chemical fate testing for the chemicals subject to this proposed rule (see Unit I.A. of this preamble). The chemicals and the specific proposed tests are listed in Table 1. The tests are to be conducted in accordance with EPA's TSCA Good Laboratory Practice standards in 40 CFR Part 792 and the specific TSCA test guidelines as enumerated in 40 CFR Parts 796 and 798, published in the **Federal Register** of September 27, 1985 (50 FR 39252) and modified in the **Federal Register** of May 20, 1986 (52 FR 19056).

EPA is proposing that the chemicals listed in Table 1 under Subchronic Testing be tested using the TSCA Test Guideline at 40 CFR 798.2650. The subchronic studies will be performed by the oral gavage route. The rat will be the test species.

EPA proposes that the chemicals listed in Table 1 under Soil Sorption Testing be tested using the TSCA Test Guideline, "Sediment and Soil Adsorption Isotherm," 40 CFR 796.2750.

EPA further proposes that the chemicals listed in Table 1 under Hydrolysis Testing be tested using the TSCA Test Guideline, "Hydrolysis as a Function of pH at 25°C." 40 CFR 796.3500 as modified in this rule.

EPA is also proposing that the chemicals listed in Table 1 under Biodegradation Testing be tested using the EPA-developed test guideline proposed with this rule under 40 CFR Part 795.54. This guideline was developed by EPA to obtain information on the biodegradation of chemicals in the subsurface environment.

The Agency is proposing that the above-referenced health effects and chemical fate test guidelines, and any modifications to those guidelines, be considered the test standards for the purposes of the proposed testing for these chemicals.

B. Test Substance

EPA is proposing that the test substance in the proposed studies for each of the chemicals subject to this test rule be of at least 98-percent purity. For chemicals commercially available only as an impurity, EPA proposes that research grade chemical of at least 98-percent purity be used as the test substance. The Agency has specified relatively pure substances for testing because it is interested in evaluating the effects attributable to the subject compounds themselves. This requirement lessens the likelihood that any effects seen are due to other chemicals that may be present.

C. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use, and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing, which includes production of a chemical as a co-product ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures causing the potential risk occur during use, distribution, or disposal.

Because EPA has found that existing data are inadequate to assess the health risks from the continued disposal of the chemicals subject to this test rule, EPA is proposing that persons who manufacture, import, and/or process, including inadvertent, by-product, or impurity manufacture (defined in 40 CFR 791.3), or who intend to manufacture or process these chemicals at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this proposed rule. The end of the reimbursement period will be 5 years after the last final report is submitted, or an amount of time equal to that which was required to develop data, if more than 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to this rule to designate one such person or a qualified third person to conduct the

tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their product or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for the chemicals subject to this proposed test rule. As noted in Unit III.B. of this preamble, EPA is interested in evaluating the effects attributable to each of the chemicals themselves and has specified relatively pure substances for testing.

Manufacturers and processors subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

D. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards, which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(c) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed test stands as follows:

1. The 90-day subchronic toxicity study on each of the designated chemicals shall be completed and the final results submitted to the Agency within 12 months of the effective date of the final test rule.

2. The soil sorption study on the designated chemicals shall be completed and the final results submitted to the Agency within 9 months of the effective date of the final test rule.

3. The biodegradation studies on the designated chemicals shall begin within 4 months of the effective date of the final rule and the final results of each study shall be submitted to the Agency within 6 months of the completion date of the study.

4. The hydrolysis studies on the designated chemicals shall be completed and the final results submitted to the Agency within 6 months of the effective date of the final test rule.

A progress report on these tests except the hydrolysis tests will be required every 6 months from the effective date of the final rule until submission of the final report.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a noltce of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical substance or mixture subject to a section 4 test rule are subject to the export reporting requirement of TSCA section 12(b). Final regulations interpreting the requirement of section 12 (b) are in 40 CFR Part 707. In brief, as of the effective date of this test rule, an exporter of any of the chemicals listed in Table I in this rule must report to EPA the first annual export of the compound to any one country. ERA will notify the foreign country about the test rule for the chemical.

E. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA,

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated EPA representatives to determine compliance with any final rule for these chemicals. These inspections may be conducted for purposes which include verification that testing has begun, the schedules are being met, and that reports accurately reflect the underlying raw data and interpretations and evaluations to determine compliance with TSCA GLP and the test standards established in the rule.

EPA's authority to inspect a test facility also derives from section 4(b)(l) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to a assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provisions of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or importers that fail to submit a letter of intent or an exemption request and that continue maunfacturing or importers after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.48(b)). Knowing and willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of

violation and imprisonment for up to 1 year. In determining the amount or penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injuction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Section 15 and 16 of TSCA apply of TSCA apply to "any person" who violates various provisions of TSCA. At its discreation, EPA may procees against individuals as well as companies. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, ficitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Issues

A. Chemicals not on the TSCA Inventory or no Longer Manufactured or Processed for TSCA Uses

Certain of the chemical substances included in this proposed rule are not listed on the noconfidential TSCA Inventory. Possible reasons for this are:

1. The chemical substance was reported for the TSCA Inventory but its identity was claimed as confidential.
2. The chemical substance was and is manufactured and processed only in ways that are excluded for purposes of inventory reporting and premanufacture notification, such as production solely as a byproduct (see 40 CFR 710.4(d) and 40 CFR 720.30 (g) and (h)).
3. The chemical was and is manufactured, processed, and used only in a manner not subject to TSCA, e.g., as a pesticide.
4. The chemical is not currently manufactured in the United States, nor imported into the United States, and is not processed currently.

While EPA can determine which, if any, of the substances included in this proposed rule fall within category 1, distinguishing such substances (if any) from those categories 2, 3, and 4 would reveal confidential business information (CBI). In general, EPA does not have information that would allow it to distinguish substances in category 2 from those in category 3 or 4. Nevertheless, each of the substances included in this proposed rule has been identified in wastes and so is, or has been, manufactured and/or processed in the United States. Persons who manufacture or process substances in categories 1 and 2 would be required to conduct testing and submit data (or to obtain an exemption from testing) under this rule. Persons who manufacture or process substances in category 3 would not be required to test those chemicals under this rule because their activities are not covered by TSCA. Testing of substances in category 4 would not be required until such time as they are manufactured or processed in ways covered by TSCA.

In addition, it is possible that certain substances included in this proposed rule that are listed on the non-CBI TSCA Inventory now are manufactured and processed only in ways that correspond to categories 2 and 3 above or are no longer manufactured or processed (category 4). However, EPA does not have data to determine this and could only obtain such data by requiring specific reporting under TSCA section 8(a). To do so would significantly delay this rulemaking and would impose an additional burden on EPA and industry.

Therefore, in light of the above considerations, EPA is proposing to include in this test rule all of the chemicals identified by OSW as lacking data needed for the concentration-based listing program, independent of whether those chemicals are listed in the non-confidential TSCA Inventory or may no longer be manufactured or processed in ways included within the definition of "chemical substance" under TSCA. Chemicals falling within categories 1 and 2 above would have to be tested under this rule, while substances falling within category 3 and 4 would not have to be tested under this rule until such time as they are manufactured or processed in ways covered by TSCA.

EPA is considering several approaches to dealing with chemicals subject to this rule which may be produced only for research and development (R&D) or in small quantities. If there is only one manufacturer or importer of a chemical produced solely for R&D, EPA is considering a provision which would allow that person a waiver of the requirement to test because chemicals produced for R&D are likely to be in small quantities, handled more carefully by persons likely to know their hazards, and be disposed, if at all, in small amounts. For small volume, non-R&D chemicals, EPA is considering establishing an aggregate production threshold below which manufacturers would not be required to test. EPA believes that such a threshold should be set fairly low, depending on the cost of the testing for each chemical. Thus different thresholds could be set for different chemicals. EPA believes that only those small developmental chemicals with a single producer would qualify for a production threshold.

EPA solicits both comments on this approach to dealing with these chemicals and suggestions of alternative approaches.

B. Production Information

The following chemicals have been identified as chemicals which are not currently manufactured in the United States or imported into the United States for TSCA purposes: acetamide, *N*-(aminothioxomethyl); bromoacetone; 1-bromo-4-phenoxy benzene; 2-chloroethyl vinyl ether; chlornaphazine; 1-(*o*-chlorophenyl) thiourea; daunomycin; *o,o*-diethyl-*S*-methyldithiophosphate; 4,6-dinitro-*o*-cyclohexylphenol; ethylene-bis-dithiocarbamic acid; glycidylaldehyde; hexaethyl-tetra-phosphate; pentachlorobenzene; pentachloroethane; propaenenitrile, 3-chloro; and tetraethyldithiopyrophosphate. The Agency is soliciting information for these chemicals on current production volume, including importation, and also on any inadvertent or by-product production or environmental release resulting from processing.

C. Nonpesticide Use

The following chemicals have been identified as pesticides as defined under TSCA: chlornaphazine; daunomycin; *a,a*-dimethylphenethylamine; 4,6-dinitro-*o*-cyclohexylphenol; endrin; hexaethyl-tetra-phosphate; maleic hydrazide; and tetraethyldithiopyrophosphate. The Agency is soliciting information on any nonpesticide uses of these chemicals—including as an intermediate in the manufacture of other pesticides—and the amounts used.

