Wilson, 150 East Gilman Street, Madison, WI 53703. *Lime and limestone products* (except in bulk, in tank vehicles) from the facilities of Rockwell Lime Company in Manitowoc County, Wisconsin to points in IL, IN, IA, MI, MN and MO. Authority sought for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Rockwell Lime Company, Route 2, Box 124, Manitowoc, WI 54220. Send protests to: John E. Ryden, DS, ICC, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 147034 (Sub-1TA), filed May 14, 1979. Applicant: ALBANESE TRANSPORT, INC., 3537 Apulia Road, Jamesville, NY 13078. Representative: Frank Pompo, 820 University Bldg., Syracuse, NY 13201. *Wood chips, sawdust, bark, rough sawn lumber, planned lumber pallets, all in bulk,* from Cazenovia and Syracuse, NY and its commercial zone to all points in PA, VA, NJ, NC and MD, with returned, rejected, refused products of the same description in reverse direction, for 180 days. Underlying ETA for 90 days under R granted and effective May 7, 1979. Supporting shipper(s): B & B Lumber Company, Inc., Robert H. Booher, Pres., Allied Chemical Quarry, Jamesville, NY 13078. Johnson Bros. Lumber, Paul A. Johnson, Owner, Balina Road, Cazenovia, NY 13035. Send protests to: Interstate Commerce Commission, 910 Federal Bldg., 111 West Huron St., Buffalo, NY 14202.

MC 147035 (Sub-1TA), filed May 7, 1979. Applicant: J. HOWARD LEASING, INC., 253 Southwest Cutoff, Worcester, Massachusetts 01604. Representative: James F. Martin, Jr., 8 W. Morse Road, Bellingham, MA 02019. Contract carrier: irregular routes: *Frozen concentrates, materials and supplies,* between the facilities of Newton Foods, Inc., Taunton, MA, on the one hand, and, on the other, points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, MD, DE, WV, VA, FL, IL, MI and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Newton Foods, Inc., 500 Turnpike Street, Canton, MA 02021. Send protests to: David M. Miller, DS, ICC, 436 Dwight Street, Springfield, MA 01103.

MC 147045 (Sub-1TA), filed May 4, 1979. Applicant: CALIFORNIA TRANSPORTATION LABOR, INC., 6901 South Eastern Avenue, Bell Gardens, CA 90201. Representative: Wyman C. Knapp, Knapp, Grossman & Marsh, 1800 UCB Bldg., 707 Wilshire Blvd., Los Angeles, CA 90017. *Refined petroleum products in bulk,* from points in Los Angeles County, CA, to points in Clark and Nye Counties, NV; and, from points in Los Angeles County, CA, to Phoenix, Tucson, and Bull Head City, AZ, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Newhall Refining Co., Inc., 22674 N. Clampilt Rd., Newhall, CA 91321. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, California 90053.

MC 147074 (Sub-1TA), filed May 17, 1979. Applicant: E Z FREIGHT LINES, Gould & E. 46th Street, Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Aluminum extrusions, aluminum billets and aluminum ingots. (1) From Coldwater, MI to New Brunswick, NJ and Winton and Burlington, NC and (2) From Winton and Burlington, NC to DE, IN, MD, MI, NJ, KY, OH, PA, VA, and WV for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): New Jersey Aluminum Co., P.O. Box 73, North Brunswick, NJ 08902. Send protests to: Robert E. Johnston, DS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 147104 (Sub-1TA), filed May 14, 1979. Applicant: WILLIAM OLINGER and MICHAEL OLINGER, d.b.a. OLINGER TRUCK SERVICE, Route 1, Box 182, Hector, MN 55342. Representative: James E. Ballenthin, 630 Osborn Building St. Paul, MN 55102. *Beat pulp pellets* from Renville, MN to Superior, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Southern Minnesota Sugar Corporation, 400 South County Road 18, Room 490, Minneapolis, MN 55426. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 147185 (Sub-1TA), filed May 9, 1979. Applicant: STEVE FARRAR, P.O. Box 31, Waynesboro, MS 39367. Representative: Kent F. Hudson, 202 Main St., Purvis, MS 39475. *Water, drilling mud, oil spillage, and bulk sediments in connection with oil and gas exploration, production, discovery and drilling* from Waynesboro, MS, to points in AL, FL, and LA, for 180 days. Supporting shipper(s): Getty Oil Co., P.O. Box 16878, Mobile, AL 36616. Chesley-Pruet Drilling Co., P.O. Box 324, Laurel, MS 39440. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 147204 (Sub-1TA), filed May 16, 1979. Applicant: JACK'S TRUCK RENTAL, INC. Route 3 Box 61, Holts Summit, MO 65043. Representative: Mrs. Chester Surface, Route 3 Box 61, Holts Summit, MO 65043. *Freight, all kinds,* in straight or mixed shipments, between Cedar City, Jefferson City and Moberly, MO on the one hand, and, on the other, points and places in Missouri within 75 miles thereof RESTRICTED to shipments having a prior or subsequent move by rail in TOFC service. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): McGraw-Edison Co., Portable Appliance and Tool Group, 1801 N. Stadium Blvd., Columbia, MO 65201. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 147314 filed May 10, 1979. Applicant: GARFIELD TRANSPORTATION SYSTEMS, INC., 1426 Clark Street, Montreal, PQ, Canada H2X 2R3. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. (1) *General commodities* (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), in containers or trailers, restricted to the transportation of shipments having a prior or subsequent movement by water in foreign commerce, and in bond, between ports of entry on the United States—Canada Boundary Line in NY and VT on the one hand, and, on the other, Weehawken, NJ, and (2) *Empty containers, trailers, and trailer chassis,* from Weehawken, NJ to ports of entry on the US—Canada Boundary Line in NY and VT, for 180 days. Supporting shipper(s): Aquatainer Ltd., 465 St Jean Street, Montreal, PQ, Canada H2Y 2R6. Send protests to: ICC, PO Box 548, Montpelier, VT 05602.

MC 147315 TA, filed May 4, 1979. Applicant: TRIWAYS, INC., 2455 E. 27th St., Los Angeles, CA 90058. Representative: Willam Davidson (same as above). Contract carrier, irregular routes: *Garments on hangers, wearing apparel, piece goods cut or uncut, carpeting, draperies, furniture blanket wrapped or in cartons and freight all kinds in unitized loads.* Points in Los Angeles County and Orange County California on the one hand, and Utah and Nevada on the other hand, for 180 days. Supporting shipper(s): Catalina Inc., 6040 Bandini Blvd., Los Angeles, CA 90040. Send protests to: Irene Carlos, TA, P.O. Box 1551, Los Angeles, CA 90053.

By the Commission.

H. G. Homme, Jr.,

Secretary

[FR Doc. 79-17708 Filed 6-6-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 90

Motor Carrier Temporary Authority Applications

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 1515 (Sub-264TA), filed May 17, 1979. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: Lat J. Celmins (same address as applicant). Common, Regular, *Passengers and their baggage and express and newspapers in the same vehicle with passengers,* (Route 1) between Bay Shore, NY and Riverhead, NY, serving all intermediate points: From Bay Shore over NY Hwy 27 to Junction NY Hwy 51, then over NY Hwy 51 to Riverhead, and return over the same route, (Route 2) between Junction NY Hwy 101 and NY Hwy 27 and Riverhead, NY, serving all intermediate points: From Junction NY Hwy 101 and NY Hwy 27 over NY Hwy 101 to Junction NY Hwy 495, then over NY Hwy 495 to Junction NY Hwy 24, then over NY Hwy 24 to Riverhead, and return over the same route, for 180 days. An underlying ETA seeks 90 days authority. Applicant requests to tack this authority with authority it presently holds in No. MC 1515. Supporting shipper(s): 1. Cantin Fabrics, 301 E. Main St., Riverhead, NY 11901. 2. Riverhead Stationery, 121 Main St., Riverhead, NY. 3. Karen H. Philipps, 14 Vautrin Ave., Holtsville, NY 11742. 4. Jermaine Aquino, P.O. Box 755, Southold, NY 11971. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 1515 (Sub-265TA), filed May 21, 1979. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: Lat J. Celmins (same address as applicant). Passengers and their baggage and express and newspapers in the same vehicle with passengers, between Phoenix, AZ and Tempe, AZ, serving the intermediate point of Scottsdale, AZ only: From Phoenix over city streets via Scottsdale to Tempe, and return over the same route, for 180 days. Applicant requests to tack this authority with authority it presently holds in No. MC 1515. Supporting shipper(s): There are ten (10) supporting shippers. Their statements may be examined at the office listed below and headquarters. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 1515 (Sub-266TA), filed May 14, 1979. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: Lat J. Celmins (same address as applicant). *Passengers and their baggage and express and newspapers in the same vehicle with passengers,* between Rhinelander, WI and Eagle River, WI, serving all intermediate points: From Rhinelander over WI Hwy 17 to Eagle River, and return over the same route, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are five (5) supporting shippers. Their statements may be examined at the office listed below and headquarters. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025. NOTE: Applicant request to tack this authority with authority it presently holds in No. MC–1515 Sub 71.

MC 1824 (Sub-92TA), filed May 21, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21655. Representative: C. S. Perry (same as above). *Bananas,* from Norfolk, VA to points in the States of CT, DE, GA, IL, IN, IA, KS, KY, MD, MA, ME, MI, MN, MO, NE, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI and DC, for 90 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Robert Rogers, Best Banana Company, 3616 E. Virginia Beach Blvd., Norfolk, VA 23502. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore MD 21201.

MC 1824 (Sub-93TA), filed May 21, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21655. Representative: C. S. Perry (same as above). *Petroleum and petroleum products, vehicle body sealer and sound deadener compound* (except commodities in bulk) from Congo and St. Marys, WV, Emlenton, Farmers Valley and New Kensington, PA, to points in the States of IL, IN, MD, MI, OH, VA and WI for 90 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J. D. Campbell, GTM, Quaker State Oil Refining Corporation, P.O. Box 989, Oil City, PA 16301. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore MD 21201.

MC 8535 (Sub-85TA), filed May 16, 1979. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INCORPORATED, P.O. Box 500, Parkton, MD 21120. Representative: Charles J. McLaughlin (same as above) *Iron and Steel Articles* from the facilities of Armco Inc. located at Butler, PA and Zanesville, OH to IL and IN. (Restricted to traffic originating at the above facilities.) For 90 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Charles W. Hall, Dir. of Transportation, Armco, Inc., Middletown, OH 45043. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore MD 21201.

MC 94265 (Sub-299TA), filed May 14, 1979. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305—Route 460 West, Windsor, VA 23487. Representative: Clyde W. Carver, Attorney, P.O. Box 720434, Atlanta, GA 30342. *Foodstuffs* (except in bulk) in vehicles equipped with mechanical refrigeration, from points in Cobb, Dekalb, Fulton, Clayton, and Gwinnett Countires, GA, to points in the states of KY, MD, NC, OH, PA, TN, VA, WV, and

DC. Restricted to traffic originating at the facilities of Commercial Cold Storage, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Commercial Cold Storage, Inc., 4300 Pleasantdale Road, Atlanta, GA 30340. Send protests to: Paul D. Collins, DS, ICC, Room 10–502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 97244 (Sub-2TA), filed May 17, 1979. Applicant: MASS. TRANSPORTATION, INC., 187 Sidney Street, Cambridge, MA 02139. Representative: Frank J. Weiner, 15 Court Sq., Boston, MA 02108. *Common carrier:* irregular route: *liquid sugar, in bulk,* from Lakeville, NY to Allen Park, MI, for 180 days, an underlying ETA seeks 90 days authority. Supporting shipper(s): Corn Sweeteners, Inc., A Division of Archer-Daniels Midland Co., 24 East Street, Cambridge, MA 02141. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 99234 (Sub-14TA), filed May 14, 1979. Applicant: WESTWAY MOTOR FREIGHT, INC., 5231 Monroe St., Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. *Alcoholic beverages (including wine and brandy) and non-alcoholic beverage mixes)* from points in CA to points in CO and Cheyenne, WY for 180 days. Underlying ETA filed seeking 90 days authority. Supporting shippers: R&L Distributing, 5270 Fox St., Denver, CO 80216; Wholesale Liquor Company, 29 Fordham Circle, Pueblo, CO 81002; Wyoming Liquor Commission, Cheyenne, WY 82002. Send protests to: D/S Roger L. Buchanan, ICC, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.

MC 100785 (Sub-4TA), filed May 15, 1979. Applicant: LAWRENCE E. BULT, d.b.a., L. BULT CARTAGE, 123 North Williams, Thornton, IL 60476. Representative: Robert A. Kriscunas, 1301 Merchants Plaza, Indianapolis, IN 46204. (1) *Ferro alloys,* from Chicago, IL to Wilton, IA and (2) *Steel articles,* from Wilton, IA to Chicago, IL for 180 days. An underlying ETA for 90 days authority was filed. Supporting shipper(s): North Star Steel Co., P.O. Box 749, Wilton, IA 52778. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Rm. 1386, Chicago, IL 60604.

MC 104104 (Sub-19TA), filed May 8, 1979. Applicant: GEORGE A. FETZER, INC., Newton-Sussex Road, Augusta, NJ 07882. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Cleaning compounds,* (except in bulk), and, on return *materials,* and *supplies* used in the manufacturing and sales thereof, (except in bulk) from Port Jervis, NY to points in the US east of the Mississippi River, for 180 days. Supporting shipper(s): Barrier Industries, Inc., Box X, Port Jervis, NY 12771. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton Street, Newark, NJ 07102.

MC 105865 (Sub-3TA), filed May 18, 1979. Applicant: SMART TRUCK LINE, INC., P.O. Box 73, Beattie, KS 66406. Representative: William B. Barker, 641 Harrison, Topeka, KS 66603. (a) *Feed and Feed Ingredients,* from Kansas City and St. Joseph, MO to points in Jewell, Smith, Republic, Washington, Marshall, Nemaha, Brown, Doniphan, Osborne, Mitchell, Cloud, Clay, Riley, Pottawatomie, Jackson, Atchison, Russell, Lincoln, Ottawa, Ellsworth, Saline, Dickinson, Geary, Wabaunsee, Shawnee, Jefferson, Leavenworth, Douglas and Wyandotte Counties, KS; and Franklin, Webster, Nuckolls, Thayer, Jefferson, Gage, Pawnee and Richardson Counties, NE; (b) *Fertilizer and Fertilizer Materials,* from St. Joseph, MO to the destinations listed in part (a) above; (c) *Feed and Feed Ingredients,* from Weeping Water, NE to the KS Counties listed in part (a) above; 180 days, common, irregular; supporting shipper: Farmland Industries, Inc., Kansas City, MO 64116; Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg.; Wichita, KS 67202.

MC 106074 (Sub-111TA), filed April 26, 1979. Applicant: B & P MOTOR LINES, INC., Shiloh Road and U.S. Hwy 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, Attorney, P.O. Box 720434, Atlanta, GA 30328. *Glass containers* from the plant site of Thatcher Glass at Streator, IL to points in NC for 180 days. Supporting shipper(s): Thatcher Glass Manufacturing Co., Division of Dart Industries, Inc., P.O. Box 265, Elmira, NY 14902. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd., Rm. CC516, Charlotte, NC 28205.

MC 106074 (Sub-112TA), filed May 3, 1979. Applicant: B & P MOTOR LINES, INC., Shiloh Road and US Hwy. 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Materials and supplies used in the manufacture of decorations and ornaments* from points in IL, KY, NJ, OH, PA and TX to Gastonia, NC. Restricted to the transportation of traffic moving to the facilities of Rauch Industries, Inc. at Gastonia, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Rauch Industries, Inc., P.O. Box 609, Gastonia, NC 28052. Send protests to: Terrell Price, D/S, ICC, 800 Briar Creek Rd.-Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 107295 (Sub-920TA), filed April 27, 1979. Applicant: PRE-FAB TRANSIT CO., P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr, P.O. Box 146, Farmer City, IL 61842. *Water screens, intake fabrications, trash rakes, parts and accessories* for the above named commodities from Pearland, TX to points in U.S. except (AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Royce Equipment Company, P.O. Box 34543, Houston, TX 77034. Send protests to: Charles D. Little, D/S, ICC, 414 Lenand Bldg., 527 Capitol Avenue, Springfield, IL 62701.

MC 109064 (Sub 39TA), filed May 1, 1979. Applicant: TEX-O-KAN TRANSPORTATION COMPANY, INC., 3301 E. Loop 820 South, P.O. Box 8367, Fort Worth, TX 76112. Representative: George C. Jackson (same address as applicant). *Iron and steel articles, pipe, tubing, and conduit,* from Washington and Allegheny Counties, PA, to points in TX, OK, LA, AR, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tubular Goods, Inc., 1 East Court, Moorestown, NJ 08057. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 109584 (Sub-196TA), filed May 14, 1979. Applicant: ARIZONA-PACIFIC TANK LINES, 3980 Quebec St., P.O. Box 7240, Denver, CO 80207. Representative: Rick Barker (same address as applicant). *Cottonseed oil, crude or refined, in bulk, in tank vehicles,* from Phoenix, AZ to Houston and Bayport, TX for 180 days. Underlying ETA filed seeking 90 days authority. Supporting shipper(s): Anderson-Clayton Co., Inc., P.O. Box 2988, Phoenix, AZ 85062. Send protests to: D/S Roger L. Buchanan, ICC, 492 U.S. Customs House, Denver, CO 80202.

MC 111045 (Sub-168TA), filed April 18, 1979. Applicant: REDWING CARRIERS, INC., 8515 Palm River Road, P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (same address as applicant). Chemicals, in bulk, from Geismar, LA to LeMoyne, AL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Virginia Chemicals, Inc., 3340 West Norfolk Rd., Portsmouth, VA 23703. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 111045 (Sub-169TA), filed April 20, 1979. Applicant: REDWING CARRIERS, INC., 8515 Palm River Road, P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (same address as applicant). *Pulpmill liquids,* in bulk, in tank vehicles, between plant sites of International Paper Co. at or near Natchez, MS and Mobile, AL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: International Paper Company, P.O. Box 160707, Mobile, AL 36616. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 111375 (Sub-108TA), filed May 15, 1979. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3358, Madison, WI 53704. Representative: Elaine Conway, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. *Paper and paper products,* from Brokaw and Mosinee, WI to AZ, CA, ID, MT, NM, NV, OR, UT, WA, and WY for 180 days. Supporting shipper: Wausau Paper Mills Co., Brokaw, WI 54417. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 111375 (Sub-109TA), filed May 18, 1979. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3358, Madison, WI 53704. Representative: Bernard Kompare, Suite 1600, 10 S. LaSalle St., Chicago, IL 60603. *Such commodities as are dealt in or used by grocery, drug and hardware business houses and retail chain stores* (except commodities in bulk), from facilities of Colgate-Palmolive Co., located at or near Berkeley, CA to points in OR & WA, restricted to transportation of traffic originating at the above-named origins, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Colgate-Palmolive Co., 2700 7th St., Berkeley, CA 94710. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 111434 (Sub-100TA), filed May 11, 1979. Applicant: DON WARD, INC., 241 West 56th Avenue, Denver, CO 80216. Representative: Don L. Ward (same address). *Cement,* from Trident, MT to points in WY, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper: Ideal Basic Industries, Inc., Cement Division, 950 17th Street, Denver, CO 80202. Send protests to: R. L. Buchanan, D/S, ICC, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 111545 (Sub-281TA), filed May 1, 1979. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road, S.E., Marietta, GA 30067. Representative: Robert E. Born, P.O. Box 6426, Station A, Marietta, GA 30065. Self-propelled sweepers from Olathe, KS to points in MI, AL, VA, MD, NY, NJ, MA, TX, OH, PA and IN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Olathe Manufacturing Corp., 100 Industrial Pkwy., Olathe, KS 66061. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 113024 (Sub-160TA), filed April 25, 1979. Applicant: ARLINGTON J. WILLIAMS, INC., 1398 S. DuPont Highway, Smyrna, DE 19977. Representative: Samuel W. Earnshaw, 833 Washington Bldg., Washington, DC 20005. *Contract carrier;* irregular routes: *Clothing, dry goods, drugs, medicines, toilet preparations and articles,* from Dover, DE and Camarillo, CA, to points in the States of AR, CO, NE, NV and UT, under a continuing contract with International Playtex, Inc., Dover, DE, for 90 days. An underlying ETA seeks 90 days. Supporting shipper(s): James M. Harrison, International Playtex, Inc., Box 631, Dover, DE 19901. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, Md. 21201.

MC 113325 (Sub-160TA), filed May 11, 1979. Applicant: SLAY TRANSPORTATION CO., 2001 S. 7th St., St. Louis, MO 63104. Representative: T. M. Tahan (same as applicant). *Chemicals,* in bulk, in tank vehicles from the plant site of Monsanto Co. at or near Chocolate Bayou and Texas City, TX and the Houston, TX commercial zone to all points in the US in and east of LA, AR, MO, IA, and MN, for 180 days. Supporting shipper(s): Monsanto Company, 800 N. Lindberg, St. Louis, MO 63166. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 118865 (Sub-12TA), filed April 9, 1979. Applicant: CEMENT EXPRESS, INC., Hokes Mill Rd. & Lemon St., York, PA 17404. Representative: Jerome Mulroy (same as applicant). *Cement (Portland and Masonry, in bulk or package),* from York, PA to points in FL, GA, and SC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Medusa Cement Company, 2300 W. Market St., York, PA 17404. Send protests to: Peter R. Guman, D/S, 600 Arch St., Rm. 3238, Phila, Pa 19106.

MC 114604 (Sub-74TA), filed May 10, 1979. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer I, Forest Park, GA 30326. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., NE., Atlanta, GA 30326. *Preserved foodstuffs* (1) between the facilities of National Fruit Products Co., Inc. at Martinsburg, WV, Winchester and Timbersville, VA and Lincolnton, NC and (2) from the facilities of National Fruit Products Co., Inc. at Martinsburg, WV, Winchester and Timbersville, VA and Lincolnton, NC to points in AL, FL, GA, LA, MS, TN, SC and VA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Fruit Products Co., Inc., 550 Fairmont Ave., Winchester, VA 22601. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N. W., Rm. 300, Atlanta, GA 30309.

MC 114725 (Sub-99TA), filed May 9, 1979. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 North 11th St., Omaha, NE 68110. Representative: Donald F. Swerczek (same address as applicant). *Liquid fertilizer, in bulk, in tank vehicles,* from Audubon, IA to points in NE, KS, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Great Dane Fertilizer, Inc., Box 86, Audubon, IA 50025. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 115215 (Sub-36TA), filed May 15, 1979. Applicant: NEW TRUCK LINES, INC., P.O. Box 639, Perry, FL 32347. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Sheetrock;* from points in AL to points in FL for 180 days. Supporting shipper(s): Mason Lumber Co., Inc., 915 N. Court St., P.O. Box 1786, Montgomery, AL 36103. Send protests to: G. H. Fauss, DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 115904 (Sub-139TA), filed May 11, 1979. Applicant: GROVER TRUCKING CO., 1710 West Broadway, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Potash,* from Carlsbad, NM to points in ID, OR, UT and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): WMB, 960 E. Green St., Suite 110, Pasadena, CA 91106. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 116004 (Sub-56TA), filed May 22, 1979. Applicant: TEXAS OKLAHOMA EXPRESS, INC., 2222 E. Grauwyler Road, Irving, TX 75061. Representative: Doris Hughes, P.O. Box 47112, Dallas, TX 75247. Common Carrier, regular routes, *General commodities, (except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk or those requiring special equipment),* serving Muskogee, OK as off-route point in connection with regular route

authority as shown in MC–116004 and applicable subs thereto, for 180 days. Applicant request authority to interline at Dallas, Ft. Worth and Amarillo, TX; Wichita, KS; St. Louis and Kansas City, MO; Oklahoma City and Tulsa, OK and to tack this authority with authority it presently holds in No. MC 116004. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are nine (9) supporting shippers. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 75202.

MC 116004 (Sub-57TA), filed May 22, 1979. Applicant: TEXAS OKLAHOMA EXPRESS, INC., 2222 E. Grauwyler, Irving, TX 75061. Representative: Doris Hughes, P.O. Box 47112, Dallas, TX 75247. Common carrier, regular routes, transport *General Commodities (with usual exceptions)* serving the facilities of P.P.G. Industries at or near Woodward, OK as an off-route point in connection with carrier's otherwise authorized regular route operations, for 180 days. Applicant requests authority to interline at Dallas, Ft. Worth and Amarillo, TX; St. Louis and Kansas City, MO; Tulsa and Oklahoma City, OK; and Wichita, KS and to tack this authority with authority it presently holds in No. MC 116004. An underlying ETA seeks 90 days authority. Supporting shipper(s): PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 819 Taylor Street, Room 9A27 Federal Building, Fort Worth, TX 75202.

MC 116254 (Sub-266TA), filed May 15, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: M. D. Miller (same address as applicant). *Aluminum and aluminum articles,* from the facilities of Martin-Marietta Aluminum at Hancock County, KY, to points in AL, AR, CO, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI (Lower Peninsula), MN, MS, MO, NE, NH, NJ, NC, OH, PA, RI, SC, TN, TX, VA, VT, WV, WI, KS OK and the District of Columbia, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Martin-Marietta Aluminum, Inc., 6801 Rockledge Drive, Bethesda, MD 20034. Send protests to: Mabel E. Holston, T/A, ICC, Suite 1616–2121 Building, Birmingham, AL 35203.

MC 116254 (Sub-267TA), filed May 18, 1979. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35630. Representative: Mr. Hampton M. Mills (same address as above). *Iron and steel articles,* from Madison River Terminal, located in Madison, IN, to points in IL, IN, MI, and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Madison River Terminal, 140 Vaughn Drive, Box 253, Madison, IN 47250. Send protests to: Mabel E. Holston, T/A, ICC, Suite 1616–2121 Building, Birmingham, AL 35203.

MC 117815 (Sub-302TA), filed May 15, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 20th St., Des Moines, IA 50317. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. *Bones* from the facilities of Dubuque Packing Co., Inc. at Denison, IA to the facilities of Swift & Company at St. Joseph, MO for 180 days. Restricted to traffic originating at the named origin and destined to the named destination. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Company, 30 N. LaSalle St., Chicago, IL. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 118535 (Sub-138TA), filed May 8, 1979. Applicant: TIONA TRUCK LINE, INC., 102 West Ohio, Butler, MO 64730. Representative: Tom Ventura, 102 West Ohio, Butler, MO 64730. *Fertilizer materials,* from Walnut Ridge, AR to all points in CO, IA, MO, NE, NM, OK and TX, for 180 days. Supporting shipper(s): Frit Industries, Inc., P.O. Box 850, Ozark, AL 36360. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 118535 (Sub-139TA), filed May 8, 1979. Applicant: TIONA TRUCK LINE, INC., 102 West Ohio, Butler, MO 64730. Representative: Tom Ventura, 102 West Ohio, Butler, MO 64730. *Lead Oxide,* from Terrell, TX to Denver, CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Powerlab Inc., Box 913, Terrell, TX 75160. Send protests to: John V. Barry, DS, ICC, 600 Federal Building, 911 Walnut St., Kansas City, MO 64106.

MC 119345 (Sub-1TA), filed May 14, 1979. Applicant: CARY TRUCKING, INC., Box 265, Downs, KS 67437. Representative: Richard E. Dietz, 118 West Main St., Osborne, KS 67473. *Hides and Packinghouse By-Products,* (1) From Great Bend, KS to MN, WI, and TX; and (2) from Butler, MO to MN, WI, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cox Hide Company, P.O. 212, Butler, MO 64730. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., 110 No. Market, Wichita, KS 67202.

MC 119345 (Sub-2TA), filed May 4, 1979. Applicant: CARY TRUCKING, INC., Box 265, Downs, KS 67437. Representative: Richard E. Dietz, 118 West Main Street, Osborne, KS 67473. *Hides, Meat Scraps and Packinghouse By-Products,* (a) From Gibbon, NE; Mankato, Great Bend and Hutchinson, KS to Butler, St. Joseph and Kansas City, MO; (b) From Hutchinson and Mankato, KS to Lincoln and Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Cox Hide Company, 710 West Harrision, Butler, MO 64730. Send Protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., 110 No. Market St., Wichita, KS 67202.

MC 119894 (Sub-13TA), filed May 21, 1979. Applicant: BOWARD TRUCK LINE, INC., 104 Azar Building, Glen Burnie, MD 21061. Representative: G. F. Morgan, Jr., (same as above). *Paper, pulpboard or fibreboard* from Big Island, VA to points in the States of NC and SC, for 180 days. Supporting shipper(s): Lester E. Pierce, Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Building, Baltimore, MD 21201.

MC 123885 (Sub-31TA), filed May 17, 1979. Applicant: C & R TRANSFER CO., P.O. Box 1010, Rapid City, SD 57709. Representative: Floyd E. Archer, P.O. Box 1794, Sioux Falls, SD 57101. *Liquid asphalt and residual fuel* from the plant site of Little America Refining Co. near Evansville, WY to job sites near Danbury, Broken Bow and Lindsay, NE for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J. L. Healy Construction Co., 38 Riverview Heights, Sioux Falls, SD 57105. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Building, Pierre, SD 57501.

MC 124174 (Sub-149TA), filed May 15, 1979. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen (same address as applicant). *Iron and steel decking, flooring or roofing,* from Gloucester City, NJ to Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Paxton & Vierling Steel Co., 5 and Avenue H., Carter Lake, IA 68110. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 124774 (Sub-112TA), filed May 10, 1979. Applicant: MIDWEST REFRIGERATED EXPRESS, INC., 4440 Buckingham Avenue, Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Iron and steel articles,* from Chicago, IL and its commercial zone to Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Phillips Manufacturing Co., Inc., 4601 South 76th St., Omaha, NE 68127. Send protests to: Carroll Russell,

ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 126305 (Sub-119TA), filed May 18, 1979. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., Rtd 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladston, NJ 07934. *Railway car wheels, iron or steel, loose or mounted on axles, with or without bearings.* From the facilities of Griffin Wheel Co., Keokuk, IA, on the one hand, and on the other, points in AL, MS, TN, GA, NC, SC, and FL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Griffin Wheel Company, Division of Amsted Industries, Inc., 200 West Monore Street, Chicago, IL 60606. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 128205 (Sub-77TA), filed May 14, 1979. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 South Doty Avenue, Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Flour,* in bulk, from Winona, Wabasha, New Ulm, New Prague and St. Paul, MN to WI, IA, MO, IL, IN, MI, KY, OH, PA, NY, MA, NJ, WV, VA and MD for 180 days. Supporting shipper(s): Bay State Milling Company, 1776 Heritage Drive, North Quincy, MA 02171. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 133655 (Sub-157TA), filed May 16, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. *Meat, meat products, and meat by-products, and articles distributed by meat packing houses* as described in Sections A, C, and D of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, (except hides and commodities in bulk) between the facilities of Lauridsen Foods, Inc. located at or near Britt, IA and Armour & Company located at or near Mason City, IA, on the one hand, and, on the other, points in AR, CT, DE, IL, IN, KS, LA, ME, MD, NH, NJ, NY, OH, OK, PA, RI, TX, VT, VA, WV, AND DC, for 180 days. Supporting shipper(s): Armour & Company, Greyhound Tower, Phoenix, AZ 85077. Send protests to: Martha Powell, Transportation Assistant, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133805 (Sub-20TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Route 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Forth Worth, TX 76112. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Description in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank trucks),* from the facilities used by Swift Fresh Meats Company at or near Cactus, TX, to points in AL, CA, CT, DE, FL, GA, IL, IN, KY, MA, MI, MS, ME, MD, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Company, 115 W. Jackson Boulevard, Chicago, IL 60604. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133805 (Sub-21TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *Charcoal briquets, lighter fluid, hickory chips and related barbecue items,* (1) from the facilities used by Husky Industries, Inc. at or near Pachuta, MS, to points in AL, FL, GA, LA, NC, SC, TN, TX, CO, and OK, and (2) from the facilities used by Husky Industries, Inc. at or near Branson, MO, to points in AL, AK, AR, CA, CT, DE, GA, ID, IL, IN, IA, KS, KY, FL, LA, MA, MD, MS, MN, MT, NV, NH, NJ, MI, NY, NC, OH, OR, PA, RI, SC, TN, UT, VA, WV, WA, WI, WY, CO, OK and TX, for 180 days. Supporting Shipper(s): Husky Industries, Inc., 62 Perineter Center East, Atlanta, GA. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133805 (Sub-22TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *Promotional materials, china, flatware, cookware, glassware, and related commodities,* between the facilities used by the Easterling Company at or near Des Plaines, IL, on the one hand, and, on the other, point in the U.S. (except AK and HI), for 180 days. Supporting shipper(s): The Easterling Company, 2200 South Mt. Propsect Rd., Des Plaines, IL 60018. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 133805 (Sub-23TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions of Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk),* from the facilities used by San Antonio Packing, at or near San Antonio, TX, to points in CA, FL, GA, WI, TN, OK, MS, LA, KS, IA, IL, NJ, and NY, restricted to shipment originating at said origin and destined to points in the named destination states, for 180 days. An underlying ETA seeks 90 days authority filed. Supporting shipper(s): San Antonio Packing, 1717 S. Brazos, San Antonio, TX 78207. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 133805 (Sub-24TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *(1) Such merchandise as is dealt in by discount and variety stores (except foodstuffs, furniture, and commodities in bulk), and (2) foodstuffs (except in bulk) and furniture, in mixed loads with the commodities in (1) above,* from the facilities of K Mart Corporation at or near Charlotte, NC, to Kansas City, MO and Dallas, TX, for 180 days. An underlying ETA seeks 90 days authority filed. Supporting shipper(s): K Mart Corporation, 3100 W. Big Beaver Road, Troy, MI 48084. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 134405(Sub-74TA), filed May 17, 1979. Applicant: BACON TRANSPORT COMPANY, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615–East, The Oil Center, 2601 Northwest Expressway Oklahoma City, OK 73112. *Asphalt,* in bulk, in tank vehicles, from Houston and South Houston, TX, to McCurtain County, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Riffe Petroleum Co., 111 Philtower Building, Tulsa, OK 74103. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 134755 (Sub-187TA), filed May 10, 1979. Applicant: CHARTER EXPRESS, INC., 1959 East Turner St., P.O. Box

3772, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. *Petroleum and petroleum products in packages,* from Maryland Heights, MO, to points in KS for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pennzoil Company, P.O. Box 808, Oil City, PA 16301. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 136605 (Sub-110TA), filed May 17, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as Applicant). *Cement and cement products* from the facilities of BMD-Sakrete located at or near Denver, CO to points in WY and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Building Material Distributors, 940 West 3rd Ave., Denver, CO 80223. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136605 (Sub-111TA), filed May 17, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as Applicant). *Lumber and lumber mill products* from the facilities of Brand S Corporation located at or near Livingston, MT to points in IL, IN, WI, IA, MN, NE, ND, SD, OK and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Brand S Corporation, Airport Road, Corvallis, OR 97330. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 138144 (Sub-51TA), filed May 14, 1979. Applicant: FRED OLSON CO., INC., 6022 W. State St., Milwaukee, WI 53213. Representative: Wm. Brejcha, 10 S. LaSalle St., Chicago, IL 60603. (1) *Insulation board and accessories used in the installation thereof* from facilities of Johns-Manville Sales Corp. at or near Alexandria, IN to points in IL & WI; (2) *Insulation board and accessories used in the installation thereof* from the facilities of Johns-Manville Perlite Corp., at or near Rockdale, IL to MI, OH & to points in WI Counties of Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Door, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Jackson, LaCrosse, Langlade, Lincoln, Marathon, Marinette, Menominee, Monroe, Oconto, Oneida, Pepin, Pierce, Polk, Portage, Price, Rusk, St. Croix, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Washburn & Wood; and (3) *Building materials and cement pipe containing asbestos fiber* from the facilities of Johns-Manville Sales Corp. at or near Waukegan, IL to IN, MO, OH & to points in WI Counties named in (2) above, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Johns-Manville Sales Corp., 2222 Kensington Court, Oak Brook, IL 60521. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 139495 (Sub-445TA), filed April 23, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. *Petroleum, petroleum products in containers, and advertising matter and commodities used or distributed by retail or wholesale marketers of petroleum products,* from Ponca City, OK to points in WA, OR, CA, NV, ID, MT, WY, UT, CO, AZ, NM, ND, SD, NE, KS, TX, MN, IA, MO, IL, IN, WI; for 180 days, common, irregular; Supporting shipper: Continental Oil Co., Houston, TX; send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS. 67202.

MC 139495 (Sub-448TA), filed May 17, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Springs, MD 20910. *Meat, meat products, and meat by products and articles distributed by meat packers* (in vehicles equipped with mechanical refrigeration), from Garden City, KS to points in the states of CA, CO, TX, NE, MO, AR, LA, MS, AL, GA, FL, SC, NC, TN, KY, IL, OH, WV, VA, IN, MD, DL, PA, NJ, NY, MA, CT, RI, VT, NH, ME (Restricted to traffic originating at the facilities of Farmland Industries at Garden City, KS and destined to the above states; common, irregular, 180 days. Supporting shipper: Farmland Foods, Inc., Garden City, KS. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 141145 (Sub-2TA), filed May 7, 1979. Applicant: REYNOLDS & COMPANY, INC., Box 227, No. 1 Railroad Avenue, Waynesboro, GA 30830. Representative: Thomas L. Reynolds, Wood Valley Rd., Waynesboro, GA 30830. *Lumber, forest products, bark, sawdust, wood chips and wood fuel* from the facilities of the Forest Products Division, Kimberly-Clark Corp. at or near Waynesboro, GA to points in NC, SC and TN for 180 days. Supporting shipper(s): Kimberly-Clark Corp., 1414 W. Larsen Road, Neenah, WI 54956. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW, Rm. 300, Atlanta, GA 30309.

Note.—Applicant does intend to tack this authority with authority it presently holds in MC–141145.

MC 141245 (Sub-7TA), filed May 17, 1979. Applicant: BARRETT TRUCKING CO., INC., 16 Austin Drive, Burlington, VT 05401. Representative: John A. Barrett (same address as applicant). *Malt beverages,* from the facilities of Miller Brewing Co., Fulton, NY to Barre, VT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wark Bros. Inc., P.O. Box 190, South Barre, VT 05670. Send protests to: ICC, P.O. Box 548, Montpelier, VT 05602.

MC 141245 (Sub-8TA), filed May 1, 1979. Applicant: BARRETT TRUCKING CO., INC., 16 Austin Drive, Burlington, VT 05401. Representative: John A. Barrett (same address as applicant). *Swimming pools* from Fort Wayne, IN to Burlington, VT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pool World, Inc., 16 Austin Drive, Burlington, VT 05401. Send protests to: ICC, P.O. Box 548, Montpelier, VT 05602.

MC 141245 (Sub-9TA), filed May 1, 1979. Applicant: BARRETT TRUCKING CO., INC., 16 Austin Drive, Burlington, VT 05401. Representative: John A. Barrett (same address as applicant). (1) *Flour* from Buffalo, NY to Burlington, VT, (2) *canned goods* from Marion, NY to Burlington, VT, (3) *Wine* from Canandaigua, NY to Burlington, VT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Champlain Valley Fruit Co., Inc., 237 S. Champlain Street, Burlington, VT 05401. Send protests to: ICC,P.O. Box 548, Montpelier, VT 05602.