D. Economic Impact

The following chemicals have been identified in the economic impact analysis contained in the public docket as chemicals which may experience a significant adverse economic impact as a result of the testing costs: bromoform; chloral; cyanogen; bromide; 1,3-dichlorobenzene; 1,3-dichloropropanol; 2,3-dichloropropanol; dihydrosafrole; 1-naphthylamine; paraldehyde; and *n*-phenylthiourea. The Agency is soliciting information on production volumes (including import volumes), prices, uses, production processes, and market characteristics to assist the Agency in assessing the extent of adverse economic impact.

The following chemicals are those for which insufficient information was available to the Agency to evaluate the likelihood of adverse economic impact:

isosafrole; phenacetin; 1,2,4,5-tetrachlorobenzene; thiosemicarbazide; and trypan blue. The Agency is soliciting information on production volumes (including import volumes), prices, uses, production processes, and market characteristics to assist the Agency in evaluating the likelihood of adverse economic impact.

The Agency also requests that manufacturers, importers, and other interested parties submit comments regarding the adverse economic impact which may result from testing requirements on small firms. Upon receipt of public comments, the Agency will be able to reevaluate the determination that a large number of small firms will not be adversely affected by this rulemaking.

E. Chemical Fate Testing

The Agency solicits comment on the anaerobic biodegradation guideline proposed in this rule. The Agency is considering making the anaerobic biodegradation testing optional, rather than required. The manufacturer(s) would have the option of performing the test and having the data used in the chemical fate and transport model, or not performing the test and having the model assume no biodegradation of that chemical. The Agency solicits comments on this approach.

V. Economic Analysis of Proposed Rule

To assess the potential economic impact for this rule, EPA has prepared an economic analysis (contained in the public docket for this rule) that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing for each of the 73 chemicals and evaluates the potential for significant adverse economic impact as a result of those costs, incorporating an impact measure based upon unit test cost as a percent of price. If there is no indication of adverse effect for a particular chemical, no further economic analysis is performed. However, if the cost of testing a particular chemical indicates a potential for significant economic impact, more detailed analysis will be conducted to more precisely predict the magnitude of the expected impact. In the preparation of the economic analysis for the final rule, particular emphasis will be placed on comments received from the public concerning the economic impact of this rule on individual chemicals.

Of the 73 chemicals subject to this rule, EPA believes that 9 chemicals are manufactured for pesticidal purposes only, and that 20 chemicals—including 5 of the pesticide chemicals—are not currently being commercially manufactured or manufactured as a by-product or impurity of a commercial chemical. In Units IV.B. and IV.C. of this preamble, EPA has requested that interested parties submit information which will assist in the verification of the production status of the 73 chemicals.

The total testing costs for testing the 49 chemicals believed to be currently manufactured (or imported) chemicals or the by-products or impurities of currently manufactured (or imported) chemicals are estimated to range from $4.61 million to $6.03 million. The estimated testing costs for individual chemicals range from $102,000 to $180,000. See the economic analysis contained in the public docket for this rule for the estimated testing costs for each chemical subject to this rule.

The economic impact analysis indicates that for 34 of the 49 chemicals believed to be currently manufactured (or imported) commercial chemicals or a by-product or impurity of currently manufactured (or imported) commercial chemicals, the probability of adverse economic impact as a result of the testing costs is very low. Ten chemicals have a potential for significant adverse impact on the basis of the estimated testing costs. For 5 chemicals, the information currently available to the Agency is insufficient to make a similar determination. The specific chemicals believed to fall in each of these groups are listed in Unit IV.D. of the preamble. In that Unit, EPA has requested that interested parties submit information which will allow the Agency to better characterize the impact of the testing requirements on specific chemicals. Such information submitted from interested parties will be incorporated in the economic analysis for the upcoming final rule.

Refer to the economic analysis for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," can be obtained through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB 82-140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing specified in this proposed rule.

VII. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting after the close of the public comment period in Washington, D.C. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO) (202-554-1404) by July 13, 1987. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe it and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VIII. Public Record

EPA has established a record for this rulemaking (docket number OPTS-42088A). This record contains the basic information considered by the Agency in developing this proposal and appropriate **Federal Register** notices.

This record includes the following information:

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of final rules on EPA's TSCA Good Laboratory Practice standards (48 FR 53922; November 29, 1983).

(b) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(c) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(2) Support documents consisting of:

(a) Literature search results and critique.

(b) Economic impact analysis of NPRM for the chemicals subject to this proposed rule.

(c) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (40 U.S.C. 10001).

(d) Identification and Listing of Hazardous Waste (40 CFR 261).

(3) TSCA test guidelines cited as test standards for this rule.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm., NE-G004, 401 M Street., SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday except legal holidays.

IX. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (14 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA believes that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses. The definition of small manufacturer used under section 8 of TSCA includes any manufacturing/importing firm with annual sales, including sales of any parent firm, below $4 million or any firm which manufactures the chemical of concern at less than 100,000 pounds annually and has sales, including sales of any parent firm, below $40 million.

EPA believes that few small manufacturers will be subject to this rule, and in those cases in which a small manufacturer will be subject, the testing costs for those persons will be relatively low. This conclusion is based upon two observations. First, the volume of manufacture of many of the chemicals subject to this rule is high (well above 100,000 pounds). If small firms are manufacturing less than 100,000 pounds of these chemicals, the firms will be subject to only a portion of the testing costs, resulting in the relatively larger manufacturers paying a relatively larger share of the test costs. Second, the testing costs are small. If small firms are the only manufacturers of these chemicals, it is unlikely that these test costs will have a significant impact on a substantial number of small businesses.

In Unit IV.D. of this preamble, EPA has requested that manufacturers, importers, and other interested parties submit comments regarding adverse economic impact which may result from testing requirements on small firms. Upon receipt of public comments, EPA will reevaluate the determination that a large number of small firms will not be adversely affected by this rulemaking.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approve by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB number 2070-0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB; 726 Jackson Place, NW., Washington, DC, 20503, marked "Attention: Desk Officer for the EPA." The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR 795, 796 and 799

Testing, Environmental protection, Hazardous substances, Chemicals, Laboratories, Provisional testing, Recordkeeping and reporting requirements.

Dated: May 15, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that Chapter I of Title 40 of the Code of Federal Regulations be amended as follows:

PART 795—[AMENDED]

1. Part 795 is amended as follows:

a. The authority citation for Part 795 continues to read as follows:

Authority: 15 U.S.C. 2603, 2625.

b. New Subpart B, consisting at this time of § 795.54, is added to read as follows:

Subpart B—Provisional Chemical Fate Testing Guidelines

§ 795.54 Microbiological transformation rate data for chemicals in the subsurface environment.

(a) *Introduction.* (1) This guideline describes laboratory methods for the collection of microbiological transformation rate data for organic chemicals in saturated subsurface materials. The data can be used as part of a chemical transport and fate model for assessing the fate of organic chemicals leaching into ground water from waste management facilities.

(2) The principal microbiological activities included in the guideline are anaerobic oxidation-reduction processes under Methanogenic and sulfur-reducing conditions. Aerobic oxidation-reduction process have not been included for several reasons. Anaerobic metabolism is generally slower than aerobic metabolism; therefore, estimates of degradation rates would be conservative if measured under anaerobic conditions. In addition, aerobic processes are limited by the concentration of oxygen in ground water. For many compounds, roughly two parts of oxygen are required to completely metabolize one part of an organic compound. Microorganisms in a well-oxygenated ground water containing 4 parts per million (ppm) of molecular oxygen can degrade only 2 ppm of organic compound. Therefore, the extent of aerobic degradation of these compounds will depend on their concentration as well as the concentration of other degradable organic materials in the aquifer; the degradation of these other compounds will reduce the amount of oxygen available to degrade the subject compound. The Agency believes that the degradable organic carbon leaching from hazardous or municipal waste dumps would generally be greater than the available oxygen, thus leading to a depletion of oxygen and the development of anaerobic conditions. Aerobic degradation would only occur at the leading edge of a contaminant plume where dispersion and other processes dilute the plume with oxygenated water, as stated in Wilson et al. (1985) under paragraph (d)(23) of this section.

(3) The anaerobic transformation of chemicals in selected subsurface samples shall be estimated from subsurface microcosm studies using

methods recently reported by Wilson et al. (1986) under paragraph (d)(24) of this section. These procedures shall be used to determine the length of the adaptation period before detectable degradation can be observed and the half-life of the compound following the adaptation period. Supporting laboratory methods shall be applied to the measurement of residual test chemicals, levels of persistent intermediates, biomass, and other physical-chemical parameters.

(b) *Laboratory procedures*—(1) *Identification of subsurface sampling sites, collection of subsurface materials, and transportation and storage of subsurface materials.* (i) A minimum of six subsurface sampling sites shall be identified on the basis of two temperatures and three pH values. Three of the sites shall have annual average temperatures near 10 ± 3°C, and three of the sites shall have temperatures near 20 ± 3°C. These values were chosen to represent the high and low temperatures commonly observed in aquifers and are one standard deviation either side of the mean temperature of 15°C.

(ii) Acidic (pH 4.5—6.0), neutral (pH 6.5—7.5) and alkaline (pH 8.0—9.5) sites shall be selected for each temperature range. These ranges of pH were selected to estimate the effect of pH on microbial degradation capacity and to examine the effect of chemical form on the degradation of compounds having disslociable hydrogen (i.e., degradation of the protonated and unprotonated forms of the compound). All sites shall have dissolved oxygen levels below 0.1 ppm and sulfate concentrations below 10 ppm. Six different subsurface samples shall be collected from random locations at each of the sites.