MC 142484 (Sub-6TA), filed May 15, 1979. Applicant: STRINGFELLOW TRANSPORTATION COMPANY, INC., 724 3rd Avenue, North, Birmingham, AL 35203. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Contract, irregular: *Treated and untreated forest products and lumber mill products and lumber,* between the facilities of Walker Williams Lumber Co., Inc. at Hatchechubbee, AL, on the one hand, and on the other, points in IN, IL, OH, IA, WI, MO, and MI, for 180 days. Supporting shipper(s): Walker Williams Lumber Company, Inc., P.O. Box 170, Hatchechubbee, AL 36858. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 142715 (Sub-52TA), filed May 11, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Foodstuffs and confectionery (except commodities in*

bulk) from Hershey, PA to points in IA, IL, IN, KS, MO, MN, MI, NE, ND, SD and WI, restricted to traffic originating at the facilities of Hershey Foods Corporation and its subsidiaries and destined to the named states, for 180 days. Supporting shipper(s): Hershey Foods Corporation, 19 East Chocolate Avenue, Hershey, PA 17033. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, South 4th Street, Minneapolis, MN 55401.

MC 142835 (Sub-3TA), filed May 11, 1979. Applicant: CARSON MOTOR LINES, INC., P.O. Box 909, Lakeland, FL 33802. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. *New furniture*, set up, from the facilities of Thayer Coggin, Inc., at High Point, NC to points in FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Thayer Coggin, Inc., 427 South Rd., High Point, NC 27262. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 142905 (Sub-7TA), filed April 2, 1979. Applicant: PETROLEUM TRANSPORTATION CORPORATION, 9717 East 42nd Street, Tulsa, OK 74145. Representative: Thomas N. Willess, 1000 Sixteenth Street, NW., Washington, DC 20036. *Anhydrous ammonia and nitrogen fertilizer solution*, from the facility of Agrico Chemical Co., at or near Williams (Verdigris), OK, to points in AR, KS, TX, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Phillips Petroleum Company, 154 Phillips Building Annex, Bartlesville, OK 74004. Send protests to: Connie Stanley, TA, ICC, Room 240 Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 143205 (Sub-4TA), filed May 21, 1979. Applicant: DAVE HAAS, INC., 203 E. Birch St., Thorp, WI 54771. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53703. *Iron and steel articles* from Crawfordsville, IN; Minneapolis, MN; Chicago, IL; and Fort Worth, TX to the facilities of Industrial Fabricators, Inc., at Thorp, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Industrial Fabricators, Inc., Thorp, WI 54771. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 144504 (Sub-1TA), filed May 16, 1979. Applicant: DELTA CHARTER SERVICE, INC., 4900 East Mariposa, Stockton, CA 95206. Representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108. *Passengers and their baggage, in the same vehicle with passengers, in charter operations*, beginning and ending at points in San Joaquin County, CA, and extending to points in Douglas, Storey and Washoe Counties, and Carson City, NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nationwide Travel, 5311 Elkhorn Blvd., Sacramento, CA 95842, Cal-Vada Fun Tours, 551 N. Hunter St. No. 10, Stockton, CA 95202, Amer. Legion Post No. 263, 1535 2nd St., Escalon, CA 95320, Wood's Wanderer's, Inc., 4729 N. Pershing Ave., Stockton, CA 95207, and Southwest Police Dept., 22 E. Market St., Stockton, CA 95202. Send protests to: A. J. Rodriguez, DS, ICC, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 145054 (Sub-17TA), filed May 16, 1979. Applicant: COORS TRANSPORTATION COMPANY, 5101 York Street, Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. *Meat, meat products, and articles distributed by meat packinghouses*, from facilities of Wilson Foods Corp. at Cedar Rapids, Cherokee and Des Moines, IA to all points in the State of CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Foods Corporation, 4545 Lincoln Blvd., Oklahoma City, OK 73105. Send protests to: District Supervisor Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 145425 (Sub-1TA), filed May 9, 1979. Applicant: DAN'S MOVING & STORAGE, INC., 222 Lake Shore Drive West, Dunkirk, NY 14048. Representative: William J. Hirsch, Atty., Suite 1125, 43 Court Street, Buffalo, NY 14202. *Used household goods, unaccompanied baggage and personal effects*, between points in Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming Counties, NY. Restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, and unpacking, uncrating, and decontainerization of such traffic, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Department of the Army, United States Army Legal Services Agency, Nassif Bldg., Falls Church, VA 22041. Send protests to: Richard H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 W. Huron Street, Buffalo, NY 14202.

MC 145595 (Sub-7TA), filed May 7, 1979. Applicant: WARREN G. GORMLEY, dba GORMLEY TRUCKING, 1607 W. Swan, Springfield, Missouri 65807. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Charcoal, charcoal briquets, fireplace logs, wood chips, lighter fluid* and *related products* (except commodities in bulk) from Branson, MO, to AR, LA, MS, IN, TN, IL, OH, TX, OK, KY, NE, IA, WV, VA, PA, CA, CO, KS, UT, and NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Husky Industries, 62 Perimeter Center East, Atlanta, GA 30346. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 145614 (Sub-3TA), filed May 22, 1979. Applicant: TRIPLE A TRANSPORT, INC., 193 Main Street, Springvale, ME 04083. Representative: John C. Lightbody, 30 Exchange St., Portland, ME 04101. *Fresh meat* from Commerce City, CO to points in ME and NY, for 180 days. Supporting shipper(s): Gold Star Beef Co., Inc., 4810 Newport St., Commerce City, CO 80022. Send protests to: Donald G. Weiler, District Supervisor, ICC, 76 Pearl St., Rm. 303, Portland, ME 04111.

MC 145765 (Sub-2TA), filed April 3, 1979. Applicant: WIEST TRUCKLINE, INC., 1305 6th Avenue S.W., Jamestown, ND 58401.Representative: Charles E. Johnson, 418 East Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501. *Iron and steel articles*, from Chicago and Granite City, IL, Minneapolis, MN, and Wilton, IA, and points in their commercial zones, to the facilities of Northern Plains Steel, and O'Day Equipment, Inc., at or near Fargo, ND, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s):Northern Plains Steel, P.O. Box 6060, Fargo, ND 58102. O'Day Equipment, Inc., 2500 Main Avenue, Fargo, ND 58102. Send protests to: DS, ICC, Bureau of Operations, Room 268 Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 146545 (Sub-1TA), filed May 1, 1979. Applicant: DELMAR L. HAUCK, P.O. Box 66, R.D. #2, York, PA 17402. Representative: John M. Musselman, c/o Rhoads, Sinon & Hendershot, P.O. Box 1146, 410 N. 3rd St., Harrisburg, PA 17108. *Truck trailers and cargo containers* between Middletown, PA and points in its commercial zone, and points in CT, DE, MD, NJ, NY, RI, VA, and DC, for 180 days. Supporting shipper(s): Fruehauf Corporation, P.O. Box 238, Detroit, MI 48232. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 146635 (Sub-1TA), filed May 15, 1979. Applicant: CLOVER LEAF LINES, INC., 4031 N. 87th St., Milwaukee, WI

53222. Representative: Daniel Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. Contract carrier; irregular routes; *Cheese and cheese products* from facilities of Associated Milk Producers, Inc. at Portage and Clair, WI to points in AZ, CA, CO & NM, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Associated Milk Producers, Inc., P.O. Box 455, New Ulm, MN 56073. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 146814 (Sub-2TA), filed May 16, 1979. Applicant: VAN WYK, INC., C Street—Box 433, Sheldon, IA 51201. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A & C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, except hides and commodities in bulk, in tank vehicles,* from the facilities of John Morrel & Co., Sioux City, IA to points in IL, MI, and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): John Morrell & Co., 208 S. LaSalle St., Chicago, IL 60604. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146845 (Sub-2TA), filed May 8, 1979. Applicant: J. D. RAY COMPANY, 107 Glenwood Drive, P.O. Box 1183, Americus, GA 31709. Representative: Norman J. Bolinger, 1729 Gulf Life Tower, Jacksonville, FL 32207. *Contract carrier,* irregular routes, *particle board, finished and unfinished, and materials, equipment, and supplies used in the manufacture, sale, and distribution of particleboard, finished and unfinished,* between the facilities of Designs of Americus, Inc., at or near Americus, GA, on the one hand, and, on the other points in LA for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Designs of Americus, Inc., Industrial Boulevard, Americus, GA 31709. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 146975 (Sub-1TA), filed April 26, 1979. Applicant: HOWARD KEBLER, 10960 Cutler Road, R #1, Eagle, MI 48822. Representative: Howard Kebler, 10960 Cutler Road, R #1, Eagle, MI 48822. *Brick* from Points in Indiana, OH and IL to the Lower Peninsula of MI. For 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): George P. Anderson Co. P. O. Box 18038, Lansing, MI 48901. SEND PROTESTS TO: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 147074 (Sub-2TA), filed May 8, 1979. Applicant: E Z FREIGHT LINES, Gould & E. 46th St., Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Cigars, snuff and chewing and smoking tobacco.* From Kingston, PA Wheeling, WV and Helmetta, NJ to Charlotte, NC, San Francisco, CA Kingston, PA, Helmetta, NJ and Wheeling, WV, for 180 days. Supporting Shipper(s): General Cigar and Tob. Co., P.O. Box 2000, Dayton, NJ 08810. Send protests to: Robert E. Johnston, D/S, 744 Broad St., Rm 522, Newark, NJ 07102.

MC 147074 (Sub-3TA), filed May 10, 1979. Applicant: E Z FREIGHT LINES, Gould & E. 46th St., Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Wiping cloths, cotton sweepings and cotton piece goods.* Between Dunellen and New Brunswick, NJ on the one hand, and on the other, points in AL, CA, CT, GA, IL, IN, MA, NY, NC, OH, PA, SC, VA, & WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Nu Tex Corp., 130 South 2nd St., Dunellen, NJ 08812. Send protests to: Robert E. Johnston, D/S ICC, 9 Clinton St., Newark, NJ 07102.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17709 Filed 6-6-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 111
Thursday, June 7, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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[M-226, Amdt. 5; June 4, 1979]

CIVIL AERONAUTICS BOARD.

Addition and closure of item to the June, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., June 5, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 29. Pan American's refiled fuel-related fare increases in international markets. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Pan American is requesting short notice tariff permission to implement its proposed increases on June 15, 1979. June 5, 1979 is the last day there will be the opportunity for a quorum before the proposed tariff effective date. No earlier notice was possible due to the fact that the proposed was only filed on May 25, 1979 and is still undergoing staff analysis. Accordingly, the following Board Members have voted that agency business requires that the Board meet on this item on less than seven days' notice and that no earlier announcement of the meeting was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Public disclosure, particularly to foreign governments of opinions, evaluations, and strategies discussed could seriously compromise the ability of the United States Government to achieve understanding in future rate negotiations which would be in the best interests of the United States. Accordingly, we believe that public observation of this meeting would involve matters the premature disclosure of which would be likely to significantly frustrate future action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9) and 14 CFR section 310b.5(9)(B) and that the meeting should be closed:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Persons Expected To attend

Board Members.—Chairman, Marvin S. Cohen; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey; and Member, Gloria Schaffer.
Assistants to Board Members.—Mr. David M. Kirstein, Mr. James L. Deegan, and Mr. Stephen H. Lachter.
Office of the Managing Director.—Mr. Cressworth Lander.
Executive Assistant to Managing Director.—Mr. John R. Hancock.
Office of the General Director.—Mr. Michael E. Levine.
Bureau of International Affairs.—Mr. Sanford Rederer, Mr. Donald Litton, Mr. Douglas Leister, Mr. John Kiser, Mr. Richard M. Loughlin, Mr. Ivars V. Mellups, Mr. Rosario J. Scibilia, Mr. David A. Levitt, Mr. Francis S. Murphy, Mr. Michael Pelcovits, Ms. Mary I. Pett, Mr. James S. Horneman, Mr. John A. Driscoll, Mr. Herbert P. Aswall, and Mr. Mark Kahan.
Office of the General Counsel.—Mr. Philip J. Bakes, Jr., Mr. Gary Edles, Mr. Peter Schwarzkopf, and Mr. Michael Schopf.
Bureau of Domestic Aviation.—Ms. Barbara A. Clark.
Bureau of Consumer Protection.—Mr. Reuben B. Robertson and Ms. Patricia Kennedy.
Office of Economic Analysis.—Mr. Larry Manheim.
Office of the Secretary.—Mrs. Phyllis T. Kaylor, Ms. Deborah A. Lee, and Ms. Louise Patrick.

General Counsel Certification

I certify that this meeting may be closed to the public under 5 U.S.C. 522b(c)(9) and 14 CFR section 310b.5(9)(B) and that this meeting may be closed to public observation.

Philip J. Bakes, Jr.,
General Counsel.

[S-1139-79 Filed 6-5-79; 3:52 pm]
BILLING CODE 6320-01-M

2

[M-226, Amdt. 6; June 4, 1979]

CIVIL AERONAUTICS BOARD.

Addition of item to the June 5, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., June 5, 1979.

PLACE: Room 1027 (Open), room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 10428.

SUBJECT: 4b. Docket 32851, IATA Show Cause Proceeding, proposed Order revising procedural dates set forth in Order 79-5-113 and responding to petitions for reconsideration of that Order. (BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: The Chairman has requested that Item 4b. be placed on the June 5, 1979 calendar for consideration by the Board so that the parties can have the earliest possible notice of a revised schedule in this Docket. Since the next Board meeting will not be held until June 20, 1979 the parties would be substantially prejudiced if they were not informed before that time. Accordingly, the following Members have voted that agency business requires the addition of Item 4b. to the June 5, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1140-79 Filed 6-5-79; 3:52 pm]
BILLING CODE 6320-01-M

3

[M-225, Amdt. 1; May 29, 1979]

CIVIL AERONAUTICS BOARD.

Cancellation of Meeting

TIME AND DATE: 2 p.m., June 5, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Aero-America to make a presentation regarding its present and proposed operations.

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Aero-America is scheduled to make a

presentation to the Board on Tuesday, June 5, 1979. The reason for Aero-America's presentation is its desire to inform the Board and the public about "the carrier's present and proposed operations." Its proposed operations are the subject of formal proceedings which will be promptly scheduled for oral argument. The Board believes that it would be preferable to defer Aero-America's informal presentation until after the Board's decision is reached in the formal proceedings in order to avoid any overlap between the formal cases and the presentation. We regret any inconvenience this deferral may have caused. Accordingly, the following Members have voted that agency business requires the presentation be deferred from the June 5, 1979 agenda and that no earlier announcement of this deferral was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1123-79 Filed 6-5-79; 9:05 am]

BILLING CODE 6320-01-M

4

[M-226, Amdt. 1; May 31, 1979]

CIVIL AERONAUTICS BOARD.

Addition of items to the June 5, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., June 5, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

4a. Board views on General Accounting Office proposed recommendation of legislation to give the Federal Trade Commission authority over all package tours. (OGC)

27a. Docket 34758, Aerplineas Territorials de Colombia Ltda. "AEROTAL" application for a foreign air carrier permit. (Memo No. 8874, BIA, OGC, BLJ)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: The General Accounting Office is planning to publish imminently its recommendation of legislation to give the Federal Trade Commission authority over all package tours and needs the Board's views on the proposed recommendation before publication. Item 4a is being added so that the Board's views can be given to the General Accounting Office prior to their publication date. If Item 27a is not considered at the June 5, 1979 meeting, the applicant probably will have to seek additional exemption authority or interrupt its service. Accordingly, the following Members have voted that agency business requires the addition of Items 4a and 27a to the June 5, 1979 agenda and that no earlier announcement was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1124-79 Filed 6-5-79; 9:05 am]

BILLING CODE 6320-01-M

5

[M-226, Amdt. 2; June 4, 1979]

CIVIL AERONAUTICS BOARD.

Corrected Copy [1]

Addition of item to the June 7, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., June 5, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 1a. Nondiscrimination on the basis of handicap in the employment practices of carriers receiving federal financial assistance. (BCP)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMETARY INFORMATION: This item was discussed at the May 31, 1979 Board Meeting and the staff is revising the proposed draft. The Board would like to expeditiously consider the draft and submit its comments to HEW. Accordingly, the following Members have voted that agency business requires the addition of Item 1a to the June 5, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1125-79 Filed 6-5-79; 9:05 am]

BILLING CODE 6320-01-M

6

[M-226, Amdt. 3; May 31, 1979]

CIVIL AERONAUTICS BOARD.

Addition of item to the June 5, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., June 5, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 27b. Wild Card Route Case Instituting Order (To determine selection of carrier and new city gateway for U.S.-London service) (BIA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: This item could not meet administratively scheduled deadlines for the June 5, 1979 meeting because of last minute intra-Bureau coordination. It is essential that the Board take action on it immediately so that the prescribed deadline for Board decision date can be met. Accordingly, the following Members have voted that agency business requires the addition of Item 27b to the June 5, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman Marvin S. Cohen
Member Richard J. O'Melia
Member Elizabeth E. Bailey
Member Gloria Schaffer

[S-1126-79 Filed 6-5-79; 9:05 am]

BILLING CODE 6320-01-M

7

[M-226, Amdt. 4; June 1, 1979]

CIVIL AERONAUTICS BOARD.

Addition of item to the June 5, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., June 5, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 6a. Dockets 34826 and 34928, Applications of United Air Lines and Trans World Airlines for exemptions. (OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: One of the applicants, United Air Lines, wants to begin service on June 8 if it receives approval from the Board. Because of the press of other work, the staff was unable to prepare its memorandum by the regular closing date for the June 5 calendar, and United must know by June 7, 1979 whether or not it will be permitted to operate its flights. Accordingly, the following Members have voted that agency business requires the addition of Item 6a to the June 5, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

[1] Change in date on line 1 in Supplementary Information.

Member, Gloria Schaffer
[S-1127-79 Filed 6-5-79; 9:05 am]
BILLING CODE 6320-01-M

8

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, June 7, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Additional item to be considered at Open Commission Meeting.

MATTER TO BE CONSIDERED:

Agenda, Item No., and Subject

Broadcast—6—Amendment of delegations of authority to Chief of Broadcast Bureau.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: June 4, 1979.
[S-1130-79 Filed 6-5-79; 10:46 am]
BILLING CODE 6712-01-M

9

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, June 7, 1979.

PLACE: Room 856, 1919 M Street., N.W., Washington, D.C.

STATUS: Closed Commission Meeting following the Open Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Hearing—1—Application for review filed by Lincoln-Douglas Communications and motion for expedited consideration filed by Midwest Broadcasting Company in the Springfield, Illinois FM proceeding (Docket Nos. 21340 and 21341).
Hearing—2—Petitions for reconsideration of a final Commission decision remanded from the Court of Appeals in the Radio Carrollton, Carrollton, Georgia, AM proceedings (Docket Nos. 19636 and 19637).
General—1—Subpoena of FCC records by AT&T in connection with *United States* v. *AT &T, et al.*, Civil Action No. 74-1698 (D.D.C.).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: June 1, 1979.
[S-1131-79 Filed 6-5-79; 10:46 am]
BILLING CODE 6712-01-M

10

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, June 7, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Hearing—1—Petition for review by Review Board of the Supplemental Initial Decision in the WNYC/WCCO consolidated AM broadcast proceeding (Docket Nos. 11227, 17588 and 19403).
Hearing—2—Request that order issued pursuant to delegated authority in the New York, New York-Minneapolis, Minnesota Am proceeding be set aside (Docket Nos. 11227, 17588 and 19403).
Hearing—3—Motion to disqualify counsel in the Columbus, Ohio comparative TV proceeding (BC Docket Nos. 78-395 and 78-396).
Hearing—4—Settlement reimbursement in the Richmond, Virginia (WTVR-TV-AM-FM), renewal proceeding (Docket No. 21409).
General—1—Amendment of Sec. 83.224 of the Rules to exempt certain vessels operating in Vessel Traffic Service (VTS) areas from VHF Channel 16 listening watch requirements (156.800 MHz).
General—2—Allocation of 900 MHz frequencies for the creation of a new Personal Radio Service.
General—3—Biological effects of radio frequencies radiation.
General—4—FOIA request by James Reston, Jr., to inspect records and tapes of amateur Radio transmissions of The People's Temple. FOIA Control No. 9-80.
Private Radio—1—Amendment of Part 87 of the Commission's Rules to provide a frequency for helicopter air-to-air communcations. RM 3293.
Private Radio—2—Expansion of fixed point-to-point operations in the 450-470 MHz bands to include narrow band, multi-channel stations.
Private Radio—3—Petition by ATS Mobile Telephone, Inc. for reconsideration of denial, by delegated authority, of ATS's petition for a Cease and Desist and Show Cause order why General Communications Co., Inc.'s Business Radio license should not be revoked.
Private Radio—4—Amendment of Parts 81 and 83 of the Rules to add San Francisco and Seattle to the designated radio protection areas for Vessel Traffic Services.
Common Carrier—1—American Satellite Corporation's petition to reject RCA American Communications, Inc.'s tariff establishing rates and regulations for new 56 kilobit/sec. service.
Common Carrier—2—Notice of Proposed Rule Making seeking to amend Part 68 to allow connection of customer-provided telephone equipment to private line services without "connecting arrangements".
Assignment and Transfer—1—Applications for consent to the voluntary transfer of control of Starr Broadcasting Group, Inc. to Shamrock Broadcasting Company, Inc.
Assignment and Transfer—2—Applications for consent to voluntary transfer of control of Combined Communications Corp. from John J. Louis, Jr., Karl Eller, et al., to Gannett Co., Inc.; application for consent to voluntary assignment of license of WHEC-TV, Rochester, New York from WHEC, Inc. (a wholly owned subsidiary of Gannett) to BENI Broadcasting of Rochester, Inc.; co-pending request for a tax certificate in connection with WHEC-TV transaction.
Assignment and Transfer—3—Application for consent to voluntary aassignment of license for AM station WCFL, Chicago, Illinois, from Chicago Federation of Labor and Industrial Union Council to WCFL, Inc.
Aural—1—Application by Doubleday Broadcasting Co., Inc. for assignment of call letters KWK-FM to its recently acquired station WGNU-FM, Granite City, Illinois.
Aural—2—Application by Portorican American Company, Inc. for FM broadcast station CP for station WOQI, Ponce, Puerto Rico, and for waiver of Section 73.213(f)(1).
Aural—3—Request for presunrise service filed by radio Akron, Inc., (WHLO), Akron, Ohio.
Television—1—Applications by Spanish International Communications Corp. to construct TV translator stations to serve Hartford, Connecticut; Bakersfield, California; Philadelphia, Pennsylvania; and Denver, Colorado.
Broadcast—1—Television Waveform Standards concerning horizontal and vertical blanking.
Broadcast—2—Broadcast Reregulation Order.
Broadcast—3—Digitally coded program-related material in the video portion of signals.
Broadcast—4—Restructuring of Part 73 of the Rules.
Broadcast—5—Proposed Rule Making on stereophonic broadcasting by AM station (Docket 21313).
Complaints and Compliance—1—Field investigation into the operations of Radio Station WYEN-FM, Des Plaines Illinois.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning the meeting may be obtained from the FCC Public Information Office, telephone number (202) 632-7260.

Issued: June 1, 1979.
[S-1132-79 Filed 6-5-79; 10:46 am]
BILLING CODE 6712-01-M

11

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2 p.m. on Monday, June 11, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550–17th Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Disposition of minutes of previous meetings.

Memorandum and resolution proposing the final adoption and publication of amendments to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information".

Memorandum proposing the appointment of an agent for service of process in the State of Minnesota.

Resolution expressing the Board's appreciation to Ms. Carmen J. Sullivan for her contributions to the Corporation and to the public while serving as Acting Director of the Office of Consumer Affairs and Civil Rights.

Reports of committees and officers:

Minutes of the actions approved by the committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or request approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

CONTACT PERSON FOR MORE INFORMATION: Mr. Hoyle. L. Robinson, Executive Secretary, (202) 389–4425.

[S–1133–79 Filed 6–5–79; 11:58 am]

BILLING CODE 6714–01–M

12

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2:30 p.m. on Monday, June 11, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550—17th Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Applications for Federal deposit insurance:

The City Bank of San Francisco, a proposed new bank to be located at the northeast corner of Sansome and Pine Streets, San Francisco, California, for Federal deposit insurance.

Louisiana Bank of Ouachita Parish, a proposed new bank to be located at North 7th and West Jackson Streets, West Monroe, Louisiana, for Federal deposit insurance.

Missouri Southern Bank, a proposed new bank to be located at 1319 North Porter Wagoner Boulevard, West Plains, Missouri, for Federal deposit insurance.

Request pursuant to section 19 of the Federal Deposit Insurance Act for consent to service of a person convicted of an offense involving dishonesty or a breach of trust as a director, officer, or employee of an insured bank:

Name of person and of bank authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6)).

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,921–L—Franklin National Bank, New York, New York; The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee; American Bank & Trust Company, New York, New York; Farmers Bank of the State of Delaware, Dover, Delaware.

Case No. 43,942–L—Franklin National Bank, New York, New York.

Case No. 43,945–L—Tri-City Bank, Warren, Michigan.

Case No. 43,946–L—Northeast Bank of Houston, Houston, Texas.

Case No: 43,947–L—Franklin National Bank, New York, New York.

Case No. 43,949–L—The Hamilton Bank and Trust Company, Atlanta, Georgia.

Memorandum re: Bank of Woodmoor, Woodmoor (P.O. Monument), Colorado.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, adminstrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION: Mr. Hoyle L. Robinson, Executive Secretary, (202) 389–4425

[S–1134–79 Filed 6–5–79; 11:58 am]

BILLING CODE 6714–01–M

13

FEDERAL ELECTION COMMISSION.

FEDERAL REGISTER NO. FR–S–1108.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 7, 1979 at 10 a.m.

CHANGE IN MEETING: The following item has been added to the open portion of the meeting:

Review of Commission audit policies and procedures.

The following item has been added to the closed portion of the meeting:

Udall 1976 Committee audit report.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, Telephone: 202–523–4065.

Marjorie W. Emmons,

Secretary to the Commission.

[S–1137–79 Filed 6–5–79; 3:37 pm]

BILLING CODE 6715–01–M

14

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Tuesday, June 12, 1979 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance, Personnel, Udall 1976 Committee Audit Report.

* * * * *

DATE AND TIME: Wednesday, June 13, 1979 at 10 a.m.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Any matters not concluded on June 12, 1979; Udall 1976 Committee Audit Report

* * * * *

DATE AND TIME: Thursday, June 14, 1979 at 10 a.m.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings.

Correction and approval of minutes.

Advisory opinions: AO 1979–22 Evan S. Dobelle, Counsel, Carter-Mondale Presidential Committee, Inc. ("Committee"); AO 1979–26 Charles E. Grassley, U.S. House of Representatives.

Thresholds for review of Presidential Disclosure Reports.

Index Pricing Policy.

Contract proposal on use of sampling techniques for matching fund certification program.

Proposed regulations on the funding and sponsorship of debates.

Commission Program Reviews.

FEC monthly status report on the Presidential public funding process.
Budget Execution report.
Appropriations and budget.
Classification actions.
Routine administrative matters.

Portions closed to the public:
Any matters not included on June 12 and 13.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, Telephone: 202–523–4065.

[S–6715–79 Filed 6–5–79; 3:43 pm]

BILLING CODE 6715–01–M

15

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 31387 (May 31, 1979).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Thursday, June 7, 1979.

CHANGES IN THE MEETING:

The following item, previously scheduled for the meeting of Thursday, June 7, 1979, has been rescheduled and added to the agenda for the meeting on Tuesday, June 12, 1979:

8. Carbon steel plate from Poland (inv. AA1921–203)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

[S–1136–79 Filed 6–5–79; 2:19 pm]

BILLING CODE 7020–02–M

16

NATIONAL LABOR RELATIONS BOARD.

AGENCY HOLDING THE MEETING: National Labor Relations Board.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 30192, published May 24, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Monday, June 4, 1979.

CHANGES IN THE MEETING:

1. The time and date of the meeting has been changed to: 9 a.m., Tuesday, June 12, 1979.
2. Matters to be considered has been changed to read: Personnel matters pertaining to Senior Executive Service.

Dated: Washington, D.C., June 5, 1979.

By direction of the Board.

George A. Leet,

Associate Executive Secretary, National Labor Relations Board.

[S–1141–79 Filed 6–5–79; 3:52 pm]

BILLING CODE 7545–01–M

17

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Thursday, June 14, 1979. [NM–79–19]

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report*—Grounding and capsizing of clam digger PATTI–B at Ocean City, Md., May 9, 1978.
2. *Marine Accident Report*—Sinking of the offshore supply vessel M/V SABINE SEAHORSE in the Gulf of Mexico, January 31, 1978.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, 202–472–6022.

June 5, 1979.

[S–1142–79 Filed 6–5–79; 4:06 pm]

BILLING CODE 4910–58–M

18

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: June 2, 4, 5 and 7, 1979.

PLACE: Commissioners' Conference Room, 1717 H St., N.W., Washington, D.C.

STATUS: Open/Closed (Changes).

MATTERS TO BE CONSIDERED:

Saturday, June 2, 5 p.m.

Discussion of Personnel Matter (Approximately 30 minutes—Closed—Ex 6)

Monday, June 4, 1:30 p.m.

The "Discussion of Personnel Matter" (Approximately 1½ hours—Closed—Ex 6) is Postponed to Tuesday, June 5 at 10:30 a.m.

Tuesday, June 5, 10:30 a.m.

The "Second Periodic Review of NRC Fiscal Year 1979 Operating Budget and Decision Unit Tracking" (Approximately 1½ hours—Public meeting) is Postponed to Thursday, June 7 at 9:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, 202–634–1410.

Dated: June 4, 1979

Roger M. Tweed,

Office of the Secretary.

[S–1135–79 Filed 6–5–79; 1:04 pm]

BILLING CODE 7590–01–M

19

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 28925—May 17, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 1 p.m. on June 7, 1979.

CHANGES IN THE MEETING: This meeting has been canceled and will be rescheduled at a later date to be announced.

Dated: June 4, 1979.

[S–1128–79 Filed 6–5–79 9:05 am]

BILLING CODE 7600–01–M

20

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m. on June 12, 1979.

PLACE: Fourth Floor Courtroom, U.S. Court of Customs and Patent Appeals, 717 Madison Place, N.W., Washington, D.C.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED: The Commissioners will hear and consider oral argument from the parties in the matter of *Secretary of Labor* v. *New England Telephone & Telegraph Company*, OSHRC Docket No. 76–3010.

CONTACT PERSON FOR MORE INFORMATION: Ms. Particia Bausell, (202) 634–4015.

Dated: June 4, 1979.

[S–1129–79 Filed 6–5–79; 9:05 am]

BILLING CODE 7600–01–M

federal register

Thursday
June 7, 1979

Part II

Environmental Protection Agency

National Pollutant Discharge Elimination System; Revision of Regulations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 6, 115, 121, 122, 123, 124, 125, 402, and 403

[FRL 1201-2]

National Pollutant Discharge Elimination System; Revision of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extensively revises the existing regulations governing the National Pollutant Discharge Elimination System (NPDES) program for three purposes:

(1) To clarify and improve existing program regulations and procedures in light of past experience;

(2) To fill significant gaps in coverage under the existing regulations, particularly in response to court decisions and the emerging emphasis on the control of toxic and hazardous pollutants; and

(3) To make the regulatory changes which are necessary under the 1977 amendments to the Clean Water Act.

DATES: These regulations will be considered issued for purposes of judicial review at 1:00 p.m. eastern time on June 14, 1979. If such date is a Federal holiday, the issuance date will be considered to be 1:00 p.m. eastern time on the next day after the seventh day which is not a Federal holiday. Parts 121, 122, 123, 125 and 403 of this regulation shall be effective August 13, 1979. Part 124 is effective as provided in § 124.135. In order to assist EPA to correct typographical errors, incorrect cross-references, and similar technical errors, comments of a technical and nonsubstantive nature on this final regulation may be submitted not later than August 13, 1979. However, the effective dates will not be delayed by consideration of such comments.

FOR FURTHER INFORMATION CONTACT: Edward A. Kramer (EN-336), Office of Water Enforcement, Environmental Protection Agency, Washington, DC 20460 (202-755-0750).

SUPPLEMENTARY INFORMATION:

Background

The Federal Water Pollution Control Act Amendments of 1972 established the National Pollutant Discharge Elimination System (NPDES) permit program. Shortly after, in December 1972 and May 1973, EPA promulgated regulations outling the NPDES program in two Parts. 40 CFR Part 124 established substantive requirements for approved State NPDES programs, while Part 125 established the similar requirements of the EPA permit program. These two Parts, revised several times, are the existing NPDES regulations which remain in force until the effective date of these regulations published today.

In 1977, a new phase of the NPDES program began, prompted by several developments. First, five years of experience with dischargers, approved NPDES States, and the courts had been gained. Second, the "first round" of NPDES permits, issued for a term of five years, were beginning to expire. Third, a major statutory deadline (July 1, 1977) had passed, and the 1983 deadline for achievement of more stringent treatment requirements became the new program goal, along with an increased emphasis on the control of toxic and hazardous pollutants. In late 1977, Congress enacted the Clean Water Act of 1977, making several significant changes in the scope and direction of the NPDES program. These changes include: revisions of the 1983 treatment requirements for industrial dischargers; extensions of the 1977 treatment deadline for certain municipal and industrial dischargers; provisions for certain variances from technology-based treatment requirements; recognition of the Consent Decree in *NRDC* v. *Train*, 8 ERC 2120 (D.D.C. 1976); requirements for best management practices in certain industrial permits; provision for control of sewage sludge disposal in NPDES permits; provision for EPA to issue permits if it objects to a State NPDES permit; and authorization of State assumption of the permit programs under sections 318, 404, and 405.

In addition to the need for regulatory revisions to address these major developments, the former regulations had to be amended and reorganized because they had become unwieldy. On one hand, much needless duplication of the basic substantive and procedural requirements between the former State and Federal NPDES program regulations can be eliminated. Under the regulations published today, the basic substantive and procedural requirements applicable to all permits are set forth in Parts 122 and 124. Part 123, which establishes State Permit Program Requirements, cross-references provisions from those Parts which are applicable to State programs. EPA believes that this new structure will help to simplify the regulations for use by permittees, the States, and the public, and will avoid inconsistencies between State and Federal programs.

Parts of the former NPDES regulations were either too terse to provide meaningful guidance or left significant permit-related issues unaddressed. For example, in many situations the former regulations governing adjudicatory hearings provided inadequate assistance or direction to Presiding Officers or the parties. Based upon several years of experience accumulated by EPA in conducting these hearings, the regulations published today for Part 124 provide more detailed procedures better tailored to result in responsible, informed permit issuance decisions. Similarly, and for the same purpose, the regulations published today for Parts 122 and 125 provide guidance on substantive questions formerly unaddressed in regulations.

Accordingly, five new Parts of Title 40, incorporating all of existing Parts 115, 122, 123, 124, 125 and 402, as well as portions of § 6.900, are established as follows:

- **PART 121—STATE CERTIFICATION OF ACTIVITIES REQUIRING A FEDERAL LICENSE OR PERMIT**
- **PART 122—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**
- **PART 123—STATE PERMIT PROGRAM REQUIREMENTS**
- **PART 124—PROCEDURES FOR DECISIONMAKING REGARDING NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS**
- **PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

A "Guide to the NPDES Regulations" which describes the regulations has been prepared and is available by writing the Environmental Protection Agency, Public Information Center (PM-215), 401 M Street, S.W., Washington, D.C. 20460.

These regulations were proposed on August 21, 1978, (43 FR 37078). Originally, the comment period on the proposed regulations was to have ended on October 20, 1978. However, based on many requests from the public, the comment period was extended to November 20, 1978 (43 FR 47213, October 13, 1978). During the comment period, two public meetings were held: one in Washington, D.C. and one in San Francisco. Over 100 people attended each meeting and over 500 letters were

submitted containing thousands of comments. Comments were catalogued and summarized for each section of the proposal. These final regulations revise the proposed regulations based on comments received. A summary of comments received and the bases for revisions are discussed later in this preamble.

In addition to the August 21, 1978 proposal, EPA published other regulations governing specific portions of the NPDES program. These regulations were promulgated separately from the August 21, 1978 core package because of statutory deadlines for application by permittees for certain extensions and modifications or because of other pressing needs. The following table summarizes all regulations recently published by EPA concerning the NPDES program. Except as noted in the table, these separately published regulations have been incorporated into this final rule.

Table I

Federal Register Date	Summary of regulation	Status of regulations as of last publication	Comments
Feb. 4, 1977 (42 FR 6846)	*General Permit Program.* Proposed establishment of a new general program covering point source discharges.	Proposed Rule.	Incorporated in final rule, primarily at § 122.48.
Apr. 25, 1978 (43 FR 17484)	*301(h) Modifications.* Proposed establishment of criteria, standards and procedures for granting 301(h) permit modifications to the secondary treatment requirements for certain ocean discharges.	Proposed Rule.	Procedures incorporated into Part 124, Subpart G, of Part 125 reserved for standards and criteria.
May 16, 1978 (43 FR 21266)	*301(i) Extensions.* Establishes criteria for granting extensions for compliance with 1977 statutory deadline for municipal treatment requirements and industries planning to connect to these treatment systems and a method for incorporating these extensions in the NPDES program.	Interim Final Rule.	Incorporated in final rule as Subpart J of Part 125.
May 23, 1978 (43 FR 22160)	*Veto/Modification.* Revised Parts 124 and 125 of EPA regulations to clarify the procedures and criteria which EPA will use in exercising its authority to object to (veto) the issuance of State NPDES permits and to require modification of permits to incorporate BAT/Toxic requirements in accordance with NRDC Consent Decree of June 8, 1976.	Final Rule	Veto regulations incorporated in final rule at § 123.23. Modification regulations incorporated in final rule at § 122.15(b).
June 26, 1978 (43 FR 27736)	*Pretreatment.* Pretreatment regulations to control the introduction of non-domestic wastes into municipal treatment plants.	Final Rule	Technical conforming amendments made by this final rule.
Aug. 21, 1978 (43 FR 37078)	*NPDES Regulations* Proposed revision to the NPDES regulations	Proposed Rule.	Incorporated in final rule as Parts 122, 123, 124, and 125.
Sept. 1, 1978 (43 FR 39282)	*Best Management Practices.* Proposed establishment of new controls on toxic and hazardous pollutants by imposing in NPDES permits Best Management Practices for ancillary industrial activities.	Proposed Rule.	Incorporated, in part, in Part 125, Subpart K.
Sept. 1, 1978 (43 FR 39278)	*Spill Prevention Control and Countermeasures (SPCC).* Requirements for SPCC Plans to prevent discharges of hazardous substances from facilities subject to NPDES permits.	Proposed Rule.	Not part of final rule.
Sept. 13, 1978 (43 FR 40859)	*Best Available Technology (BAT) Modifications.* Establishes requirements for application for modifications of BAT non-conventionals under 301(c) and/or 301(g).	Interim Final Rule.	Incorporated in final rule at § 124.51(b).
Dec. 11, 1978 (43 FR 58066)	*Second Round Permits.* Established strategy to ensure NPDES permit will reflect 1983 treatment requirements by issuing short-term permits set to expire 18 months after the scheduled date of promulgation of BAT guidelines for industries affected by the NRDC Consent Decree.	Final Rule	Incorporated in final rule at § 122.12(c) and § 122.15(b).