(iii) Samples of subsurface materials and associated ground waters shall be collected in a manner that protects them from contamination from surface materials and maintains anaerobic conditions. An appropriate procedure has been reported by Wilson et al. 1983 under paragraph (d)(25) of this section. First, a bore hole is drilled to the desired depth with an auger. Then the auger is removed and the sample taken with a autoclaved thin-wall core barrel. Using aseptic procedures, up to 5 centimeters (cm) of the core is extruded, then broken off to produce an uncontamination face. A sterile paring device is installed, and the middle 30 to 35 cm of the core is extruded, paring away the outer 1.0 cm of core material. As a result, the material that had been in contact with the core barrel, and thus might be contaminated with surfacer microorganisms, is discarded. For anaerobic subsurface material, the core is manipulated in a portable anaerobic chamber filled and continually purged with nitrogen gas. Modifications of this technique can be used for samples obtaining from deep coring devices when auger equipment is insufficient because of the depth of the aquifer. Subsurface material shall be stored under nitrogen gas and on ice and shall be used in microcosm studies within 7 days of collection.

(iv) Ground waters shall be filter sterilized by filtration through 0.22 micrometer (um) membranes on site in a portable anaerobic chamber filled and continually purged with nitrogen gas. The sterile water shall be stored under nitrogen and on ice and shall be used in microcosm studies within 7 days of collection.

(v) Two samples shall be collected from each of the sites. Each sample shall be assayed for test compound degradation and analyzed for biomass (heterotrophic, sulfate reducing, and methanogenic) and physical-chemical parameters (pH, cation exchange capacity, percent base saturation, percent silt, percent sand, percent clay, redox potential, percent ash-free dry weight).

(2) *Anaerobic microcosm assay.* (i) Microcosms shall consist of 160-milliliter (ml) serum bottles containing approximately 100 ml of a slurry containing wet subsurface material (20 grams dry weight) and sufficient ground water to bring the total water content to 80 ml. One series of serum bottles shall be amended with 200 ppm sulfate (added as sodium sulfate) to stimulate sulfate-reducing conditions. A second series shall be left unamended to stimulate methanogenic conditions. All manipulations in preparing the microcosms shall be performed aseptically under strict anaerobic conditions, as described in Kasper and Tiedje (1984) under paragraph (d)(10) of this section, and all equipment in contact with the subsurface samples shall be sterilized. Sterile controls shall be prepared by autoclaving the samples for one hour on each of three consecutive days. Test chemical amendments shall be prepared in sterile nitrogen-purged ground water. Sparingly soluble and volatile compounds shall be added to sterile, nitgrogen-purged ground water and then stirred overnight without a head space.

(ii) The microcosms shall be dosed with the test chemical, and then each unit shall be immediately sealed with a Teflon-coated silicone septum and crimp seal. The microcosms shall be stored upside down in the dark at the original in situ temperature. Duplicate microcosms and duplicate control microcosms, from the sulfate-amended series and the unamended series, shall be analyzed at 0, 4, 8, 16, 32, and 64 weeks for residual test chemical and the formation of degradation intermediates. Once the residual level of the compound reaches a level less than 5 percent of the initial concentration, the analysis of subsequent time period is not required. Duplicate microcosms and duplicate control microcosms, from both series also shall be analyzed at weeks 0, 16, and 64 (or the week following complete degradation of the compound if less than 64) for heterotrophic, sulfate-reducing, and methanogenic bacteria.

(iii) Three concentrations of each chemical tested shall be used. The test chemical concentrations should range between a low level of 22.5 times the health-based level and a level that equates to the chemical's solubility (or to a level that causes inhibition of the test chemical's degradation).

(iv) Biomass measurements shall be made for heterotrophic, sulfate-reducing, and methanogenic bacteria. Anaerobic techniques described by Kasper and Tiedje (1984) cited in paragraph (d)(10) of this section, shall be used.

(v) Heterotrophic bacterial concentrations shall be measured by a modification of the procedure developed by Molongoski and Klug (1976), cited in paragraph (d)(13) of this section. A 1-ml sample taken from the center of the appropriate microcosm, which has been well mixed, shall be aseptically transferred to 100 ml of a sterile dilution medium and agitated to suspend the organisms. Ten-ml samples shall be transferred immediately from the center of the suspension to a 90-ml sterile dilution medium blank to give a 10^{-3} dilution. From this second dilution, 10 ml shall be similarly transferred to another 90-ml of sterile dilution medium to obtain a dilution of 10^{-4}. This process shall be repeated to give a dilution series through at least 10^{-7}. Only the 10^{-2} dilution need be prepared for control samples. From the highest dilution, 0.1 ml portions shall be transferred to the surface of each of three dilute tryptone glucose extract agar plates. The sample shall be transferred immediately over the surface of the plates; the process shall be repeated for lower dilutions. Dilute tryptone glucose agar plates shall be prepared by combining 2.4 g tryptone glucose extract agar and 13.5 g agar in 1 liter of distilled water. The mixture shall be autoclaved, and 25 ml of the molten agar shall be transferred to petri plates.

Agar plates should be stored in an anaerobic chamber for a minimum of 24 hours before use. The inoculated plates shall be incubated in plastic bags in the glove box, or, if necessary, removed and kept in anaerobic jars. After 14 days of incubation, the plates shall be examined and the total count per gram of dry sediment material shall be determined. If the plates from the highest dilution show more than 300 colonies, the dilution series has been too low, and if those from the lowest dilution show less than 30 colonies, the dilution series has been too high. In either event, all of the plates shall be discarded and the process shall be repeated with lesser or greater dilutions, as appropriate.

(vi) Sulfate-reducing species shall be enumerated by the MPN (most probable number) technique as described in Pankhurst (1971) under paragraph (d)(15) of this section. The dilution series shall be prepared as described for heterotrophic bacteria.

(vii) Methanogenic bacteria will be enumerated by the MPN technique as described in Jones et al. (1982) under paragraph (d)(9) of this section. The dilution series shall be prepared as described for heterotrophic bacteria.

(3) *Analytical measures of the loss of test compound.* (i) The loss of test compound can be quantified directly by measuring the residual test compound concentration or indirectly by measuring the formation of CO_2 and methane.

(ii) Direct measurements generally require organic analytical techniques tailored to the specific test compound and subsurface material being investigated. Several extraction and purge-trap techniques are available for the recovery of residual test compounds and degradative intermediates from subsurface materials. The following represent example techniques. Unique analytical procedures would have to be developed or modified for each test compound and sediment. Such methods include: soxlet extraction as described in Anderson et al. (1985), Bossert *et al.* (1984), Eiceman *et al.* (1986), Grimalt *et al.* (1986), and Kjolholt (1985), cited in paragraphs (d)(2), (3), (7), (8), and (11) of this section, respectively; shake flask methods as described in Brunner *et al.* (1985), and Russel and McDuffie (1983), cited in paragraphs (d) (4) and (16) of this section, respectively; sonification as described in Schellenberg *et al.* (1984), cited in paragraph (d)(17) of this section; and homogenization as described in Fowlie and Bulman (1986), Lopez-Avila *et al.* (1983), Sims *et al.* (1982), Scott and Tabatabai (1985), and U.S. EPA (1982), cited in paragraphs (d) (5), (12), (18), (19), and (22) of this section, respectively. Purge-trap techniques have been described by Wilson *et al.* (1986), cited in paragraph (d)(24) of this section. These procedures can be readily coupled to gas chromatography (GC) and high-pressure liquid chromatography (HPLC) procedures to quantify the chemicals of interest.

(iii) Indirect measures of test chemical degradation such as CO_2 and methane trapping shall use uniformly labeled test compounds. Radiolabeled CO_2 and methane can be differentiated and measured by the methods described by Nottingham and Hungate (1969), cited in paragraph (d)(14) of this section.

(4) *Characterization of subsurface materials and ground waters.* (i) Subsurface materials shall be classified, described, and characterized as to soil type and physical and chemical properties using standard procedures as described by the Soil Conservation Service (U.S. Department of Agriculture 1972 and 1975), cited in paragraphs (d) (20) and (21) of this section. Nine parameters shall be measured or described: pH, cation exchange capacity, percent base saturation, percent silt, percent sand, percent clay, redox potential, percent ash-free dry weight, and texture.

(ii) Ground water shall be characterized for pH; dissolved oxygen; dissolved organic carbon; nutrients including sulfate, phosphate, and nitrate; conductivity; and temperature by standard water and wastewater methods described by the American Public Health Association (1985), cited in paragraph (d)(1) of this section, or other equivalent methods. The properties of pH, dissolved oxygen, and temperature shall be measured at the site of collection. All other properties shall be measured in the laboratory.

(c) *Data to be reported to the Agency.* Data shall be reported to EPA for each of the composite subsurface samples and corresponding ground waters from the four composite sampling sites and for each of the 12 unique subsurface samples from the remaining two sites (6 from each).

(1) The following shall be reported for subsurface sediment samples:

(i) Levels of residual test compound or $^{14}CO_2$ or $^{14}CO_4$ quantified in each replicate microcosm and sterile controls at the specific time periods identified under the anaerobic microcosm assay.

(ii) Numbers of heterotrophic, sulfate-reducing, and methanogenic bacteria enumerated in each replicate microcosm and sterile controls at the specific time periods identified under the anaerobic microcosm assay.

(iii) Levels of persistent degradation intermediates identified in microcosm and sterile controls at the specific time periods identified under the anaerobic microcosm assay.

(iv) Measured values for pH, cation exchange capacity, percent base saturation and percent silt, percent sand, percent clay, redox potential, and percent ash-free dry weight and a description of texture.

(2) For ground water samples, the analysis report shall provide measured values for pH; dissolved oxygen; dissolved organic carbon; nutrients including sulfate, phosphate, and nitrate; conductivity; and temperature.