The incorporated regulations have been renumbered to conform with the codification of this final rule. Any additional changes (i.e., based on public comments) are discussed later in this preamble.

These final NPDES regulations set the framework for EPA's consolidated permit regulations, which will soon be proposed in the **Federal Register.** The proposed consolidated permit regulations will cover the NPDES and section 404 (discharge of dredged or fill material) programs under the Clean Water Act, the hazardous waste management program under the Resource Conservation and Recovery Act, and the underground injection control program under the Safe Drinking Water Act. When promulgated, the consolidated regulations will occupy Parts 122–124 of Title 40 of the Code of Federal Regulations. The final NPDES regulations will be incorporated into the proposed consolidated regulations without significant change. The Preamble to the consolidated regulations will highlight the changes made during the process of program consolidation that affect the NPDES program, and will invite comments on the proposed changes. The final NPDES regulations will remain effective until the consolidated regulations are published in final form.

Judicial Review of the Regulations

The issue has arisen as to where and when judicial review will be available on these regulations. For the benefit of those who might be affected by these regulations, and to avoid, if possible, premature attempts to seek review for protective reasons based on concern that EPA will oppose review when it is proper, a brief outline of the Agency's views on reviewability of these regulations follows.

Judicial review of most regulatory actions under the Clean Water Act is available under section 509(b). That section identifies specific actions which are reviewable in the Courts of Appeals. Judicial review of two permit-related actions is available under section 509(b): "issuing or denying any permit" (section 509(b)(1)(F)) and "making any determination as to a State permit program" (section 509(b)(1)(D)). However, review is not provided for actions in issuing general regulations governing the issuance of NPDES permits. NPDES regulations have been in force since 1973, and no court has held that they are independently reviewable. They have, however, been reviewed in the context of individual permit issuance actions, for which review in the Courts of Appeals is explicitly provided. See, e.g., *Marathon Oil Company* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977), *Seacoast Anti-Pollution League* v. *Costle*, 572 F.2d 872 (1st Cir. 1978).

The alternative to direct review of NPDES regulations under section 509(b) has been rejected by the Court of

Appeals for the Third Circuit. In *American Iron and Steel Institute* v. *EPA (AISI II)*, 543 F.2d 521 (3rd Cir. 1976), the court held that "net/gross" provisions of NPDES regulations (which currently appear, in amended form, as § 122.16 (f) and (g) of these regulations) are not reviewable in the abstract, but become reviewable either in the context of individual effluent limitations guidelines or NPDES permit issuance. *AISI II* at 528.

EPA agrees with the Court's analysis in *AISI II*. Today's regulations will be reviewable when NPDES permits are issued. A very few, such as net/gross provisions, may also become reviewable when effluent limitations guidelines are promulgated. None are reviewable now in the Courts of Appeals.

There remains a question not addressed by the *AISI II* decision: Is review of these regulations available in District Courts? EPA believes that District Court review is not available now. Two of the reasons cited in *AISI II* for the unavailability of Court of Appeals review similarly militate against District Court review: The absence of a factual context to focus review, and the absence of a concrete record to aid the reviewing court; *AISI II* at 528. Moreover, the absence of immediate effect on the discharger and other parties points persuasively to a conclusion that today's regulations are not ripe for review in either the District Courts or the Courts of Appeals. As the Supreme Court stated in *Toilet Goods Ass'n.* v. *Gardner*, 387 U.S. 158, 165 (1967) the challenged regulations:

> would at most lead only to . . . a determination that can then be promptly challenged through an administrative procedure, which in turn is reviewable by a court. Such review will provide an adequate forum for testing the regulation in a concrete situation. [Footnotes omitted.]

EPA believes, for the same reasons, that the NPDES regulations should be reviewed in the concrete context of permit issuance proceedings. See *Diamond Shamrock Corp.* v. *Costle*, 580 F. 2d 670 (D.C. Cir. 1978).

Issuance Date of the Regulations

EPA further wishes to point out that the NPDES regulations will not be considered issued for the purpose of judicial review (if available at this time) until 1:00 p.m. eastern time, 7 days after publication in the **Federal Register** (June 14, 1979). EPA published notice of this intent to have a delayed issuance date on May 1, 1979, 44 FR 25475. The regulations will not become effective until 60 days from that issuance date (August 13, 1979) except for Part 124 which will be 120 days (October 12, 1979). In addition, due to the length of NPDES regulations and the number of cross-references, EPA will accept nonsubstantitive comments (e.g., typographical errors, incorrect cross-references, missing lines, etc.) during this same 60-day period. This nonsubstantive comment period will not affect the effective date of the NPDES regulations.

Overview of These Regulations

I. Part 121—State Certification of Activities Requiring a Federal License or Permit

A. *What Does This Part Do?* Part 121 contains State certification procedures and requirements applicable to all Federal Licenses and permits other than NPDES.

B. *How Does This Part Relate to Existing Regulations?* The existing State certification regulations predate the Federal Water Pollution Control Act Amendments of 1972 and have never been updated. However, because of the impact of State certification of non-NPDES permits on a myriad of Federal programs, it will be necessary to consult with the affected agencies in some detail before changes are made. State certification of Federal licenses or permits other than NPDES will continue unchanged. This Part merely redesignates the existing regulations, formerly 40 CFR 123, as Part 121. State Certification of NPDES permits is discussed in the overview of Part 124.

C. *How Does This Part Relate to the August 21, 1978 Proposed Regulations?* The August 21, 1978 proposal inadvertently deleted existing State certification regulations. This deletion was noted in a comment from the public. In response to the comment, this Part has been retained.

II. Part 122—National Pollutant Discharge Elimination System

A. *What Does This Part Do?* Proposed Part 122 establishes the basic "program definition" of the NPDES, whether administered by EPA or an approved State. This Part covers the full range of substantive program requirements, spelling out in detail: who must apply for a permit; how a permit is issued; what terms, conditions, and schedules of compliance must be incorporated into permits; when and how monitoring and reporting of permit compliance must be performed; when permits may be revised or reissued; and what special requirements apply to certain types of dischargers.

B. *How Does This Part Relate To Existing Regulations?* The former regulations contain separate NPDES program requirements for approved States (40 CFR Part 124) and for EPA (40 CFR Part 125). The majority of provisions under former Parts 124 and 125 are duplicative. To eliminate this duplication, the NPDES program requirements applicable to both EPA and approved States have now been consolidated into one set of regulations in Part 122. The process for approval of a State program to administer the NPDES is in a separate Part (see Part 123 below), which cross-references the applicable substantive requirements of Part 122.

Part 122 regulations reflect significant developments which have occurred since the NPDES program began. Furthermore, provisions of the former regulations have been reorganized and rewritten. New regulations have been included where the former regulations do not adequately address the requirements of the Act (i.e., where court decisions have altered aspects of the NPDES program, where EPA guidance for administration of the NPDES program was not previously incorporated into regulations, and where experience in administering the program has highlighted gaps in effective implementation of the Act). Finally, certain revisions have been made to conform the NPDES program to provisions of the 1977 amendments to the Clean Water Act.

C. *How Does This Part Relate to the August 21, 1978 Proposed Regulations?* The following is a discussion of the significant comments received and the basis for revisions made to Part 122 of the proposed regulations. Minor editorial changes have been made in all sections.

§ 122.3 Definitions.

§ 122.3(f) Definition of "best management practices".

Many commenters indicated confusion as to the relationship between best management practices mandated under section 304(e) of the Act and best management practices which might be required under other authorities (e.g., through section 401 State certification; pursuant to section 208(e) for water quality management plan requirements; where effluent limitations are inappropriate or infeasible to control plant source discharges in accordance with *NRDC* v. *Costle* (Runoff Point Sources) 568 F.2d 1369 (D.C. Cir. 1977)). To clarify this point, it should be noted that the definition of best management

practices in paragraph (f), while adapted from section 304(e) language and legislative history, applies to uses of the term "under any or all authorities." Thus, the term has been used to reflect section 304(e) as well as requirements imposed under section 402(a)(1) in accordance with the Runoff Point Sources decision in *NRDC* v. *Costle*.

Several commenters also noted that the legislative history of section 304(e) specifically excludes actual plant process design and related operating decisions from the definition of best management practices. EPA agrees, and has revised the definition to include this limitation authority under section 304(e).

§ 122.3(k) (proposed § 122.3(j)) Definition of "discharge of a pollutant".

Many commenters disagreed with one or more of the types of activities included within the definition of a "discharge of a pollutant" in proposed paragraph (j). In response, the following revisions and clarifications have been incorporated into the final regulations.

First, the regulations have been clarified to indicate that a discharge to a pipe is not, in and of itself, a discharge of pollutants subject to the permit program. A discharge to a pipe must ultimately reach navigable waters in order to fall within the purview of the NPDES requirements.

Second, a number of comments questioned the statutory authority for the requirement in the proposed § 122.3(j) that classified a discharge through a State or municipally owned treatment system as a direct discharge, if that treatment system was not designed and constructed to meet the "applicable requirements of section 301(b) of the Act." These commenters argued that this provision placed an undue burden on industrial users of State/municipal treatment systems and that this method of control was beyond authority granted EPA by the Act.

EPA has changed this requirement in response to these comments, although the Agency believes that the proposed regulations were within its authority. This provision in revised § 122.3(k) now defines as a "discharge of a pollutant" only those discharges into pipes which do not lead to a treatment system, but rather into waters of the United States.

On the other hand, a discharger discharging into a storm sewer or other publicly owned conveyance which does not lead to a publicly owned treatment works, but directly to navigable waters, is clearly subject to the permit requirement. See *United States* v. *Granite State Packing Co.*, 343 F. Supp. 57 (D.N.H. 1972), *aff'd.*, 470 F.2d 303 (1st Cir. 1972). The final regulations continue to reflect this requirement.

Third, the provision in the proposed definition of "discharge of pollutant," which stated that discharges through State or municipal systems handling primarily industrial wastes be considered direct discharges has been deleted in response to comments. Many commenters considered the proposed approach to be unwieldly and inconsistent with the language of the Act regarding publicly owned treatment works (POTWs). This provision was intended to allow a more equitable control of compatible wastes (biochemical oxygen demand (BOD) and suspended solids (SS)) which are discharged into POTWs by industries (incompatible industrial wastes are controlled through the pretreatment regulations, 40 CFR Part 403). At present, POTWs are required by the Act to achieve, at a minimum, the effluent quality attainable through the application of secondary treatment. The secondary treatment information regulation (40 CFR Part 133) controls concentration and percent removal of BOD and SS, pollutant parameters normally associated with domestic wastes. However, many POTWs receive and treat large amounts of industrial waste. The secondary treatment information regulation does not completely address compatible industrial waste; 40 CFR § 133.103(b) only allows an upward adjustment of the concentration limits where the effluent limitation guidelines, which would be applicable to the industry if it were a direct discharger, are *less* stringent than secondary treatment. 40 CFR 133 does not allow for *more* stringent concentration limits where industrial effluent limitations guidelines are more stringent. Nor does the secondary treatment regulation allow for any adjustment of the 85% removal requirement. The proposed provision would have allowed EPA to address these two areas and we continue to believe that it is supportable under the Act. However, we do agree with those commenters who said that such a provision would be very unwieldly and would make permit writing under these circumstances a very difficult task. Therefore, we have deleted this provision and intend to deal with these issues by revising the definition of secondary treatment or alternatively, covering these areas in a revision to the definition of best practicable waste treatment technology.

Further, a number of commenters objected to the provision which included discharges through pipes, sewers or other conveyances owned by third parties other than a State or municipality as direct discharges. These commenters argued that such discharges, at a minimum, should be considered to be discharges through treatment systems. In addition, many commenters questioned the statutory authority and practicability of such a provision.

EPA has revised this provision to indicate that discharges through privately owned treatment systems are direct discharges. Moreover, EPA continues to believe that adequate authority exists for such a provision. This provision reflects EPA's interpretation of the Act in the Decision of the General Counsel No. 43 (Friendwood Development Company). Nevertheless, EPA does not intend for this requirement to result in many permits for a single discharge point. To avoid the administrative problems caused by multiple permits, EPA recommends the issuance of a single permit to all users as well as the control or treatment facility, with all parties listed as permittees and with joint and several liability for obligations under the permit.

Finally, a number of commenters argued that the inclusion of surface runoff channelized into point sources in the proposed definition of "discharge of a pollutant" was overreaching in light of the statutory exclusion of irrigation return flows. Many commenters also argued that the definition was confusing when read in conjunction with proposed § 122.4 (Exclusions), § 122.45 (Separate storm sewers), and § 122.46 (Silvicultural activities). This definition has not been changed. The concerns of the commenters have been addressed through revisions to § 122.4, § 122.45, and § 122.46. For further details see discussion on these sections later in this preamble.

§ 122.3(1) (proposed § 122.3(K)) Definition of "discharge monitoring report".

A number of comments were received on the proposed definition of "discharge monitoring report." Some argued that the definition should allow more flexibility to States in development of a form for reporting of self-monitoring results by permittees. Other commenters argued that EPA standard national forms for Discharge Monitoring Reports should be used both by EPA and by approved States. EPA was persuaded by the latter arguments and has changed the definition to require the use of standard national forms by both EPA and approved NPDES States. This will

facilitate the use of computer systems designed to directly read and analyze the reported information. It will also increase the ability of all program offices within EPA to share such information. EPA will provide the States with preprinted standard forms (States may substitute their name, logo, etc. on these forms) and will also provide necessary computer software.

§ 122.3(t) (Proposed § 122.3(s)) Definition of "navigable waters".

The definition of "navigable waters" has been slightly revised to clarify its intent and scope, but the basic thrust and coverage remain the same as in the proposed rules.

Some commenters suggested that EPA exclude certain types of impoundments of navigable waters from the definition, such as holding ponds, cooling ponds, and closed cycle lagoons. Under some circumstances, it is appropriate to impound navigable streams in order to create a cooling pond or lake. EPA does not mean to prohibit this practice and applicable regulations specifically recognize this use and specify where it is allowable to comply with technology-based regulations. For example, in 40 CFR § 423.11 (m) and (n), the terms "cooling pond" and "cooling lake" are distinguished. A "cooling pond" may under some circumstances be navigable waters, but usually is not. A "cooling lake" is always a navigable water. Yet in either case affluent guidelines explicitly recognize some circumstances in which it is appropriate to use such impoundments for treatment. (Compare 40 CFR § 423.13(1)(3) with 40 CFR § 423.15(1)(2)). These are exceptional cases, however. In general, the Act's requirements must be met at the point of discharge into navigable waters.

Some commenters suggested that waste treatment systems be excluded from the definition of navigable waters. EPA disagrees with this comment where cooling ponds are involved. Such ponds are frequently extremely large in size and some harbor fish populations which invite recreational uses. If such ponds are opened for recreational use, recreational users of the previously non-navigable waters could be exposed to potentially harmful effects where, for example, fish are contaminated and consumed by such users. EPA believes this use should remain subject to control under the Act's regulatory provisions, and that such broad jurisdiction is consistent with the thrust of the Act and its legislative history.

Use by industries in interstate commerce. Some controversy has centered around the question of what waters are defined as "waters of the United States" because of use by industries in interstate commerce for industrial purposes. The Decision of the General Counsel No. 73 concluded that the definition in the previous regulations required actual use by an industrial user downstream from the discharger. Since there were no users downstream from the discharging industry, the stream in question was found not to be waters of the United States. The opinion explicitly stated, however, that it was based upon the regulations, not the Act, and left open the question whether EPA was free to adopt a broader definition tied to the susceptibility of the stream of use by industries in interstate commerce.

These regulations are intended to broaden the definition of waters of the United States in the manner suggested by Decision No. 73. Waters will be considered to be waters of the United States not only if they are actually used, but also if they may be susceptible to use, for industrial purposes by industries in interstate commerce. Thus the regulations now focus, not on the nature of the stream's users, but on the characteristics of the stream itself, and it will no longer be necessary to show actual industrial use for a stream to fall within the definition.

On the other hand, except for cooling ponds which meet the criteria for "waters of the United States" (such as, for example, those which are used for fishing or other recreational purposes by interstate travelers), EPA agrees with a frequently encountered comment that waste treatment lagoons or other waste treatment systems should not be considered waters of the United States. Accordingly, the definition has been revised to exclude such treatment systems.

Moreover, if any portion of a stream is used or susceptible to use by industries in commerce, the entire stream is waters of the United States. As an example, assume that three industries in interstate commerce (A, B and C), lie along a stream which flows into a small lake contained entirely on the property of Industry C, and from which there is no outflow. Industries A and B are upstream of Industry C. All three use the stream for industrial purposes and discharge effluent into the stream. The stream is waters of the United States because it is used by industries in interstate commerce. All three industries require NPDES permits, including Industry C, even though there is no user downstream from Industry C. The question of actual or potential use downstream from the discharger (Industry C) is not relevant to the determination, since the character of the stream as a whole is clearly such as to be susceptible to use by an industry in interstate commerce.

§§ 122.3 (u) and (v) (proposed § 122.3(t)) Definition of "new sources and new dischargers".

Some commenters objected to the definition of new source in the proposed regulations, particularly the 120-day limit in paragraph (t)(1)(ii) for the promulgation of proposed standards. These commenters pointed out that the 120-day limit for promulgation of standards was not part of the statutory definition of new sources in section 306 of the Act and so went beyond proper EPA authority. EPA believes that the definition of new source in section 306 of the Act must be read in the context of section 306 in its entirety. Section 306(b)(1)(B) contemplates the promulgation of new source performance standards within 120 days of proposal. See Decision of the General Counsel No. 71. Read together with the definition in section 306(a)(2), this section supports the language of both the proposed and final regulation. Further, there is also an overriding policy in support of the 120-day limitation; since construction of a source to meet new source performance standards can only proceed in a meaningful way if final standards are available, any inequities which may result from EPA failure to promulgate standards within 120 days of proposal are resolved by the language of section 306(d). A source which falls outside the new source definition but is a new discharger and commences construction after October 18, 1972, may gain the benefit of the new source protection period by satisfying the requirements of section 306(d). See preamble discussion of § 122.47(d).

A number of commenters objected to the use of the definition of "new discharger" in proposed § 122.3(t)(2) (now § 122.3(v)). They argued the definition would automatically require a new permit when a discharger ceased operation during the term of the permit. They also suggested the definition could be read to impose new source performance standards on a discharger which recommences operation after terminating a discharge. EPA has revised the definition of "new discharger" in response to these comments. The term now applies only to a genuinely new source of discharge but which is not a "new source" as defined in section 306 of the Act because applicable performance standards have not been issued. The final regulations

continue to require that new dischargers meet applicable standards and limitations upon commencement of discharge, and identify most of these sources as eligible under section 306(d) of the Act and § 122.47(d) for the ten year protection from more stringent standards of performance.

EPA does not intend to require a new permit automatically when a discharge ceases. Many permits cover facilities which in the normal course of their operations cease and recommence discharge. Their permits do not lapse when they cease discharging. However, the proposed rules were intended to require a source which shuts down (including those which do so in order to escape a statutory deadline or other requirement) to meet all applicable standards and limitations upon recommencement of discharge. This requirement is now contained in § 122.17(c)(3).

Definitions of Application, Discharge Monitoring Report, New Source/ Environmental Questionnaire and Permit. Proposed § 122.3 referenced Appendices A, B, C and D which were to contain copies of the application form, permit format, new source/ environmental questionnaire and discharge monitoring reports, respectively. These Appendices have been deleted from the final regulations pending completion of these forms. They will be published at a later date.

A new Appendix A has been added which is a redesignation and redivision of the industrial categories appendix contained in former regulations promulgated on May 23, 1978 and December 11, 1978 (see Table I of this preamble). The Appendix has been revised to conform to the modified settlement agreement approved by the District Court and issued on March 9, 1979, in *NRDC* v. *Costle* (which modifies the *NRDC* v. *Train* 8 ERC 2120 (D.D.C. 1976), settlement agreement of June 8, 1976). Additional time after the issuance date for effluent limitations guidelines under the consent decree has been added to allow for processing of permits. This Appendix will be updated from time to time if further modifications are made.

New Definitions. In response to comments requesting definitions for additional terms, EPA has included several new definitions in the final regulations.

A definition of "publicly owned treatment works" ("POTWs") (§ 122.3(bb)) has been added which is consistent with the definition of POTW found in other EPA regulations, e.g., 40 CFR § 403.3(m).

A definition of "Direct discharge" (§ 122.3(h)) has been added which states that this term means the discharge of pollutants.

The term "Director" (§ 122.3(i)) has been changed to include both the Regional Administrator and the State Director, as appropriate. Generally, the use of the term Director means that the regulation is applicable to both EPA and approved States. The terms "Regional Administrator" (§ 122.3(cc)), "Enforcement Division Director" (§ 122.3(n)) and "State Director" (§ 122.3(ii)) are now used only where the regulation addresses an action that is unique to one of those people. This change in the use of the term "Director" necessitated the addition of a new term, "State Director" which is the same definition as was found for "Director" in proposed § 122.3(h).

A definition of "process waste water" (§ 122.3(aa)) has been added which restates the definition found in 40 CFR § 401.11(q).

§ *122.4 Exclusions.*

Some commenters thought proposed § 122.4(a)(1) over-stepped EPA's statutory authority to control vessels when "operating in a capacity other than a vessel." Commenters felt that the language in section 502(12)(B) of the Act which defines "discharge of a pollutant" as "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source *other than a vessel or other floating craft,"* (emphasis added) precluded regulating mining vessels as point sources. The Act does not define "vessels or other floating craft", but it appears that those terms refer to transportation vessels. The legislative history of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA) and the Marine Protection Research and Sanctuaries Act (MPRSA) of the same year, indicated that all ocean discharges within the jurisdiction of the United States were to be regulated by EPA under one Act or the other. As the Senate Public Works Committee noted on the FWPCA:

> Coupled with the provisions in the bill reported by the Committee on Public Works, the bill to be reported from the Commerce Committee [i.e., the MPRSA] should enable the United States to have complete and integrated regulation of the disposal of pollutants *into all waters and over all sources of pollutants subject to its jurisdiction (emphasis added).* See A *Legislative History of the Water Pollution Control Act Amendments of 1972, Senate Committee on Public Works,* 93d Cong., 1st sess. (1973) at 1492 (hereafter FWPCA Legis. Hist.).

Hence, if the commenters are right, the MPRSA or Ocean Dumping Act would require permits for temporarily fixed drilling vessels, ocean mining dredge ships or processing vessels.

We believe the greater weight of authority points to the fact that similar structures should be treated similarly, i.e., an oil platform at sea and an oil platform that is temporarily anchored to the bottom of the sea should have to meet the same requirements under the same Act. Similarly a deepsea mining processing ship should have the same requirements as an onshore processing plant discharging into the ocean. It appears the exception in section 502(12)(B) was intended solely to exclude redundant authority over ocean dumping under NPDES and the Ocean Dumping Act.

The Clean Water Act clearly is better designed to regulate routine industrial discharges. The industry-by-industry approach required for effluent limitation guidelines under the Act is more attuned to handling discharges from these two industries than the Ocean Dumping Act since the Ocean Dumping Act requires extensive studies aimed at finding alternatives to ocean discharges.

Regular sewage discharges from vessels are still regulated by the Coast Guard under section 312 of the Act. Paragraph 122.4(a)(1) is aimed at industrial processes that occur at sea.

Many commenters objected to the comment after § 122.4(a)(2) in the proposed regulations regarding the relationship of section 402 and 404 permits, which incorporated the "primary purpose" test presently stated in Corps of Engineers regulations for section 404 permits, 33 CFR § 323.2(m). These commenters objected to the vagueness of the comment and to the implication that both a section 402 and a section 404 permit could be required for the same activity. This comment has been deleted because the Agency is currently reviewing its position on the overlap between section 402 and 404 permits. Part of this Agency review involves a draft policy document concerning the applicability of the NPDES program to the disposal of solid waste in waters of the United States. Since Agency policy was not resolved at the time of publication of these final regulations, no resolution or further clarification is now appropriate.

Many commenters objected to the restriction contained in § 122.4(a)(3) of the proposed regulations that limited that exclusion to indirect dischargers as defined in § 122.3(o) of the proposed regulations. Although § 122.4(a)(3) has been retained without change, these

comments have been reviewed in conjunction with comments submitted on proposed § 122.3(j) (definition of "discharge of pollutant"). For further details, see preamble discussion on proposed § 122.3(j).

Many commenters objected to the comment after § 122.4(a)(4), pertaining to the exclusion of irrigation return flows, as being beyond EPA authority. Comments under this section were considered in conjunction with those received under proposed § 122.3(j) (discharge of pollutant), § 122.45 (separate storm sewers), and § 122.46 (silvicultural activities). The comment has been deleted and changes have been made in § 122.46 which address many of the concerns raised by commenters.

§ *122.5 Signatories.*

Many commenters objected to the proposed revision of § 122.5, which required that all permit program forms be signed by a principal executive officer of a level of at least vice president for a corporation, or by an equivalent level official for partnerships or for public facilities. This section has been changed to require that only permit applications must be signed by a principal executive officer or equivalent official. Other permit program forms may be signed by a duly authorized representative of the appropriate official so long as the authorized representative is responsible for the overall operation of the discharging facility, and the authorization is made in writing. Further, the signatory may rely on the representations of the person immediately responsible for obtaining the information in the document when certifying to its accuracy, etc. This change will ease the paperwork burden upon the regulated community, while at the same time providing an equal degree of legal accountability on the part of the principal executive officer or equivalent level official. By authorizing a representative to sign other permit program forms, the responsible official does not lose legal accountability for the accuracy of the information that is submitted.

§ *122.10 Application for a permit.*

A number of commenters were concerned about the intent of proposed § 122.10(b) regarding enforcement against persons currently discharging without a permit who have applied for, but have not yet received, an NPDES permit. In response, EPA has deleted this section. However, EPA wishes to clarify its enforcement policy with regard to existing dischargers who have submitted timely and sufficient applications for an initial NPDES permit, and have otherwise proceeded in good faith, but have not yet received a permit through no fault of their own. In those cases, these dischargers will not be subject to enforcement action by EPA for discharging without a permit.

EPA has also placed the requirements of proposed § 124.11(b) and (c) into § 122.10 so that all the requirements relating to permit application will be contained in one section.

Many commenters objected to the requirement in proposed § 124.11(b)(3) and (c) for submitting applications 180 days before the present permit expired (180 days before the discharge) when there is no concomitant requirement on the issuing authority to issue a permit in a resonable time. Because of the significant resource restraints on States and EPA, it may not be possible to issue permits to all applicants, especially minor dischargers, in a set time period. Although the statute requires a permit for a lawful discharge of pollutants, the fact a discharger is without a permit due to the lack of action by the issuing authority will weigh heavily against the instituting of enforcement actions.

§ *122.12 Duration and transferability.*

Some commenters suggested that the five year limit for permit terms be extended to ten years for new sources. While new sources and certain new dischargers may qualify for a "protection period" from any more stringent standards of performance under section 306(d) of the Act, the five year permit term is an express statutory requirement and cannot be altered through these regulations. However, permits may be continued under the Administrative Procedure Act (APA) where the applicant has submitted a timely application for renewal and EPA has been unable to process the application. See § 122.12(b).

Several comments were also received on proposed § 122.12(c) (now § 122.12(d)), which established requirements for transfer of permits. Many of these comments objected to the required approval by the permitting authority prior to transfer, arguing (1) restraint of trade and (2) increase of paperwork. EPA does not agree with the first argument but does agree with the second. Accordingly, paragraph (d) has been revised to make transfer approval automatic within 30 days unless action is taken by the Director. The Director's option to require a new application for permit reissuance or modification, as well as the requirement for a written agreement between the transferor and transferee specifying transfer of liability has been retained.

A new section, § 122.12(c) has been added which substantially incorporates the requirements of former § 124.46 (Compliance with 1984 Treatment Deadlines for Discharges of Toxic Pollutants 43 FR 58066). Some of the requirements originally in former § 124.46, (e.g., the permit must incorporate "[a]ny other terms and conditions necessary to carry out the provisions of the Act") have not been repeated in new § 124.12(c) because they are elsewhere in Part 122.

EPA has moved proposed § 122.33 to § 122.12(b) because "extension of expiring permits" is more logically dealt with in this section on permit duration. In porposed § 122.33, EPA indicated that expiring permits could be "extended" under 5 U.S.C. section 558(c) (section 9(c) of the APA. For clarity EPA has substituted the terms "continuation" or "continued" for "extension" or "extended," since the APA does not use the terms "extension" or extended."

Proposed § 122.33(a)—Many commenters objected to the restrictions in proposed § 122.33(a) for automatic continuations, arguing that the only restriction provided by the APA for automatic continuation is "timely and sufficient application for a renewal." Some commenters suggested deletion of the requirement that the delay in permit issuance not be caused by actions of the permittee (proposed § 122.33(a)(2)). Other commenters suggested revising the requirement to provide that requests for evidentiary hearings do not constitute a delay caused by the permittee.

In response to these comments, EPA has deleted proposed § 122.33(a)(2) from the final regulations, but believes that delays caused by the permittee may in some cases render a permit application "untimely." Proposed § 122.33(a)(3) (now § 122.12(b)(1)(ii)) restricts permit continuation to instances where the Regional Administrator is unable to issue a new permit before the expiration date of the old permit. This provision has been retained but it is intended only to implement the requirement of section 558(c) that there be no final Agency determination on an application, and not to restrict the applicability of section 558(c).

§ 122.33(c)—Proposed § 122.33(c)(2) (now § 122.12(b)(3)) indicated that a permit continuation could be denied by the Enforcement Division Director when the permittee was not in compliance with the expiring permit. Many commenters contended that such a denial is not authorized by the APA.

EPA agrees and has redrafted § 122.12(b)(3)(iii) accordingly. However, if the Regional Administrator makes a final determination to deny an application for permit reissuance, section 558(c) is by its terms no longer applicable, and the discharger is subject to enforcement action for discharging without a permit.

Several commenters questioned the applicability of this section to permits issues by EPA in NPDES States before the State program was approved. In response to this question, § 122.12(b)(4) clarifies that although § 122.12(b) does not apply where EPA originally issued the permit but an NPDES State is now the permit issuing authority, States may continue the State-issued permit if so authorized under State law.

§ *122.13 Prohibitions.*

§ *122.13(b)*—Several commenters expressed concern over the role of State certification in the permit issuance process. This issue is addressed more directly in the preamble discussion of Part 124, Subpart C.

§ *122.13(c)*—See the preamble discussion to § 123.23 for a discussion of EPA's authority to object to the issuance of State-issued permits under section 402(d) of the Act.

§ *122.13(i)*—In response to a number of comments, § 122.13(i) has been modified. This section has been changed to clarify that only a new source or a new discharger into a water quality segment (as defined in 40 CFR § 130.20(o)(1)) must demonstrate that there are sufficient pollutant load allocations to allow the discharge and that the facility is entitled to these allocations. The proposal applied to all new sources or new dischargers, including those to an effluent limitation segment (as defined in 40 CFR § 130.20(a)(2)). However, upon review of the comments, the Agency determined that the requirement was appropriate only in water quality segments.

§ *122.14 Conditions applicable to all permits.*

§ *122.14(a)*—This section in the proposed regulations (the permit as a limited authorization to discharge) received the greatest number of comments. Many of these comments pointed out the difficulty of analyzing the effect of paragraph (a) without the benefit of reviewing the application form to which it is tied. The Agency agrees with these comments. As a result, the substantive requirements of paragraph (a) are reserved in these final regulations and will be reproposed, together with publication of a draft application form, in the summer of 1979. In conjunction with the application form revision, the Agency is also examining the overall permit scheme, including use of the application data, monitoring requirements, enforcement, the relationship of the application to section 311 and other such considerations.

Although paragraph (a) is withdrawn and reserved for reproposal, a comment has been inserted in its place to reemphasize the Agency's commitment to moving towards the national goal of the elimination of the discharge of pollutants as stated by section 101(a)(1) of the Act. It is no longer acceptable for a discharger to disclaim responsibility for being aware of the impact of its discharges upon human health and upon the environment. The Agency, therefore, expects each applicant to discharge pollutants only in accordance with its application and permit.

Many comments on this paragraph discussed the difficulty of its implementation. In its ongoing development of a new application form, the Agency is addressing many of the major concerns expressed, and commenters will have an opportunity to raise these issues when the Agency proposes its revised approach this summer.

§ *122.14(b)*—The language of § 122.14(b) has been shortened to eliminate superfluous language. The substance remains unchanged.

§ *122.14(d)*—Several commenters argued that permits should only be modified to incorporate section 307(a) standards or prohibitions where the pollutant has been found to be injurious to health. However, the Agency is not empowered to ignore the criteria of section 307(a), which include toxicity, persistence, degradability, and the effect on organisms in waters. When a standard is promulgated under section 307(a) to establish these criteria, it should be incorporated into the permit. However, where a standard under section 307(a) controls a pollutant identified as injurious to health, it is effective and enforceable *whether or not* incorporated into permits and must be complied with by the time set forth in the promulgated standard.

Many commenters were concerned that modification proceedings to conform the permit to a toxic effluent standard or prohibition might also open other permit conditions to modification. Such a result is contrary to this paragraph's express language. Other terms and conditions may be modified only in accordance with § 122.31.

The comment to § 122.14(d) has been expanded to indicate that when the new NPDES application form becomes available, this paragraph will be reproposed to require submission of a new application or partial application as part of the modification proceedings of this paragraph.

§ *122.14(e)*—Many commenters objected to the requirement that permittees notify the Director of process changes or other modifications which do not result in permit violations. In response, this paragraph has been revised to require only notification of activities which would constitute cause for permit modification or revocation and reissuance. This requirement, as revised, is necessary because process or other changes may result in significant discharges of pollutants which are not limited by the permit. Upon receipt of notification under this paragraph, the Director can require further information on a new application which may either justify permit modification or indicate that no modification is necessary.

Several other commenters expressed concern that this paragraph would require daily notifications as a result of variability in their discharges. As noted in the above discussion, this paragraph has been revised and should, therefore, minimize any potential problems presented by waste stream variability.

§ *122.14(f)*—In response to comments, § 122.14(f) has been revised. As revised, EPA believes this provision is consistent with the Supreme Court's decision in *Marshall* v. *Barlow's Inc.*, 436 U.S. 307, (1978).

§ *122.14(g)*—Several commenters expressed doubts whether EPA is legally authorized to require proper operation and maintenance of facilities and systems, including requirements such as effective management of treatment facilities and adequate staffing and training. Such requirements are clearly authorized by section 402(a)(2) of the Act, which requires the Administrator to prescribe conditions in permits which will assure compliance with the requirements of section 402(a)(1).

§ *122.14(h)*—A number of commenters questioned the need to report "minor" noncompliance under § 122.14(h) within 24 hours of becoming aware of the noncompliance. They felt that the Discharge Monitoring Reports (DMR) under § 122.22 provide a sufficiently prompt method of notification. EPA agrees that in instances of "minor" noncompliance the DMR does provide a sufficiently prompt method of notification and has revised § 122.14(h)(2)(iii) to reflect this. In response to comments, we have also revised § 122.14(h)(2)(i) to require 24 hour reporting only for violations of

discharges containing the toxic pollutants limited by toxic pollutant effluent standards under section 307(a) (e.g., Aldrin/dieldrin, Endrin, Toxaphene, Benzidene, Polychlorinated Biphenyls and DDT/DDD and DDE). In addition a new § 122.14(h)(2)(ii) has been added which gives the Director the discretion to require 24-hour and/or five-day reporting in a permit for other noncomplying discharges which may pose health problems (e.g., section 311 substances). The purpose of such prompt reporting is to enable the permitting authority to use the information to make a case-specific determination of the severity of the violation, its possible environmental effects and mitigation possibilities.

The majority of the commenters were concerned with the difficulty in providing the required noncompliance information within 24 hours. Several commenters stated that the determination of corrective measures may in some cases take longer than 24 hours to develop. As stated earlier, this 24-hour requirement is now mandatory for only certain instances of noncompliance. While EPA expects these dischargers to formulate a plan of action for correcting the situation within 24 hours of a violation, such plan may indicate various options for corrective action. It is necessary, however, that the best possible information, including notice of the noncompliance, be provided to the permitting authority within 24 hours of the time that the permittee was aware of the noncompliance so as to enable any action necessary to prevent a crisis, such as contamination of a downstream drinking supply.

Many commenters requested that the term "becoming aware" be more precisely defined. This language has not been changed because it was intended to cover "awareness" based on any or all sources of information such as analysis, measurement or observation.

Some commenters felt that the five-day requirement for submission for written information might not be long enough if a corporate vice president must sign a letter, under the requirements of § 122.5. This situation has been addressed in changes to § 122.5, which now allows for the delegation of such responsibilities and through changes to § 122.14(h)(iii) discussed earlier.

§ *122.14(i)*—The language of § 122.14(i) has been shortened to eliminate superfluous language but the substance remains unchanged.

Proposed § *122.14(j)*—The substance of this section has been moved to Part 125, Subpart A. The requirement that permits to POTWs include sewage sludge disposal conditions under section 405 has been moved to § 122.15(h). Many commenters objected to the prohibition against discharge of solids, sludges, filter backwash or pollutants removed in the course of treatment or control of wastewaters. However, to allow discharge of substances which have been removed by treatment systems would result in circumvention of the Act's requirements for limiting discharge of those substances which can be removed by the treatment.

§ *122.14(j)*—Some commenters argued that halting or reducing production as required in proposed § 122.14(k) (now § 122.14(j)) may cause greater environmental harm than continuation of production. The Agency believes that the pollution problems which may occur as a result of shutdown and startup will generally be less severe than those characteristic of situations of continual noncompliance. Rather than require the Director to decide immediately in each case whether the environmental harm caused by shutdown or reduction might be greater than that caused by continual noncompliance, the requirements of this subsection have been retained. It should also be noted that paragraph (j) is not as harsh as some commenters have indicated, since it is modified somewhat by the upset and bypass provisions.

§ *122.14(k)*—In response to comments, the bypass provision (proposed § 122.14(l)) has been redrafted for clarity. Many commenters stated that the bypass notification requirements were impractical and internally inconsistent. The provision has been modified to require permittees to submit notice within 24 hours of becoming aware of the bypass in those circumstances where the necessity for a bypass cannot be anticipated. Where the need for a bypass is known in advance, the permittee must now submit a request for approval at least 10 days before the anticipated event.

Several commenters stated that it was inappropriate for the Agency to limit bypasses to situations where there is a risk of "serious" injury. This provision has been modified to apply where there is a risk of "personal" injury.

Commenters objected to the statement that treatment facilities should generally be constructed with redundant or backup equipment. This comment was merely intended to note that proper engineering practices often involve the use of redundant or backup systems for equipment such as pumps or power supplies. Such practice can eliminate any noncompliance during periods of equipment malfunction or maintenance. This comment has been modified to clarify that the pemitting authority will take into account whether the bypass involved regular preventive maintenance for which backup equipment should have been available.

Several commenters stated that bypasses should be authorized during periods of preventive or corrective maintenance. However, in most cases waste treatment facilities should be designed with redundant equipment and with sufficient storage capacity such that bypassing is not necessary during periods of maintenance. The bypass provision is intended to provide relief from permit limitations during unusual circumstances; it is not intended to allow limitations to be routinely exceeded.

Some commenters objected to the requirement that the public be afforded an opportunity to comment on requests for bypasses. However, the Agency believes that the critical review offered by the public is a useful element of the system.

Many commenters argued that economic loss caused by delays in production should be included in the definition of severe property damage. After serious consideration, the Agency has rejected this position. Except in limited cases, the Clean Water Act does not authorize noncompliance with effluent limitations because of the cost to an individual facility. Where effluent limitations, which include consideration of the cost of operation of waste treatment facilities, have been properly established, a source must either comply or close. Nonetheless, this section provides for the authorization of intentional bypass where failure to bypass would result in severe property damage. In most cases this damage would be to the treatment facility itself; thus, failure to allow bypass would jeopardize future adequate treatment. In the oil and gas production industry, severe property damage includes permanent loss of oil which might result if a well were to be shut in. For electric generating facilities, curtailing production might risk substantial property loss to users of the electricity. In all of these cases consideration beyond the economic loss to the permittee warrant a bypass.

Further, although permittees may be required to limit production rather than exceed limitations, this risk can be minimized by the prudent use of back-up equipment and the capacity to store untreated wastes during periods of maintenance. The Agency will consider

the reasons for noncompliance in exercising its discretion to enforce.

§ *122.14(l)*—In response to comments, the upset provision (proposed § 122.14(m)) has been redrafted for clarity. Many commenters also noted that proposed subparagraph (m)(2) provided only that an upset "may" constitute an affirmative defense. However, it is the Agency's intention that a defense of upset is available if the applicable conditions are satisfied. The provision has been amended to reflect this.

The comment following this section relating to judicial review of Agency determinations was confusing to several commenters. In response to these concerns, the comment has been revised to indicate that the initial Agency determination on a claim of upset constitutes an exercise of prosecutorial discretion, not final Agency action subject to judicial review. Since upset is an affirmative defense, the permittee's opportunity for review of a claim of upset will be in the context of any enforcement action for noncompliance.

Many commenters stated that an upset should not be treated as a permit violation in the first place and that it was improper to require permittees to prove an upset as an affirmative defense in a court action. Commenters relied on *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) in support of this position.

The Agency believes that this upset provision is fully consistent with all legal opinions dealing with this issue. Most Courts have concluded that no upset provisions need be provided. In *Weyerhouser Co.* v. *Costle*, 590 F.2d 1011, 1056–58 (D.D. Cir. 1978) and *Corn Refiners Ass'n* v. *Costle*, (No. 78–1069, 8th Cir. April 2, 1979) the District of Columbia and the Eighth Circuits recently held that EPA's exercise of its enforcement discretion would adequately deal with any possible problem. *See also United States Steel* v. *Train*, 556 F.2d 822, 842, n.3 (7th Cir. 1977); *American Petroleum Institute* v. *EPA*, 540 F. 2d 1023, 1035–36 (10th Cir. 1976). Although the Agency will continue to exercise its enforcement discretion, EPA believes that all parties will benefit from allowing permittees an opportunity to present their claims in a formal judicial proceeding. This provision also meets the requirements set out in those decisions which required some form of upset relief. See *Marathon Oil Co.* v. *EPA, supra; FMC Corp.* v. *Train*, 539 F.2d 973, 986 (4th Cir. 1976). In *Marathon*, the Court of Appeals for the Ninth Circuit clearly indicated that the burden of proof and the obligation to provide relevant evidence establishing that the noncompliance could not have been prevented could be placed on the permittee. The requirement that an upset be established as an affirmative defense is an efficient and effective method of implementing this obligation. The only alternative approach would be to require an administrative determination with respect to upsets. However, Congress has indicated, in reference to section 309(a)(5)(B) of the Act, that enforcement actions should not be bogged down in administrative determinations or showing of fault. See *A Legislative History of the Clean Water Act of 1977*, Senate Committee on Environment and Public Works, 95th Cong., 2d sess. (1978) at 464–65 (hereafter *CWA Legis. Hist.)*. Although the upset provision does authorize permittees a limited opportunity to make such showings, it is properly placed in the context of judicial determinations in an enforcement action.

Commenters have not been able to identify significant impacts from this approach. The Act contains no provision for administrative penalties, and sanctions can only be imposed after a judicial determination of a violation. Further, noncompliance reporting requirements exist independently of whether the noncompliance was caused by an upset. One commenter did note that under § 122.31, a permit may be withdrawn by administrative action for previous violations. It is agreed that an opportunity to prove upset must be afforded in such cases.

While the Agency will, of course, consider the possibility of upset where relevant, it must be stressed that upsets are exceptional events which should occur infrequently. The upset provision should not be construed as providing relief where there is a pattern of permit violation.

In response to comments, § 122.14(l)(1) has been revised to indicate that noncompliance due to operational error or lack of preventive maintenance does not constitute an upset. EPA believes these revisions clarify the situations listed in the original proposal.

Commenters objected to the requirement that a specific cause be identified in establishing an upset. They claimed that even properly run facilities may have upsets for which no particular cause can be found. However, requiring permittees to identify the cause of noncompliance is an essential aspect of placing the burden of proof on the permittee to show that an upset was beyond its control. If upsets could be proved merely by asserting that a facility was being properly run at the time of noncompliance, the burden of proof would be reversed and the prosecution would be required to establish the cause of the upset to rebut this showing. Such an approach would make enforcement extraordinarily difficult. Congress intended that prosecution for permit violation be swift and simple, and this provision implements that objective while allowing permittees to demonstrate that noncompliance could not be avoided. Further, the requirement that a cause be identified will encourage permittees to examine the operation of their treatment system and will help ensure that noncompliance is not repeated. Finally, where a cause of noncompliance cannot be identified, the Agency may still exercise prosecutorial discretion not to enforce in situations where it is not warranted.

Some commenters asserted that the upset provision would undercut the States' authority to impose stricter effluent limitations. In response to this concern, EPA has revised this section to make clear what was originally intended—the upset provision applies only to violations of technology-based effluent limitations established pursuant to sections 304 and 306 of the Act. This change is consistent with the *Marathon* decision, and necessary to achieve the goals of the Act. Violations of stricter State standards or water quality based effluent limitations are not subject to a defense of upset.

§ *122.15 Applicable limitations, standards, prohibitions and conditions.*

§ *122.15(f)*—Paragraph (f) listed situations where limitations more stringent than those required by sections 301(b)(1)(A), 301(b)(1)(B), 301(b)(2)(B), and 306 of the Act would be required. Some commenters suggested an additional situation, where necessary to conform to applicable water quality requirements under section 402(a)(2) of the Act, when the discharge affects a State other than the certifying State. EPA agrees and has added § 122.15(f)(4) to cover this situation.

Some commenters were concerned that paragraph (f)(8), which indicated that additional or more stringent permit limits could be established based on "fundamentally different factors," might be misinterpreted to mean that fundamentally different factors variances could only result in additional or more stringent limits. To address their concerns, EPA has added a comment indicating that less stringent permit limits may also be requested based on fundamentally different factors. Further details as to fundamentally different

factors variances are found in Part 125, Subpart D, and related preamble discussion.

Paragraph (f)(9), which provides for incorporation of additional requirements, conditions or limitations into a new source permit based on the National Environmental Policy Act or section 511 of the Clean Water Act, provides the basis for the incorporation into NPDES permits of conditions related to an Environmental Impact Statement (EIS). Some commenters suggested nonwater related EIS condition cannot be placed in permits. However, EPA believes that EIS-related conditions may be imposed in NPDES permits in order to minimize any adverse impacts on the environment identified in the EIS, regardless of their relation to water pollution or water quality problems. (See September 23, 1976, Memorandum of the General Counsel, entitled *EIS Regulations for NPDES Permits* and former 40 CFR § 6.918). To do otherwise would negate the purpose and intent behind the requirement that an environmental impact statement be prepared.

Commenters also argued that the Act does not authorize the case-by-case establishment of technology-based permit limitations as contemplated by paragraph (f)(10). This argument is unpersuasive in light of section 402(a)(1) of the Act, which authorizes the establishment of "necessary" conditions in the absence of effluent limitations guidelines. Moreover, this argument has been rejected in the courts and by long-standing EPA policy (see preamble discussion to Part 125, Subpart A). Thus, this section has not been changed.

A new paragraph § 122.15(f)(11) has been added to assure consistency with the pretreatment regulations (40 CFR Part 403) which may, in some cases, require more stringent limitations.

§ *122.15(g)*—A number of commenters questioned the relationship between "best management practices," under proposed § 122.3(f) and § 122.15(g); and "operating practices" under proposed § 122.15(i). Since best management practices include operating practices, the two sections have been combined.

Thus, paragraph (g), has been revised to clarify that "best management practices" (BMPs) may be required in permits where numeric effluent limitations are infeasible, or where reasonably necessary to achieve effluent limitations and standards. These BMPs are similar to those authorized pursuant to section 304(e) of the Act (which is covered in detail in Part 125, Subpart K); however, they are authorized by section 402 and EPA's authority has been so recognized in *NRDC* v. *Costle*, (Runoff Point Sources). In addition, a comment has been added which provides examples of BMPs which could be required under paragraph (g). See also preamble discussion under proposed § 122.3.

§ *122.15(i)*—Proposed paragraph (j) (now paragraph (i)) which prohibited "backsliding" in permit levels of control with limited exceptions, has been retained. The concerns of some commenters about the effect of paragraph (j), where permits are based on interim final effluent guidelines which are more stringent than final effluent guidelines, have been addressed in § 122.31. Paragraph (j) is superseded in these cases by § 122.31(e)(4), which allows limitations based on more stringent interim final limitations to be modified based on less stringent final guidelines if a modification request is made in a timely manner. In addition, § 122.15(i)(3) now indicates that there is a third instance where "backsliding" will be allowed, i.e., for conventional pollutants. Congress directed EPA to shift its pollution control technology to toxics. (See *CWA Legis. Hist.*, Statement of Managers, at 269). The 1977 amendments to the Act (sections 301(b)(2)(E) and 304(b)(4)) set out a completely new test for conventional pollutants. The new requirement, known as best conventional technology (BCT), is based on a comparison to the cost of secondary treatment and a cost/benefit test. The test sets best practicable technology (BPT) effluent guidelines as a floor and best available technology (BAT) as a ceiling. In a small number of cases, where no promulgated guidelines were in effect at the time of initial permit issuance, (i.e., where a section 402(a)(1) limit is very stringent) the test may result in effluent limits for BCT less stringent than limitations in the original permit for BPT. In these cases, EPA believes that, consistent with Congressional intent, backsliding to BCT should be allowed.

§ 122.16 Calculation and specifications effluent limitations and standards.

§ *122.16(a)*—A number of commenters suggested that "actual production," as used in proposed § 122.16(a) as the basis for calculating permit limitations, standards or prohibitions, should be defined or clarified.

In response to these suggestions, a comment to § 122.16(a) has been added, which explains that permit limitations will be calculated based upon a reasonable measure of production, taking into account historical data in the case of existing facilities, or market data for new or significantly modified facilities or processes. In the case of new or modified facilities or processes, permit limitations are subject to subsequent modification once a pattern of production figures become available.

Other commenters questioned whether proposed § 122.16(a) was intended to apply to POTWs, and if so, how? In response to these comments, EPA has added a new § 122.16(a)(3) which states that POTW permit limitations are to based on design flow. Basing POTW permit limitations on design flow will allow growth, while at the same time maintain the proper level of treatment due to the 85% removal requirement in 40 CFR Part 133. Since the percentage removal requirement is not applicable to industries, their limits must be based on actual production.

In response to a specific invitation for comments in the August 21, 1978, preamble discussion on proposed § 122.16 some commenters favored the use of an alternative effluent limitation approach for calculating permit limits. The approach described in that preamble was: (1) Determine a total technology-based effluent limitation for the entire plant and (2) relocate this total discharge among the outfalls, as long as the plant continues to meet the overall technology-based requirement. EPA is still evaluating this proposal. Should it prove appropriate within the constraints of the Act, EPA may adopt this alternative approach in future rulemaking. This portion of § 122.16(a) is promulgated as proposed.

§ *122.16(c)*—A number of commenters suggested that certain terms in § 122.16(c) (Proposed § 122.16(b)) such as "maximum daily discharge", "average monthly discharge" and "average seven consecutive day discharge" be defined. These definitions have been added to § 122.16(c) and for clarity the term "average seven consecutive day discharge" has been replaced by "average weekly discharge".

Several commenters questioned the distinction between the terms used in § 122.16(c) for the calculation of permit limitations of POTWs and discharges other than POTWs. The distinction between these two general types of discharges is based upon existing requirements in effluent guidelines and its secondary treatment information (40 CFR Part 133). In order to maintain consistency with effluent guideline and secondary treatment requirements, § 122.16(c) has not been changed, except as discussed earlier.

A number of commenters urged that the permitting authority should have the

discretion to require either mass- or concentration-based limitations, depending on the nature of the process and the receiving waters. This approach has not been adopted, except as provided in § 122.16(d), because the Agency continues to believe that most permit limitations standards and prohibitions must be expressed quantitatively in terms of mass in order to preclude the use of dilution as a substitute for treatment. Paragraph (d) of § 122.16 allows the use of concentration limits under circumstances in which administrative or technical problems make the use of mass limits impracticable or inconsistent with other requirements such as promulgated effluent guidelines or pretreatment standards. (EPA has decided to state pretreatment standards in terms of concentration and wherever possible to provide an equivalent mass per unit of production, see preamble discussion to 40 CFR Part 403, June 26, 1978, 43 FR 27743–27744).

§ *122.16 (f) and (g)*—Paragraph 122.16(g) (proposed § 122.16(f)) provides for issuance of permits based on net terms rather than gross terms. Dischargers may receive a credit, under specific conditions, for pollutants present in their intake waters. Numerous commenters objected to the conditions under which a credit would be granted and suggested that the various conditions be deleted. EPA has not deleted any of the conditions necessary for achieving a credit allowance and, therefore, receiving a permit calculated on a net basis. EPA considers these conditions as reasonable and consistent with court decisions and also believes they are necessary for achieving the goals of the Act.

The limitations upon the net/gross provision in these final regulations grow out of the technical basis on which effluent limitations guidelines are established. Without exception, EPA has developed effluent limitations guidelines on a gross, not a net, basis. The guidelines assume that a treatment technology will achieve a final effluent concentration which is independent of fluctuations in influent concentration, within a very broad range. (For a discussion of the independence of effluent concentration from raw waste concentration in the petroleum refining industry, for example, see 40 FR 21939–21949 (May 20, 1975).) The effluent levels achieved by good treatment may be close to background levels in some receiving waters. This fact underlines the mischief which can result from an indiscriminate application of net limitations. A plant may have a treatment system which, properly operated, achieves a suspended solids limit of 15 mg/l with a raw waste between 150–600 or more mg/l. If the intake concentration is 15 mg/l, this will have no effect upon the achievable final effluent concentration. Yet indiscriminate application of the "net" requirement would allow the discharger to discharge 30 mg/l, or twice the concentration which a well-run treatment system should achieve. For this reason, EPA has restricted the application of the "net" allowance to those cases where the treatment required by the Act will not remove the pollutants in the intake water (such as, for example, where cooling water is discharged without settling).

Many commenters suggested that proposed § 122.16(f) (now § 122.16(g)(1)) be revised to read that permits "shall" be written on a net basis rather than the discretionary "may" in the proposed regulation. EPA has accepted these comments in part. EPA does not believe every permit should automatically be written on a net basis (assuming the conditions of § 122.16(g) are met) because some dischargers may not want to do the sampling, etc., necessary to develop a net permit. Therefore, the discharger must actually request calculation on a net basis at the time of permit application. However, EPA does believe, if calculation on a net basis *is* requested, and all the conditions of § 122.16(g) are met, the permit should be written on a net basis. To this extent, EPA has accepted the suggestion of these commenters.

Several commenters objected to the requirement in § 122.16(g)(1) (proposed § 122.16(f)) that limits the availability of credit to those dischargers who discharge their effluent into the same body of water from which they received their influent. While a discharger should not be held responsible for pollutants already existing in its water supply if the discharge is into the same body of water from which the discharger took water, the same reasoning cannot support allowance of a credit where the discharge is into another body of water. The grant of a credit in the latter case would allow a discharger to transfer pollutants from one body of water to another, thus, adding pollutants to receiving waters for the first time. An exception to this rule is where the discharge is made into a tributary of the stream from which the influent was taken. In such a case a credit may be allowed since the tributary will be considered to be the same body of water as the downstream lake or river for the purpose of § 122.16(g).

A number of commenters objected to proposed § 122.16(f)(2) (now § 122.16(g)(2)) as being vague. The intent of this section was to deny calculation of effluent limitations on a net basis if the discharger's influent treatment system (to clean water for the manufacturing process) or the wastewater treatment system entirely removes specific pollutants which had been present in the intake waters and are limited by the dischargers permit. This intent has been clarified in § 122.16(g)(1)(i)(B).

The provision that a credit shall only be allowed for pollutants present after any treatment steps have been performed on the intake water is also repeated in § 122.16(g)(2) (proposed § 122.16(f)(4)). Some commenters objected to this requirement suggesting that EPA has no jurisdiction to regulate intake pollutants but may only regulate pollutants added by the discharger. See *Appalachian Power Co.* v. *Train*, 545 F.2d 1351, 1377 (4th Cir. 1976). In *Appalachian Power* the court said that EPA only had jurisdiction over pollutants added by the discharger. EPA believes that when a source changes the character or concentration of an intake pollutant and then discharges it, the source is, in effect, adding a pollutant to the water. For example, one step in the pretreatment of intake water in many industries is chlorination to protect pipes and process equipment from algae formation. This treatment will result in chlorination of the intake pollutants thereby rendering them more toxic. When this occurs, the discharger should not be allowed to pass through those pollutants in its waste stream without some responsibility for treatment. If the discharger can demonstrate that the character or concentration of the pollutants has not changed after pretreatment, then a credit for those pollutants will be allowed. These determinations will have to be made on a case-by-case basis.

A credit may be allowed for the amount of pollutant remaining in a discharger's intake water after any treatment of the intake waters and wastewater treatment. Thus, if a discharger treats its intake water and removes 90 percent of a pollutant, the discharger may be entitled to a credit for the remaining ten percent left in the water used in the plant process. If the discharger's waste treatment system also removes 90 percent of the pollutant, the discharger's credit of ten percent shall be reduced by 90 percent because the pollutant remaining in the influent is being treated a second time, thereby, reducing the pollutant by an additional

90 percent. Therefore, the discharger's total credit following both treatments would be one percent of the pollutant in the original influent. To clarify this result, the word "incidentally" was deleted from § 122.16(g)(2) (proposed § 122.16(f)(4)).

Some commenters objected to the requirement in § 122.16(g)(2) (proposed § 122.15(f)(4)) that a credit could not be granted where the pollutants in the intake waters were "chemically or biologically" different from the discharge water. This requirement was considered vague and overly broad. EPA disagrees. Generic pollutant parameters such as biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC) or total suspended solids (TSS) are broad measurements of a number of specific chemicals or materials. TSS, as measured at an intake point, may consist mostly of river silt; but after being used in a process the TSS, as measured at the outfall, may include substantial quantities of metals or other materials with toxic characteristics. EPA considers it essential to avoid allowance of credit when the pollutants in the discharge water vary significantly in toxicity from the pollutants in the intake water. Dischargers should not be allowed an unrestricted right to add more toxic pollutants to their discharge waters.

Finally, a new sentence has been added to § 122.16(g)(2) stating that a credit not be allowed for the discharge of pollutants which have been made more concentrated by a discharger (the third sentence has been similarly revised to state that the pollutants discharged cannot vary physically, e.g., in concentration from the pollutants in the intake water). For example, when waters are taken from a stream and used in a cooling pond, this use may result in the loss (through evaporation or otherwise) of significant amounts of the water thereby concentrating the remaining pollutants. This action by the discharger—causing the character of the water to change by increasing the amount of pollutants per volume of water—constitutes an addition of pollutants to the stream. Therefore, a source will not be allowed to discharge this water without treatment.

§ *122.16(h)*—A number of comments were received on the subject of batch discharges, under § 122.16(h), suggesting that definitions of terms used in § 122.16(h) be provided, and that restrictions on batch discharges be relaxed.

Paragraph 122.16(h) has been redrafted. The Agency's intent is unchanged, however, the terminology has been clarified. As proposed, the paragraph used the terms "continuous," "batch" and "intermittent" discharges but did not define them. In final form, paragraph (c) now defines "continuous discharge" and paragraph (h) now deals with "noncontinuous discharges." In addition, paragraph (h) now clearly indicates that the requirements of § 122.16 (c) and (d) (proposed paragraphs (b) and (d)) are applicable to the discharges described in this paragraph. Subparagraph (h)(2) has been revised to clarify that limits refer to specific pollutants.

Several commenters argued that batch discharges should be limited only in cases where water quality standards would be violated. Such a provision would be inconsistent with the Act's technology-based treatment requirements which apply regardless of water quality impacts.

§ *122.16(i)*—Many commenters urged that the Agency should not impose limitations and standards upon internal waste streams under § 122.16(i) and questioned the Agency's authority to do so. Other commenters urged that the Agency should broaden the circumstances under which internal waste stream limitations would be imposed. EPA continues to believe that the Act provides authority to regulate internal waste streams in appropriate circumstances. The Agency's intent regarding the imposition of limitations upon internal waste streams has been clarified by means of a comment to § 122.16(i) which states that limitations on internal waste streams will not be imposed routinely, but only under exceptional circumstances which make monitoring of the final discharge point impractical or infeasible. The comment also provides examples of where internal waste stream limitations might be necessary.

§ *122.17 Schedules of compliance.*

Several commenters thought that proposed § 122.17(e) (now § 122.17(d)) provided for a schedule of compliance which allowed compliance after the statutory deadline. This was not EPA's intent, so to avoid any possible confusion this paragraph has been revised to clarify that compliance with statutory treatment requirements must be as soon as possible, but no later than the applicable deadline imposed by the Act.

In response to comments, § 122.17(c) has been redrafted to explain in greater detail the use of two alternative schedules of compliance in cases of planned or contemplated plant "shut-down" or discharge to a publicly owned treatment works. These two schedules, when read together will indicate a critical date for the decision to cease discharge rather than proceed toward compliance—and irreversible date on which steps toward compliance must be taken. No later than this date, if the permittee does not intend to construct the required treatment technology, it must make a firm public commitment to cease discharge. Examples of firm public commitment have been provided in the Comment to § 122.17(c).

Some commenters also thought that the requirements of § 122.17(c) should not apply where a discharge to a POTW is planned, but should apply where Federal funding problems, beyond the control of the permittee, delay the planned "tie-in" to the POTW. In cases of this sort, paragraph (c) must be considered in conjunction with sections 301(i)(2) and 309(a) of the Act, which authorize limited extensions of statutory compliance dates. EPA has no intention of negating these provisions of the Act through the operation of paragraph (c).

A new paragraph, § 122.17(e) has been added to deal with the situation where a POTW received a section 202(a)(2) innovative and alternative wastewater technology grant. POTWs constructing facilities with this grant money may not achieve the statutory treatment limitations because the innovative technology, as applied, may not work as planned when the facility is completed. Section 202(a)(3) of the Act recognizes that the facilities may have to be modified or replaced and thus, to encourage innovative and alternative technologies, authorizes grants of 100 percent of these costs if the Administrator determines that certain conditions are met. EPA believes that in order for the Permits Program and the Construction Grants Program to work in concert, the permit schedule of compliance should be modified if this unique type of construction grant is awarded. Thus, this new paragraph provides that the permit may be modified to extend the schedule to account for the amount of time lost in building the first treatment plant. This new paragraph does not, however, authorize EPA to extend the statutory date for compliance. If the POTW cannot achieve compliance in time, the schedule will not be extended. However EPA, in it exercise of prosecutorial discretion, may consider the grant under section 202(a)(3) when assessing the POTWs efforts to comply with statutory treatment requirements.

§ 122.20 Monitoring.

Several commenters suggested that § 122.20(b), which requires the Director to specify monitoring requirements in permits, should be deleted. No change has been made in this paragraph. EPA believes that there is an important need to tie permit limits to specific monitoring equipment or methods, such as biomonitoring, in complex situations involving toxic pollutants.

§ 122.20 (c) and (d)—Section 122.20 has been amended to provide guidance for establishing sampling and measuring requirements in NPDES permits. The section also requires that once monitoring requirements are established for an NPDES permit such requirements cannot be changed unless the permit is modified in accordance with § 122.31.

In establishing monitoring requirements there are several considerations. Many effluent limitation guidelines have been determined by statistical analysis of the pollutant levels found in a large number of composite samples or in grab samples. Consequently, a permitting authority may require that sampling for compliance monitoring be done in a manner consistent with the data base used in setting the limitation guideline. The development documents for effluent limitation guidelines often indicate the general method of sampling used to accumulate the data for guidelines setting. The revisions to § 122.20(c) indicate that less detailed monitoring may be appropriate in some cases, but once a permittee has accepted a given set of monitoring requirements, the permittee is bound by that approach unless the permit is modified for other reasons, in which case monitoring requirements may be reexamined.

§ 122.22 Reporting of monitoring results and compliance by permittees.

Several commenters objected to § 122.22(a) because it could be read to require permittees to submit monitoring results to both EPA and where appropriate the NPDES State. In response to these comments, EPA has substituted the term "Director" for the proposed terms "Enforcement Division Director and . . . Director" to indicate that only one report must be submitted to the appropriate permit issuing authority (unless otherwise specifically required).

Several commenters objected to the requirements for reporting of monitoring results for pollutants not limited in the permit. However, section 308 of the Act clearly authorizes such a requirement. Even in those situations where monitoring is not required, it is clear that if the permittee has conducted monitoring activities, they should be reported to provide as complete and accurate a picture of the discharge as possible.

Other commenters suggested that § 122.22(a) should be limited to monitoring done at the monitoring points specified in the permit. EPA has not accepted this suggestion since it would allow circumvention of this requirement by sampling at a point other than that specified in the permit.

Several commenters suggested that the imposition of a maximum $10,000 fine per violation (e.g., false statement) (§ 122.22(d)) is inconsistent with section 309(c)(2) of the Act. This is a misreading of the Act, which states that any person who knowingly makes "any" false statement should be liable up to $10,000. If this section is violated several times as a result of several false statements, each violation is separately subject to the statutory fine.

§ 122.23 Quarterly noncompliance reporting.

Many comments were received indicating that definitions of "major" and "minor" permittees should be provided in the regulations. However, "major" and "minor" are not permanent classifications. Rather, these classifications are intended to provide EPA and the States with flexibility to establish priorities for permitting and compliance activities so as to best utilize existing resources. Thus, it is more appropriate that information on "major" and "minor" classifications be provided in annual guidance, rather than fixed in these regulations. However, in order to emphasize that the "major" or "minor" classification relates to the nature of the discharge and not the nature (or size) of the facility, the regulations have been revised to read major [or] minor "discharger" rather than "permittee" (see, e.g., § 122.23(a)).

Several commenters objected that the quarterly reporting requirements were too frequent, too resource-intensive, and not useful. However, the regulation were designed to minimize the amount of reporting and to focus on the most significant instances of noncompliance by major dischargers in the narrative portion of the report. In fact, the proposed (and final) regulations change the existing requirement by adding narrative information on noncompliance with effluent limitations by major dischargers, continuing the existing narrative reporting requirements on schedule violations by major dischargers, and reducing the required reporting on noncompliance by minor dischargers to annual statistical reporting. EPA believes that these changes will result in less resources devoted to preparing reports while providing the most useful, up-to-date information to interested members of the public.

Many comments were received concerning § 122.23(b)(3). Specifically, concern was expressed that serious effluent limitation violations of short duration would not be reported. Other commenters stated that the definition of a pattern of noncompliance did not adequately handle noncompliance for parameters requiring continuous monitoring. The concern was expressed by many that our definition would result in almost continuous reporting of many minor violations. In response to these comments, two changes have been made. First, the definition of a pattern of noncompliance has been changed by adding the sentence: "This pattern of noncompliance is based on violation of monthly averages and excludes parameters where there is continuous monitoring, such as pH". Second, a paragraph has been added that provides for the reporting of a significant discharge of a pollutant that otherwise would not be reported.

Many other comments were received requesting clarification of requirements for format, copying and distribution. We do not believe such specific details are appropriate for regulation. These concerns will be addressed in guidance issued by the Office of Enforcement on report preparation.

§ 122.31 Modification, revocation and reissuance, and termination.

The majority of the comments on proposed § 122.31 dealt with two general areas. First, many commenters thought that permit modification or revocation was inconsistent with a fixed term permit and the concept of finality as expressed in section 402(k) of the Act. However, the protection provided by section 402(k) is expressly limited by section 402(b)(1)(C) of the Act, which states that permits may be modified or terminated (revoked) for cause, "including but not limited to" three specified situations which are representative examples, not an exhaustive list. Other situations may also constitute good and valid cause for permit modification or revocation. EPA believes that "cause," as defined in § 122.31, falls well within the authority of section 402(b)(1)(C) of the Act, notwithstanding section 402(k).

Second, a large number of commenters, while recognizing EPA's

authority to modify or revoke permits, suggested that causes for revocation and causes for modification should be listed separately since absolute revocation is a more "severe" measure. EPA agrees with these commenters and has separated and reduced the causes for absoulte revocation. For clarity in distinguishing between the methods used for changing or terminating a permit, three terms are used in § 122.31 and throughout these final regulations: "modification," "revocation and reissuance" and "termination." "Modification" is used where existing permit conditions are changed but the permit expiration date remains the same. "Revocation and reissuance" is used to describe the action to revoke an existing permit and reissue a new permit which provides the permittee the protection of a new five-year permit. Finally, "termination" means the revocation of an existing permit, where a new permit is not reissued.

Proposed § 122.31(d) listed thirteen situations which constituted "cause" for permit modification or termination. In accordance with EPA's decision to separate cause for "termination" from cause for permit "modification" or "revocation and reissuance," a new paragraph (e) has been added to supplement paragraph (d). In the final regulations paragraph (d) contains five situations where a permit can be either "modified," "revoked and reissued" or "terminated." These include the three situations listed in the Act plus two other situations. The first situation is where information indicates that the discharge poses a threat to human health or welfare (see discussion of paragraph (d)(4)). The second situation, a change in ownership, was added in response to comments (see discussion of paragraph (d)(5)).Paragraph (e) lists all other situations which are cause only for permit "modification" or "revocation and reissuance."

Several commenters suggested additional situations that should constitute "cause" for permit modification. The suggested causes included: revisions to the best practicable waste treatment technology standards; promulgation of regulations governing the disposal of sewage sludge under section 405(d) of the Act; and the inability of a permittee to meet permit limitations despite installation of technology contemplated by the permit. EPA does not believe that these situations constitute "cause" for modification or revocation and reissuance. However, in response to comments, two additional "causes" have been added: (1) § 122.31(d)(5), a change in ownership or control of a source which has a permit, consistent with § 122.12(d) (where no changes in the permit are necessary, the permit may be modified but is not subject to public notice or an opportunity for a hearing in accordance with § 122.31(f)(4)), and (2) § 122.31(e)(7), failure of an NPDES State to notify an affected State of a discharge that originates in the NPDES State as required by section 402(b)(3) of the Act.

One commenter also felt that procedural safeguards surrounding the revocation and reissuance, and termination of a permit were inadequate and did not meet the requirements of 5 U.S.C. section 558(c). In response to this concern, it should be noted that §§ 122.1(b)(2) and 122.30 specifically state that all actions will be taken in accordance with the procedural requirements of 40 CFR Part 124, thus providing adequate procedural safeguards.

§ *122.31(d)*—Section 122.31(d)(1) states that "violation of any term or condition of the permit" constitutes cause for permit modification, revocation and reissuance, or termination. Many commenters objected to this and specifically to the use of the word "any" since it did not distinguish between serious, repeated, or willful violations and minor, single, or inadvertent violations. EPA understands that these commenters fear that under the proposed regulations, a single, minor permit violation could result in permit termination and subject the discharger to action for discharging without a permit. While this is an unlikely case, the Act specifically states that violation of any condition of the permit constitutes cause for permit modification or termination. Consequently, EPA has not revised this paragraph; however, the permitting authority will normally consider the seriousness of the violation and the use of other enforcement actions before deciding to terminate a permit under this paragraph.

Paragraph 122.31(d)(2) states that "failure of the permittee to disclose fully all relevant facts or misrepresentation of any relevant facts by the permittee" constituted cause for permit modification, revocation and reissuance, or termination. Many commenters felt that this subsection should require knowing or willful failure to disclose facts. As with proposed § 122.31(d)(1), EPA has not made the suggested change because this paragraph mirrors the language in the Act. In response to comments, however, EPA has clarified the final clause in this paragraph to indicate that misrepresentation of any "relevant" fact is intended to be subject to this paragraph.

The last sentence to both proposed §§ 122.31 (d)(1) and (d)(2) stated that the two situations, violation of any term or condition of a permit or failure of a permittee to disclose all relevant facts, constituted cause for termination, revocation and reissuance, or modification only when such changes would make the permit more stringent. Many commenters strenuously objected to the more stringent requirement in the last sentence and gave examples of when a permit should be made less stringent. Although EPA believes that circumstances justifying a less stringent permit will be extremely rare, comments suggesting such circumstances were persuasive. Accordingly, EPA has deleted the more stringent modification restriction in paragraph (d) (1) and (2) to allow less stringent modifications if justified.

In response to comments which pointed out that proposed § 122.31(d)(3) did not properly paraphrase the statutory definition of "cause" found in section 402(b)(1)(C)(iii) of the Act, EPA has revised this paragraph to be consistent with the Act.

Proposed § 122.31(d)(4) stated that "information indicating the permitted discharge poses a threat to human health or welfare" constituted cause for permit modification or revocation. While some commenters thought this paragraph exceeded EPA's statutory authority, other commenters stated that this provision was consistent with EPA's authority under section 402(k) of the Act. Because EPA concurs with the latter comments and believes that such a provision is consistent with the Act, paragraph (d)(4) is retained as a final regulation. In response to comments suggesting that the "human health or welfare" provision should be "cause" only to modify a permit to make it more stringent, and in keeping with EPA's decision to allow permit termination only in certain limited circumstances, EPA has placed this "cause" under the section which authorizes termination of the permit in addition to modification or revocation and reissuance. Many commenters also felt that this paragraph should be limited to situations where there was a "substantial showing" or "verification" as to the likelihood of an adverse impact on human health. EPA has not adopted these suggestions but points out that the permittee remains free to challenge the existence of a threat to human health or welfare in any proceeding to modify, revoke and reissue, or terminate a permit.

Proposed § 122.31(d)(5) indicated that a discharger's failure or refusal to allow authorized representatives of the permit issuing authority to enter, inspect, or copy materials on the premises as provided in proposed § 122.14(f) constituted cause for permit modification or revocation. Many commenters suggested deletion of this provision because failure to allow such entry, inspection, or copying was a cause for enforcement action under sections 308 and 309 of the Act. Other commenters stated that the provision was inconsistent with the Supreme Court's decision in *Marshall* v. *Barlow's Inc.*, 436 U.S. 307, (1978). In response, EPA has deleted proposed § 122.31(d)(5). Proposed § 122.14(f) was also revised in response to comments. See discussion of § 122.14(f).

§ *122.31(e)*—Proposed § 122.31(d)(6) (now § 122.31(e)(1)) indicated that material and substantial alterations or additions to the discharger's operation constituted cause for permit modification or revocation. In response to comments requesting clarification as to what constitutes "material and substantial alterations or additions," a parenthetical cause has been added to indicate that such change includes situations covered by § 122.14(e) which requires a new permit application.

Some commenters asked under what circumstances would proposed § 122.31(d)(7), now § 122.31(e)(2), be used? Section 122.31(e)(2) might be appropriate if a permit misapplied State water quality standards (in effect at the time of permit issuance) and only secondary treatment was necessary. This section could be used to modify the permit to reflect the proper level of treatment. In addition, § 122.31(e)(2) has been revised to indicate that it can be used for revising more than effluent limitations, e.g., monitoring requirements.

Proposed § 122.31(d)(8) (now § 122.31(e)(3)) indicated circumstances under which revision or withdrawal of EPA promulgated effluent limitations guidelines constituted cause of permit modification or revocation. Many commenters objected that the requirement to file a modification request within ninety (90) days after the Federal Register notice of withdrawal or revision was unreasonable, particularly since the scope of the relaxed guideline or standard may not be known. EPA continues to believe that Federal Register notice is appropriate and adequate and that 90 days is sufficient time for a discharger to determine the scope of the revision or withdrawal.

Several commenters suggested that withdrawal or revision of Water Quality Standards of EPA promulgated interim final effluent limitation guidelines should also constitute cause for permit modification. EPA agrees with these commenters and has revised § 122.31(e)(3) accordingly.

Other commenters suggested modifications should be allowed to make a permit less stringent, when the permit was issued based upon section 402(a)(1) of the Act and the pemit limitations are more stringent than subsequently promulgated effluent guidelines. EPA cannot allow modification to make a permit less stringent under these circumstances since a less stringent modification would constitute unwarranted "backsliding" in pollution control. See *U.S. Steel* v. *Train*, 556 F.2d 822, 846 (7th Cir. 1977). Paragraphs 122.15(i)(1), (2) and (3) lists the only exceptions to this principle.

A few commenters thought there was no need to modify a permit when EPA-promulgated effluent guidelines limitations were withdrawn, revised, or judicially remanded (see proposed § 122.31(d)(8) and (9), now § 122.31(e)(3) and (4)) since the guidelines were no longer applicable or enforceable. These comments indicate a fundamental misconception as to the enforceability of individual permit terms and conditions; permit terms and conditions remain enforceable unless and until they are modified, revoked, or judicially or administratively stayed.

Several commenters objected to proposed § 122.31(d)(11), (now § 122.(e)(6)) which indicated by reference to proposed § 122.14(d) and § 122.15(b) that promulgation of effluent standards limitations or prohibitions under sections 307(a), 301(b)(2)(C) and (D) and 304(b)(2) of the Act constituted cause for permit modification or revocation. Since that paragraph incorporated the requirements of former 40 CFR § 124.46, that requirement has not been changed. However, two additional cross references to § 122.17 (causes for modifications to schedules of compliance) have been added for completeness.

Proposed § 122.31(d)(12), stated that failure of the permit "to apply any applicable standards or limitations" constituted cause for permit modification or revocation. Many commenters objected to that paragraph as unfairly penalizing the permittee for failure of the permit issuing authority to write the permit properly. Other commenters indicated that any attempt to apply limitations or standards which were not in effect at the time of permit issuance constitutes unauthorized overreaching by the permit issuing authority. EPA has carefully considered these comments in light of section 402(k) of the Act and has concluded that, except as provided in § 122.31(e)(7), a permit should not be modified to incorporate new standards or limitations. Accordingly, EPA has deleted that paragraph.

Proposed § 122.31(d)(13), defined cause to include "other circumstances . . . [which] have materially and substantially changed since the permit was issued." Several commenters suggested that this subsection was either too vague or too expansive and should, therefore, be deleted. Although it was not intended that this paragraph be used as a carte blanche to allow permit modifications, EPA understands and partially agrees with the fears of some commenters that this paragraph could be so used. Accordingly, that paragraph has been deleted.