(d) *References.* For additional background information in this protocol, the following references should be consulted:

(1) American Public Health Association, American Water Works Association, and Water Pollution Control Federation. "Standard methods for the examination of water and wastewater," 16th ed., A.E. Greenberg, R.R. Trussel, and L.C. Clesceri (eds.), American Public Health Association, Washington, D.C. (1985).

(2) Anderson, J.W., G.H. Herman, D.R. Theilen, and A.F. Weston. "Method verification for determination of tetrachlorodibenzodioxine in soil." *Chemosphere* 14: 1115–1126 (1985).

(3) Bossart, I., W.M. Kachal, and R. Bartha. "Fate of hydrocarbons during oil sludge disposal in soil." *Applied and Environmental Microbiology* 47: 763–767 (1984).

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PART 796—[AMENDED]

2. Part 796 is amended as follows:

a. The authority citation for Part 796 continues to read as follows:

Authority: 15 U.S.C. 2603.

b. In § 796.3500, paragraph (b)(1)(ii) is amended by revising the first sentence and by revising paragraphs (b)(1)(iii), (iv), (v), (vii), (ix), and (x) and (b)(2)(i)(C)(*1*) and (b)(2)(i)(D)(*1*) and (*2*), to read as follows:

§ 796.3500 Hydrolysis as a function of pH at 25°C.

* * * * *

(b) * * *

(1) * * *

(ii) *Purity of water.* Reagent-grade water (e.g., water meeting ASTM Type IIA standards or an equivalent grade) shall be used to minimize biodegradation. * * *

(iii) *Sterilization.* All glassware shall be sterilized. Aseptic conditions shall be used in the preparation of all solutions and in carrying out all hydrolysis experiments to eliminate or minimize biodegradation. Glassware can be sterilized in an autoclave or by any other suitable method.

(iv) *Precautions for volatility.* If the chemical is volatile, the reaction vessels shall be almost completely filled and sealed.

(v) *Tempreature controls.* All hydrolysis reactions shall be carried out at 25 °C (±1 °C) and with the temperature controlled to ±0.1 °C.

* * * * *

(vii) *Concentration of solutions of chemical substances.* The concentration of the test chemical shall be less than one-half the chemical's solubility in water but not greater than 10^{-3}M.

* * * *

(ix) *Buffer catalysis.* For certain chemicals, buffers may catalyze the hydrolysis reaction. If this is suspected, hydrolysis rate determination shall be carried out with the appropriate buffers and the same experiments repeated at buffer concentrations lowered by at least a factor of five. If the hydrolysis reaction produces a change of greater than 0.05 pH units in the lower concentration buffers at the end of the measurement time, then the test chemcial concentrations also shall be lowered by at least a factor of five. Alternatively, test chemical concentrations and buffer concentrations may both be lowered simultaneously by a factor of five. A sufficient criterion for minimization of buffer catalysis is an observed equality in the hydrolysis rate constant of two different solutions differing in buffer or test chemical concentration by a factor of five.

(x) *Photosensitive chemicals.* The solution absorption spectrum can be employed to determine whether a particular chemical is potentially subject to photolytic transformation upon exposure to light. For chemicals that absorb light of wavelengths greater than 290 nm, the hydrolysis experiment shall be carried out in the dark, under amber or red safelights, in amber or red glassware, or employing other suitable methods for preventing photolysis. The absorption spectrum of the chemical in aqueous solution can be measured under § 796.1050.

* * * * *

(2) * * *

(i) * * *

(C) * * *

(*1*) The concentrations of all the above buffer solutions are the maximum concentration to be employed in carrying out hydrolysis measurements. If the initial concentration of the test chemcial is less than 10^{-3}M, the buffer concentration shall be lowered by a corresponding amount; e.g., if the initial test chemical concentration is 10^{-4}M, then reduce the concentration of the above buffers by a factor of 10. In

addition, for those reactions in which an acid or base is not a reaction product, then employ the minimum buffer concentration necessary for maintaining the pH within ±0.05 units.

* * * * *

(D) * * *

(*1*) if the test substance is readily soluble in water, prepare an aqueous solution of the chemical in the appropriate buffer and determine the concentration of the chemical. Alternatively, a solution of the chemical in water may be prepared and added to an appropriate buffer solution and the concentration of the chemical then determined. In the latter case, the aliquot shall be small enough so that the concentration of the buffer in the final solution and the pH of the solution remain essentially unchanged. Do not employ heat in dissolving the chemical. The final concentration shall not be greater than one-half the substance's solubility in water and not greater than 10^{-3}M.

(*2*) If the test chemical is too insoluble in pure water to permit reasonable handling and analytical procedures, it is recommended that the chemical be dissolved in reagent-grade acetonitrile and buffer solution and then added to an aliquot of the acetonitrile solution. Do not employ heat to dissolve the chemical in acetonitrile. The final concentration of the test substance shall not be greater than one-half the chemical's solubility in water and not greater than 10^{-3}M. In addition, the final concentration of the acetonitrile shall be one volume percent or less.

* * * * *

PART 799—[AMENDED]

3. Part 799 is amended as follows:

a. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. New Subpart D, consisting at this time of § 799.5055, is added to read as follows:

Subpart D—Multichemical Test Rules

§ 799.5055 Hazardous waste constituents subject to testing.

(a) *Identification of test substances.* (1) The table in paragraph (c) of this section identifies those hazardous waste constituents that shall be tested in accordance with this section.

(2) Identified constituents of at least 98-percent purity shall be used as the test substances. For chemicals commercially available only as an impurity, research-grade chemical of at least 98-percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (import) or process the identified constituents, including as an impurity, after the effective date of this rule (44 days after the publication date of the final rule in the **Federal Register**) to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data or submit exemption applications as specified in this section, Subpart A of this part, and Parts 790 and 792 of this chapter for single-phase rulemaking.

(c) *Designation of testing.* The substances identified in the following table by name and CAS number shall be tested in accordance with the designated requirements under paragraphs (d) and (e) of this section. The paragraph number(s) listed for a chemical refers to the specific testing and reporting requirements specified in paragraphs (d) and (e) of this section.

Chemical name	CAS No.	Required testing under paragraphs (d) and (e) of this section
Acetamide, *N*-(aminothioxomethyl)	591-08-2	(d)(1), (2), (e)(1).
Acetamide, 2-fluoro	640-19-7	(d)(1), (e)(1).
Acetophenone	98-86-2	(d)(1).
Ammonium vanadate	7803-55-6	(d)(1), (2).
Benzal chloride	98-87-3	(d)(1).
p-Benzoquinone	106-51-4	(d)(1), (e)(1).
2,2'-Bioxirane	1464-53-5	(d)(1), (3).
Bis(2-chloroethoxy)methane	111-91-1	(d)(1), (3), (e)(1).
Bis(2-chloroisopropyl)ether	108-60-1	(d)(1), (3).
Bromoacetone	598-31-2	(d)(1), (2), (3), (e)(1).
4-Bromobenzylcyanide	16532-79-9	(d)(1), (2), (3), (e)(1).
Bromoform	75-25-2	(d)(1), (3).
1-Bromo-4-phenoxy benzene	101-55-3	(d)(1), (e)(1).
Carbonyl fluoride	353-50-4	(d)(1), (2), (e)(1).
Chloral	75-87-6	(d)(1), (2) [1].
2-Chlorobenzotrichloride	2136-89-2	(d)(1), (2), (3), (e)(1).
4-Chlorobenzotrichloride	5216-25-1	(d)(1), (2), (3), (e)(1).
2-Chloroethyl vinyl ether	110-75-8	(d)(1), (3), (e)(1).
Chlornaphazine	494-03-1	(d)(1), (2), (e)(1).
1-(*o*-Chlorophenyl)thiourea	5344-82-1	(d)(1), (2), (e)(1).
Cyanogen bromide	506-68-3	(d)(1), (2), (3), (e)(1).
2,4-D	94-75-7	(d)(1), (3).
Daunomycin	20830-81-3	(d)(1), (2), (e)(1).
Dibromomethane	74-95-3	(d)(1), (3).
Dibutyl phthalate	84-74-2	(d)(1).
1,2-Dichlorobenzene	95-50-1	(d)(1), (3).
1,3-Dichlorobenzene	541-73-1	(d)(1).
1,4-Dichlorobenzene	106-46-7	(d)(1).
1,1-Dichloroethane	75-34-3	(d)(1), (3).
1,3-Dichloropropanol	96-23-1	(d)(1), (2), (e)(1).
2,3-Dichloropropanol	616-23-9	(d)(1).
o,o-Diethyl- *S*-methyldithiophosphate	3288-58-2	(d)(1), (3), (e)(1).
Dihydrosafrole	94-58-6	(d)(1), (3).
a,a-Dimethylphenethylamine	122-09-8	(d)(1), (e)(1).
Dimethyl phthalate	131-11-3	(d)(1).