§ *122.31(f)*—Proposed § 122.31(e) (now § 122.31(f)) listed six uncontested actions amending minor provisions of an effective permit that were not subject to the usual procedures of notice and opportunity for hearing unless the modification would render the permit less stringent. Several commenters thought that it was inconsistent to allow only more stringent modification without public notice and an opportunity for hearing and not to allow less stringent modifications in that same manner. EPA believes that a requirement for public notice and opportunity for a hearing for less stringent modifications is necessary, since the public has a right to know of any permit modifications which would render a permit less stringent and could, therefore, adversely affect the environment. The only person who would be affected by a more stringent modification is the permittee and the permittee receives notice of and retains the right to contest any more stringent modifications. If the permittee contests the modification, § 122.31(f), by its terms, is not applicable and the requirements of Part 124 come into effect.

Several commenters suggested that a permit modification to require less frequent monitoring or reporting should be an insignificant modification under § 122.31(f). Since less frequent monitoring or reporting would render a permit less stringent, EPA, for the reasons stated above, believes public notice and an opportunity for a hearing is required.

Other commenters suggested various changes to proposed § 122.31(e)(3) (now § 122.31(f)(3)) to allow more than the proposed 120 days slippage not only for interim compliance dates but also for final compliance dates. An extension of the final compliance date clearly renders the permit less stringent and therefore EPA has not made the suggested changes. EPA further believes that a slippage of more than 120 days in an interim compliance date would, in most cases, interfere with the attainment of a final compliance date. In the development of the *Interim National Municipal Policy and Strategy* EPA carefully considered the effect of the Construction Grants process on the achievement of interim compliance dates by municipal permittees. EPA concluded that 120 days slippage in interim compliance date is sufficient to accommodate the Construction Grants process and that, with careful grants management, EPA is hopeful that even slippages of 120 days will not occur in the future.

§ 122.41 Disposal of pollutants into wells, into publicly owned treatment works, or by land application.

Proposed § 122.41(a) requiring State permits for the disposal of pollutants into wells has been moved from Part 122 to Part 123 because it is applicable solely to NPDES States.

§ 122.41(a)—One commenter recommended that disposal of wastes by land application, as well as by well injection or routing to a POTW should be included in § 122.41. EPA agrees, and this change has been made.

A number of commenters objected to the provision in proposed § 122.41(b) (now § 122.41(a)) requiring adjustment of effluent limitations for discharges into surface waters where a portion of raw waste is injected into a well. These commenters argued that the adjustment provision is inconsistent with *Exxon Corp.* v. *Train*, 554 F.2d 1310 (5th Cir. 1977), and further that EPA should defer to Subpart C of the Safe Drinking Water Act, which establishes controls over well injection.

EPA believes that these commenters have misconstrued the purpose and scope of proposed § 122.41(b) (now § 122.41(a)). The provision does not regulate well injection, directly or indirectly, nor does it place any limit on the amounts which may be injected, the rates of injection, or the design and operation of injected wells. Instead, §122.41 focuses on the remaining wastes which are being discharged into waters of the United States. The purpose of the regulation is to ensure that the Act's treatment requirements are met for discharges into surface waters. Unless adjustment is made in calculating effluent limitations, dischargers using wells, POTWs, or land application for part of their wastes would get treatment "credit" for pollutants so disposed and thus escape application of technology-based requirements to the portions of the wastes disposed to waters of the United States.

Several comments noted that the formula as published in the proposed rules is incorrect and inconsistent with EPA's examples in the preamble. EPA agrees, and has modified the final rules to incorporate the correct method of calculation. This method may be algebraically expressed as:

$$P = E \times \frac{N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.

Several commenters noted that strict application of the formula would allow a discharger to inject concentracted wastes into a well and discharge relatively dilute wastes to surface water with little or no treatment. The last sentence in proposed § 122.41(b) was intended to cover this situation. That sentence allows adjustment of the effluent limitations derived from the formula as necessary to account for changes in "character or treatability" of the wastes disposed into navigable waters. Permit issuing authorities should devise appropriate methods of adjustment in each case, based upon a finding that the wastes being discharged into surface waters are "fundamentally different" from those considered in issuing effluent guidelines. These variances will be controlled by Subpart D of Part 125.

A new paragraph (§ 122.41(a)(1)) has also been added to cover the situation where EPA-promulgated effluent guidelines provide separate standards for a discharge of wastes from a particular process and all wastes from that process go to wells, land application, or POTWs. Such separate process standards would not be used to calculate permit limits.

§ 122.42 Concentrated animal feeding operations.

Proposed § 122.42 subjected concentrated animal feeding operations to individual permits coverage and all other animal feeding operations to general permit coverage. Many commenters objected to EPA's blanket coverage of all animal feeding operations, arguing that many smaller animal feeding operations are not point sources. These commenters also added that such operations were adequately covered by the section 208 planning process. EPA has reconsidered its position and agrees that not all animal feeding operations are point sources and thus subject to permit requirements.

EPA is, therefore, withdrawing the proposed revision; and the final regulations reflect the requirements found in former § 124.82 and § 125.51. Thus, only concentrated animal feeding operations will be subject to individual permits and general permits will not apply to other animal feeding operations.

§ 122.43 Concentrated aquatic animal production facilities.

Many commenters objected to this proposal which subjected concentrated aquatic animal production facilities to individual permit coverage and all other aquatic animal production facilities to general permit coverage. In addition, commenters objected to the provisions for case-by-case designation of certain aquatic animal production facilities as concentrated aquatic animal production facilities, and therefore, subject to individual permits.

As discussed in § 122.42, EPA is withdrawing the proposed revision regarding general permits. The final regulation concerning permit coverage is similar to former 40 CFR § 124.1(u) and § 125.1(ii) requiring only individual permits of concentrated aquatic animal production facilities. However, EPA believes that some aquatic animal production facilities that may not be classified as concentrated under the formula, nevertheless, may be significant contributors of pollution. Because of this, EPA is retaining the provision for case-by-case designation of concentrated aquatic animal production facilities. EPA is revising this to include the following language suggested by one commenter: "In no case shall a permit application be required from a concentrated aquatic animal production facility designated under (the case-by-case provision) until there has been an on-site inspection of the facility and a determination that the facility should and could be regulated under a permit program."

Commenters also objected to combining warm and cold water aquatic animal production facilities and the 9,090 kilograms (approximately 20,000 pounds) of aquatic animals per year cut-

off. In response to these comments, aquatic animal production facilities are now differentiated in the regulations based on whether they produce warm or cold water species and the characteristics of the method of confinement. Warm and cold water production facilities are separated because of basic operational characteristics differences. Cold water aquatic animal production facilities, where concentrated feeding and continuous flow occur, discharge organic pollutants at a rate related to the amount of food fed and the total weight of the animals produced. Small facilities of this type, however, (such as "fishout" ponds and farm ponds) produce negligible amounts of pollution. For this reason a facility which produces less than 9,090 harvest weight kilograms (approximately 20,000 harvest weight pounds) of aquatic animals per year and feeds less than 2,272 kilograms (approximately 5,000 pounds) of food during the month of maximum feeding, is not required to have an NPDES permit unless so required on a case-by-case basis (see § 122.43(c)).

In most cases warm water aquatic animal production facilities differ in construction and operation from cold water facilities. If the discharge from a warm water operation takes place for less than 30 days per year or only during periods of excess runoff, no NPDES permit is required. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 harvest weight pounds) of warm water aquatic animals per year are also exempted. The 45,454 kilogram figure will apply to warm water aquatic animal production facilities. If sufficient information is submitted to EPA to substantiate a higher figure, EPA will consider amending this section.

Finally, EPA has deleted the non-native fish restriction found in proposed § 122.43(b)(1). Although this restriction was taken from the former regulations, an overwhelming number of commenters objected to the restriction because of its indirect effect on research, sport fishing, and fish management and, generally, because it exceeded EPA's statutory authority. Since EPA agrees that a native/non-native fish distinction bears little relation to the quality of the discharge, this distinction was deleted.

§ *122.45 Separate storm sewers.*

On February 4, 1977, the EPA published a proposed rule to establish an NPDES general permit program for irrigation return flows and separate storm sewers (see preamble discussion of § 122.48 *General Permit Program).* The February 4, 1977 proposed definition of "separate storm sewer" was the same as defined in former 40 CFR § 125.52. In the August 21, 1978 proposal, EPA redefined "separate storm sewer" to mean "a conveyance or system of conveyances (including but not limited to pipes, conduits, ditches and channels) primarily used for collecting and conveying storm water runoff." This definition differed from the February 4, 1977 definition, in that the February 4, 1977 proposal required the sewer to be located in an "urbanized area" or otherwise be found to be a significant contributor of pollution. The August 21, 1978 proposal also introduced the concept of case-by-case designations of "concentrated" storm sewers and indicated that concentrated storm sewers require individual permits.

In response to comments objecting to the case-by-case designation of concentrated separate storm sewers and the deletion of the "urbanized area" requirement for separate storm sewers, EPA has returned to the definition of separate storm sewer proposed in February 4, 1977, i.e., the sewer must be located in an urbanized area to be a separate storm sewer and there will be no case-by-case designations of a different category of sewers known as "Concentrated" storm sewers. A conveyance or system of conveyances not located in an urbanized area, can, as proposed in the February 4, 1977 rule, be designated a significant contributor of pollution and be considered a "separate storm sewer" subject to permit requirements. Likewise, under § 122.48(e) concerning general permits, the permit issuing authority can require that sources otherwise subject to a general permit obtain an individual permit. This case-by-case designation is similar to the February 4, 1977 proposal.

A comment has also been added which indicates that the designation of separate storm sewer under this section has no bearing on whether the source is or is not a separate storm sewer for purposes of funding under Title II of the Act. This comment was added to prevent any possible confusion between these regulations and the Title II regulations.

§ *122.46 Silvicultural activities.*

Proposed § 122.46 restated the former definition of "silvicultural point source" (40 CFR § 124.85(a) and § 125.54(a)) and introduced the concept of case-by-case designations of silvicultural activities as point sources. Many commenters objected to the case-by-case designation of point sources arguing, among other things, that such designations would negate the section 208 planning process, that the criteria for designations were too vague and that the designation of any additional silvicultural point sources should be through rulemaking procedures. EPA has considered these comments and determined that the four silvicultural point source activities defined under § 122.46(a) (rock crushing, gravel washing, log sorting, and log storage) are sufficient under NPDES because most water pollution from forest management areas is non-point in nature and hence not subject to NPDES. EPA accordingly has deleted all reference to case-by-case designation of silvicultural point sources.

§ *122.47 New sources and new dischargers.*

§ *122.47 (a) and (b)*—Two commenters pointed out that proposed § 122.47 (a) and (b) did not address the question of whether a mobile drilling rig which relocates requires an EIS upon relocation. The final regulations continue to track the language of section 306(a)(5) of the Act which defines construction to include "any placement, assembly or installation of facilities and equipment . . . at the premises where such equipment will be used," without interpreting this language in the context of mobile drilling rigs. It should be noted that, at present, no new source performance standards have been promulgated for mobile drilling rigs; thus, no mobile drilling rig may be considered a new source at present. The Agency intends to examine the EIS issue at the time that it promulgates new source performance standards for these sources.

§ *122.47(c)*—Several commenters remarked that State-issued permits to new sources should require EIS's under proposed § 122.47(c)(1)(ii). Other commenters disagreed. It is clear, however, that the issuance of a permit by a State is not a major Federal Action. *Chesapeake Bay Foundation* v. *United States* (E.D. Va. June 28, 1978). Therefore, EPA has not changed this statement.

Several commenters objected to the requirement in proposed § 122.47(c) (2) and (3) that the Regional Administrator must accept the EIS recommendations and deny or condition permits in accordance with such recommendations. They argued that the EIS is only a recommendation and that it is the Regional Administrator's duty to evaluate the recommendation and make permit-related decision accordingly. EPA agrees with the thrust of these comments, and the regulation has been redrafted to reflect them.

Many commenters disagreed with the provision of proposed § 122.47(c) (4) and (5) which would bar construction prior to issuance of a permit or negative declaration. However, EPA believes that it is implicit in the requirement of section 511(c) of the Act and of the National Environmental Policy Act (NEPA) that the expected environmental impacts studied in the environmental impact assessment should not be allowed to proceed until that assessment has been concluded. This has consistently been the Agency's position (see former 40 CFR § 6.906, published in 42 FR 2454 (January 11, 1977)) and has recently been reinforced in NEPA regulations published by the Council on Environmental Quality (43 FR 55478, November 29, 1978). Therefore, the position is retained in these final regulations. It should be noted that subparagraph (c)(4) allows the Regional Administrator to approve construction prior to issuance of a permit or finding of no significant impact (i.e., a negative declaration) if he or she determines that such a finding will probably be made.

§ *122.47(d)*—Several commenters pointed out under proposed § 122.47(d)(1)(ii) that construction often creates construction-related discharge and that the 10-year protection period for new source performance standards should not begin at the time of such discharges. Accordingly, the regulations have been modified to trigger the period at the time of discharge only in the case of process or other non-construction related discharges.

The interpretation of section 306(d) has been a vexing legal problem for EPA since the enactment of the 1972 Amendments to the Clean Water Act. That provision grants to a qualifying source meeting "all applicable standards of performance" a ten-year immunity (or immunity during the period of amortization of pollution control facilities, if shorter) from "any more stringent standard of performance." The term "standard of performance" is defined in section 306(a)(1) in such a way as to make it clear that it refers only to new source performance standards issued by the Administrator. Thus the literal effect of section 306(d) is to give a new source a ten-year protection only from more stringent new source performance standards, and not from more stringent BAT, BPT, or BCT effluent limitations.

Reading this provision of the statute literally would make it meaningless, a result Congress could not have intended. New source performance standards are periodically revised to incorporate new designs and in-process changes which can only be incorporated into a new plant when it is first built. If the statute is applied literally, after the protection period expires a new source would have to comply with any revised new source performance standards, some of which might be achievable only by a plant which was designed and constructed from the ground up so as to meet them.

On the other hand, reading the term "standard of performance" (in its second use in section 306(d)) to refer to all technology-based standards not only does violence to the language of the Act (by requiring the same statutory term to have two different meanings in the same sentence and by failing to track the definition in section 306(a)(1)), but also seriously interferes with Congress' command in the 1977 Amendments that technology-based standards for toxic pollutants be expeditiously achieved.

In the proposed regulations EPA sought to deal with these problems of interpretation by construing the protection afforded by section 306(d) to apply only to "more stringent" technology-based effluent limitations controlling the same pollutants as are controlled by the applicable standards of performance. In other words, if the NSPS only limited pollutants A and B, EPA could later impose technology-based effluent limitations for pollutants D and E, but could not impose more stringent technology-based limitations on A and B.

A number of commenters objected to this proposal, arguing that section 306(d) should be read to afford new sources protection against any additional requirements during the protection period. EPA agrees that the protection provided by the proposed regulations should be broadened, although not to the extent suggested by the commenters. Accordingly, the Agency has invoked its rule-making authority under section 501(a) of the Act to fashion an interpretation of section 306(d) that gives the greatest effect possible to the language of the statute in light of congressional purposes. This construction has two principal features. First, it extends the protection afforded by section 306(d) not only to new source performance standards, but to all technology-based requirements under section 301 (BPT, BCT, and BAT). Second, the protection is not extended to toxic pollutants controlled by applicable BAT regulations, but not by the new source performance standards. (The proposed regulations would have exempted from 10-year protection conditions controlling any pollutants not controlled by the applicable new source performance standards.)

In this way, EPA has sought to implement two conflicting congressional goals. On the one hand, new sources must be given some meaningful protection for ten years after construction. Section 306(d) should not be ignored. On the other hand, the purpose of the new provisions of the Act controlling toxic pollutants must not be frustrated by allowing new sources which meet old new source performance standards based on traditional pollutants such as BOD and suspended solids to escape application of BAT controls on toxic pollutants.

A number of commenters suggested that the section 306(d) protection period apply to State water quality standards and other requirements not based on technology. EPA has not adopted these proposals because the term "standard of performance" clearly refers to a technology-based standard. (See section 306(a)(1) of the Act.) Moreover, an earlier version of section 306(d) adopted by the House would have provided protection from any effluent limitation, whether technology-based or water-quality-based. (See FWPCA Legis. Hist. at 965–66.) But the version adopted by the conferees and ultimately enacted provided protection only from "standards of performance." The shift clearly indicated an intent to narrow the type of "standards" from which protection is granted.

In response to comments objecting to the limitation of the protection period to pollutants actually controlled by the standard of performance, § 122.57(d)(2)(ii) allows imposition of a more stringent technology-based effluent limitation during the protection period only if it controls a toxic pollutant. This revision will allow the imposition of additional controls over pollutants which are neither hazardous nor toxic where such control has been specifically identified as necessary to indirectly control toxic pollutants. EPA's present strategy for controlling toxics will involve such indirect regulation in many instances. This best accommodates the purposes of the 1977 Clean Water Act amendments. Congress intended for EPA to shift its focus from the regulation of conventional pollutants to a new program for applying technology-based requirements to toxic pollutants. Under the Act as amended, toxic pollutants are treated separately from less hazardous materials. Section 307(a), as amended in 1977, requires EPA to establish for toxic chemicals either effluent limitations based on the 301(b) criterion of best available

technology economically achievable, or a national standard under section 307(a) itself based on the toxicity of the substance and designed to provide an "ample margin of safety."

The policy of Congress was clearly to control toxic chemical pollution as quickly and as effectively as possible. See *CWA Legis. Hist.* 427–29 (remarks of Senator Muskie). The addition of the new BAT standard for toxic pollutants was intended not to make toxic controls less effective than they would have been under section 307(a), but to allow EPA to use the regulatory mechanisms of section 301(b) when they would be more efficient than those under section 307(a). In light of the expressed intent of Congress to expedite the control of toxic pollutants, EPA believes that the intent of the Act would be ill served by a policy of exempting classes of sources from compliance with toxic controls for ten years, where the Act can be interpreted not to provide such an exemption.

Finally, the protection period will not extend to permit conditions controlling hazardous substances under section 311 of the Act. This exception is intended to carry out the purposes of the 1978 amendments to section 311 of the Act. Those amendments excluded from control under section 311 discharges which are controlled by the permit system under section 402. The legislative history of that provision, though brief, shows that Congress intended for any exemption from section 311 to depend upon the availability of effective control under section 402 of the hazardous substance discharges. Thus, for example, Congressman Breaux, one of the sponsors of the 1978 amendments, said:

> At the present time many industrial point sources have section 402 permits which do not identify or provide for the regulation of designated hazardous substances. Section 311(a)(2) would be amended to provide these sources a reasonable opportunity to identify the constituent elements of their effluent, to develop treatment and management procedures and to apply for a new permit without being liable for section 311 penalties. *Cong. Rec.* (daily ed.) at 13599, October 14, 1978.

New sources should have this same opportunity to apply for a permit that reflects consideration of hazardous substance discharges, and these regulations now accord that opportunity.

Several commenters pointed out that under proposed § 122.47(d)(4) the maximum of a 60-day "start-up" period was insufficient for new sources to meet all permit conditions. One example given was the case of biological oxidation ponds in cold weather. As a result, the time limit has been extended to 90 days.

§ *122.48 General permit program.*

On February 4, 1977, EPA published a proposed rule (42 FR 5846) to establish an NPDES general permit program for irrigation return flows and separate storm sewers. The proposed rule arose out of the decision in *NRDC* v. *Costle* (Runoff Point Source), which denied EPA's authority to exclude certain point sources from the permit program. The general permit program outlined a system whereby similar activities in a given geographic area would be covered by a single general permit. The program was intended to provide administrative flexibility in dealing with numerous minor discharges subject to the same limitations.

Approximately 40 comments were received on the proposed regulations during the overall comment period, ending April 1977. Many of these comments addressed problems associated with irrigation return flows. However, after the proposal Congress excluded irrigation return flows from the permit requirements (see section 502(14) of the Act). Accordingly, EPA has exempted those discharges from both individual and general permit coverage, see § 122.4(a)(4).

The August 21, 1978 proposal reserved § 122.48 for the general permit program. Based on comments on the original general permit proposal and the August 21, 1978 proposal, EPA has made several revisions as noted below.

First, as indicated in § 122.48(b), the general permit program is limited to certain types of point sources. While the original general permit proposal covered only separate storm sewers and irrigation return flows (now exempted), comments addressing the administrative flexibility of the approach have prompted us to authorize the use of general permits for other categories of points sources with minor discharges located in the same geographic area. All draft general permits for other categories of points sources must be sent to the EPA Deputy Assistant Administrator for Water Enforcement for a 90-day review (see §§ 123.22, 124.32(a) and the Comment to § 122.48(a)(2)).

Some commenters misinterpreted the proposed regulations and though that EPA was requiring States to use general permits. It should be noted that the general permit program is optional. States (and EPA) retain the right to require individual permits for any and all point sources.

A few commenters were confused as to the proposed timetable for establishment of a general permit program for separate storm sewers which varied depending on whether the permitting authority is a State or EPA. In response, EPA has decided to drop the deadline requirement for submitting a separate storm sewer general permit program. Since the requirements for State general permit programs have been placed in § 123.12, a more in-depth discussion of State requirement can be found in the preamble discussion of that section.

The proposed general permit regulations listed geographic areas which may be appropriate for the issuance of general permits to storm sewers, including political or geographical boundaries. Based on several comments, the final regulations have been revised to include boundaries designated by roads in a State highway system as a geographical area.

Several commenters addresed the procedural aspects of general permit issuance established in the proposed regulations, particularly, public notice. These issues are now covered under Part 124 and have been subject to renewed opportunity to comment in the August 21, 1978 proposal. Although commenters felt the Agency should individually send notice to permittees covered by a general permit, EPA believes that such system would be unwieldy and that **Federal Register** notice, or other appropriate notice in the case of State issued general permits, is sufficient (see § 124.41(f)).

The original February 4, 1977 proposed general permit terms and conditions have been deleted because they would be duplicative of the provisions in § 122.14 and § 122.15 (permit terms and conditions). Since these sections are more detailed than the general permit proposal, they address the concerns of commenters that proposed general permit terms and conditions were vague and overbroad. Any concerns about unreasonable permit conditions are adequately addressed by a discharger's right to request an individual permit and then request a hearing under Part 124.

Some commenters were confused about the use of best management practices (BMPs) as general permit terms and conditions, including questions on how best management practices would be developed. The use of BMPs for separate storm sewers is of particular importance since "end-of-pipe" effluent limitations may not be the most appropriate means of control. As indicated in the preamble discussion of

BMPs, they may be imposed in general permits under a variety of authorities. To summarize briefly, BMPs may be imposed in general (or individual) NPDES permits, where: uniform numeric effluent limitations are infeasible, in accordance with *NRDC* v. *Costle* (Runoff Point Sources); BMPs are mandated under section 304(e) of the Act to control toxic and hazardous pollutants from ancillary industrial activities; BMPs are "appropriate requirements" related to the achievement of effluent limitations, pursuant to section 402(a)(2) of the Act; BMPs are a condition of State certification for an EPA-issued permit under section 401(d) of the Act; BMPs constitute a more stringent limitation established pursuant to State law or regulations under section 301(b)(1)(C) of the Act; BMPs are required pursuant to the National Environmental Policy Act, where an Environmental Impact Statement (EIS) has been prepared; and BMPs are necessary to assure consistency with a State water quality management plan pursuant to section 208(e) of the Act. (See § 122.15(g).)

A number of commenters noted some problems with the provisions related to revocation of a general permit and issuance of an individual permit to a particular discharger. As a result, the provisions have been redrafted, with several major changes in the final regulations. First, interested persons can request that a general permit be revoked and an individual permit required for a particular permittee. A permittee is adequately protected against arbitrary action in this regard under the procedural safeguards of Part 124. Second, rather than requiring general permit modification, the revocation of a general permit and the issuance of an individual permit now automatically modifies the general permit's applicability to the individual permittee. Public notice and opportunity for comment on the modification of the general permit for this purpose (i.e., solely reflecting a change in covered permittees) is not necessary because public notice will be given of the new individual permit for the permittee. Third, individual permittees can request to be covered by the general permit, and vice versa. In a related vein, a few commenters suggested that a person covered by a general permit should be excluded from general permit coverage where an individual permit is requested, and left unpermitted pending a decision on the individual permit request. This suggestion has not been taken, since it runs contrary to the pollution control goals of the Act and EPA's policy on permit modification and revocation and reissuance.

Finally, EPA has rejected some changes recommended by commenters as inconsistent with the Act's requirements, e.g., general permits may not be issued for terms which exceed five years, and section 208 water quality management agencies may not be designated as permitting authorities for general permits.

III. Part 123—State Permit Program Requirements

A. *What Does This Part Do?* Section 304(i)* of the Act directs the Administrator to promulgate guidelines for State programs setting minimum requirements for State participation in the National Pollutant Discharge Elimination System (NPDES) permit program under sections 402, 318 and 405. Section 101(e) of the Act directs the Administrator to promulgate guidelines setting minimum requirements for public participation in the development, revision and enforcement of State programs approved pursuant to sections 402 or 404. This Part contains the guidelines required by section 304(i) and 101(e). In addition, this Part sets guidelines for State section 404 permit programs regulating discharges of dredged or fill material. The decision to include section 404 permit programs in this Part is based on the very close parallel between the statutory requirements for the NPDES and section 404 permit programs (e.g., compare section 402(b) with section 404(h)).

This Part also specifies the process for EPA approval of State programs and for revision of State programs (including any revisions to existing State programs necessary to conform to the Clean Water Act of 1977). Guidelines for EPA overview of State programs, including the requirement for a Memorandum of Agreement between the State and EPA, and the process for objection to proposed State NPDES permits are also incorporated into this Part.

Many of the substantive requirements for the operation of the NPDES program, whether administered by a State or EPA, are contained in Parts 122, 124 and 125. The provisions of those Parts are applicable to State programs only to the extent they are incorporated by reference into Part 123 (e.g., see § 123.12). Thus, if a provision of Part 122, 124 or 125 is not cross-referenced in Part 123 it is not directly applicable to State NPDES programs. For example, most of the requirements of Part 124 do not apply to States.

A person reading Part 122, 124 or 125 should be able to determine from the context whether the particular provision is applicable to State administered programs. Nonetheless, if any doubt exists Part 123 should be consulted to determine whether or not States must conform to the particular requirement in question. Where an applicable provision of Part 122 incorporates requirements from elsewhere in this Chapter it becomes a State program requirement. For example, § 122.20 is made applicable to State programs under § 123.12 and requires that NPDES permits include monitoring requirements. Under § 122.20(c) the testing done by permittees is required to conform to 40 CFR Part 136. Therefore, these Part 136 requirements are applicable to State programs.

Additional operational requirements of State section 404 programs will be proposed in the near future as part of the "consolidated regulations". These will closely parallel the requirements of Parts 122 and 124 which are applicable to State NPDES programs. Until the remaining requirements to State section 404 programs are proposed, States should seek guidance from Parts 122 and 124, from regulations promulgated by the Corps of Engineers and directly from EPA.

The provisions of Part 123 (including the applicable sections of Parts 122, 124 and 125) are *minimum* requirements and the States are free to impose more stringent requirements at any time. Thus, in the final example of the preceding paragraph, the State is free to ignore the EPA-promulgated effluent guideline if it chooses to impose more stringent effluent limitations than EPA requires under 40 CFR Subchapter N.

B. *How Does This Part Relate to Existing Regulations?* Prior to the promulgation of these regulations the operational requirements for State NPDES programs were contained in former Part 124 and former Part 105 (Public Participation). The process for approval and revision of State programs was developed and contained in EPA policy memoranda and informational communications. The approval and revision process contained in this Part is merely a codification of existing requirements and does not represent any change in these processes.

The public participation guidelines of Part 105 were recently replaced with a revised set of guidelines under Part 25. In doing this EPA decided to remove

*The provisions of section 304 were redesignated as a result of the Clear Water Act of 1977. What is now designated section 304(i) was formerly section 304(h). Congress failed to make corresponding changes to section 402. Cross references in section 402 to section 304(h) should, therefore, be read to mean section 304(i).

State permit programs from the coverage of Part 25 and to incorporate the applicable public participation requirements for State programs into Part 123. This was done so all the major requirements for State programs are contained in one Part. In doing this EPA has incorporated most of the substantive provisions of Part 25 into Part 123 (in certain instances this is done by incorporation of applicable requirements of Part 124).

Public participation in the permit issuance process, pursuant to the requirements of section 101(e) of the Act, is fostered by the public notice requirement (§ 124.41), the statement of basis and fact sheet requirements (§§ 124.33 and 124.34), the public comment period and opportunity for hearing requirements (§ 124.42), and the response to comments section (§ 124.63), all of which are applicable to State NPDES programs.

A basic element of Congress' concern for public participation is to make use of a concerned public in identifying possible noncompliance with permit requirements. To this end Part 123 requires that all permit applications and all effluent data be made available to the public without restriction. All other information must be made available to the public unless shown to be confidential. (See § 124.131.) In addition, "quarterly noncompliance reports" and annual reports prepared under § 122.23 must be made available to the public. The availability of this data ensures that the public can monitor the performance of permittees.

Additionally, the regulations attempt to assure that possible violations identified by the public will be acted upon by the State. Section 123.31 requires that States establish programs to receive and review all evidence submitted by the public.

Finally, citizens have a right to directly initiate enforcement actions in Federal court pursuant to section 505 of the Act. That section also provides that citizens may intervene as a matter of right in any action in Federal court and, in many cases, recover attorney's fees.

C. *How Does This Part Relate to the August 21, 1978 Proposal?* The following is a discussion of the significant comments received and changes made to the August 21, 1978 proposal. Editorial changes have been made to all sections and are not discussed. There has also been a renumbering of the Part 123 sections. There are now fewer sections in Part 123 because a large number of the proposed sections were condensed into § 123.12.

§ 123.1 Purpose and scope.

Many comments suggested EPA should be allowed to complete the permit issuance process, after approving a State program, for those permits "in the pipeline" at the time of program approval. While this approach has merit it cannot be adopted because section 402(c) of the act precludes permit issuance by EPA after the date of approval of a State program. See *Central Hudson Gas and Electric Corp. v. EPA*, 587 F.2d 549 (2nd Cir. 1978). However, EPA will endeavor to avoid these problems, to the extent possible, whenever the transfer of program authority is pending.

In an effort to clarify the status of Federally issued permits after program approval a new paragraph has been added, §123.1(d). It provides that EPA or the Corps (in the case of section 404 programs) retains jurisdiction over Federally issued permits for all purposes until they expire, unless arrangements are made with the State for the State to assume responsibility for administering permits issued by the Federal Government. This retention of jurisdiction may be extended beyond the expiration date of the permit, with the agreement of the State, for the purpose of resolving an ongoing issue, such as an adjudicatory hearing or permit modification request.

Many commenters opposed the provisions in § 123.1 and § 123.62 (proposed § 123.102) which link the permit programs under sections 318 (aquaculture) and 405(a) (disposal of sewage sludge) to the section 402 permit program. These comments suggested that such a linkage is not authorized by law and would impose an additional burden on NPDES States. However, the Clean Water Act of 1977 specifically amended section 318 and 405 to provide that permits issued under these sections are NPDES permits. In light of the prohibition against partial program approval requiring that all elements of the NPDES program be administered by the State, State programs must now include the activities specified in sections 405 and 318.

To avoid any confusion, the language in § 123.1 and § 123.62 has been clarified. A preliminary review of State programs indicates that most existing NPDES States have adequate authority to control the discharges specified in sections 318 and 405(a). Therefore, the requirement that States have authority for controlling these discharges should not impose an additional burden. EPA will assume that existing State programs have the necessary authority and are authorized to implement sections 318 and 405(a). Any State which lacks authority should contact EPA and take whatever action is necessary to modify its program to conform.

Another new provision has been added to this section (§ 123.1(f)) which specifies that the public participation guidelines of section 101(e) are now incorporated into Part 123.

§ 123.2 Definitions.

Four new definitions have been added, i.e., "draft permit," "proposed permit," "Memorandum of Agreement," and "State/EPA Agreement." These definitions conform to existing practice and do not represent any new or changed requirement.

A draft permit is the document prepared by the Director after tentatively determining to issue a permit to an applicant. This draft permit is then put on public notice and circulated in accordance with the applicable sections of Part 124. A fact sheet on the draft permit may be required. A statement of basis is required whenever a fact sheet is not prepared.

After the close of the comment period, the Director analyzes all the information submitted on the draft permit and arrives at a final determination to issue a specific document as a final permit. Where EPA has not waived the right to review the permit, this final determination is subject to EPA review in accordance with § 123.23 before it can become finally effective. The State Director's final determination is sent to EPA as a "proposed permit" in accordance with the Memorandum of Agreement. The State Director may issue the proposed permit as soon as EPA concurs with the proposed permit, or the time for EPA review expires. No proposed permit is required under these regulations whenever EPA has waived its right to review (See §§ 123.23 and 123.7).

The definitions of Memorandum of Agreement and State/EPA Agreement were added to provide clarity. There were several comments questioning the relationship between these two documents. See the preamble discussion of § 123.7 for a discussion of this relationship.

§ 123.3 Elements of a program submission.

A new section (§ 123.3) has been added to clarify and identify all requirements of a program submission in one section. With respect to State program forms, EPA is now more specific as to which State forms it will review (i.e., the permit form and the

permit application form(s)). States will be required to use a standard Discharge Monitoring Report (DMR) form developed by EPA. These forms will be printed by EPA and supplied to States on request. States may, however, substitute their State Agency's name, address, logo, and other similar material for EPA's on the forms. They are designed to be read and analyzed by computer. EPA will supply the computer software associated with the standardized DMR to States as requested.

The use of standard national forms is specifically provided for in the Act (section 304(i)) and enhances EPA's ability to assure a degree of national uniformity of the program. Many comments were received from national companies requesting EPA to standardize all forms. However, the Agency believes that DMRs are the only forms which should be standardized now.

§ 123.4 Program description.

Several comments were received on proposed § 123.3 objecting to the prohibition against allowing more than one State agency to issue section 404 permits. Most of these comments suggested that this is inconsistent with the efforts of several States to provide "one-stop" permitting authorities covering certain activities (e.g., power plant siting councils). EPA disagrees with these comments and believes that it is important to have this permitting authority in one State Agency.

§ 123.5 Memorandum of Agreement with Secretary for section 404 programs.

This requirement was proposed as § 123.3(b) (the program description section) but has been made into a separate section for clarity. Some of the proposed requirements of this section have been eliminated or modified in response to comments. For example, joint processing agreements, while encouraged, are not required. Likewise, the State need not await the completion of a environmental impact statement by the Corps before permit issuance. The most important feature of this Memorandum of Agreement (MOA) is in paragraph (a) and remains unchanged. This requires a delineation of section 404 permitting responsibilities for waters of the State consistent with section 404(g)(1) of the Act.

§ 123.6 Attorney General's Statement.

Section 402(b) of the Act requires that the State Attorney General certify that the State have adequate legal authority to implement the requirements of the NPDES program. Where the State program has independent legal counsel, such counsel may submit the statement in lieu of the State Attorney General. To qualify as "independent legal counsel" the attorney representing the State agency must have authority to independently represent the State agency in court on all matters pertaining to the State program.

Many comments indicated that the requirements of proposed § 123.4(c) were confusing insofar as that paragraph listed a number of sections of Part 123 which, in turn, cross-referenced sections of Parts 122 and 124 as being applicable to State programs. In order to eliminate this confusion, the sections of Part 123 which merely served to cross-reference sections of Part 122 and 124 have been consolidated in a new § 123.12 (see discussion below). Section 123.6(c) is now phrased to require a certification that the State has authority to implement the requirements of Part 123. EPA will continue its past practice of supplying States with a model Attorney General's Statement format.

While EPA has a legal duty to independently review State authorities, the Attorney General's Statement is given great weight in interpreting the requirements of State law.

§ 123.7 Memorandum of Agreement with the Regional Administrator (MOA).

The provision on scope of EPA waiver of review (proposed § 123.5.(b)) drew the most comments on this section and has be modified. The language in the regulations as proposed was based on existing Agency policy on waiver and, therefore, reflected what is presently found in MOA's with the NPDES States. As written, the provision on waivers broadens the scope of waivers available. This waiver of review is now very broad for non-process wastewater discharges; however, in some instances such a waiver is possible only with the prior approval of the EPA Deputy Assistant Administrator for Water Enforcement. On the other hand, EPA will not waive review of any general permits proposed by the State. The waiver provisions of this section only specify the maximum waiver available, and in some instances EPA may choose not to extend this maximum waiver to a State. This is particularly true for a State with a new program where EPA oversight is critical until the program becomes established and experienced.

The entire paragraph on the contents of the MOA (proposed § 123.5(c)) has been reorganized to reflect a more functional arrangement. The requirement that the agreement be reviewed and revised every three years (proposed § 123.5(b)) has been deleted on the basis of many comments suggesting that it was unnecessarily mechanical. Instead, MOA's should be reviewed and revised as necessary to reflect programmatic changes.

Relationship between Memorandum of Agreement and State/EPA Agreement. The State/EPA Agreement is an overall management tool which provides a way for the Regional Administrator and the State to coordinate and, to the maximum extent feasible, integrate programs administered by EPA and the State, emphasizing problem-solving approaches to specific environmental problems. The State/EPA Agreement reflects important decisions on environmental priorities, administrative problems, timing, responsibilities and allocation of resources. In FY 1980, the State/EPA agreement is to cover programs under the Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act. Other environmental programs will be added to the process in following years.

The Memorandum of Agreement is a document signed by the Administrator and the State which formally sets forth the relationship between EPA and the State in the administration of an approved State permit program and details specific procedures that must be followed by both parties in the development, issuance, review, and enforcement of permits. The Memorandum of Agreement is the legal basis upon which EPA predicates its continuing decision that State issued permits are consistent with the requirements of the Clean Water Act and implementing regulations. Because of this, any proposed change to an MOA must be reviewed and approved by the Administrator to assure it is consistent with the requirements of Part 123.

The Memorandum of Agreement and the State/EPA Agreement should be consistent. This should not present a problem since they generally address different areas of the State/EPA NPDES relationship. The State/EPA Agreement should include the MOA. However, it may not override it in the instance of any inconsistency. If the State/EPA Agreement indicates that a change is needed in the MOA, the proposed change must be reviewed and decided by the Administrator.

§ 123.8 Sharing of information.

Many commenters raised concerns about the treatment of confidential information submitted to EPA or an NPDES State, particularly when the two

agencies share information. For example, when a State NPDES program is approved EPA gives the State the information in its files. A new § 123.8 has been added to specify how confidential information is treated under these circumstances. Persons interested in this area should consult 40 CFR Part 2 which is also applicable.

§ 123.11 Requirement to obtain a permit.

Proposed § 123.11(c), which specified which State has permit issuing authority for discharges into waters which form the boundary line between States, has been dropped.

§ 123.12 Operational requirements.

This is a new section which combines the requirements of proposed §§ 123.24, 123.21, 123.41, 123.42, 123.43, 123.44, 123.51, 123.52, and 123.61. Each of the proposed sections cross-referenced provisions of Parts 122, 124 and 125 as being applicable to State programs. Comments pointed out that this resulted in a great deal of confusion in understanding what is required of a State. Section 123.12 now combines, in a single section, all the cross-references. In addition, a person reading Parts 122, 124 or 125 should be able to determine, from the context, whether a particular section is applicable to State programs. In case of any doubt, however, § 123.12 is controlling.

It should be noted that, while all the provisions of § 123.12 are applicable to State programs, States need not have detailed State regulations on each provision. For example, as long as a State has adequate legal authority to implement § 123.22 (which indicates how information is submitted to EPA) and acts in accordance with § 123.22, it need not have a regulation which duplicates the Federal requirement. Again, States are always free to impose more stringent requirements than are included in these regulations.