Chemical name	CAS No.	Required testing under paragraphs (d) and (e) of this section
4,6-Dinitro-*o*-cyclohexylphenol	131-89-5	(d)(1), (2), (3), (e)(1).
2,6-Dinitrotoluene	606-20-2	(d)(1).
Endrin	72-20-8	(d)(1), (3).
Ethylene-bis-dithiocarbamic acid	111-54-4	(d)(1), (2), (e)(1).
Ethylmethacrylate	97-63-2	(d)(1), (3).
Glycidylaldehyde	765-34-4	(d)(1), (3).
Hexachlorophene	70-30-4	(d)(1).
Hexaethyl-tetra-phosphate	757-58-4	(d)(1), (e)(1).
Isosafrole	120-58-1	(d)(1), (3).
Maleic anhydride	108-31-6	(d)(1), (2), (3).
Maleic hydrazide	123-33-1	(d)(1), (2), (3).
Malononitrile	109-77-3	(d)(1), (2), (e)(1).
Methacrylonitrile	126-98-7	(d)(1), (3).
Methanethiol	74-93-1	(d)(1), (2).
Methyl chloride	75-87-3	(d)(1), (3).
Methyl chlorocarbonate	79-22-1	(d)(1), (e)(1).
1-Naphthylamine	134-32-7	(d)(1).
Nicotine	54-11-5	(d)(1).
p-Nitroaniline	100-01-6	(d)(1).
p-Nitrophenol	100-02-7	(d)(1), (e)(1).
Paraldehyde	123-63-7	(d)(1).
Pentachlorobenzene	608-93-5	(d)(1), (3).
Pentachloroethane	76-01-7	(d)(1), (3).
Phenacetin	62-44-2	(d)(1), (3).
n-Phenylthiourea	103-85-5	(d)(1), (2), (3).
Phosgene	75-44-5	(d)(1), (2), (3), (e)(1).
Phthalic anhydride	85-44-9	(d)(1), (2).
2-Picoline	109-06-8	(d)(1).
1-Propanamine	107-10-8	(d)(1), (e)(1).
Propanenitrile	107-12-0	(d)(1), (3).
Propanenitrile, 3-chloro	542-76-7	(d)(1), (e)(1).
Saccharin	81-07-2	(d)(1), (3).
1,2,4,5-Tetrachlorobenzene	95-94-3	(d)(1), (3).
Tetraethyldithiopyrophosphate	3689-24-5	(d)(1), (d)(3).
Thiosemicarbazide	79-19-6	(d)(1), (2), (3).
o-Toluidine hydrochloride	636-21-5	(d)(1), (2).
Trichloromethanethiol	594-42-3	(d)(1), (2), (3), (e)(1).
Trypan blue	72-57-1	(d)(1), (2).

[1] Sorption should be measured for the hydrated species of this chemical.

(d) *Chemical fate testing*—(1) *Anaerobic biodegradation*—(i) *Required testing.* An anaerobic biodegradation test shall be conducted with the substances designated in paragraph (c) of this section in accordance with § 795.54 of this chapter.

(ii) *Reporting requirements.* (A) The anaerobic biodegradation tests shall begin within 4 months of the effective date of the final rule and the final results of each study shall be submitted to the Agency within 6 months of the completion date of the study.

(B) Progress reports shall be submitted to the Agency at 6 months intervals from the effective date of the final rule until submission of the final report.

(2) *Soil adsorption*—(i) *Required testing.* A soil adsorption isotherm test shall be conducted with the substances designated in paragraph (c) of this section in accordance with § 796.2750 of this chapter.

(ii) *Reporting requirements.* (A) The sediment and soil adsorption isotherm tests shall be completed and the final results submitted to the Agency within 9 months of the effective date of the final rule.

(B) A progress report shall be submitted to the Agency 6 months after the effective date of the final rule.

(3) *Hydrolysis*—(i) *Required testing.* A test of hydrolysis as a function of pH at 25 °C shall be conducted with the substances designated in paragraph (c) of this section in accordance with § 796.3500 of this chapter.

(ii) *Reporting requirement.* The hydrolysis tests shall be completed and the final results submitted to the Agency within 6 months of the effective date of the final rule.

(e) *Health effects testing*—(1) *Subchronic toxicity*—(i) *Required testing.* An oral gavage subchronic toxicity test shall be conducted in the rat with the substances designated in paragraph (c) of this section in accordance with § 798.2650 of this chapter.

(ii) *Reporting requirements.* (A) The oral gavage subchronic tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) A progress report shall be submitted to the Agency 6 months after the effective date of the final rule.

(2) [Reserved]

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070-0033).

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Part V

Office of Management and Budget

Guidelines for Nonprocurement Debarment and Suspension

OFFICE OF MANAGEMENT AND BUDGET

Guidelines for Nonprocurement Debarment and Suspension

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice contains a memorandum to executive departments and agencies setting forth guidelines called for in Section 6 of Executive Order 12549, "Debarment and Suspension."

FOR FURTHER INFORMATION CONTACT: Barbara F. Kahlow, Grants Management, Financial Management Division, Office of Management and Budget, Room 10215 New Executive Office Building, Washington, DC 20503. Telephone: 202-395-3050.

SUPPLEMENTARY INFORMATION: Executive Order (E.O.) 12549, "Debarment and Suspension," was signed by President Reagan on February 18, 1986. Section 6 of the Order states that "The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe government-wide criteria and government-wide minimum due process procedures, and set forth other related details for the effective administration of the guidelines."

As part of the Administration's initiatives to curb fraud, waste, and abuse, the President's Council on Integrity and Efficiency created an interagency task force to study the feasibility and desirability of a comprehensive debarment and suspension system encompassing the full range of Federal activities. The task force concluded, in its November 1982 report, that such a system was desirable and feasible.

As a result, the Office of Management and Budget (OMB) established an interagency Task Force on Nonprocurement Suspension and Debarment under the President's Council on Management Improvement. This task force recommended, in its November 1984 report, that a government-wide nonprocurement debarment and suspension system, similar to that currently in effect for procurement, be established. This could be the first step towards a comprehensive system, including both procurement and nonprocurement.

Section 4 of E.O. 12549 calls for a new Interagency Committee on Debarment and Suspension. This Committee will monitor implementation of the Order and explore further steps toward a comprehensive system, including both procurement and nonprocurement.

On February 21, 1986, OMB published proposed guidelines covering the subjects indicated in Section 6 of E.O. 12549, including: coverage, government-wide criteria, and minimum due process procedures (51 FR 6369-79). They were prepared in regulation format as a minimum model rule to facilitate their use be the executive departments and agencies in preparing the agency regulations called for by section 3 of the Order.

Comments on Proposed Guidelines

OMB received 60 comments on the proposed guidelines: 23 from Federal executive branch agencies, eight from Members of Congress, four from State and local governments, five on behalf of universities, and 20 on behalf of nonprofit organizations and others. All comments were provided to the Task Force on Nonprocurement Suspension and Debarment for consideration in preparing these final guidelines.

The OMB draft guidelines designated three areas for specific attention by the public: Scope (coverage) of the government-wide system, nonperformance as a criterion for goverment-wide debarment, and access to the list of excluded parties.

Scope of the Government-wide System

Comments were invited on the scope of the proposed debarment and suspension program. The scope or coverage issue was further divided into five constituent questions. The first concerned the appropriate selection of programs to be covered by the government-wide system. The draft guidelines reflected a "medium" approach that included both direct assistance (e.g., grants, cooperative agreements, scholarships, and fellowships) as well as indirect benefits (e.g., insurance and loan guarantees).

Generally, the comments reflected wide support for the medium approach and this was retained in the final guidelines. Some comments suggested that the government-wide system should begin with a narrower selection (direct assistance only) and later broaden the coverage to include other programs (indirect benefits) as the agencies gained operational experience in government-wide debarment and suspension. The task force decided against a phased-in approach since it would tend to exclude major Federal agencies that currently have successful debarment programs in the indirect benefit areas. Also, a phased-in approach would create confusion both for the Federal agencies and the public during the period of implementation. No commenter identified any particular difficulty as likely to occur as a result of immediate, full implementation, and the task force does not anticipate significant problems. Accordingly, the final guidelines encompass both direct assistance and indirect benefits.

A second dimension of the scope issue concerned whether the government-wide system should apply to first tier awards and federally-approved subawards only, or whether coverage should extend to all awards, including those at lower subtiers. The draft guidelines reflected a "broad" approach reaching all tiers of participation.

While several commenters questioned the practicality of applying the system at subtier levels, several others indicated that limiting the coverage to initial awards and federally-approved subtier awards would seriously hamper the effectiveness of debarment in the management of their programs. Those favoring a narrow depth of coverage urged that first tier awardees be held responsible for protecting the Federal interest at lower tiers. However, those favoring the broad approach commented that because substantial amounts flow through State, local or other recipients, and substantive performance occurs at these subtier levels, misuse and the need for debarment and suspension protections occurs more often there than at the initial award or first tier level. Several Federal agencies currently apply debarment coverage to lower tier awards and have done so successfully. Accordingly, the task decided to retain coverage at all subtiers.

A third dimension of the scope issue on which specific comment was sought involved the question of whether a dollar threshold should be established. The draft guidelines did not include a threshold.

While some commenters favored a threshold, most argued against one. The reason cited most in favor of thresholds was administrative efficiency. However, the task force believed that a dollar threshold would invite manipulation of awards so as to avoid coverage under the government-wide system. Furthermore, a dollar threshold would tend to eliminate certain participants for whom many Federal Agencies deem coverage essential and would appear to countenance fraud when small amounts are involved. The final guidelines, therefore, provide for coverage of both initial awards and all subtiers

thereunder without regard to a dollar threshold. Section _____. 505 has been amended, however, to include paragraph (e), which authorizes agency use of a certification requirement as a cost-effective and practical tool in enforcing debarments and exclusions at subtier levels. Agencies will identify in their regulations required under Section 3 of E.O. 12549 which participants are required to provide certifications. Where certifications are used, there need not be checking the Consolidated List.