§ 123.12(a)(14)—This section allows States to operate a general permit program. This section greatly modifies and simplifies the requirements for State general permit programs which were proposed at 42 FR 6846 (February 4, 1977); see preamble discussion of § 122.48. Of course, operating a general permit program is strictly optional. A State may choose to require individual permits in all cases. If a State chooses to issue general permits it is subject to the provisions of § 123.12(a)(14). This specifies that such permits shall be issued in accordance with § 122.48, and that they are subject to a full 90-day EPA review, including review by EPA Headquarters for all proposed general permits other than those for separate storm sewers.

§ 123.13 Control of disposal of pollutants into wells.

The requirement of this section was proposed in § 122.41(a) but was moved to § 123.13 since it is applicable only to State programs. Some commenters questioned EPA's authority to require States to control well disposal by permit. Section 402(b)(1)(D) of the Act specifically requires States to have this authority, although EPA lacks similar authority under the Act. See *Exxon Corp.* v. *Train*, 554 F.2d 1310 (5th Cir. 1977). NPDES States are urged to use the authority required by this section in developing and implementing an underground injection control program required under the Safe Drinking Water Act. The requirements of these two Acts are consistent and complementary. State UIC program regulations will be promulgated as part of EPA's consolidated regulations.

The requirement of § 122.41, that permit conditions for surface discharges be adjusted where a portion of the permittee's effluent is discharged underground, into a POTW or by land application, remains applicable to States.

§ 123.22 Transmission of information to EPA.

This section was proposed as § 123.23. Several commenters felt that EPA should provide the permit applicant with a copy of any comment, objection, or recommendation respecting a proposed State permit. EPA agrees and has incorporated such a requirement into § 123.22(a).

§ 123.23 Objections to proposed NPDES permits.

The requirements of this section were not included in the August proposal (Part 124, Subpart L was reserved for these requirements) but were included as a portion of the regulations promulgated at 43 FR 22160–22164, (May 23, 1978). EPA believes that the portion of those regulations dealing with EPA objection to State permits belongs in Part 123 where the other requirements for State programs are contained. Therefore, they will not be included in Subpart L to Part 124. In transferring the objection regulations into § 123.23, no substantive changes were made.

Reviewability of Objections. Although the Agency has not sought comment on the incorporation of the objection regulations into Part 123, and issue associated with these regulations is the availability of administrative and judicial review of EPA's decision to object to a permit.

An EPA objection is, in essence, a determination that certain conditions which are not included in a proposed State permit are necessary to carry out the requirements of the Clean Water Act. Section 402(d)(2) of the Act requires the Administrator, when he objects to the issuance of a permit, to state the reasons and to set forth the effluent limitations and conditions which the permit would include if it were issued by the Administrator. If the State fails to submit a revised permit (after any EPA hearing on the objection), the Administrator may issue the permit. All determinations underlying the objection are then subject to Agency review in accordance with Part 124 of these regulations. Under those regulations, contested provisions of the permit are stayed during Agency review. Thus, EPA's determinations do not affect the discharger until the administrative process is at an end and a final permit is issued.

Where EPA objected to a permit prior to the 1977 amendments to the Act, the Act made no provision for further action by EPA. The objection to the permit was the final Agency action, and the Act prohibited the State from issuing the permit objected to. In these circumstances, the Agency took the position that the objection was reviewable in the Court of Appeals as the Agency's action in "denying any permit" under section 509(b) of the Act. In general, the courts agreed. See, *Republic Steel Corp.* v. *Costle*, 581 F.2d 1228 (6th Cir. 1978); *Ford Motor Company* v. *EPA*, 567 F.2d 661 (6th Cir. 1977); *Mianus River Preservation Committee* v. *Administrator, EPA*, 541 F.2d 899 (2nd Cir. 1976); but see, *Washington* v. *EPA*, 573 F.2d 583 (9th Cir. 1978).

This resulted in a situation which the Senate Report on the 1977 amendments described as the:

> Impasse which may result when the Administrator objects to the issuance of a permit which is contrary to the provisions of the Act and the State is unwilling to issue a permit to the point source which is consistent with the provisions of the Act. Under the present Act, neither EPA nor the State may issue a valid permit in these circumstances. [*CWA Legis. Hist.*, Vol. 4 at 706.]

Accordingly, the Congress amended the Act to allow EPA to issue the permit after an objection. The Senate Committee report criticized EPA as having been "much too hesitant" to take actions to object too State permits, and called for a "vigorous overview of State

programs to assure uniformity and consistency of permit requirements and of the enforcement of violations of permit conditions." *Id.*

The theme of the Senate Report—that the objection was an expeditious mechanism to avoid delays in permit issuance and resolve disputes between the States and EPA—was echoed in the Conference Report on Pub. L. 95–217, which said:

> After the date of enactment of this provision the Administrator is expected to use the authority given by this amendment to issue a permit after objection to a State issued permit. Thus any litigation over the degree of effluent reduction required for a source should take place in the context of judicial review of the permit, rather than in the context of an enforcement action. *. *. *.
>
> Judicial review arising out of this provision would be in the same manner as judicial review of any EPA issued 402 permit. [*CWA Legis. Hist.*, Vol. 3 at 281.]

This passage clearly indicates that EPA permit issuance under section 402 is the only reviewable action associated with an EPA objection. The objection is an interlocutory decision, one which has no effect on the applicant and other interested persons except to shift the forum for hearings and review. Thus, Congress thought judicial review of the permit was the appropriate place to review EPA's determinations. Several other factors militate in favor of this view:

1. The availability of administrative review and the stay provision in EPA's permit issuance regulations means that EPA's objection determination has no effect on the discharger. In such cases, review is properly delayed until Agency action is final and effective. See *Toilet Goods Association* v. *Gardner*, 387 U.S. 158, 165 (1967).

2. Judicial review of an Agency objection prior to final permit issuance would unnecessarily bifurcate the judicial review proceedings and delay final Agency action. Review of the objection could consume months or even years. Permit issuance, appeals, and judicial review of the permit could consume additional months or years.

3. The short time period for Agency action precludes the sort of record building by EPA which is a normal prerequisite of effective judicial review. See *American Iron and Steel Institute* v. *EPA*, 543 F.2d 521 (3rd Cir. 1976).

§ 123.31 Compliance evaluation programs.

This section, which was proposed § 123.71, was retitled and slightly condensed. A few new requirements were included based on existing Agency policy. In particular, this section now requires that the State enforcement program have procedures and ability to receive citizen complaints about possible program violations and to ensure that these complaints are adequately considered. This requirement was included in the public participation regulations of former Part 105 and as proposed in Part 25. In order to include all the public participation requirements for State programs in Part 123, this requirement was moved from Part 25. EPA believes that this is an important aspect of involving the public in enforcement as mandated by section 101(e).

§ 123.32 Enforcement.

Proposed as § 123.72, this section drew many comments. However, most of the provisions of § 123.32 are identical to the requirements of the 1973 regulations (former § 124.73). EPA has not changed these provisions, although minor wording changes have been made for clarification. The new element of § 123.32 (proposed § 123.72(i)) is the addition of a penalty policy provision requiring States to calculate civil penalties for deadline violations using specified criteria. This requirement generated a great deal of confusion. Many commenters feared that States would be required to implement all aspects of EPA's penalty policy including use of the penalty panel and EPA's computer programs. While States are strongly encouraged to use these, § 123.32(i) only requires States to employ the basic precepts of the penalty policy. It allows States to exercise substantial discretion in settling civil enforcement cases. No change was made to the proposed version.

Another new provision, § 123.32(h)(2), has been added to clarify that State enforcement proceedings may not include additional elements of proof or mental state for establishing violations. EPA's approach has consistently been to require States to have the same enforcement remedies that are available to EPA. In exercising this enforcement authority, States should not have any additional elements of proof or other legal requirements which make State imposition of penalties more difficult than EPA action.

Availability of Resources.—Proposed § 123.81. Part of this proposed section has been deleted and part has been moved into § 123.4 (Program description). Proposed § 123.81(b) (identifying criteria for EPA evaluation of State resources) was deleted entirely because these criteria are matters relating to internal EPA review and do not need to be promulgated in the form of regulations. Nonetheless, EPA does require that sufficient resources be devoted to State programs. Proposed § 123.81(a) has been incorporated into § 123.4.

§ 123.42 Agency board membership.

Proposed § 123.83 on Agency board membership drew a very large number of comments, most of which argued that it was too stringent. Nonetheless, since § 123.42 is identical to former § 124.94 and is clearly mandated by section 304(i)(2)(D) of the Act, no changes have been made.

§ 123.51 and § 123.52 Section 402 and 404 approval process.

The approval process sections (proposed §§ 123.91 and 123.92) have been clarified and made more specific. The changes are consistent with the process EPA has routinely employed in these matters. Requirements from the proposed public participation regulations (e.g., the need for EPA to prepare a responsiveness summary) have been added.

§ 123.61 Procedure for revision of State permit programs.

The procedures for State program revision have been clarified and include a new requirement that EPA publish notice of any action substantially modifying a State program. Proposed § 123.103 was inserted into § 123.61.

§ 123.62 NPDES program revisions under the CWA of 1977.

A large number of comments were received on the dates specified in proposed § 123.102(c) for modifications to State programs implementing the 1977 amendments. These dates have been adjusted to be more realistic. Proposed § 123.102(a) was deleted because it contained only optional changes. States are still free to make these changes.

IV. Part 124—Procedures for Decisionmaking Regarding National Pollutant Discharge Elimination System Permits

A. *What Does This Part Do?* Part 124 establishes the procedures which EPA will use for receiving permit applications, writing draft permits, and soliciting public comment on them. It also establishes the procedures which EPA will follow in issuing final permits and holding evidentiary and panel hearings. A number of provisions of this Part are applicable to approved States through incorporation by reference in § 123.12.

B. *How Does This Part Relate To Existing Regulations?* In most cases, this Part will not change the general framework of the former regulations covering permit determinations. Applications for permits will still be filed with the appropriate permit issuing authority; draft permits will be prepared and made available for comment. After comments have been received and analyzed, any necessary changes will be made by the permit issuing authority, and a final permit will be issued. Any interested person will then be able to request an evidentiary hearing on any factual issues involved.

However, significant changes have been made in the procedures for variances, modifications, and other permit actions besides the basic issuance of a permit: In the degree to which permit decisions are documented before an evidentiary hearing begins; in the relationship of prior administrative proceedings to any evidentiary hearing; and in the hearing procedures for "initial licensing". Each of these points, all of which were the subject of comments, are explained in the following sections.

C. *How Does This Part Relate To The August 21, 1978 Proposed Regulations?* The following is a discussion of the significant comments received and the basis for revisions made to Part 124 of the proposed regulations, including the integration of the section 301(h) procedures into Part 124 (section 301(h) procedures were proposed separately on April 25, 1978, 43 FR 17484). Minor editorial changes have been made in all sections.

§ *124.1 Purpose and scope.*

A number of comments inquired whether denials of a permit would be subject to the same rights of public comment and potential evidentiary hearing as other permit actions. The answer is "yes" and a new section has been added to make this clear (§ 124.15). A denial of a permit could be based on, among other things, the discharger not complying with the requirements of Part 122, Subpart B.

§ *124.11 Applications.*

This section has been modified by moving proposed § 124.11 (b) and (c) into § 122.10. Proposed § 122.17, "Requests for additional information" has been made part of this section.

§ *124.12 Special provisions for applications from new sources.*

(1) This section allows the Regional Administrator to delay a hearing on a new source determination until the hearing on the final permit. Some commenters objected to such a delay, arguing that it could result in an Environmental Impact Statement (EIS) being written before the discharger had an opportunity to argue on appeal that the discharge was not a "new source."

The Agency believes the proposed approach is efficient. Hearings on a new source determination and permit terms will often involve common issues and witnesses. In such cases, the Regional Administrator should have the option of either bifurcating the hearing or waiting until after a final permit is written to hear all the issues. The choice will depend on which option would consume the least resources and time. Since EPA is legally responsible for preparing the EIS, EPA will share the burden of making a wrong decision.

(2) Some comments claimed the EPA lacked authority to restrict the construction of new sources pending National Environmental Policy Act (NEPA) environmental review, arguing that the Agency may regulate only discharges and has no power to regulate construction of sources.

While it is true that EPA lacks authority to regulate construction which will not result in a discharge of pollutants, EPA has an obligation under NEPA to consider alternatives to the proposed action where a permit issuance would necessarily involve a discharge. Judicial decisions under NEPA have made it clear the EPA must consider reasonable alternatives, and that the alternatives (where a new source is involved) must always include not permitting the source. Where a source's operation necessarily results in a discharge, denial of an NPDES permit is tantamount to denial of the right to construct the facility. Thus, in such cases, EPA cannot fully consider such environmental matters as land use, air quality degradation, solid waste disposal problems, and others, without consideration of alternatives which involve no construction at the selected site. Since construction of the facility could limit or eliminate some of the options which should be considered, EPA has the authority to require that NEPA review be completed prior to actual construction. For a complete discussion of this issue, see *EPA General Counsel Opinions*, "Water Pollution" at 310–311 (NILS 1979).

Proposed § *124.13 Information required for thermal discharge modifications.*

This section, which was essentially substantive requirements for thermal discharges, has been incorporated into Part 125, Subpart H.

§ *124.13 Modification, revocation and reissuance requests.*

Several persons urged that it would be inefficient in processing modification requests to require (as proposed in § 124.15) submission first of a request to apply for a modification and then of the application itself. EPA agrees and has revised this section to state that the modification can be based on the initial request itself unless more information is needed.

The proposed regulations also intended to put modification requests and variance applications on the same procedural "track" as other permit applications. They did this by requiring those seeking a modification to write to EPA and request permission to apply for a new permit. If the request was granted, an application could then be filed and would be processed like any other application. This basic approach has been retained in the final regulations.

Suggestions for an automatic right to a hearing when permit modification requests are denied, have been rejected. Departures from the five year cycle of permit issuance and reexamination laid down by section 402(b)(1)(B) of the Act should not be encouraged. If encouraged, they could keep numerous permits in a state of perpetual reexamination to the detriment of the water pollution control program. By the same token, the regulation has been amended to make clear that even modification requests which are granted only reopen the permit to a limited extent.

§ *124.14 Permits required on a case-by-case basis.*

This section (proposed § 124.16) provides that sources which in the normal course are subject to a general permit program under § 122.48, may be required to apply for an individual permit in certain cases. Comments urging that an evidentiary hearing be afforded before requiring individual permit application have not been accepted. To allow this would produce long delays and a potential for two consecutive evidentiary hearings on closely related issues. Instead, the question whether an individual permit should be required at all will be open to full reconsideration as part of the deliberations on the potential terms of any such permit.

§ 124.21–24 State certification.

(a) State certification under section 401 of the Act was also the subject of numerous comments.[1]

(1) Many commenters objected to the delays caused by the State certification process in the NPDES program. Specifically they thought that the provision in the proposal for potentially allowing a State one year to certify was unconscionable. In response to those comments the regulations have been modified so that the right to certify will be deemed waived unless exercised within a *specified* reasonable time which shall not exceed 60 days unless the Regional Administrator finds that unusual circumstances require a longer time.

Because of some ambiguity in the certification provisions concerning the role of State certification in the EPA permit issuance process, the certification provisions were amended so as to set out a realistic, workable procedure consistent with the statute. A State will now be required to identify those provisions which it finds necessary to comply with applicable State or Federal law. However, since certification as to Federal requirements would duplicate EPA's work, EPA expects that ordinarily States will limit their certifications to requirements of State law.

Some problems have resulted from the practice of certifying draft permits, which practice has arisen from the practical difficulties of certifying applications. In particular, certifications have not always clearly stated exactly what conditions are necessary to comply with State law, and whether less stringent conditions would also satisfy State law. The final regulations remedy these problems by requiring States to set forth in all cases the minimum terms and conditions which will be necessary to comply with applicable law. For example, if a State certifies a permit with an effluent limitation imposing a daily maximum BOD of 25 mg/1, it will be required to identify also a ceiling representing the minimum level of control, such as 30 mg/1 or 40 mg/1, which the State finds necessary to comply with State law. In responding to public comments, or in an evidentiary hearing, EPA will be barred from considering any effluent limitation less stringent than the "ceiling" set by the State in its certification.

If the State fails to provide the "ceiling" required by these rules, EPA will be free to consider any changes which it finds appropriate during the subsequent permit review process. Of course, the Agency has an independent obligation to include in permits effluent limitations which are necessary to comply with State law, including water quality standards, whether or not the State has certified. See Decision of the General Counsel No. 58.

While EPA recognizes the burden that this procedure imposes upon States, the only logical alternative is unacceptable as a practical matter; that is continual resubmission to the State for recertification each time a draft permit is made less stringent as a result of public review during the permit issuance process.

(2) Changes have been made to allow EPA to modify a permit under certain circumstances if a State changes its certification during the EPA permit review process. The modified certification must be based upon changes in State law or upon a State court decision. Moreover, if a permit is final before the modified certification is received, it will be modified only to delete provisions resulting from a certification found invalid by a State court. These limitations are necessary to avoid a "moving target" of State law during the permit's life. See § 124.86(c) and preamble discussion of that paragraph for a fuller treatment of this issue.

(3) A new section § 124.24 has been added to the State certification Subpart. This addition contains the provisions for concurrence/certification from the April 25, 1978 proposal for section 301(h) modifications. The major divergence from normal permit procedures is that NPDES States (or the certifying Agency within a non-NPDES State) must concur/certify as described in this new section. Proposed § 124.61(a)(2) stated that no final permit shall be issued by EPA which grants a section 301(h) modification until the appropriate State has been given 30 days to approve or disapprove the modification. If the State disapproved the modification within 30 days, the modification would be deleted from the permit. Proposed § 233.45 had a similar provision except that there was no time limitation. One comment to proposed § 233.45 suggested that EPA should allow 30 days for State concurrence or concurrence would be considered denied. Although EPA recognizes the need to reduce delays in section 301(h) processing, we do not believe we can deem concurrence denied (as opposed to waived) if not granted within a certain number of days. Therefore we have instead chosen to deem concurrence/certification waived after 60 days rather than adopt the suggestion that concurrence be deemed denied.

§ 124.31 Draft permit.

A number of comments objected to the statement in proposed § 124.41(a) (now § 124.31(a)) that "any other relevant information" in addition to the types specified could be considered in deciding on a draft permit. Although the Agency has retained the language, it is not intended to allow draft permits to be based on material that is not reflected in the administrative record.

§ 124.32 Other draft permits.

This section provides that when EPA moves to revoke or suspend a permit, it shall do so by formulating a new draft permit subject to notice and comment and potential evidentiary hearing. Although commenters did not object to the purpose behind this section (to make sure that such decisions are made through the same basic procedures that apply to the permit issuance) some commenters suggested that the permit holder should be notified before any such draft permit was issued. EPA has not accepted this suggestion because the draft permit will constitute sufficient notice well before any legally effective action is taken. This section has also been revised to require *all* draft general permits other than separate storm sewers, (whether issued by EPA Regional Offices or the States) be sent to the EPA Deputy Assistant Administrator for Water Enforcement for 90 days for his/her concurrence or denial.

§§ 124.33–35 Statement of basis, fact sheet, and administrative record.

A major purpose of the proposed regulations was to increase the level of explanation of how and why EPA arrived at specific permit conditions, and to specifically identify the documents or other information considered in doing this.

The proposal would have done this by: (1) requiring each permit to be accompanied by a fact sheet explaining the factors considered and the reasons for the decision, and (2) requiring permits to be based on an "administrative record."

The administrative record could simply be an adequately organized file

[1] EPA recognizes that the former regulations in 40 CFR Part 123 are in need of revision. The substance of these regulations predates the 1972 amendments to the Clean Water Act and has never been updated. However, because of the impact of State certification of non-NPDES permits on a myriad of Federal programs, it will be necessary to consult with the affected agencies in some detail before changes are made. Meanwhile, the current certification requirements for Federally issued non-NPDES permits or licenses have been moved from Part 123 to Part 121.

drawer containing the relevant information. This ensures that the information considered in formulating a permit is identified and publicly available for comment. The administrative record requirement does not mean that there must be individual copies of the monitoring or reporting conditions or effluent limitations guidelines and development documents in the file, as long as they are properly cited. EPA's response to the many comments that were received on these provisions is provided below.

(1) A number of commenters argued that to prepare a detailed "fact sheet" and administrative record for every permit would result in a lot of paperwork for which there was no real demand. EPA agrees with these comments since, in our experience, although all permits are made available for public comment, over 90% of the EPA-issued permits become final without any public comment or requests for an evidentiary hearing. Accordingly, § 124.34 (proposed § 124.44) has been rewitten to require a "fact sheet" only for permits to major dischargers and other controversial permits including all variances or modifications. Permits for small discharges will not require a fact sheet and will only require a less detailed "statement of basis".

In many cases the "statement of basis" could consist of the internal memorandum prepared within the Agency which informs the person signing the permit of the guideline or other source of the effluent limits and any issues which the permit raises. By utilizing such an approach, EPA believes we are maximizing the utilization of the permit issuing authority's limited resources without denying the public or permittee basic information upon which to judge the adequacy of the permit.

The regulations have also been revised to provide explicitly that a fact sheet can be prepared for any permit which is the subject of widespread public interest during the public comment period and for which no fact sheet was prepared originally.

(2) Since the fact sheet can be quite extensive, States objected to mailing a copy to each person on a mailing list since most permits have proved to be of little interest. Therefore, the public notice of every draft permit will be sent to those on the mailing list but the fact sheet (or statement of basis) will be sent only on request.

(3) Because the fact sheet requirement has been limited to major or controversial discharges, the requirement of a special level of discussion for discharges of over 500,000 gallons per day has been eliminated. Distinctions among major or controversial permits based on the amount of water discharged do not correspond to any real differences in the degree of discussion that is advisable.

(4) Comments from both industry and EPA Regions on proposed § 124.44(a)(6)(iii) suggested deletion of the requirement that the record contain all documents cited in an EIS or similar analysis. These comments argued that since so many documents are generally cited, the requirement would be impossible practically and would also make the record less, rather than more useful. EPA agrees with these comments and has revised this section accordingly. Persons who wish specific documents to become part of the record may supply those documents as part of their comments under § 124.42.

This section has also been reworded to clarify that generally available material cited in a fact sheet does not need to be physically included in the administrative record.

§ 124.36 Applicability of Subpart D to draft permits incorporating section 301(h) modifications.

A new section, § 124.36, has been added to indicate that Subpart D is applicable to section 301(h) proceedings except, as provided in proposed Subpart C of Part 233, the Administrator, or a person designated by the Administrator will prepare the draft permit, not the Regional Administrator as with other draft permits.

§§ 124.41 and 124.42 Public comments and public notice.

The public notice sections were amended to cut time and paperwork requirements based on overwhelming objections to the proposed changes. On the advice of the States, the public comment period reverts from the proposed 45 days to the former regulations' 30 days. Many States felt that 30 days is sufficient for the vast majority of noncontroversial permits and additional time can be made available for those permits that generate public interest. EPA suggests, however, that a liberal policy be followed in granting extensions of the comment period.

Some commenters suggested that other methods of public notice of an action should be authorized. EPA and the States have found that the mailing list has been by far the most effective means of eliciting public participation into the NPDES process. Therefore, we urge States to develop mailing lists as provided or by any additional means they have found effective.

Similarly, States and EPA Regional Offices both stated that newspaper notices were ineffective in eliciting public comment and were a substantial drain on limited resources. EPA agrees and has revised this section to make newspaper notices shorter as well as optional if other means, such as posting, are utilized.

The proposed regulations allowed certain Federal and State agencies a separate early chance to comment on permit applications before the public comment period began. This provision has been eliminated in response to comments both from EPA Regions and from representatives of dischargers. These agencies now will be expected to comment during the public comment period. In particular cases, however, they may still be consulted informally before the draft permit is formulated.

This revision also deals with those comments which argued that the comments of other agencies on a draft permit must be reflected in the record. As noted elsewhere in this preamble, any permit terms in EPA-issued permits must be supported by the administrative record whether or not they are based on the views of other agencies.

§ 124.43 Obligation to raise points and provide information during the public comment period.

This section is discussed below along with § 124.76.

§ 124.44 Terms requested by the Corps of Engineers and other Government agencies.

Proposed §§ 124.21 and 124.22 stated the circumstances in which terms may be included in an NPDES permit at the request of another Federal agency. Although many comments were received on this, no substantive change has been made because EPA continues to believe the language in the proposal was correct. The Act says that EPA "shall" include in permits those conditions requested by certifying States and the Corps of Engineers.[2] Any challenge to those conditions must therefore be made through the State or Corps of Engineers procedures for challenging decisions. Terms based on the comments of other agencies without such veto authority must be within the discretion of EPA

[2] The statement of one commenter that the Corps authority under section 402(b)(6) of the Act is limited to vetoing permits, not imposing conditions on them, seems simplistic to EPA. A Corps of Engineers' statement that certain terms must be included in a permit can properly be viewed as a statement that the permit will be vetoed unless it contains those terms.

under the Clean Water Act and are therefore subject to the same procedures that apply to permits generally.

In response to comments, affected States are now included in § 124.44(c). This revision clarifies the right of such States under sections 402(b)(5) and 401(a)(2) of the Act to require more stringent requirements so that a discharge of another State does not violate its water quality standards.

§ 124.45 Reopening of comment period.

Proposed § 124.44 (now § 124.45) allowed for reopening of a comment period (or reproposal of a permit) at the discretion of the Regional Administrator.

Several comments suggested an automatic "reply comment" period in which the discharger and others could respond to points made during the main comment period. EPA agrees that this may be a good idea in some specific cases, but it could be unnecessarily burdensome if required by regulation in all cases. Therefore, the proposal has not been changed.

Subpart F—Special Provisions for Variances and Statutory Modifications

In response to several suggestions, the procedures for variances have all been placed in a single Subpart. This revision is done to present the public with an organized view of how variances will be handled within the normal permit procedures.

Under the Clean Water Act and the former regulations, there are more than a dozen different statutory or regulatory provisions on which permit requirements could be based, and seven provisions under which a variance from those provisions could be granted. Many of these provisions are not covered in the existing regulations, and where they are, the references are scattered through various parts of the Code of Federal Regulations.

Subpart F deals with the problems in two ways. First, it consolidates into one **Federal Register** Subpart the former procedures for making decisions on permit terms contained in 40 CFR Parts 122 and 402 (relating to thermal discharge requirements) and the former Part 124.

Second, it specifies where in the sequence, "application—draft permit—comment—final permit", permit actions other than the simple one of deciding on permit applications should fit.

In particular, it provides that whenever possible, a variance must be applied for before the close of comment on a draft permit. This will ensure that there is an opportunity to consider all the relevant issues before deciding the terms of a final permit and that issues are not raised at a later date for purposes of delay. The regulations also provide that where a variance is properly requested after this stage but before a permit has become final under § 124.101, the decision on the variance will still be made through the same permit procedures that apply to other permits. This will be done in appropriate cases by issuing a new supplementary draft permit embodying the Agency's response to the variance request, and holding action on the original permit until the supplementary permit has reached the same procedural stage and the two permits can proceed together.

§ 124.51 Time deadlines for applications for variance from and modifications of effluent limitations.

(1) A number of comments argued that the time limits for variance applications set forth in proposed § 124.14 were too strict. These comments have been accepted in a number of particulars.

(a) The statute requires applications for variances under section 301(c) and under section 301(g) to be submitted 270 days after promulgation of the relevant effluent guidelines or by September 25, 1978, whichever is later. However, since EPA has not yet issued crieteria for such applications, it clearly would have been unreasonable to have required a complete application by last September. Accordingly, these regulations incorporate the requirements of previous interim final regulations stating that applicants need only have submitted a very brief notice by September 25, 1978, (or within 270 days of the promulgation of an applicable effluent guideline) to qualify under that deadline. See 43 FR 40859 (Sept. 13, 1978).

Similarly, in the case of section 301(h), § 124.51(c)(1) revises proposed 40 CFR § 233.32 to indicate that a preliminary application must have been submitted to EPA by the statutory deadline, but the final application should not be filed until the section 301(h) criteria are promulgated in final form in Part 125, Subpart G. The criteria, when promulgated, will also specify the method of, and timing for, making a final application. This revision to the timing requirement is necessary because the statutory deadline has passed and EPA has not yet issued section 301(h) criteria.

(b) Dischargers who wish to be considered for a section 301(c) or section 301(g) variance will be required to comply with the substantive requirements of § 124.43 and Part 125 (once they are promulgated) by the close of the public comment period of their draft permits.

In some cases, draft permits will contain effluent limits that are not based on effluent guidelines but may still be eligible for variances. In those cases, it would be impossible to submit supporting evidence that a variance should be granted during the 30-day period of public comment. Therefore, in those cases, and in other cases the Agency believes appropriate, the Regional Administrator may grant an extension for up to six months to allow the applicant to complete his or her submission.

However, there will be many times when waiting until the last minute of the comment period would not be in the interest of the permitting process, the applicant, or the public. Therefore, in those cases where it is clear that a discharger will be submitting an application for a variance, the Director may require the applicant to submit that application in full before the draft permit is formulated. This requirement is intended to reduce the time for permit issuance, especially in those cases where it is clear that a variance or modification will be applied for, such as where the discharger has submitted the 270 day application for a section 301(c) or 301(g) variance (§ 124.51(b)(2)(i)) or where a fundamentally different factors variance is still pending on the first permit. This will lower the permit processing costs for the permitting agencies, the applicant and the public because there will no longer be a draft permit subject to a public notice that is irrelevant to the issues in the final permit.

§ 124.52 Decisions on variances and modifications which EPA or the State can grant.

Section 124.52 explains how decisions will be made on variances. There is a distinction between the variances and modifications EPA and the States may grant and those the Act requires that only EPA may grant.

(1) Many commenters objected to EPA and not approved NPDES States making variance determinations for fundamentally different factors variances, economic variances, environmental variances, and section 301(h) secondary treatment waivers. These commenters thought the States with NPDES authority have the authority to rule on these particular variances.

The 1972 Amendments to the Federal Water Pollution Control Act carefully spell out the relationship between the Federal Government and the States in

achieving the Act's goals of eliminating the discharge of pollutants from the Nation's waters. A major responsibility of the Federal Government under the Act is the development and promulgation of uniform national technology-based standards for categories and classes of industrial discharges. Variances from these standards are allowed if the applicant can show the plant is fundamentally different from those plants used in developing the limits. Since EPA promulgates those national standards, EPA, not the States, is the authority best able to judge if a plant is fundamentally different from those that were the basis for the standard.

The variance sections in the Act clearly designate who the Congress intended to make the determinations. For example, section 316(a) provided for thermal waivers to be granted by either EPA or NPDES States. Specific grants of authority appear in the 1977 amendments which added sections 301(g), 301(h) and 301(i). Section 301(g) authorizes "the Administrator, with the concurrence of the State" to grant variances from BAT effluent limitations. Similarly, section 301(h) provides that permits incorporating modifications of the secondary treatment required may be issued by "the Administrator with the concurrence of the State. . . ." Section 301(i)(1), municipal time extensions like section 316(a) variances, may be granted by the "Administrator (or, if appropriate, the State)." Finally, section 301(c), only mentions the Administrator and so variances under it can only be granted by the Agency.

(2) A number of commenters objected to the condition in the proposal that when the Act required State concurrence in a variance that is issued by EPA, the variance request would not be considered by the Agency until the State had first approved it. In response, proposed § 124.14(e) has been modified in § 124.52(b) to allow the State Director to concur after EPA makes a draft determination. In States where EPA is the permit issuing authority a State will certify the draft permit in the regular procedure. All State (whether NPDES or not) must concur/certify section 301(h) determinations before EPA can issue the section 301(h) modified permit (see § 124.24).

Some commenters objected to considering States' views at all where the act did not explicitly require it. However, States have authority, where State law requires it, to set more stringent limitations for a permittee under sections 401 and 510. Though EPA grants the variances, the variance sections do not allow EPA to overrule State authority to require more stringent State requirements. Therefore, it is not appropriate to disregard State input into variance determinations.

§ 124.55 Special provisions for modifying the secondary treatment requirement under section 301(h).

Paragraph 124.55(a) sets out the requirements for submission of additional information necessary to make a section 301(h) determination. This section is substantially the same as proposed § 233.32(c) except that it states that if an application, "on its face," demonstrates that the applicant is not entitled to a section 301(h) modification, then the applicant cannot submit additional information and the application will be denied. This requirement is consistent with Congressional intent, [*CWA Legis. Hist.* at 448] and has been added to clarify EPA's original intent behind proposed 40 CFR § 233.32(c). This is similar to the "summary denial mechanism" suggested by some commenters.

States argue they should be allowed to issue permits with section 301(h) modifications. EPA disagrees and believes that the proper procedure is dictated by the Act itself. Section 301(h) provides, not that EPA may modify an existing NPDES permit to allow a less than secondary discharge if the permittee meets the requirements of section 301(h), but that EPA may "*issue a permit* under section 402 which modifies the requirements of section 301(b)(1)(B)" (emphasis added). This requires EPA to assume full NPDES permitting authority—even where the State has an approved NPDES permit program—in issuing any section 301(h) permit. This interpretation is buttressed by the fact that the statute calls only for "State concurrence" in any section 301(h) permit issued, and does not require the State to crank the permit back into the State permitting process and add additional terms and conditions necessary to assure compliance with sections of the act other than section 301(h).

EPA believes this result is not only required by the act but makes a great deal of sense as a practical matter. Any other approach would bifurcate the permitting process for section 301(h) dischargers between EPA and the State, resulting in a great deal of confusion (especially since there is some overlap between section 301(h) requirements and other applicable requirements of the act) and delaying issuance of final permits. To clarify this issue, EPA has revised proposed § 124.61(a)(2) (now § 124.55(d)) to indicate that NPDES States may (not must) revoke the existing NPDES permit when they concur in the modification and they may also choose to cosign the section 301(h) permit. EPA hopes that NPDES States will choose to revoke any existing State-issued permits and cosign the EPA-issued section 301(h) permit because this will reduce confusion as to permit limitations.

§ 124.61 Stays.

(a) Proposed § 124.61(a) provided for automatic stays of contested permit provisions if an evidentiary hearing request is granted, or if a petition for review of denial of a request for an evidentiary hearing is filed with the Administrator.

Numerous comments were received on this provision. One recurrent theme was that if a permit was stayed by EPA, compliance schedules in it should be extended for the same period that the stay was in effect. This suggestion has been accepted except where the technology is not contested but the ability of such technology to reach certain effluent limits is. In addition, compliance schedules cannot be stayed where failure to meet a statutory deadline or a permit term of more than five years would result from such an extension. It has been EPA's consistent position that it lacks power to grant dischargers more time to comply with the statutory mandate than Congress has decided they should have, or to extend the statutorily prescribed permit term. However, permits may be continued by operation of law under the Administrative Procedure Act. See § 122.12(b).

(b) A number of comments objected to the statement in proposed § 124.61(c)(2)(ii) (now § 124.61(d)) that a new source or a new discharger is considered to be without a permit pending the completion of any evidentiary hearing. However, this provision is only a logical extension of the provision (which most of these same commenters endorsed), that new permit terms are stayed pending those hearings and therefore has been retained.

For this reason EPA has deleted the provision allowing the Regional Administrator to approve the start of discharge by a new source or a new discharger even though a hearing on that source's permit is still in progress. Such sources which are concerned about their ability to open on schedule under these provisions should apply for the necessary permit far enough in advance of their target opening dates to allow

time for completing all necessary procedures.

EPA has recently established several procedures to expedite the issuance of NPDES and other EPA permits (e.g., Prevention of Significant Deterioration permits for air new sources) to new facilities. EPA has designated in each EPA Regional Office a New Source Coordinator charged with the responsibility of shepherding these applicants through the permit process. EPA has also adopted a policy of (1) informing each new facility within 30 days of request whether a particular permit program will apply to the new facility and (2) determining within 30 days of receipt whether an application is complete. Furthermore, EPA Regions are establishing permit tracking systems or procedures to ensure that new facility applications are addressed expeditiously. All of these initiatives will help minimize delay.

One comment also asked about the relation of § 124.61(c)(2)(ii) to proposed § 124.11(c) (now § 122.10(c)) which required new dischargers to apply 180 days before the scheduled start of operations. The 180 days is a minimum period; it does not preclude applications before then.

(c) A number of commenters asked that a provision be made for appealing stays, or asked about the status and applicability of determinations that permit terms were uncontested and severable from contested ones.

In these regulations we have accommodated these concerns by requiring the Regional Administrator to identify in the notice of a grant of the hearing the terms of the permit which are not contested and therefore are enforceable against the discharger during the permit proceedings. In some cases it may be necessary for the Regional Administrator to write new conditions to represent uncontested requirements. For example, if a final permit would require compliance with effluent limitations representing the application of both technologies A and B, and the discharger agrees that compliance with technology A is appropriate but challenges application of technology B, the Regional Administrator must write specific permit conditions requiring the installation of technology A. The fact sheet or statement of basis should include the type of technology contemplated by the permit writer to meet any technology-based limits in the permit.

Appeals from determinations on uncontested conditions will be available only through the provisions of § 124.101.

(d) A number of comments questioned the provisions in the proposed regulations that made certain deadlines run from the date of receipt of a specified notice. Such a provision could result in different deadlines for different people, and make it more difficult to find out when deadlines actually did elapse. Accordingly, these provisions have been changed to specify the time when the notice is given as the starting point for deadline, and three additional days provided to cover mailing delays (§ 124.134).

§ 124.64 Response to comments.

A major part of the effort in the proposed regulations to increase the extent to which EPA explains the basis for permits was requiring a response to comments received on a draft permit. The substance of those proposed provisions has been left essentially unchanged. However, proposed § 124.63 ("final fact sheet") has been retitled "Response to comments" to clarify that a document must be prepared for every issued permit which responds to all significant comments and objections to the draft permit and indicates which provisions have been changed and the reasons for the change. A comment has also been added to make clear that if new points are raised during the public comment period, EPA has the right to add new material to the administrative record to document its response to those new points.

§ 124.65 Administrative record.

The "administrative record" provisions have not been changed, except to delete the proposed requirement that all records be indexed and subcategorized. Though this may be advisable as a matter of policy for large records in significant cases, it seems inadvisable to require it across the board by regulation.

At the request of NPDES States, the administrative record, as detailed in this section, is not a requirement for State programs.

Subpart H—Evidentiary Hearings for EPA-Issued Permits

§ 124.71 Applicability.

The provision in this section for not holding evidentiary hearings on general permits was approved by the one commenter to address it directly. The Natural Resource Defense Council in its comments did not criticize this approach but asked what alternative mechanisms for tightening requirements on individual sources subject to general permits were available. In response, EPA wishes to point out that interested persons are always free to suggest in their comments on draft general permits, or in a petition to EPA, that issuance of an individual permit should be required. EPA will then be obliged to answer the points made and to issue an individual permit if it appears that step is required.

§ 124.72 Definitions.

Comments from the Natural Resource Defense Council pointed out that the proposal, by automatically making the permittee a party to any evidentiary hearing, could result in the permittee not having to make the commitments to make witnesses available and to file certain papers to focus the issues that are required of those who become parties through their own affirmative actions.