A fourth element of the scope issue involved the system's coverage of individuals. The draft guidelines reflected inclusion of "key" employees. The comments received were very supportive of this coverage. At least one commenter suggested defining the term "key employee." The task force does not believe that a definition is necessary because the term only appeared in the preamble, not the guidelines. Moreover, § _____.200(b) adequately describes the activities of individuals to which debarment, suspension or voluntary exclusion applies.

The fifth and final aspect of the scope issue is whether the government-wide system should apply to only activities charged as a direct cost to the award, or whether it should apply to indirect costs activities as well. The draft guidelines provided coverage as to transactions (at any tier) charged as direct costs.

Some commenters expressed concern that covering direct costs alone might result in some participants attempting to avoid coverage by shifting direct cost activities into overhead. Other commenters pointed out that most indirect costs are sufficiently remote to pose no direct risk to the Federal Government. However, indirect costs could be substantial and the distinction between direct and indirect costs can be variably interpreted and arbitrary. Therefore, the scope of these final guidelines covers direct and indirect costs but leaves to agency discretion whether to limit coverage to items charged as direct costs. In response to concerns expressed by the President's Council on Integrity and Efficiency, representing the Federal Inspectors General, the task force amended § _____.200(b) to specifically prohibit the participation of a debarred or suspended person in federally-required audit services.

The comments received evidenced some confusion about the significance of the limitations on the scope of coverage. The task force believed that the following clarification is desirable and will assure Federal agencies that the purpose of the government-wide system is to further agencies' ability to protect against fraud, waste, abuse and poor performance in their assistance and benefit programs. Any participant may be debarred or suspended for any activity that constitutes a cause for debarment or suspension under §§_____.305 and _____.405, respectively. No limitation on any element of the scope of the system prevents an executive branch Federal agency from initiating a debarment or suspension action. For example, fraudulent activities may serve as the basis for debarment even though Federal funds were not involved or the program was not part of the government-wide system. The parameters set forth in the "Coverage" and "Effect of Action" provisions of the guidelines merely define those activities, programs or transactions to which the guidelines apply, and thus for which a debarment and suspension will have government-wide effect.

Nonperformance as a Criterion for Government-Wide Debarment

The draft guidelines included certain performance-related grounds for debarment. The task force sought specific comment as to the propriety of including nonperformance as a cause for debarment under the government-wide system. This issue drew the most divided response. While the majority of commenters expressed support for including nonperformance as a criterion for debarment, several supporters and opponents of the proposed system raised concern about the subjective nature of performance-based actions.

The final guidelines retain the performance-related grounds as a cause for government-wide debarment. The task force concluded that such grounds, similar to those in the Federal Acquisition Regulation (FAR), were appropriate and necessary to comprehensive government-wide system. The task force believed that the provisions of § _____.305(b), requiring "a violation . . . so serious as to affect the (participant's) present responsibility," and specifying that the conduct be "willful or material," or reflect a "history of substantial noncompliance," provide adequate assurance that performance matters which are minor or highly parochial in nature would not be used as a basis for debarment actions. Section _____.215, permitting Federal agencies to grant exceptions where appropriate, would also provide a relief mechanism if necessary in a particular case.

Access to the List of Excluded Parties

Most commenters strongly favored development of an automated list of excluded parties, to which access can be immediate for persons both in and out of the Federal Government. Many preferred using an 800 or 900 dial-up service.

The task force agreed that while the ultimate success of the government-wide system will be greatly enhanced by developing a convenient and cost-effective means of access to an automated list, implementation of the system should not be delayed pending the establishment of such a system. The task force agreed that the interests of the Federal Government would be best served if the program is begun now, even if hard copy distribution is initially used. The OMB-designated lead agency for access and automation, the U.S. General Services Administration (GSA), will continue to study available technologies during the implementation phase of this system in anticipation of converting to an automated list when practicable.

Other Public Comments

Several commenters supported the concept of a system of government-wide debarment and suspension but expressed concerns about its implementation. Some commenters expressed concern that allowing individual agencies to expand upon the minimal model rule was not in accord with the intent of E.O. 12549 that there be government-wide consistency. The basic design of the system was to establish minimum agency requirements yet accommodate widely differing substantive programs. We feel that the existing requirement for OMB review of agency regulations is adequate to achieve necessary consistency among the Federal agencies.

Other comments noted the desirability of consistency between the guidelines and the FAR. Because at the present time there is no authority for a debarment or suspension to have government-wide effect for both procurement and nonprocurement purposes, separate systems for Federal procurement and nonprocurement programs will be maintained. However, for fairness and efficiency reasons, the guidelines were written to conform as closely as possible to the FAR. The relatively few inconsistencies between the procurement and nonprocurement systems are a product of the differences in procurement and nonprocurement activities. One such specific area raised was coverage of subtier agreements. While the FAR covers only direct Federal contracts and subcontracts awarded with Federal approval, the nonprocurement system will go further,

covering all lower tier grants and contracts as well. As explained earlier, most opportunities for fraud, waste, and abuse in federally-assisted activities take place under State-awarded grants and contracts (one such example is bidrigging under the Federal highway program). A limitation in scope similar to that in the FAR would avoid much of the substantive activity the system is designed to screen.

Although there will be separate systems (and lists) for suspensions and debarments under Federal procurement and nonprocurement programs, agencies and participants in nonprocurement programs should in their decisionmaking review the list of Federal procurement debarments and suspensions to avoid fraud, waste, and abuse.

One commenter asked why not establish a single government-wide debarment and suspension tribunal. At present there is simply no authority, either in E.O. 12549 or elsewhere, to do so. More importantly, the current approach was designed to preserve and recognize individual agency preogatives, differences in approach, and various bodies of expertise and experience.

Several commenters questioned whether States should ever be debarred or suspended and whether such an action, if taken, should have government-wide effect. In recognition of the key role States have in our Federal system, Section 1(c) of E.O. 12549 excludes awards where a government's participation is an entitlement or mandated in legislation. In the case of other, discretionary awards, while the task force believed it highly unlikely that a State would ever be debarred, it concluded that such authority was necessary and appropriate so as to be able to act in an egregious case.

Other commenters asked whether in light of Federalism, recipients of block grants should be subject to a debarment and suspension action and government-wide effect. By reason of Section 1(c) of the Order, the initial block grant awards to the States themselves are not covered. However, in the interest of curbing fraud, waste, and abuse, discretionary grants and contracts awarded by the States are covered.

A number of commenters suggested we define more terms, such as "subtier awards," "present responsibility," and "materially doing business." The task force concluded that the use of each in its context makes any further definition unnecessary.

Several commenters raised concerns about the motives and severity of debarment and suspension sanctions and/or government-wide effect. Some feared overzealous use of the procedures to harass, punish, or defund certain groups. In fact, however, the criteria for debarment and suspension are not essentially different than they were before E.O. 12549. The principal difference is that a government-wide system will save the Federal Government the cost and effort of taking repetitive actions to exclude participation of the same fraudulent company. Other, less severe remedies, such as suspension or termination of a particular grant or disallowance of costs, will remain available; they may be more appropriate in many circumstances. Overall, the process should be viewed as beneficial to the vast majority of participants because it will ensure that funding goes only to qualified responsible participants.

Another question raised was whether debarment would be initiated against an individual, such as a researcher or principal investigator, or against the whole sponsoring organization or university. The most likely and practical response to a given situation is debarment of the specific individual or individuals involved. Only where conduct of individuals can be inputed to the institution itself, would debarment be taken against an organization as a whole.

A related concern was whether a debarred or suspended individual could serve on the board of directors or as an officer of a nonprofit organization receiving Federal funds. Only if the individual is paid with Federal funds or is a "person" as that term is used in § _____.200(b), the individual would be debarred from serving; if not, he or she could serve. In any event, probably most organizations would themselves be interested in re-examining the participation of such an individual in light of such information.

Another question concerned how the new system will be applied to current awards and employees. The intention is only to screen new awards (as they are made) and new employees (as they are hired), i.e., not to disrupt current programs and activities. Current participants would be subject as new awards or renewals are sought.

One Federal agency asked whether physicians and other medical service providers declared ineligible under various Federal program would be included on the Consolidated List of debarred and suspended participants. They will be included on the Consolidated List or on the GSA list of debarred and suspended parties under procurement if the providers are under contract with the Federal Government.

The Consolidated List will contain the names and other information not only about all parties who have been debarred or suspended but also those who have been voluntarily excluded, are pending debarment, or have been determined to be ineligible under other authorities. Those parties who are not debarred or suspended are included and will be specially identified on the list for decisionmaking to avoid fraud, waste, and abuse.

A number of commenters pointed out the potentially sizeable paperwork burden which pre-screening and certifications would generate. We do not believe this will necessarily be so, since agencies, under § _____.505, will establish procedures for use of the list of excluded parties. Additionally, an automated dial-up system is being explored. The public will have further opportunity to comment on any burden when agencies publish their proposed regulations, required under § _____.505(e), specifying the manner and extent to which their participants must provide certifications.

One Federal agency expressed concern that the provisions of § _____.310(b)(2) could be construed as requiring that respondents be given a right to an oral hearing in actions based on indictment or conviction. This section acknowledges the right of a respondent to submit, in person or otherwise, information and argument in opposition to a proposed debarment. However, this section is not intended to require a formal oral hearing; rather, it is intended to ensure the opportunity for an informal personal presentation of information, should the respondent find that method more expedient than a written submission. The final decision shall be made on the basis of the administrative record (see § _____.310(b)(4)). This explanation also applies to the procedures for suspensions in § _____.410.