EPA agrees with this comment and has therefore deleted this provision. Permittees will still get notice of all hearing requests, and will be free to intervene in hearings to protect their interests.

§ 124.74 Request's for evidentiary hearings.

(a) The test for "standing" to request an evidentiary hearing has been relaxed in the final version of the regulations. Instead of the stricter test contained in the proposal, the standard in the existing regulations will be retained.

(b) Some comments questioned the provision in § 124.74(b)(4) that persons requesting a hearing agree in advance to make potential witnesses under their control available to testify. EPA lacks explicit subpoena authority for hearings held in connection with NPDES proceedings and this language is necessary to provide some equivalent assurance that needed witnesses will be available. In line with this purpose, and as suggested by other comments, § 124.74(b)(4) (now § 124.74(e)(4)) has been revised to clarify that the duty to produce witnesses only applies when the Presiding Officer has ordered their production.

§ 124.75 Decision on a request for a hearing.

Section 124.75 and § 124.101 have been revised to clarify that a Regional Administrator's denial of a hearing may be appealed to the Administrator, and the Administrator may review or reverse any legal or policy conclusions on which that denial was based.

§ 124.76 Obligation to submit evidence and raise issues before a final permit is issued.

Two major purposes of the proposed changes to EPA procedures were to

encourage resolution of issues at the time of comments on a draft permit, rather than in the far more burdensome context of an evidentiary hearing, and to link that hearing explicitly to the preceding stages of permit issuance. At present, even where all major issues have been fully analyzed and resolved before the final permit was issued, they can be re-examined anew in the evidentiary hearing. The Presiding Officer may not know what happened regarding the permit before the hearing began. Also, new issues might be raised at the evidentiary hearing even though they could have been settled much more simply if raised at an earlier stage.

The proposed regulations attempted to remedy this situation in two ways. First, the administrative record on which the final permit was based would automatically go into evidence at any evidentiary hearing so that the decisionmaker would have the benefit of the earlier stages of consideration of the issues.

Second, no issue could be raised at an evidentiary hearing if it was not first raised during the comment period on the draft permit (proposed § 124.53). An exemption from this requirement was provided if "good cause" could be shown for the failure to raise the issue earlier. These provisions have largely been retained in the final regulations (§ 124.43). The purpose is not to exclude any person from EPA's decision-making process, but rather to focus the attention of the Agency and parties on the informal comment and public hearing stage of the permit issuance process. EPA believes that policy issues and most technical issues relating to the issuance of NPDES permits should be decided in the most open, accessible forum possible, and at a stage where the Agency has the greatest flexibility to make appropriate modifications to the permit. Evidentiary hearings, because they entail great delays, because they are cumbersome, and because only the well-financed can afford to participate, are disfavored as a means of solving any issues other than contested factual issues requiring cross-examination. Not only will this in the long-run lead to greater and better informed citizen participation, it will increase efficiency in the permit issuance process and will speed application of pollution control requirements.

Many comments were received on these different aspects of the proposal. The proposed changes were very widely endorsed and supported in principle. However, non-governmental commenters argued that the regulations went too far in tying the evidentiary hearing to the preceding notice-and-comment stages. These comments have been largely accepted. Specifically, § 124.53 (now § 124.43) and § 124.76 have been amended very much along the lines suggested in the comments of the Utility Water Act Group.

In addition, though the proposed requirement for automatic receipt of the administrative record in evidence has been retained, a comment has been added and the section has been changed slightly to make clear that testimonial material in the administrative record should be subjected to the same tests of its testimonial value as other testimonial material introduced at the evidentiary hearing.

Some comments argued that receiving the administrative record in evidence automatically conflicted with the provision in 5 U.S.C. § 556 for the exclusion of "irrelevant, immaterial, or unduly repetitious evidence". As the comment described above explains, receiving the administrative record in evidence serves to document for the Presiding Officer and the parties the prior proceedings out of which the evidentiary hearing will arise and on which it must in part be based. A substantial useful purpose is therefore served by this procedure. This purpose could not be served as well, and many opportunities for useless arguments would be opened up, if the section were amended to provide that the administrative record could be edited in some fashion before or after its introduction.

§ *124.84 Summary determinations.*

A number of comments objected to the provision in § 124.84 that allowed motions for summary determination to be made "with or without" supporting affidavits. They feared that by explicitly mentioning the possibility of a motion without supporting affidavits, the regulations might result in shifting the burden of proof to the party against whom the motion is made. No such result is intended by this provision. Motions for summary determination must be affirmatively supported. The form of the proposal was only meant to recognize the possibility that material already in the record might amount to that affirmative support.

§ *124.85 Hearing procedure.*

(1) *Burden of proof.* Comments came in on all sides of the question "Who should bear the burden of proof?" The comments discussed, not so much the burden of going forward, which most commenters agreed could properly be shifted by regulation, as the ultimate burden of persuasion. Several changes have been made in response to comments, but the basic approach has not been changed. Because this is a complex issue, it is discussed in some detail.

Most comments agreed that the Act explicitly assigns a burden of persuasion for most variance decisions. The Act explicitly provides that variances under sections 301(c), 301(h), 301(g), and 316(a) may only be granted if the applicant carries an affirmative burden of proof. Variances under section 301(c) are conditioned on a "showing by the owner or operator of such point source satisfactory to the Administrator"; sections 301(g) and 316(a) uses almost the same language; section 301(h) variances may be granted "if the applicant demonstrates to the satisfaction of the Administrator [that the conditions are met"].

The question then becomes what the substantive burden should be for basic permit terms not involving a variance. That question, in EPA's opinion, is of more limited importance than might first appear.

When EPA proposes permit terms, it has a burden of going forward, or, stated differently, an obligation to provide information and material so that other interested persons can understand what the proposed terms are based on and the reasoning behind them. Other persons have a similar burden with respect to terms they propose. This obligation has been recognized by EPA (See Decision of the General Counsel No. 63, pp. 28–31), and is part of the law of informal rulemaking as well. *Portland Cement Ass'n.* v. *Ruckelshaus,* 486 F.2d 375 (D.C. Cir. 1973). The provisions of these regulations on statement of basis and fact sheet, administrative record, and comments are largely aimed at implementing those requirements.

The question of the substantive burden of proof assumes importance when the information provided by the various interested persons under these obligations is fairly evenly balanced in the conclusions it points to. A substantive burden of proof rule can be used to help decide which conclusions should be accepted. It is in this context that the question of whether EPA or the person challenging a permit term bears the burden of proof assumes importance. In one sense, every party could be said to have the "burden of persuasion" as to the permit terms that it was advocating, but that approach would be of little use as a guide to decision. Accordingly, the regulations (as proposed and promulgated) assign the substantive burden of proof to the permit applicant

in all cases. The Administrative Procedure Act (APA), 5 U.S.C. section 556(d) provides that "except as otherwise provided by statute, the proponent of a rule or order has the burden of proof." Since dischargers are under a statutory obligation to apply for and receive an NPDES permit, the United States Court of Appeals for the Seventh Circuit has recently held the discharger is the proponent "as the applicant for a permit, without which it would be forbidden by law to discharge pollutants," *U.S. Steel* v. *EPA*, 536 F.2d 822, 834 (7th Cir. 1977).

Such a conclusion follows from a literal reading of the statute. It also makes sense from the standpoint of the public policy. Though we acknowledge that EPA may have some disposition to favor its own conclusions on the terms of a given permit, in general it can be expected to be more concerned with carrying out the terms of the statute in the context of given permits than a discharger. Accordingly, it is proper to fix the substantive burden of proof on the party which can be expected to have relatively less interest in achievement of the statutory purpose.

Comments were received suggesting that the Agency's position regarding burden of proof is inconsistent with Decision of the General Counsel Nos. 63 and 72. The difficulty is caused by the use of inconsistent terminology in these opinions. In Decision of the General Counsel No. 63, the term "ultimate burden of persuasion" was used with respect to the EPA's obligation under section 316(b) to present evidence regarding best available technology for minimizing the environmental impact of intake structures. In context it is apparent that EPA has the burden of coming forward with evidence regarding intake structures. This cannot shift the ultimate risk of non-persuasion, which lies always with the discharger. To the exent that Decision of the General Counsel No. 63 can be construed to shift this risk of non-persuasion to EPA, it is incorrect. Decision of the General Counsel No. 72 correctly distinguishes between the burden of coming forward with evidence and the risk of non-persuasion, and labels the burden of coming forward the "burden of proof."

(2) *Cross-examination.* (a) Several commenters objected to the restrictions on cross-examination of EPA employees set forth in proposed § 124.83(b)(16). They argued that cross-examination should be allowed on facts which formed the basis of legal or policy matters, or on those matters themselves.

Facts which meet the other tests for cross-examination and which are relevant to legal or policy judgments are of course potentially eligible for cross-examination. However, the proposed language has been retained to underline that cross-examination on legal or policy matters per se should not be allowed. These matters of course deserve to be clarified as much as any factual issues, but cross-examination is not the right way to do it. Written presentations and oral argument can perform the same task far more efficiently and should be relied on instead.

One comment also objected to the provision that required all evidence in an NPDES proceeding to be submitted in written form unless an affirmative showing could be made that oral presentation was necessary. It argued that the Food and Drug Administration (FDA) regulations cited in support of this position did not really support it. However, the FDA regulations at issue are similar to § 124.85(c) and EPA interprets the content of the two provisions as being the same (see 21 CFR § 2.154(b)). FDA regulations require written evidence on "general" matters and leaves the form of presentation to the choice of the parties where "particular" matters are concerned. However, "general" matters are said to involve (among other things) "scientific, medical or technical information not relating to a unique event", 41 FR 51706, 51716 (Nov. 23, 1976), and this is a description that could apply to many issues in an NPDES proceeding.

(c) Proposed § 124.83(c)(5)(iii) is a limited provision for "discovery" in NPDES evidentiary hearings. Comments were received arguing both for the expansion and for the deletion of this section. In the final version, this section has been kept and also applies in panel hearings (Subpart I). Although information may be attainable under the Freedom of Information Act or section 308 of the Act, discovery may be a more useful and direct approach to elicit information for a hearing.

(d) Several comments challenged as illegal the provision in § 124.83(c)(6) authorizing the Presiding Officer to group parties with similar interests. We have not changed this section since we agree with Judge Friendly and the Food and Drug Administration that such a provision is fully authorized by existing law, see *National Nutritional Foods Assoc.* v. *Food and Drug Administration*, 504 F.2d 761, 795 (2d Cir. 1974). See also 41 FR 51706, 51718.

§ 124.86(c) Motions.

The general rule is set out in § 122.15 that the applicable regulations and requirements for NPDES permit issuance are those in effect at the time a permit is issued by a State or by EPA under § 124.61.

This provision is consistent with the decision of the Administrator *In the Matter of U.S. Pipe and Foundry Co.*, NPDES Appeal No. 75–4 reprinted in EPA, *Decisions of the Administrator and Decisions of the General Counsel* v.I at 110 (1975). The Administrator's views on this issue were adopted by the Fifth Circuit in *Alabama ex rel. Baxley* v. *EPA*, 557 F.2d 1101 (5th Cir. 1977).

Proposed § 124.86(c) authorized Presiding Officers to apply in permit hearings regulations issued after the permit is issued under § 124.61. For an explanation of the proposed regulation, see 43 FR 37080 (Aug. 21, 1978).

Several commenters contended that § 124.86(c) violates due process and is inconsistent with the *Alabama* v. *EPA* decision. EPA does not believe that any due process issue can be involved here. All parties will have a full opportunity to challenge in the adjudicatory hearing the application of any regulations which are applied to a discharger under § 124.86(c). Moreover, the provision may not be used when any party would be "unduly prejudiced thereby."

It is the general rule that laws which become effective during the pendency of judicial review proceedings control those proceedings, *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974); *Republic Steel Corp.* v. *Costle*, 581 F.2d 1228 (6th Cir. 1978). This rule also holds true for the application of Federal regulations in administrative proceedings. *Thorpe* v. *Housing Authority of Durham*, 393 U.S. 268 (1969). The Supreme Court has only recognized exceptions to this general rule to prevent "manifest injustice." *Thorpe* v. *Housing Authority*, *supra* at 282; *Greene* v. *United States*, 376 U.S. 149 (1964). The Administrator departed from this rule in his decision in *U.S. Pipe*, *supra*. There he set forth a fixed rule that permits would always be governed by rules in effect at the time of initial permit issuance, and would be unaffected by changes in applicable regulations during permit appeals. The Administrator concluded that:

> To allow permit limitations and conditions to change according to a "floating" standard or guideline during the pendency of a permit review proceeding would be highly disruptive and counter-productive. [Id. at 117]

The Fifth Circuit approved the Administrator's position in *Alabama ex rel. Baxley* v. *EPA*, *supra*. However, neither the Administrator nor the Fifth Circuit discussed *Bradley* or *Thorpe*,

and EPA can only speculate as to what result would have been reached had those decisions been brought to EPA's and the court's attention.

EPA recognizes the potential for disruption which a continuously shifting field of applicable regulations could bring to permit proceedings. However, the Agency now believes that the *per se* rule established by the Administrator in the *U.S. Pipe* decision was too inflexible and in certain respects unlawful. EPA is clearly obligated under *Bradley* and *Thorpe* to apply new statutory law to administrative proceedings which are not final, unless a contrary legislative intent can be discerned. However, courts will give deference to EPA's own regulations controlling the application of EPA rules to pending proceedings. See *Greene* v. *United States, supra* at 160–162. Moreover, the courts will not apply the *Thorpe* rule blindly where to do so would result in unnecessary delay. *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 418–19 (1971). Accordingly, EPA has preserved the general rule enunciated in the *U.S. Pipe* decision, but has modified it to require the Presiding Officer to apply intervening statutory requirements, and to allow him to apply new regulations where to do so would not unduly prejudice any party. The Agency expects that motions to apply new regulations will be liberally granted where to do so will shorten the hearing or resolve issues (such as determination of BCT or BAT on a case-by-case basis) that otherwise would consume considerable staff and hearing time. See *Public Service Co. of Indiana* v. *FERC*, 575 F.2d 1204 1220–21 (7th Cir. 1978).

§ *124.90 Interlocutory appeal.*

The present practice of deciding legal issues separately through referral to the Office of General Counsel has been eliminated. Instead, these issues will be subject to normal interlocutory appeal procedures. The regulations also provide that the General Counsel's Office will play a major role in deciding any legal issues raised in such appeals. This approach was suggested in the comments of the Utility Water Act Group. Similar changes have been made to § 124.101.

This approach presupposes that members of the General Counsel's Office who take part in deciding interlocutory appeals under this provision will not have performed "investigative or prosecutorial functions" in the hearing at issue, and will not be organizationally subordinate to those who have. 5 U.S.C. Section 554(d). In the normal course lawyers in the General Counsel's office do not perform such functions. In NPDES cases where they do, the lawyer in question and all that lawyer's subordinates will be barred from advising the Administrator.

§ *124.101 Appeals to the Administrator.*

(1) The proposed regulations would have provided two administrative appeals from ALJ decisions—once to the Regional Administrator and then after that to the Administrator in Washington. In the final regulations the opportunity to appeal to the Regional Administrator has been eliminated and only the appeal to the Administrator has been retained. This will make the process far less cumbersome. Regional Administrators will still be able to express their views by advising on the terms of draft and final permits and either by participating in the evidentiary hearing or by declaring themselves part of the decisional body (and thus subject to the *ex parte* rules of § 124.78) and advising the Administrator.

(2) Comments were received objecting to the provisions in this section for the Administrator to consider new issues on appeal or to base a decision on material erroneously excluded. These provisions were inserted to provide a measure of flexibility in the administrative decisionmaking process. Of course they should not be invoked where the matters to be considered are of a type that properly should have been subject to an evidentiary hearing.

(3) A number of commenters objected to the showing of substantial issues in justification of an appeal to the Administrator has a very broad power § 124.101. We agree with those commenters who stated that the Administrator has a very board power of review of decisions in NPDES permit cases. However, EPA's intent in setting up this program is that: (1) this power of review should be only sparingly exercised; (2) most permits be finally adjudicated at the Regional level; and (3) review by the Administrator be confined to cases which have precedential importance for the program as a whole. The threshold showing as proposed was intended to further that purpose; and thus has been retained.

(4) Another commenter asked about the availability of interlocutory judicial review of decisions such as new source determinations and section 316(a) determinations.

EPA's position is that judicial review is only available for final permits for which appeal to the Administrator has been sought under §124.101. Except in the special cases explicitly described in §124.56 all other decisions in connection with a permit are subject to challenge and revision in future administrative proceedings. They represent cases in which the administrative process is therefore not complete, and are not ripe for review because they fall under the requirement to exhaust administrative remedies.

§§*124.111 through 124.127 Non-adversary procedures for initial licensing.*

The APA allows decisions on the initial grant of a license or variance to be made by procedures that are much less adversarial than strict court room procedures, even when a formal hearing is required. The regulations use this provision of the APA to move away from traditional format hearings in which EPA and other parties present separate cases before a single hearing officer. Instead, under Subpart I, a panel of EPA employees with expert knowledge of, or responsibility for, the subjects involved will be present at the hearing and will question the parties, subject to over-all control of the proceeding by the Presiding Officer, an Administrative Law Judge. We expect that in some cases no Agency trial staff will be designated, although the regulations allow one to be named if necessary. Instead, the Agency will prepare a draft response to the permit application, and the information contained in the application and the draft response will be the focus of attention at the hearing. The hearing itself will be divided into a "legislative" phase—at which the parties can present views and arguments to the panel and engage in a colloquy, and an "adjudicative" phase—at which formal cross-examination can be ordered if certain threshold conditions are met. After the hearing, the panel will prepare a recommended decision which may be appealed to the Administrator. Though the Administrator will make an independent review of the decision upon deciding to review it, the Administrator would be free to consult with panel members. EPA believes that this procedure complies with the literal language of the "initial licensing" provisions of the APA and fits the purpose of those provisions more closely than existing procedures.

Under the APA, in cases of formal rulemaking, ratemaking or initial licensing, agencies have more latitude than in other formal cases to require the submission of evidence in written form. 5 U.S.C. Section 556(d). An initial decision by the "independent" presiding Administrative Law Judge (ALJ) is not

required; instead any "responsible employee" of the Agency may recommend a decision. 5 U.S.C. Section 557(b)(1).

As the preamble to the proposal explained, these exemptions were provided for initial licensing because the decisions involved were complex and policy-dominated and thus were thought to be "like rulemaking." Since these decisions did not involve accusing anyone of wrongdoing, there was no reasons for "separation of functions" within the Agency or for an initial decision by a statutorily independent individual. Rather, the complexity of the problems required that the Agency be able to draw on its staff experts freely without being hampered by such artificial barriers. *APA: Legislative History;* S. Doc. 248, 79th Cong., 2d. Sess. 204, 229, 262, 361 (1946) (henceforth *APA Leg. Hist.).*

The use of a panel and the omission or deemphasis of an EPA trial staff in proceedings under these regulations would make their structure conform more closely to the non-accusatory nature of the decision in question. The form of proceeding would correspond to its function—a group of EPA employees exploring the issues to determine what decision to make or recommend—rather than to a courtroom trial.

The comments raised a number of closely intertwined objections to the legal justification for this approach and to the implementation of it. The most important general objections are discussed first, followed by a discussion of comments relating to individual sections.

(1) General comments.

(a) *First objection—issuing NPDES permits to existing sources is not "initial licensing".*

The commenters who raised this issue made little effort to support it, and it suffers from the initial weaknesses of being contrary to the plain language of the statute, consistent EPA practice and the relevant judicial opinions.

The APA defines "license" to include:

> The whole or a part of an agency permit, certificate, registration, charter, or other form of permission, 5 U.S.C. section 551(8),

and "licensing" as including:

> Agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license, 5 U.S.C. section 551(9).

Though "initial" is not defined, its natural meaning (according to Webster's Third World Dictionary, unabridged 1947) is "of or relating to the beginning," or, in other words to the *first grant* of the license in question. Neither this definition nor the statutory language offers any basis for distinguishing between first grants of licenses to existing sources and those which are physically new.

In the more than six years since the NPDES system was authorized by the Federal Water Pollution Control Act Amendments of 1972, EPA has consistently treated the first grant of an NPDES permit to an existing source as "initial licensing" and this reading has been upheld by both courts which have considered the point. *United States Steel Corp.* v. *Train,* 556 F.2d 822, 834–35 (6th Cir. 1977); *Marathon Oil Corp.* v. *Environmental Protection Agency,* 564 F.2d 1253, 1265 (9th Cir. 1977).

Analogous provisions of the APA confirm that the exemptions made available for "initial licensing" may properly be used even when an existing source is being permitted. Whatever the examples of "licensing" Congress had in mind, Congress made the same exemptions available for all cases of ratemaking, and ratemaking of course in the majority of cases would involve existing companies.[3]

(b) *"Separation of functions" should be followed in initial licensing.* "Separation of functions" in the strict sense will be observed in proceedings under this Subpart. Whenever an agency trial staff is named to perform an advocacy role in the hearing, separation of functions requirements will apply to it (§ 124.78).

The comments on this point argued by analogy that persons involved in preparing the draft permit should not sit on the panel, and that members of the panel should not advise the Administrator on appeal. The APA contains no prohibition on either of these practices. Nevertheless, we have discussed them as though the literal bar on separation of functions in the narrow case was concerned.

The legislative history of the APA contains a number of statements cautioning agencies against overbroad application of the exemptions which the text of the statute provides from "separation of functions" requirements and from the requirement to prepare a proposed decision before making a final one. Several commenters argued that these statements demonstrated that NPDES permitting is not the kind of "initial licensing" Congress had in mind, and that accordingly, these exemptions should not be applied to it.

We disagree. As the preamble to the proposal stated, these exemptions were provided for cases which involved a complex array of factual and policy issues requiring a division of labor among the staff, and which were not "accusatory". NPDES permitting easily meets both tests.

Particularly where a permit to a major source is concerned, questions can arise concerning the nature of given industrial processes, their similarity to or difference from other industrial processes, and how this should affect control requirements or classification under effluent limitations guidelines. For section 301(c) determinations, EPA must consider the economic impact of the proposed discharge requirement, and alternative discharge requirements, on the plant itself and the company. Section 316(a) thermal variances can require consideration of the dispersal and persistence of the discharge in the receiving waters, and its effect there on numbers of different species and the ecosystem generally. In many cases, certainty on these points will not be attainable; yet the final judgment will depend on highly discretionary judgments on a variety of legal and factual issues.

In such cases, the final decision will depend largely on "policy" choices about how to choose among uncertainties and weigh various facts against each other, just as it does, for example, when economic information of various sorts must be analyzed for rate-setting purposes, or information on traffic growth, company and community economic health, and other factors must be assessed for purposes of CAB or ICC route awards. These latter decisions are clearly among those which Congress meant to exempt from "separation of functions" requirements, and NPDES permitting in our view should be similarly classified.

Similarly, the initial grant of an NPDES permit is "non-accusatory" like these other decisions because it is the first time the Agency will have confronted the task of applying the standards of the statute to the particular discharge at issue. The Agency will have not made a prior decision to which it might feel compelled to adhere, as could be the case in renewal licensing, and whatever decision is made will not amount to a finding of legal wrong-doing.

The legislative history of the APA, we believe, recognizes these points. Both the House and Senate Reports say at

[3] Under 5 U.S.C. sections 551 (4) and (5), "rulemaking" includes "ratemaking". 5 U.S.C. section 554, which contains the APA's separation of functions requirements, states in subsection (a) that it only applies to "adjudication", while sections 556(d) and 557(b) contain parallel exemptions from other APA requirements for rulemaking and initial licensing.

one point that "instances" of the exempted categories may arise which "tend to be accusatory in form *and* involve sharply controverted factual issues" and where the exemption contained in 5 U.S.C. section 554(d) from separation of functions should not be invoked (emphasis added). As this preamble explains, the whole purpose of EPA's new provisions is to avoid being "accusatory in form" while for the reasons just given, EPA does not believe they are accusatory in substance. The logic of these passages accordingly does not apply.

Both the House and the Senate reports also say that:

> The alternative intermediate procedure [in 5 U.S.C. section 557(b) (1) and (2)] which an agency may adopt in rulemaking or determining applications for initial licenses is broadly drawn. But even in those cases, if issues of fact are sharply controverted or the case or class of cases tends to become accusatory in nature, sound practice would require the agency to adopt the intermediate *recommended* decision procedure, *APA leg. Hist.* p. 273, accord, p. 210 (emphasis added).

This language only states that agencies should not omit an intermediate decision *entirely* under section 557(b)(2) in the described cases. There is no indication that an intermediate decision by an ALJ would be required; indeed, the implication is to the contrary. The text of 5 U.S.C section 557 provides that as a general matter ALJs in adjudicatory proceedings must render "initial" decisions, but that in rulemaking and initial licensing any "responsible employee" may instead "recommend" a decision. Yet the quoted passages refer to a "recommended" decision (by a "responsible employee"), not an "initial" decision (by an ALJ).

Under this reading, the quoted passage does not pertain to the procedures at issue here, which provide for a recommended decision by the panel in every case.

In addition to these reasons based on the letter of the APA's language and legislative history, we believe EPA has made a legitimate effort to respond to the spirit of the statute. First, the procedures are not mandatory for all cases of initial licensing, and so the Agency will retain discretion to follow more conventional procedures in those cases where they are most appropriate. In general, EPA believes that Regions should consider using these procedures in complicated cases where the record will be long and technical. These are the cases that will best justify the work of assembling and using a panel, and that will profit most from the increased reliance on procedures other than cross-examination. Cases with few issues or issues that are easily focused should be handled through the more customary procedures. However, EPA also believes that Regions must have discretion to make this choice in individual cases, and that the only proper question for judicial review should be whether the procedure actually selected resulted in a legally satisfactory hearing, not whether some other procedure might have been better.

Second, the procedures themselves have been structured to avoid as much as possible creation of an "adversary" or "accusatory" mentality through overreliance on courtroom devices. Finally, in response to comments, the regulations have been rewritten to ensure that there will be independent review of a permit during Agency decisionmaking, but in a way that avoids the costs of formal separation of functions.

The regulations do this by stating that any hearing panel on a permit must include at least two persons who had no connection with preparing the draft permit, and that when the Administrator reviews a permit, any persons assisting him or her directly in preparing the opinion must be "without substantial prior connection with the matter." This will ensure that at successive levels of review new people will take a fresh look at the permit, and that the same small group will not be in charge of decisionmaking from start to finish.

However, no restriction has been placed on who these new people may talk to. To do that would be in effect to re-adopt separation of functions with all its inefficiencies. Instead, the effort has been to build a system of "checks and balances" within the internal structure of the Agency that can serve the same purpose in a less costly manner. See II K. Davis, Administrative Law Treatise 11.10 at 87 (1958).

For these reasons, we believe the elimination of formal "separation of functions" from the new initial licensing procedures is well within the discretion recently recognized by the Supreme Court. "Absent constitutional constraints or extremely compelling circumstances, the administrative agencies should be free to fashion their own rules of inquiry and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties", *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 98 S.Ct. 1197, 1211 (1978) citing and endorsing language from two prior opinions.

(c) *Third objection—variances are not initial licenses.* Many comments argued that the proposed procedures went too far in applying the APA "initial licensing" provisions to "the first decision on any variance applied for by a discharger." We believe our position is supported both by the language of the statute and by its purposes.

Under the APA, " 'license' includes the whole *or part* of any agency permit . . . [or] statutory exemption," and " 'licensing' includes agency process respecting the . . . amendment, modification, or conditioning of a license." (emphasis added) The language of the statute, then, furnishes no reason why a variance cannot be regarded as a "license" in itself, either as "part" of the existing permit or as a "statutory exemption" from the requirements. Granting a variance similarly fits under the definition of "licensing" both because the variance can be viewed as a license in itself and because in any event the proceeding results in the actual or potential amendment or modification of a permit.

This line of construction could be pressed so far that it gave results contrary to the main purpose of the statute. However, where the initial grant of a variance is concerned, the results of this approach are in harmony with those purposes.

The first decision on a statutory or administrative variance granted to a source will be the first occasion on which EPA will be applying the policy of that particular provision of the statute or authorizing regulations to the given discharge. Very often the factual and policy considerations relevant to a decision on that variance will be just as wide-ranging, and just as incapable of precise resolution, as the considerations bearing on the initial grant of the basic permit. For example, variances under sections 301(g), 301(h) and 316(a) of the Act depend on predicting the impact of the uncontrolled discharge on the entire relevant ecosystem, while variances under section 301(c) depend on an assessment and evaluation of the cost of technology for a given plant and on drawing the conclusions that installing this technology would be "beyond the economic capability" of the source and that alternate requirements will result in "reasonable further progress" toward full control.

Such decisions therefore, will often fit the tests put forth above for determining when a decision is "initial licensing." Indeed, in *Seacoast Anti-Pollution League* v. *Costle*, 572 F.2d. 872, 875 n.3, 879 (1st Cir. 1978), (henceforth *Seabrook*) the court held in effect that it made little difference whether the *Seabrook* proceedings were characterized as the initial grant of a

permit under section 402 of the Act or the initial grant of a variance under section 316(a)—the procedures would be the same and would be governed by the "initial licensing" provisions of the APA.

The one 21 year old case cited against this conclusion, *Chotin Towing Corp.* v. *Federal Power Commission*, 250 F.2d. 394 (D.C. Cir. 1957) is not on point. That case held that a proceeding to abandon a pipeline was not "initial licensing." The abandonment decision would presumably be made under the same statutory provisions the license was granted under, and would therefore not represent the first time the agency took a position on those provisions in the context of the particular pipeline. By contrast, variances under the Clean Water Act result from the application of statutory provisions on which the Agency will not previously have taken a position, and which therefore fit the purpose of the "initial licensing" provisions the way the abandonment proceeding at issue in *Chotin Towing* did not.

Experience, however, has shown that hearings for variance are seldom necessary. For instance, in all the fundamentally different factor variances decided to date, there has not been a question of fact at issue but if a particular situation applied to a quideline. In such cases, where facts are not at issue, the decision on the variances may be handled without a hearing but on the papers filed by interested parties.

(d) *Fourth objection—cross examination would be unduly limited.* Many comments asserted that the test for being granted cross-examination set forth in these procedures was too strict. The statute, however, states only that cross-examination must be allowed to the extent required for a "full and true disclosure of the [material] facts." A long line of commenters have criticized the tendency of formal administrative hearings to allow long and unproductive cross-examination. The procedures set forth in these regulations do no more than set forth in a manner essentially endorsed by one Court of Appeals, a method by which the standards of the statute may be particularized. *Seabrook* at 880. How rigorously they are applied will depend on the factual circumstances of each particular case.

Commenters also asserted generally that the restrictions on cross-examination in these procedures showed that EPA was prepared to ignore important factual questions in initial licensing.

On the contrary, EPA believes that resolving factual questions may often be important in initial licensing, though there may also be many cases where their resolution is not governing or where they cannot be resolved. However, there are many devices other than cross-examination for such questions. Written comments and panel hearings are two of them. These regulations have been structured to encourage the use of such alternative ways of resolving such important factual questions before the more cumbersome tools of cross-examination are called on.

On a more specific point, several commenters asserted that in requiring testimony to be submitted in written form in initial licensing, the regulations violated the holding in *Seabrook*. However, on March 24, 1978, Administrator Costle issued a Response to the Remand Order in this opinion. In the document that Administrator said:

> The Court of Appeals disapproved the manner in which I requested written information * * * after the initial hearing had been held and when the case was on appeal to me.
>
> Under the Administrative Procedure Act, the submission of evidence in written form may be required in cases, such as this one, concerning the initial grant of a license or permit. The court acknowledged that but held that this result had to be qualified by the special language of the Federal Water Pollution Control Act, which requires an "opportunity for public hearing" in permit cases.
>
> As I read the court's opinion, their holding on this point was motivated by a concern that all evidence received at an adjudicatory hearing be subject to a full opportunity for public comment and potential cross-examination. * * * I do not believe the court meant totally to exclude the use of written testimony in initial licensing cases such as this.
>
> The examples of abuse of the "written evidence" provision the court gave in its opinion all relate to evidence received *after* the hearing. Here I can appreciate the conclusion that evidence so received may, as a practical matter, be less exposed to public comment than it should be, even if a formal opportunity for cross-examination is provided.
>
> No such danger would arise if the evidence is provided before the hearing and can be the subject of comment, argument, and potential cross-examination at it. In addition, the hearing would provide a chance to correct any unanticipated deficiencies that might arise. Cf. Attorney General's Manual on the Administrative Procedure Act. P. 78. (1947).
>
> By contrast, there is at least a possibility that an absolute right to present direct testimony orally could be abused for purposes of delay in complicated or controversial cases.
>
> The trend of the law has been to allow more latitude, not less, to agencies to require the submission of complicated technical material in written form to increase efficiency and avoid delay, as long as an adequate opportunity for public challenge and dispute was preserved. See 40 *Fed. Reg.* 40682, 40703 (Sept. 3, 1975); 41 *Fed. Reg.* 51716–17 (Nov. 23, 1976).
>
> Beyond these considerations, I believe a careful reading of the conceptual framework of the court's opinion also supports the position I have adopted.
>
> The question of the extent to which written evidence is proper under the APA only arises when an initial licensing decision must be made by formal adjudicatory procedures. Those procedures are only applicable where the statute (or in some cases, due process) requires them. The court held that where adjudicatory decisions are concerned, an intent to hold formal hearings should generally be inferred whenever the statute requires a "hearing" in connection with that decision.
>
> However, to hold that written evidence may not be required in initial licensing cases if the governing statute requires a "hearing" would be inconsistent with that basic analysis. The "written evidence" provision only applies when the statute requires a formal hearing. It was deliberately inserted to govern such hearings. To say that it does not apply whenever the statute at issue requires a "hearing" would be in effect to say that it never or almost never applied, since a statutory "hearing" requirement is necessary to make the APA applicable in the first place. It would be in effect to say that the same statutory reference that makes formal hearing procedures applicable generally also makes the "written evidence" provision for initial licensing cases inapplicable, even though Congress expressly inserted that provision as a general rule for formal hearing procedures.
>
> Though the Federal Water Pollution Control Act does not simply require an opportunity for a hearing, but an opportunity for a "public" hearing, I do not believe that the presence or absence of this one word should change the outcome of the analysis. There is no indication Congress intended such a sweeping result to follow, and the term has never been understood to carry this meaning. Indeed, virtually all hearings are "public" by definition and to the extent "public" has any explicit connotation, I take it to be one of less, rather than more, formality—a hearing to receive *public* views and complaints, rather than to generate a record for decision.
>
> Instead, I take the court's opinion to mean that where the statute requires a "public hearing" any written evidence received must come in before that hearing begins, or at it, so that it can be the subject of potential cross-examination, or other types of challenge, in a public forum.

This interpretation was not challenged in the remand proceedings and has now been decided in EPA's favor by the First Circuit. It is adopted here.

A related change has been made in consequence. Comments came in asking about the relationship between "reply comments" under proposed § 124.119 and post-hearing briefs under § 124.123.

Since under the interpretation here adopted, reply comments could not contain testimonial material in any event, the "reply comment" provision and the section on post-hearing briefs perform the same function and the "reply comment" provision has been deleted.

Some commenters also argued that the use of a panel violates the "on the record" decision requirement of the APA. However, as the court in the *Seabrook* case explicitly recognized, consultation among experts is legal and desirable in decisionmaking in technical areas. *Seabrook* at 872, 880–81. The statutory background discussed above explicitly contemplates that the decision in initial licensing cases may be the work of a group. See especially *APA Leg. Hist. at 229.*

(e) *Fifth objection—there is no need for two procedures.* Several persons urged that having two types of procedures for making decisions on "initial licensing" would be cumbersome and create confusion beyond any purpose it might serve.

We disagree. Procedures analogous to those set forth in Subpart I have been used in other contexts at EPA and have worked well. They have proved easy to follow and did not require undue explanation. The costs of delay and lack of coordination in formal adjudication can be so great that a new approach would be justified if it saved time and effort in only a few cases. We think the savings from this approach will be much more considerable than that.

The Natural Resources Defense Council suggested that these procedures might be adapted to all NPDES permit decisions, which would make the creation of separate initial licensing procedures unnecessary. Though this would be desirable as a matter of policy, in EPA's judgment the legal differences between initial and non-initial licensing under the APA are too great to make such an approach feasible. However, § 124.111(a)(3) has been amended to allow applicants who do not come within the definition of "initial licensing" to voluntarily be subject to these procedures instead of Subpart H. A request under § 124.111(a)(3) made during the public comment period, if granted, can have the effect of this Subpart superseding Subparts E and G.

(2) *The Extent of Disagreement.* Despite the number of comments received on these proposals, EPA believes the disagreement is more about means than about ends. This emerges clearly from the following comments of the Utility Water Act Group, which submitted the longest and most detailed analysis of these procedures. As an alternative to the proposed procedures, they suggested these steps:

> Hearing panels, with independent decision makers [sic] as suggested below, could be used either during the informal public hearings on draft permits or, in proper cases of initial licensing, during the adjudicatory hearing itself. They might, under the supervision of the presiding officer, be used to write some or all of the technical portions of the decisions involved. Separate technical advice (perhaps drawn from the same pool of technical persons involved in the hearing panels, but not including those persons involved in the particular case in question) could be provided to the Administrator on appeal. Thus, the advantages of technical input to the decisionmakers could be combined with independence of decisionmakers, both initially and on review. This would fill the Agency's needs while also providing fair and imparital decision [sic] making.
>
> In the evidentiary hearing process, presiding officers can be authorized to impose very abbreviated cross-examination rights where proper initial licensing cases are involved, subject to the same sorts of tests articulated now in the separate [initial licensing] procedures. The Agency staff would function as party to these proceedings. But the rules could specifically require that they eschew an adversary position and act affirmatively to ensure that the record is adequate and that a reasoned and objective Agency decision results from the process. Participating staff members must be prepared to confess error, after hearing the evidence, on some positions which the staff originally took in the draft permit. [Utility Water Act Group Comments pp. 252–53.]

These are the same basic ends EPA seeks through the special "initial licensing" procedures promulgated today. The only differences are that the Agency believes that a strict, courtroom type separation of functions is too costly in time, resources, and the quality of the resulting decision to be compatible with that goal, and that a "non-adversary" agency staff can only be achieved by removing it from participation in the inherently adversary setting of a trial-type hearing.[4]

Comments on Specific Sections

§124.111 Applicability.

The major questions under this section, regarding the treatment of existing sources, variances and the need for an alternative procedure, have been discussed above. A new provision has been added to allow parties to elect to follow this procedure in cases that do not involve initial licensing.

One commenter raised the question whether a permit to a source that has changed owners would be considered an "initial license" potentially subject to these procedures. The answer is "No"—it is the first permit to the physical facility, not to the owning entity—that is significant under the purposes of the "initial licensing" provisions discussed above.

§124.112 Relation to other Subparts.

A number of commenters point out that the procedures in this Subpart were not articulated in as much detail as the other evidentiary hearing provisions, and asked that more provisions be added.

This lesser degree of formality was to some extent deliberate on EPA's part, since these proceedings are meant to be relatively less "judicialized" in form than those under Subpart H. For that reason, not all the suggestions on this point have been accepted. However, a substantial number have been, and therefore §124.112 has been added to specify the provisions from Subpart E, F, G and H that are incorporated in this Subpart I by reference.

§124.116 Notice of hearing.