A commenter asked for an example of "incidental benefits" as used in § _____.110(a)(3). An example is an individual's calling the National Weather Service for a report on hurricane activity.

Explanation of Changes to Guidelines

Based on the comments received, the guidelines were revised as follows:

"Nonprocurement." The title was changed from "Guidelines for Governmentwide Nonprocurement Debarment and Suspension" to "Guidelines for Government-wide Debarment and Suspension (Nonprocurement)." No substantive change is intended. In addition, since

the coverage of the debarment and suspension system to which these guidelines apply is set forth in § ____.110, both the word "nonprocurement" in renumbered § ____.100 (b)(1) ("prescribing the nonprocurement programs and activities that are covered by the Order") and the definition of "nonprocurement" (§ ____.120) are no longer necessary and have been deleted.

Purpose. Section ____.100(a) is new. It is simply a summary statement, using the language of E.O. 12549, of what that Order established and of the authority of OMB to issue these guidelines. It serves as an introduction to the rest of § ____.100, which is as originally published and which summarizes how the guidelines implement the Order.

Scope and effect of action. For the sake of clarity, § ____.110, formerly entitled "Scope," was retitled "Coverage," and a new § ____.110(b) was added to explain the relationship among the coverage (§ ____.110), effect of action (Subpart B), and causes of debarment and suspension (§§ ____.305 and ____.405) provisions of the guidelines. As a conforming change, former § ____.110(b) was renumbered § ____.110(c).

Indirect costs. Coverage was expanded to include indirect costs by adding "or indirect" after "direct" in § ____.110(a)(1). However, agencies have the option to limit coverage to items charged as direct costs.

Affiliate and control. Technical changes were made in the definitions of "affiliate" and "control" (§ ____.120) to more closely conform to the definitions of those terms pending for the FAR.

Notice. One technical, clarifying change was made to the definition of "notice" in § ____.120. The phrase "of the party" now modifies "joint venturer" in order to make it clear that only joint venturers of a party to a debarment or suspension proceeding are covered.

Federally-required audit services. Section ____.200(b) was amended to specifically exclude a debarred or suspended "person" from providing federally-required audit services.

Exception provision. The exception provision (§ ____.215) has been changed to conform to the actual language of E.O. 12549 (Section 2(c)).

Subpart E. The title of Subpart E was changed to more accurately summarize the contents of that subpart. It now reads "Agency Responsibilities; Consolidated List" because the subpart covers both subjects; originally, the title only referenced the Consolidated List.

Certification. Section ____.505(e) provides that agencies shall establish certification requirements in the regulations called for under Section 3 of Executive Order 12549. Participants identified in these regulations shall certify as to whether they, or persons acting in specified capacities, currently are, or within the preceding three years have been, debarred, suspended, declared ineligible, proposed for debarment, voluntarily excluded, or indicted, convicted, or had a judgment rendered against them for specified offenses which would be a basis for a debarment or suspension action. This certification provision was added at the suggestion of a number of commenting Federal agencies. It provides an efficient means of protecting the interests of both the Federal Government and the assistance community by helping to ensure that awards are not made to participants who have been excluded from receiving them.

Comparable certification provisions applicable to certain Federal civilian acquisition activities (prime contracts over $25,000, subcontracts subject to Federal approval and construction and demolition subcontracts) have been required since 1981 under GSA's acquisition regulations (48 CFR 509.104-4(c), 509.105-70, and 552.209-70 through 552.209-72).

Future Steps

Section 3 of E.O. 12549 directs Federal agencies to issue regulations governing implementation of the Order; the regulations must be consistent with these guidlines. Proposed regulations will be submitted to the Financial Management Division in OMB within four months. Final rules will be published in one year. OMB's Financial Management Division will review each agency's proposed and final regulations for consistency with these final guidelines as well as compliance with E.O. 12291 and the Paperwork Reduction Act of 1980.

Joseph R. Wright, Jr.,
Deputy Director.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Government-wide Nonprocurement Debarment and Suspension System

On February 18, 1986, the President signed Executive Order 12549, "Debarment and Suspension." The Order directs Federal executive branch departments and agencies to participate in a system for nonprocurement debarment and suspension under which an agency's debarment or suspension of a nonprocurement program participant will have government-wide effect.

Pursuant to Section 6 of the Order, the attached Office of Management and Budget (OMB) guidelines prescribe the program coverage, government-wide criteria, minimum due process procedures, and other guidance for this system. The guidelines are prepared in regulation format to facilitate your use in preparing agency regulations.

Section 3 of the Order directs agencies to issue regulations to implement the system. Proposed agency regulations, which are to be consistent with these guidelines, should be submitted to the Financial Management Division in OMB for review no later than four months from the date of this memorandum in accordance with Section 3 of the Order. Please submit a copy after **Federal Register** publication to the General Services Administration (GSA).

Section 5 of the Order directs OMB to designate a Federal agency to maintain a current list of excluded participants, periodically distribute the list to Federal agencies, study the feasibility of automating the list, coordinate with GSA in its role as the lead agency for government-wide debarment and suspension of contractors, and report periodically to OMB on implementation of E.O. 12549. This memorandum designates GSA to fulfill these functions. Section 5 also directs OMB to designate a chair for the Interagency Committee on Debarment and Suspension established by Section 4. OMB will co-chair this interagency committee with an agency to be named later.

Further information regarding implementation of the Order may be obtained from the Grants Management staff, Financial Management Division, at 395-3050.

Joseph R. Wright, Jr.,
Deputy Director.

GUIDELINES FOR GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

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Subpart E—Agency Responsibilities; Consolidated List

____.500 GSA responsibility.
____.505 Responsibilities of Federal agencies.

Authority: _____.

Subpart A—General

§ ____.100 Purpose.

(a) Eecutive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect. Section 6 of the Order authorizes the Office of Management and Budget (OMB) to issue guidelines concerning the Order.

(b) These guidelines implement Section 6 of Executive Order 12549 by:

(1) Prescribing the programs and activities that are covered by the Order;

(2) Prescribing the goverenment-wide criteria and government-wide minimum due process procedures that Federal agencies shall use in implementing the Order;

(3) Providing for the listing of debarred and suspended participants, participants who voluntarily exclude themselves from participation in covered transactions, and participants declared ineligible (see the definition of "ineligible" in § ____.120);

(4) Setting forth the consequences of the actions under paragraph (b)(3) of this section;

(5) Offering such other guidance as necessary for the effective implementation and administration of the Order.

(c) Although these guidelines cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

(d) The procedures set forth in §§ ____.310 and ____.410 are the minimum due process procedures which agencies must follow. However, agencies are free to supplement them in any way not inconsistent with those sections.

§ ____.105 Authority.

These guidelines are issued pursuant to Executive Order 12549 of February 18, 1986.

§ ____.110 Coverage.

(a) *Covered transactions.* These guidelines apply to Executive branch domestic assistance described below:

(1) *General.* Covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) include, except a noted in paragraph (a)(3) of this section: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreement subawards, subcontracts and transactions at any tier that are charged as direct or indirect [1] costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards); and specially covered activities identified in paragraph (a)(2) of this section.

(2) *Specially covered activities.* In addition to those transactions identified in paragraph (a)(1) of this section, participants in the loan, loan guarantee, and insurance programs of the Departments of Agriculture and Housing and Urban Development and of the Veterans Administration, and in the interstate land sales and manufactured housing programs of the Department of Housing and Urban Development are subject to these guidelines. Also, those in business relationships with such participants with respect to such programs are subject to these guidelines, whether or not their participation involves the actual receipt of Federal funds.

(3) *Exceptions.* The following transactions are not covered: statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory); benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted); incidential benefits derived from ordinary governmental operations; and, other transactions where the application of Executive Order 12549 and these guidelines would be prohibited by law.

(b) *Relationship to other sections.* This section, § ____.110, describes the types of activities and transactions to which a debarment or suspension under the guidelines will apply. Subpart B, Effect of Action, § ____.200, sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants in the covered transactions and activities described in § ____.110. Sections ____.330, Scope of debarment, and § ____.420, Scope of suspension, govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which additional affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal acquisition activities.* Executive Order 12549 and these guidelines do not apply to direct Federal acquisition activities. Debarment and suspension of Federal contractors and subcontractors are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4. However, agencies are encouraged to integrate their administration of these complementary debarment and suspension programs.

§ ____.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these guidelines, are appropriate means to effectuate this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these guidelines.

§ ____.120 Definitions.

Adequate evidence. Information sufficient to support the reasonable belief that a participation act or omission has occurred.

Affiliate. Persons are affiliates of one another if, directly or indirectly, one owns, controls, or has the power to control the other, or a third person owns, controls, or has the power to control both.

Agency. Any executive department, military department or defense agency.

[1] "or indirect"—excluded at agency option.

or other agency of the executive branch, excluding the independence regulatory agencies.

Consolidated List. A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these guidelines, and those who have been determined to be ineligible.

Control. The power to exercise, directly or indirectly a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or otherwise. For purposes of actions under these guidelines, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. Such presumption may be rebutted by evidence. Other indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and, establishment, following the debarment, suspension, or other exclusion of a participant, of an organization or entity which is to operate in the same business or activity and to have substantially the same management, ownership, or principal employees as the debarred, suspended or excluded participant.

Conviction. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

Debarment. An action taken by a debarring official in accordance with agency regulations implementing Executive Order 12549 to exclude a person from participating in covered transactions. A person so excluded is "debarred."

Debarring official. An agency head or a designee authorized by the agency head to impose debarment.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. Excluded from participation in covered transactions, programs, or agreements pursuant to statutory, Executive order, or regulatory authority other than Executive Order 12549 and its agency implementing and supplementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the equal employment opportunity acts and Executive orders, or the environmental protection acts and Executive orders.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service or process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

Participant. Any person who submits proposals for, receives an award or subaward or performs services in connection with, or reasonably may be expected to be awarded or to perform services in connection with, a covered transaction. This term also includes any person who conducts business with a Federal agency as an agency or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government or legal entity however organized, including any subsidiary of any of the foregoing.

Preponderance of the evidence. Proof by information that, compared, with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking a benefit, directly or indirectly, under a covered transaction.

Respondent. A person against whom a debarment or suspension action has been initiated.

Subsidiary. Any corporation, partnership, association or legal entity however organized, owned or controlled by another person.

Suspending official. An agency head or a designee authorized by the agency head to impose suspension.

Suspension. An action taken by a suspending official in accordance with agency regulations implementing Executive Order 12549 to immediately exclude a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue. A person so excluded is "suspended."

Voluntary exclusion. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

Subpart B—Effect of Action

§ _____.200 Debarment or suspension.

(a) Except to the extent prohibited by law, a person's debarment shall be effective throughout the executive branch of the Federal Government. Except as provided in § _____.215, persons who are debarred or suspended under these provisions are excluded from participation in all covered transactions of all agencies for the period of their debarment or suspension. Accordingly, agencies and participants shall not make awards to or agree to participation by such debarred or suspended persons during such period.

(b) In addition, persons who are debarred or suspended are excluded from participation in or under any covered transaction in any of the following capacities: as an owner or partner holding a controlling interest, director, or officer of the participant; as a principal investigator, project director, or other position involved in management of the covered transaction; as a provider of federally-required audit services; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; or in any other position charged as a direct cost under the covered transaction.

§ _____.205 Voluntary exclusion.

Participants who accept voluntary exclusions under § _____.320 are excluded in accordance with the terms of their settlements; their listing, pursuant to Subpart E, is for informational purposes. Awarding agencies and participants must contact the original action agency to ascertain the extent of the exclusion.

§ _____.210 Ineligible persons.

Persons who are ineligible are excluded in accordance with the applicable statutory, Executive order, or regulatory authority.

§ _____.215 Exception provision.

An agency may grant an exception permitting a debarred, suspended, or excluded person to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from the

Presidential policy established by Executive Order 12549. However, the Order states that it is the President's intention that exceptions to this policy should be granted only infrequently. Exceptions should be reported in accordance with § _____.505.

§ _____.220 Continuation of current awards.

(a) Notwithstanding the debarment, suspension, voluntary exclusion or ineligible status of any person, agencies and participants may continue agreements in existence at the time the person was debarred, suspended, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend the duration of current agreements with any person who is debarred, suspended, declared ineligible or under a voluntary exclusion, except as provided in § _____.215.

§ _____.225 Failure to adhere to restrictions.

Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transaction, except as permitted under these guidelines, may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

Subpart C—Debarment

§ _____.300 General.

The debarring official may debar a participant for any of the causes in § _____.305, using procedures established in accordance with § _____.310. The existence of a cause for debarment, however, does not necessarily require that the participant be debarred; the seriousness of the participant's acts or omissions and any mitigating factors should be considered in making any debarment decision.

§ _____.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ _____.300 and _____.310 for:

(a) Conviction of or civil judgment for any offense indicating a lack of business integrity or honesty which affects the present responsibility of a participant, including but not limited to:

(1) Fraud or a ciminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(3) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of the terms of a public agreement so serious as to affect the present responsibility of a participant, including but not limited to:

(1) A willful or material failure to perform under one or more public agreements;

(2) A history of substantial noncompliance with the terms of one or more public agreements; or

(3) A willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.

(c) Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for by §_____.305;

(2) Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transactions;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a participant;

(4) Loss or denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a participant;

(5) Failure to pay a debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a participant.

§_____.310 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the debarring official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* Agencies shall establish procedures governing the debarment decisionmaking process that are as informal as practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) *Notice of proposed debarment.* A debarment proceeding shall be initiated by notice to the respondent advising:

(i) That debarment is being considered;

(ii) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(iii) Of the cause(s) relied upon under §_____.305 for proposing debarment;

(iv) Of the provisions of §_____.310(b)(1)–(b)(6) and the agency's specific procedures governing debarment decisionmaking;

(v) Of the effect of the proposed debarment pending a final debarment decision; and

(vi) Of the potential effect of a debarment.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(3) *Additional proceedings as to disputed material facts.* (i) In actions not based upon a convicition or judgment, if it is found that there exists a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents.

(ii) A transcribed record of any additional proceedings shall be made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) *Debarring official's decision*—(i) *No additional proceedings necessary.* In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the

debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Standard of evidence.* In any contested action, the cause for debarment must be established by a preponderance of the evidence. In any contested action in which the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(6) *Notice of debarring official's decision.* (i) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(A) Referring to the notice of proposed debarment;

(B) Specifying the reasons for debarment;

(C) Stating the period of debarment, including effective dates; and

(D) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or a designee authorized by an agency head makes the determination referred to in _____.215.

(ii) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ _____.315 Effect of proposed debarment.

Upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, the debarring agency shall not make any new awards to the respondent. That agency may waive this exclusion pending a debarment decision upon a written determination by the debarring official identifying the reasons for doing so. In the absence of such a waiver, the provisions of § _____.215 allowing exceptions for particular transactions may be applied.

§ _____.320 Voluntary exclusion.

A participant and an agency may enter into a settlement providing for the exclusion of the participant. Such exclusion shall be entered on the Consolidated List (see Subpart E).

§ _____.325 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer or indefinite period of debarment may be imposed. If a suspension precedes a debarment, the suspension period may be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of § _____.310 shall be followed to extend the debarment.

(c) The debarring official may reduce the period or scope of debarment, upon the respondent's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ _____.330 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person or affiliate under Executive Order 12549 constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the debarment decision is limited by its terms to one or more specifically indentified individuals or organizational elements or to specific types of transactions.

(2) The debarment action may include any other affiliate of the participant that is (i) specifically named and (ii) given notice of the proposed debarment and an opportunity to respond (see § _____.310).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

Subpart D—Suspension

§ _____.400 General.

(a) The suspending official may suspend a participant for any of the causes in § _____.405 using procedures established in accordance with § _____.410.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence of one or more of the causes set out in § _____.405 when it has been determined that immediate action is necessary to protect the public interest.

§ _____.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of

§§ _____.400 and _____.410 upon adequate evidence:

(1) To suspect the commission of an offense listed in § _____.305(a); or

(2) That a cause for debarment under § _____.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ _____.410 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* Agencies shall establish procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) *Notice of suspension.* When a respondent is suspended, notice shall immediately be given:

(i) That suspension has been imposed;

(ii) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(iii) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(iv) Of the cause(s) relied upon under § _____.405 for imposing suspension;

(v) That the suspension is for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue;

(vi) Of the provisions of § _____.410(b)(1)–(b)(5) and the agency's specific procedures governing suspension decisionmaking; and

(vii) Of the effect of the suspension.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(3) *Additional proceedings as to disputed material facts.* (i) If it is found that there exists a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents, unless—

(A) The action is based on an indictment, conviction or judgment, or

(B) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(ii) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, unless the repondent and the agency, by mutural agreement, waive the requirement for a transcript.

(4) *Suspending official's decision.* The suspending official may modify or terminate the suspension (for example, see § _____.325(c) for the reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(i) *No additional proceedings necessary.* In actions (A) based on an indictment, conviction, or judgment, (B) in which there is no genuine dispute over material facts, or (C) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent and any affiliates involved.

§ _____.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ _____.420 Scope of suspension.

The scope of a suspension shall be the same as the scope of debarment (see § _____.330), except that the procedures of § _____.410 shall be used in imposing a suspension.

Subpart E—Agency Responsibilities; Consolidated List

§ _____.500 GSA responsibility.

(a) GSA shall compile, maintain, and distribute a list of all participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these guidelines, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, voluntarily excluded, and ineligible participants in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ _____.505 Responsibilities of Federal agencies.

(a) Each agency shall designate a liaison who shall be responsible for providing GSA with current information concerning debarments, suspensions, voluntary exclusions and ineligibilities taken by that agency. Until February 18, 1989, the liaison shall also provide GSA and OMB with information concerning all transactions in which the agency has granted exceptions under § _____.215 permitting participation by debarred, suspended, or excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, each agency shall advise GSA of the information set forth in § _____.500(b) and of the exceptions granted under § _____.215 within five working days after taking such actions.

(c) Each agency shall establish procedures to provide for the effective dissemination and use of the list, in order to ensure that listed persons do not participate in any covered transaction in a manner inconsistent with that person's listed status, except as otherwise provided in these guidelines.

(d) Each agency shall direct inquiries concerning listed persons to the agency that took the action.

(e) Each agency shall establish participant certification requirements in their regulations required under Section 3 of Executive Order 12549. The regulations shall identify which participants in covered transactions are required to certify to whether the participant, or any person acting in a capacity listed in § _____.200(b) with respect to the participant or the particular covered transaction, is currently or within the preceding three years has been:

(1) Debarred, suspended or declared ineligible;

(2) Formally proposed for debarment, with a final determination still pending;

(3) Voluntarily excluded from participation; or

(4) Indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in § _____.305(a).

Adverse information of the certification need not necessarily result in denial of participation. Agencies shall establish procedures to ensure that information provided by the certification, and any additional information they may require, is considered in the administration of covered transactions.

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