Under the proposal, the Regional Administrator would have issued the decision in all cases after the hearing. This proposal left open the question of the role of the Presiding Officer in preparing that decision. To correct this ambiguity the regulations have been rewritten to provide that the Regional Administrator must choose, at the time the notice of hearing is issued, whether the decision will be issued in his or her name or in the name of the Presiding Officer. If the Presiding Officer is chosen, then the analysis and conclusions of the initial decision will be wholly the responsibility of the Presiding Officer, though consultation with the panel and consideration of their views will be expected. If a Regional Administrator decision is chosen, the Presiding Officer will have no obligation to take part in preparing it, although he or she may take part.

§124.120 Panel hearing.

(1) Commenters attacked the provision in this section and §124.121 requiring the Presiding Officer to consult with the panel before making rulings on cross-examination. They argued this might prejudice the independence of the Presiding Officer.

The APA allows decisions in "initial licensing" cases to be "institutional" decisions that draw on the training and experience of a number of different staff members, rather than the work of the Presiding Officer alone. These staff

[4] For further discussion of these and other points relating to these "initial licensing" procedures see Pedersen "The Decline of Separation of Functions in Regulatory Agencies", 64 Va. L. Rev. 991 (1978).

members must work from the record in preparing their decision. Under these regulations those staff members will also be members of the hearing panel or its support staff. Because the panel members will therefore have a stake in the contents of the record from which they will all have to work, it is appropriate for the Presiding Officer to consult them on key decisions that may help to shape that record. The Presiding Officer, of course, will retain the final power to rule on these matters.

(2) Several commenters argued that the entire panel be present at any cross-examination under this section. This comment has been accepted, so that all panel members, to the extent feasible, be present

Subpart J—Miscellaneous

§124.131 Public access to information.

A number of commenters suggested that trade secret information either should not be disclosed to other persons in NPDES proceedings, or should only be disclosed subject to specific safeguards. The handling of trade secret information has not generally been a problem in NPDES proceedings, in part because the statute restricts the types of information that qualify.

However, to remove any ambiguity EPA has added a reference to EPA's general regulations on this point to this section to make clear that they continue to govern except to the extent that the Clean Water Act mandates disclosure.

§ 124.132 Delegation of authority: time limitations.

Quite a few commenters urged that EPA should set additional deadlines for its actions under this Part, or that failure to meet the deadlines already established should have more drastic consequences. These comments have not been accepted. The Agency's workload, commitments, and future resources are too unpredictable to make it advisable for any more binding deadlines to be set. One of the major purposes of these revisions is to speed the processing of permits and that result should be evident whether or not more deadlines are established.

§ 124.133 EPA Headquarters approval of stipulations or consent agreement.

Some commenters also question the provision that all stipulations be approved by the EPA Deputy Assistant Administrator for Water Enforcement. This provision has been retained because cases which are settled upon stipulation after having been set down for hearing are apt to be the major controversial cases for which a specific provision for central review is appropriate. However, it has been rewritten and renumbered to make clear that only stipulations which settle the case or a major portion of it are subject to this provision.

§ 124.135 Effective date.

While Parts 121, 122, 123, 125, and 403 will be effective 60 days after issuance, this is a new section which states that Part 124, with some exceptions, shall not be effective until 120 days after issuance. This extra time is necessary to allow EPA Regional Offices and NPDES States to change internal operating procedures as necessary.

V. Part 125—Criteria and Standards for the National Pollutant Discharge Elimination System

A. *What Does This Part Do?* Part 125 contains requirements or standards which must be applied by EPA or approved States in making specialized types of permit determinations. One or more of these determinations must often be made in the course of permit issuance or modification.

B. *How Does This Part Relate To Existing Regulations?* Three of the Subparts contained in this Part are taken from existing, i.e., former, EPA regulations. Subpart B (proposed Subpart C) establishes the criteria for issuance of permits to aquaculture projects. These criteria are substantially the same as the criteria in former 40 CFR 115.10. The other requirements of former 40 CFR Part 115 are now contained in various sections of Part 122 and 124. These regulatory revisions were made in response to the 1977 amendments to section 318 which stated that such permits must now be issued pursuant to section 402 of the Act. Since the requirements of former Part 115 are now contained in these regulations, Part 115 is deleted. Subpart H (proposed Subpart I) establishes the criteria for determining alternative effluent limitations under section 316(a) of the Act. The criteria are substantially the same as in former 40 CFR Part 122. Since the requirements of former Part 122 are now contained in these regulations, former Part 122 is deleted. Subpart J (proposed Subpart K) establishes the criteria for extending compliance dates under section 301(i) of the Act. This Subpart J incorporates the interim final section 301(i) regulations published on May 16, 1978.

Two of the Subparts contained in Part 125 were proposed for the first time on August 21, 1978. Subpart A establishes criteria and standards for imposing technology-based treatment requirements under section 301(b) of the Act. Subpart D (proposed Subpart E) establishes criteria and standards for determining fundamentally different factors under sections 301(b)(1)(A), 301(b)(2)(A), 301(b)(2)(E) and 307(b) of the Act.

One Subpart contained in this Part was proposed for the first time on September 1, 1978. Subpart K (proposed reserved Subpart L) establishes criteria and standards for imposing best management practices for ancillary industrial activities under section 304(e) of the Act.

C. *How Does This Part Relate to the August 21, 1978 Proposed Regulations?* The following is a discussion of the significant comments received and the basis for revisions made to Part 125 of the proposed regulations. Minor editorial changes have been made in all sections.

Proposed Reserved Subparts

Proposed reserved Subpart B—EPA Objection to State-Issued Permits Under Section 402(d)(2) of the Act. This Subpart was reserved for the provisions of former 40 CFR § 124.42. EPA has decided to move these requirements to § 123.23 so that all requirements relating to State permit programs will appear in that Part.

Proposed Reserved Subpart L—Criteria and Standards for Best Management Practices Under Section 304(e) of the Act.

This Subpart was reserved in the August 21, 1978 proposal. On September 1, 1978, EPA proposed regulations establishing criteria and standards for best management practices under section 304(e) of the Act. These regulations are now incorporated in part in the final regulations as Subpart K. A more detailed discussion of this Subpart is found in the preamble discussion of Subpart K.

Other Proposed Reserved Subparts.

Other proposed reserved Subparts remain reserved pending development of criteria and standards. These Subparts are relettered as follows:

Subpart C (proposed Subpart D)—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology

Under Section 301(k) of the Act.

Subpart E (proposed Subpart F)—Criteria for Granting Economic Variances from BAT Under Section 301(c) of the Act.

Subpart F (proposed Subpart G)—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act.

Subpart G (proposed Subpart H)—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Act (criteria proposed as 40 CFR 233, Subpart B on April 25, 1978).

Subpart I (proposed Subpart J)—Criteria Applicable to Cooling Water Intake Structures Under Section 316(b) of the Act.

Subpart L (proposed Subpart M)—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act.

Subpart A—Technology-Based Treatment Requirements

This Subpart establishes the criteria and standards for imposing technology-based treatment requirements of the Clean Water Act into permits under section 301(b). It clarifies and sets forth in regulatory form the long-standing EPA policy that these technology-based treatment requirements represent the minimum levels of controls under section 402, and that they cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators (although such techniques may be used to achieve water quality standards in certain limited circumstances).

Technology-based requirements may be imposed in permits through the application of an EPA promulgated effluent guideline or on a case-by-case basis under section 402(a)(1) of the Act. Case-by-case determinations must consider: the factors listed in section 304(b) of the Act for development of EPA effluent guidelines; EPA draft or proposed development documents or other guidance; and other appropriate factors.

Commenters had little difficulty with the requirement that EPA promulgated effluent guidelines limitations must be applied in permits but several argued that EPA cannot require technology-based effluent limitations to be included in State-issued permits until EPA has promulgated effluent guidelines, citing *Ford Motor Co.* v. *EPA*, 567 F.2d 661 (6th Cir. 1977) and *Washington* v. *EPA*, 573 F.2d 583 (9th Cir. 1978). EPA disagrees and believes that these commenters misread those cases. EPA believes that issuance of these regulations satisfies the criteria expressed by the court in *Ford Motor Co.* v. *EPA*, (which indicated that EPA may "veto" State-issued permits only on the basis of validly promulgated EPA regulations or clear statutory requirements). For example, § 125.3 contains a clear and explicit requirement that even if effluent limitations guidelines have not been promulgated for a class or category of point sources, State and Federal permit issuers are obligated to establish technology-based permit requirements. See *United States Steel Corp.* v. *Train*, 556, F.2d 822 (7th Cir. 1977). As to the decision of the Ninth Circuit in *Washington* v. *EPA*, the court there held that the requirements of sections 301 and 304 of the Act are not self-executing, and that there were no regulations which would support a veto by EPA. The Agency believes that these regulations provide the support the court found lacking in *Washington* v. *EPA*, and that States can properly be required to set case-by-case technology-based effluent limitations even where EPA has not been able to promulgate effluent limitations guidelines. This requirement is also supported by the decision of the Sixth Circuit in *Republic Steel Corp.* v. *Costle*, 581 F.2d 1228 (1978).

Subpart B—Aquaculture

Subpart B (proposed Subpart C) sets out the criteria and standards for approving aquaculture research projects. The final version is essentially unchanged from the proposal except for § 125.11(a)(4). Two commenters pointed out that the proposal requiring the crop be fit for human consumption was too strict, in that it precluded crops which may be consumed by animals or plants. Therefore, this requirement was changed to require only that the crop not have a significant potential for human health hazards resulting from its consumption. As stated earlier, this Subpart incorporates the criteria found in former 40 CFR Part 115, and since the other requirements of 40 CFR Part 115 have been incorporated into the NPDES regulations revision, 40 CFR Part 115 is deleted.

Subpart D—Fundamentally Different Factors Variances

Subpart D (proposed Subpart E) establishes the criteria for determining whether a particular industrial discharger should be subject to more or less stringent effluent limits than those required by national effluent limitations guidelines or pretreatment standards promulgated under sections 301(b)(1)(A), 301(b)(2)(A) and (E), and 307(b) of the Act ("national limits"), because of site-specific "fundamentally different factors". When EPA establishes national limits under these sections of the Act, EPA considers a great deal of information regarding the appropriate statutory factors from various dischargers in an industrial category. In some cases, however, data on a particular discharger may not be available or may not be considered. It may therefore be necessary, on a case-by-case basis, to vary the nationally prescribed limits for a particular discharger if the relevant statutory factors relating to that discharger are shown to be fundamentally different from those previously considered by EPA.

No discharger, however, may be excused from the Act's requirement to meet BPT, BCT, BAT or a pretreatment standard through this variance clause. A discharger may instead receive an individualized definition of such a limitation or standard where the nationally prescribed limit is shown to be more or less stringent than appropriate for the discharger under the Act.

Subpart D is substantially similar to proposed Subpart E. However, the provisions have been reorganized and edited for greater clarity and have been revised in certain respects in response to public comments.

In response to some comments, EPA has deleted proposed § 125.26(a)(9). This paragraph would have prohibited a variance for a discharger if, as a result of the variance, other dischargers (or nonpoint sources) would be subject to additional controls through water quality wasteload allocations. EPA agrees that potential changes to wasteload allocations are irrelevant when considering the appropriate technology-based limitation for a particular discharger under the Act.

EPA has also modified proposed § 125.26(b)(3) (now § 125.31(d)(3)) by deleting the requirement that a treatment technology must cause a violation of State or Federal law to be considered an adverse non-water quality impact. EPA recognizes that a discharger's non-water quality impact, while not in violation of the law, could be fundamentally worse than the impact of the dischargers EPA studied when promulgating a national limit.

EPA has been prompted by other comments to add a new provision (§ 125.31(e)(4)) which makes clear that specific receiving water quality is not a relevant factor in the fundamentally different factors variance context. To allow relaxation from technology-based limits because of case-by-case variations in receiving water quality would be grossly violative of the Act

and contrary to its fundamental principles. *Weyerhaeuser Company* v. *Costle*, 11 ERC 2149, 2170–73 (D.C. Cir. 1978); *Appalachian Power Company* v. *Train*, 545 F.2d 1351, 1360, 1378 (4th Cir. 1976); *In Re Louisiana-Pacific Corp.*, 10 ERC 1841 (Administrator's Decision 1977). Similarly, new § 125.31(f) makes clear that nothing in the variance provisions impairs rights of States and localities under section 510 of the Act. Thus, a State or local government need not grant a variance even if a discharger satisfies all of the requirements of Subpart D.

It should be stressed that only "fundamental" differences may qualify a discharger for a variance. The above-cited authorities and the Act's legislative history show that Congress intended for plants in a given industrial category to meet technology-based limitations which are as uniform as possible. EPA's national limits are therefore "presumptively applicable," *Appalachian, supra* at 1358, and the variance clause must assure that the "pin-hole safety valve envisioned in the Act and *duPont* does not become a yawning loophole." *Weyerhaeuser, supra* at 2169. Accordingly, a discharger should not expect to obtain a variance by merely showing certain differences between itself and the plants EPA studied since no two plants in the country are exactly alike. The discharger must instead show such a substantial difference with respect to one or more of the relevant statutory factors that either (i) the costs of complying would be wholly out of proportion to the costs EPA considered on a national basis or (ii) the non-water quality environmental impact (including energy requirements) would be fundamentally more adverse than the impacts EPA considered on a national basis.

Paragraph 125.31(e)(2) provides that a variance may not be granted on the basis that a technology which EPA relied upon in establishing a national limit will not achieve the limit at a particular discharger's plant. Rather, a variance must be based on a showing that the discharger's plant is fundamentally different from the plants EPA studied. If a discharger does not believe that EPA's national limit is supported by a technology which EPA identified in its rulemaking record, the discharger's legal recourse is to seek judicial review of the national limit under section 509(b)(1)(E) of the Act within 90 days after promulgation. Alternatively, if the discharger's arguments are based solely on grounds which arose after this 90-day period, the discharger's remedy is to petition EPA for an amendment to its national rules. (See Administrator's final decision in the matter of Martin Marietta Aluminum, Inc.'s request for variance approval, October 1977, at pp. 15–16.)

Finally, as in the proposal, this Subpart does not apply to national limits promulgated in 40 CFR Part 423 (steam electric generating point source category). Pursuant to an order of the U.S. Court of Appeals for the Fourth Circuit, EPA has already published a new BPT variance clause for that industry; 43 FR 44846, September 29, 1978. EPA plans to propose an appropriate BAT variance clause for this category at the same time it proposes new BAT limitations for steam electric plants in compliance with the 1977 Clean Water Act Amendments.

Subpart H—Criteria for Determination of Alternative Thermal Effluent Limitations Section 316(a).

Subpart H (proposed Subpart I) is unchanged except for the addition of language regarding demonstrations of prior applicable harm discussed below. This language is now found in new § 125.72, *Early screening of applications for section 316(a) variances,* (proposed § 124.13); this section was moved into Part 125 because EPA believes it is more in the nature of a substantive, rather than a procedural requirement.

Commenters questioned why EPA did not discuss the use of "absence of prior appreciable harm" demonstrations for obtaining thermal variances under section 316. EPA considers the "absence of prior appreciable harm" demonstrations to be very important part of the section 316(a) process, and when warranted, encourages their use. EPA excluded reference to this type of demonstration because detailed guidance on how and when to conduct them will not be included in these regulations. However, for clarification, a reference to "absence of prior appreciable harm" has been added to this section.

The regulations have also been revised to provide that the specific forms of studies prescribed apply only to the initial grant of a section 316(a) variance. In many cases, neither the nature of the thermal discharge nor the aquatic population will have changed since a variance was initially granted. It would therefore be an unnecessary and costly burden on the Agency and dischargers alike to require a full section 316(a) demonstration for each renewal. Section 125.72 accordingly gives the Director the flexibility to require substantially less information in the case of renewal requests. This does not mean, however, that the Director may not require a full demonstration for a renewal in cases where he has reason to believe that circumstances have changed, that the initial variance may have been improperly granted, or that some adjustment in the terms of the initial variance may be warranted. Persons holding such a variance should, of course, be prepared to justify its continuation with studies based on actual operating experience, and a comment has been added to that effect.

One commenter suggested that the definitions of "representative important species" and "balanced indigenous community" should include only native species unless otherwise designated by the Director. Another commenter suggested the inclusion of all species. EPA has not changed this language.

Several commenters argued that applicants should not be required to analyze cumulative effects of thermal discharges together with other sources of impact upon the affected species as required by proposed § 125.47(a) (now § 125.72(a)). This issue was addressed in the Administrator's first *Seabrook* decision which concluded that analysis of cumulative effects is required.

Several commenters pointed out that the criteria in proposed § 125.47 (now § 125.72) are vague. The criteria have intentionally been written in a general manner because, as one commenter noted, factors in section 316(a) demonstrations are site-specific. Indeed, Agency experience in reviewing section 316(a) requests under the more detailed criteria of the former part 122 ("Thermal Discharges") has shown the inappropriateness of such criteria and has led to the more general criteria of present Part 125, Subpart H.

Subpart J—Criteria for Extending Compliance Dates Under Section 301(i) of the Act.

Proposed Subpart K (now Subpart J) was reserved for the criteria for extending compliance dates under section 301(i) of the Act. On May 16, 1978, EPA published interim final regulations implementing section 301(i) of the Act (43 FR 21266). Section 301(i) authorizes the Administrator, or where appropriate, the State Director, to grant timely requests for permits extending the July 1, 1977 statutory treatment requirements to no later than July 1, 1983. These extensions are potentially available only to POTWs that require construction to meet 1977 treatment levels and to certain dischargers which planned, in good faith, to discharge into a presently unavailable POTW ("tie-

ins"). The purpose of the interim final regulation was to establish the criteria for granting section 301(i) extensions and the method for incorporating these extensions into permits issued under section 402 of the Act. A 60-day comment period was provided, and the Agency received 11 written comments.

The EPA response to significant comments, including the development of an *Interim National Municipal Policy and Strategy* (Notice of Availability published 43 FR 47774, October 17, 1978) is described below.

The Enforcement Compliance Schedule Letter (ECSL) Policy

In the preamble to the interim final regulation, EPA announced that no more municipal ECSLs or comparable State procedural mechanisms would be issued "[s]ince section 301(i) and the ECSL are different solutions to the same noncompliance problem" (43 FR 21267). The preamble further stated that ECSL holders should elect a remedy; they could either request a section 301(i) extension and thus ultimately give up the ECSL or not request a section 301(i) and thus retain the ECSL. EPA strongly encouraged all potentially eligible POTWs, whether or not they held an ECSL, to request section 301(i)(1) extensions. In response to this effort, over 9,500 POTWs have requested section 301(i)(1) extensions while slightly more than 600 POTWs elected to retain their ECSLs. Thus, almost every POTW in the Nation which needs construction to meet the 1977 treatment deadline has either taken advantage of section 301(i)(1) or chosen to retain its ECSL. One commenter expressed the belief that all ECSLs should remain in effect and that the prior granting of an ECSL indicated a finding of good faith and therefore should be dispositive of a section 301(i) request. EPA does not intend to change its policy on the effect of an extension request on an ECSL because to do so after the deadline for 301(i)(1) requests (June 26, 1978) would unfairly penalize the 600 ECSL holding POTWs which may have relied on this EPA policy in deciding not to request an extension. EPA also continues to believe that the prior granting of an ECSL is not dispositive of a 301(i) request and that Congress intended for each request to be considered independently in light of the statutory criteria and actions by the ECSL-holder subsequent to the issuance of the ECSL.

EPA is aware of possible situations under section 301(i)(2) where an extension request must be denied for reasons completely outside the control of the discharger (e.g. the POTW did not request or receive a section 301(i)(1) extension as required by the Act). In such a situation, the use of a section 309(a)(6) order to "tie-in" (or comparable State procedural mechanism) may be appropriate.

Eligibility for a Section 301(i)(1) Extension

Under interim final § 124.103, a POTW would be eligible for a section 301(i)(1) extension if, among other requirements, it required construction to achieve statutory treatment limitations. The term "construction" was defined in interim final § 124.102(a). One commenter suggested that the definition of "construction" should be the same as the definition in section 212 of the Act. EPA agrees with this comment, particularly since the granting of a section 301(i)(1) request and the awarding of Federal financial assistance are closely related. The definition of "construction" has been changed accordingly.

Under interim final § 124.103(a), a POTW that needed construction to achieve the statutory treatment limitations and that had begun "actual construction . . . before July 1, 1977, but construction could not physically be completed by July 1, 1977, despite all expeditious effort of the POTW" was eligible for a section 301(i)(1) extension. "Actual construction" was intended to mean that the POTW must have begun a continuous program of physical construction of the facility before July 1, 1977, as opposed to actions which have been abandoned or are so insignificant that they did not lead to completion of the facility. However, when the EPA Regional offices and NPDES States began to process section 301(i)(1) requests it became apparent that there was some confusion as to what "actual" construction meant since only the term "construction" was defined. Therefore, EPA has clarified this concept by replacing the term "actual construction" with the definition of the term "initiation of construction" to allow a precise definition which is consistent with the construction grants definition found at 40 CFR § 35.905. Thus, under § 125.93 a POTW would be eligible for a section 301(i)(1) extension if it: (1) needs construction to achieve the statutory treatment limitations; (2) before July 1, 1977, issued a notice to proceed under a construction contract for any segment of Step 3 project work (or executed a construction contract if notice to proceed was not necessary) and (3) made all expeditious efforts to complete construction.

Under interim final § 124.103(b) (now § 125.93(b)), a POTW that needed construction to achieve the statutory treatment limitations and did not complete construction because "[F]ederal financial assistance was not available, or was not available in time for construction required to achieve these limitations, and the POTW did not in any significant way contribute to this unavailability or delay", was eligible for a section 301(i)(1) extension. This criterion has not been changed. EPA recognizes that many POTWs, especially minor POTWs, meet this requirement but will not receive Federal funding in time (or at all) to complete construction by July 1, 1983. Since, by the terms of the Act, these POTWs cannot be granted a section 301(i)(1) extension, EPA has developed an *Interim National Municipal Policy and Strategy* which indicates that such POTWs should receive 309(a)(5)(A) Administrative Orders (or comparable State procedural mechanisms) which are also based on the Construction Grant process. These orders, like 301(i)(1) extensions, should not be written to extend the July 1, 1983 deadline.

Section 301(i)(1) Compliance Schedules

Many commenters expressed confusion as to when fixed date compliance schedules, as opposed to floating or ratchet compliance schedules, should be used. This confusion was as a result of the use of the phrases "when the availability of Federal funding is certain" and "when the availability of Federal funding is uncertain" to indicate what type of schedule should be used. EPA discourages the use of ratchet schedules or floating schedules because they decrease the ability of the public to participate in the permit process. Furthermore, by definition, if the availability of Federal funding is so uncertain that compliance with the July 1, 1983 deadline cannot reasonably be assured, then the POTW is not eligible for a section 301(i) extension. Thus the regulations now require fixed date compliance schedules in all instances. In the *Interim National Municipal Policy and Strategy*, EPA established the priority in which section 301(i)(1) extension requests should be considered. Generally, projects in the earliest stage of the Construction Grant process (i.e., Step 1) are to be processed last. One of the reasons for giving Step 1 projects lowest priority was that EPA recognized that uncertainties in the Step 1 planning process, such as the need to prepare an Environmental Impact Statement or to make changes after a

public hearing, make it difficult to project the amount of time it will take to complete the Step 1 planning process. However, if *after* acting on requests from POTWs in Steps 2 and 3, extensions are granted for POTWs in Step 1, fixed dates for the submission of a facility plan should be used, recognizing that up to a four month slippage without permit modification is allowable. Permits issued during or prior to Step 1 planning generally should be written to expire on the date set for submission of a facility plan. The reissued permit will then contain a fixed date compliance schedule derived from the facility plan. However, if the permitting authority is able to accurately establish dates certain beyond the Step 1 process, such dates may be included in the permit.

When developing fixed date compliance schedules based on the construction grant process, the permit issuing authority should assume that appropriation will be provided in accordance with the EPA Annual Operating Guidance. Use of this approach in developing permit compliance dates will be considered sufficient to meet the requirement that the permit assure that the July 1, 1983 deadline will be met. It should also be noted that while the regulations contemplate certification that funding will be available in time to complete construction by July 1, 1983 to be by whatever method the EPA Regional Office and the State agree on, the mere granting of a section 301(i)(1) extension by an NPDES State does not constitute certification.

Subpart K—Criteria and Standards for Imposing Best Management Practice Under Section 304(e) of the Act.

Proposed Subpart L (now Subpart K) was reserved for the criteria and standards for imposing best management practices under section 304(e) of the Act. On September 1, 1978, EPA published proposed regulations establishing these criteria and standards (43 FR 39282). Section 304(e) of the Act authorizes the Administrator to publish regulations to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which may contribute significant amounts of toxic and hazardous pollutants to navigable waters. The purpose of Subpart K is to prevent discharges of toxic and hazardous substances from facilities which are subject to the NPDES. In *NRDC* v. *Costle* (Runoff Point Sources) the court recognized EPA's authority under section 402(a)(1) of the Act to include BMPs in permits where numeric effluent limitations are infeasible or where reasonably necessary to achieve effluent limitations and standards (see §122.15(g) (2) and (3) and preamble discussion to §122.15(g)). Subpart K, however, addresses EPA's authority to require BMPs under section 304(e) of the Act.

On September 1, 1978, EPA also proposed Spill Prevention Control and Countermeasure (SPCC) regulations under the authority of section 311(j)(1)(C) of the Act. Section 311(j)(1)(C) authorizes the issuance of regulations establishing procedures, methods and equipment to prevent discharges of oil and hazardous substances from vessels and from on-shore and off-shore facilities and to contain such discharges. The purpose of proposed 40 CFR Part 151 was to prevent discharges of hazardous substances from facilities subject to section 402 permitting requirements.

The approach used in both proposed regulations was similar to the one developed and used in EPA's oil pollution prevention regulation, 40 CFR Part 112. This was the concept of a plan developed by the owner or operator of a facility or by his/her engineer, in accordance with guidelines contained in the respective regulations. The proposal required that the plans be certified by a registered professional engineer and subsequently implemented by the owner or operator.

The requirements of the two proposed regulations (40 CFR Parts 125 and 151) were coordinated and the proposals stated that compliance by a facility with the provisions of the SPCC plan requirements set out in 40 CFR Part 151 would be established as a minimum level of control for the BMP plan required by 40 CFR Part 125. The purpose of publishing the two regulations concurrently was to allow the owner or operator of a permitted facility to develop BMP and SPCC plans concurrently and thereby avoid duplication of environmental controls. The proposal stated that SPCC plans could be incorporated into BMP Plans by reference.

A thirty-day comment period was provided which was extended twenty days (43 FR 47213, October 31, 1978). The Agency received 75 comments and EPA's response to the significant comments is described below.

Several comments were received suggesting that BMP Plans and SPCC Plans are duplicative and should be developed together. Other comments requested a clarification of the relationship between the two. Finally, some comments argued that since BMPs and SPCC Plans are authorized by different sections of the Act, they are therefore designed for different purposes and should not be linked. In response to the first comment, EPA wishes to point out that BMP Programs and SPCC Plans are being developed together. This first step in this development is Subpart K, i.e., BMPs which involve minor new construction or modifications to existing facilities. The second step will be SPCC Plans (and perhaps another BMP regulation) which will emphasize secondary containment to control spills and may require major construction for drainage control, sewering and diking.

EPA believes that a requirement for BMP programs is a necessary step at this time, for a number of reasons. Many industrial permits were issued during 1974 and 1975 and will be due for renewal before the SPCC requirements under section 311 become effective. Since the timing for preparation of SPCC plans by NPDES-permitted facilities will be tied to permit reissuance, many facilities would be subject to no spill prevention controls at all until 1984 or 1985. The development of a BMP program by such facilities will focus attention on the potential for spills and other unplanned discharges and help to prevent such occurrences until the time SPCC requirements become effective. BMP programs will be compatible with later requirements for SPCC plans, and steps taken in implementing a BMP program will satisfy some of the SPCC requirements. Additionally, EPA believes that prevention of unplanned releases of toxic materials requires actions by facilities not yet subject to SPCC requirements, and that the BMP program is an effective and relatively inexpensive way to achieve such prevention.

EPA also agrees with some commenters that, while both BMPs and SPCC Plans have many common features, their emphasis is different. Facilities subject to the NPDES Program normally have continuous discharges of wastewater and the capability to treat that wastewater. SPCC Plans, on the other hand, focus on classic spill events and may require containment. Thus, there is some overlap between BMPs and SPCC Plans (BMPs are normally a subpart of SPCC Plans) and therefore a need exists for a regulatory link. It should be noted that BMPs are broader than SPCC Plans in one sense because BMPs control both section 307 and 311 pollutants whereas SPCC Plans control only section 311 pollutants.

Many commenters argued that the economic impact of the proposed

regulations would be excessive and that the benefits to the environment would not justify the expense of employing the BMPs contemplated by the regulation. Although EPA explicitly requested information in the preamble to the proposed regulation (43 FR 39282) concerning the costs of BMPs and preparation of BMP plans for particular industries, few commenters directly addressed costs. It appears that the major categories of expense in the proposal were for SPCC related requirements. Because of this economic impact, EPA has revised today's regulations to make inclusion of SPCC plans in BMP programs discretionary rather than mandatory as was proposed. (See § 125.104(b)(4)(i).) Thus, Subpart K emphasizes BMPs of a procedural nature (especially preventive maintenance and housekeeping) and BMPs requiring only minor construction.

Based on a recent EPA survey of representative plants in the chemical industry, it appears that many of these type of BMPs are currently in use by facilities. Good housekeeping or preventive maintenance procedures, material recovery programs, safety procedures, training programs, etc. are common and thus the costs of complying with Subpart K will not be great. Facilities are encouraged, nevertheless, to begin planning for BMP-related major construction (drainage control, waste stream segregation, and secondary containment) to coincide with construction related to the installation of best available technology (BAT) and of the implementation of (SPCC) plans. BMP regulations requiring major construction may be published in the future.

Under authority of section 402(a)(1) of the Act, permitting authorities may impose BMPs on a case-by-case basis using best engineering judgment. These case-specific BMPs may be more costly than those contemplated by Subpart K which requires only procedural BMPs or minor construction. Guidance to permitting authorities will emphasize procedural BMPs and will encourage equivalency for potentially costly BMPs, such as secondary containment. Where permitting authorities have knowledge of a specific facility or receive information through the permit application indicating the opportunity for discharges of toxic or hazardous pollutants which could be prevented by a BMP, the permitting authority may impose a BMP based on best engineering judgment. Such BMPs, which may involve construction, are expected to be limited to facilities with spill histories or other indications of an inadequate program to control discharges from ancillary industrial activities.

Several commenters argued that dictating manufacturing process changes or operational procedures and activities went beyond the intent of Congress. EPA does not intend to use BMPs to dictate how plants are operated or to otherwise infringe on plant management's prerogatives. However, section 304(e) does give EPA the authority to prescribe certain "in-plant" procedures or practices which would be useful to prevent the discharge of toxic or hazardous pollutants where traditional effluent limitations guidelines are impractical or ineffective.

To further explain EPA's intent, changes have been made to proposed § 125.62 and § 125.64(b)(4)(iii), now § 125.102 and § 125.104(iii), to clearly distinguish between ancillary manufacturing operations (sources of pollutants) and BMPs (methods to prevent or minimize pollution). For example, preventive maintenance and housekeeping are BMPs, not ancillary operations. Material storage and loading/unloading operations are ancillary manufacturing operations, not BMPs.

To allow due process and public notice of BMP programs, permittees are now required to submit a description of their program with their NPDES permit application, (§ 125.104(c)). Some commenters thought one year for the implementation of BMP plans, proposed § 125.64(c), was too short. EPA feels that the one year after permit issuance is realistic and reasonable, particularly for the BMPs of a procedural nature or minor construction required by this Subpart. However, a discharger could be given more than one year under special circumstances such as coordinating a BMP plan with an SPCC plan required under 40 CFR Part 151.

Many commenters suggested that the term "significant amount" should be defined or that a minimum amount of a particular chemical should be specified to require the preparation of a BMP plan. EPA has not defined this term but wishes to clarify its meaning. In the case of section 311 pollutants EPA has proposed reportable quantities of hazardous substances (44 FR 10271, Feb 16, 1979) and considers these quantities potentially significant for the purpose of this Subpart. For section 307 pollutants, the fact that a chemical is on the section 307 toxic pollutant list indicates potentially toxic effects of its discharge. As guidance to facilities developing BMP programs, two examples are given to demonstrate the definition of "significant amount" in terms of the BMPs applicable to a particular chemical:

1. A facility uses laboratory quantities of toxic chemical X in an analytical chemistry laboratory adjacent to its manufacturing facility. Chemical X is used for no other purpose at the facility. No more than five pounds of the chemical are on hand at any given time. An appropriate BMP could be to label all containers of chemical X with instructions such as "Do not dispose of this material in laboratory sinks. Refer to Laboratory Procedures Manual for Disposal Instructions." The Laboratory Procedures Manual might further provide that chemical X and other compatible chemicals be disposed of in an appropriately labelled 55 gallon drum to be periodically picked up and treated by a responsible hazardous waste contractor in accordance with RCRA regulations.

2. A facility uses thousands of gallons daily of a hazardous chemical Y (a section 311 Category "A" pollutant) as a raw material in a batch chemical manufacturing process and is located next to a small stream. Chemical Y is stored outside in a single 10,000 gallon tank and is periodically pumped to the reactor vessel. An appropriate BMP would be to provide secondary containment around the storage tank in the form of a dike to contain the maximum volume of chemical Y stored in the tank plus a reasonable allowance for rainfall. In the alternate, a facility might choose to use a combination of measures instead of secondary containment to attempt to achieve equivalency to secondary containment. For example, a liquid level alarm, frequent non-destructive testing and daily visual inspections might be employed rather than constructing a dike around the storage tank. However, this latter approach may not satisfy proposed SPCC requirements which require the former approach, i.e., secondary containment wherever reasonable probability of a discharge to navigable waters exists. Thus, provision of secondary containment would satisfy both BMP and proposed SPCC requirements simultaneously.

Numerous commenters stated that the proposed regulations went beyond the intent of Congress because the development of BMPs is discretionary and can ony be on the basis of point source categories supplemental to effluent guidelines. EPA disagrees and believes that BMP programs and case-by-case determination of BMPs are appropriate based on the legislative history to section 304(e) (see *CWA Legis. Hist.* at 453 which specifically discusses case-by-case determinations of BMPs). BMPs supplemental to effluent limitations guidelines have not yet been promulgated by EPA. However, the potential for confusion and duplication of effort by the permittee between BMPs and SPCC plans has led us to delete the requirement for a BMP plan in favor of a BMP program. The BMP program approach provides a self-regulatory,

flexible mechanism to control toxic and hazardous pollutant discharges from ancillary sources and will allow permittees to develop BMPs tailored to their particular circumstances with attendant cost savings.

Many comments were received concerning the relationship of BMPs to the requirements of the Resource Conservation and Recovery Act (RCRA), arguing that RCRA requirements should not be imposed by the Clean Water Act. EPA disagrees and wishes to point out that section 304(e) specifically includes the phrase "sludge or waste disposal" as one of four general activities subject to BMPs. Thus § 125.104(b)(4)(ii) has not been changed and continues to require management practices developed by companies to comply with RCRA to simultaneously satisfy the BMP requirements of the Clean Water Act by expressly incorporating the practices into the BMP program.

Many commenters felt that the requirement for a professional engineer (PE) to certify the BMP plan was unnecessary and should be eliminated or made optional. Since Subpart K no longer requires BMP plans, PE certification is no longer required. However, EPA continues to believe that PE certification would assure a *minimum* level of quality in both BMPs and SPCC plans. Since today's regulations are the first step in a two step process, and the second step (SPCC regulations 40 CFR Part 151) may require PE certification of SPCC plans, EPA encourages facilities to develop their programs in accordance with sound engineering practices. These facilities would then have BMP-related procedures and construction which could satisfy, in part, future SPCC requirements.

Economic Impact of Subpart K

Since Subpart K now requires only BMPs of a procedural nature or those requiring minor construction, the costs of compliance with these regulations should be minimal. Permittees are encouraged to use innovative, inexpensive techniques to achieve the basic goal of preventing the discharge of toxic or hazardous pollutants from ancillary industrial activities to surface waters. Because BMP requirements will vary among facilities, guidance will be provided to the permit writers on what requirements are sufficient. This guidance will reflect the conclusion of a BMP cost analysis which is being undertaken by the Agency. The guidance will consider reasonableness of cost. Most facilities have many of these generic BMPs in place and Subpart K only requires documentation of the existing practices or, in some cases, upgrading and documentation of the BMP program. Although BMPs requiring major construction (e.g., grading, paving, sewering, waste stream segregation, covering, and secondary containment) may be included in the BMP program description, the implementation of these BMPs is not mandated by these regulations. Therefore, EPA has determined that Subpart K does not constitute a major regulation requiring the preparation of an economic impact statement under Excecutive Order 12044.

Because there is much flexibility in how the individual facility complies with BMP procedural requirements, there is also flexibility in compliance costs. The cost of developing and implementing BMP procedures is estimated to be within the range of $10,000 to $30,000 per facility for the costs of a materials inventory, some engineering modifications, training, maintenance, housekeeping, and some minor construction for items such as the installation of liquid level alarms. To develop these costs the assumption was made that 50% of the BMP procedural requirements would already be in place in order to meet normal safety, fire, and other occupational or operational standards. Clearly, a facility with minor problems will require a less elaborate program.

Because the requirements may be less flexible under the SPCC program for which these BMP requirements are the first stage and we have so little cost data now on the BMP procedures because of their flexibility, further cost estimates for BMPs will be acquired when we prepare a detailed analysis of the SPCC cost requirements. These estimates will be necessary for the Agency to adequately assess the cost and usefulness of specific aspects of the SPCC program.

Based on existing predictions of NPDES permit issuance, industrial facilities will be required to develop and implement BMP programs on the following schedule:

Number of Permits

FY 1979	2,600
FY 1980	3,000
FY 1981	1,700
FY 1982	1,000

Using an average cost of $20,000 per facility, the total costs of BMPs, thru FY 1982 are expected to be no greater than the following:

FY 1979	$52,000,000
FY 1980	$60,000,000
FY 1981	$34,000,000
FY 1982	$20,000,000

This does not include the cost of BMPs established under authority of section 402(a)(1) using best engineering judgment.

The Agency may propose a new form of BMP guidelines in the future which will describe BMPs which are broadly applicable to industrial facilities and relatively independent of the chemical under consideration. In addition, these BMP guidelines would address more specific or advanced BMPs for certain chemicals or ancillary industrial activities and would include an economic impact analysis. Major construction would probably be required to comply with these *future* BMPs and likely will be required to comply with the SPCC regulations.

VI. The Relationship of the NPDES Program to the Regulation of Hazardous Substances Under Section 311 of the Act

On November 2, 1978, Congress amended section 311 of the Act (Pub. L. 95–576). Because this Congressional action was taken after the August 21, 1978 proposal, EPA feels a brief discussion of the relationship of the NPDES program to section 311 is warranted.

Section 311 of the Act regulates discharges of oil and hazardous substances and contains reporting requirements, penalties and other requirements. Until the 1978 amendments, the relationship between the requirements of section 311 and those of section 402 has been unclear. In particular, it was unclear whether, and to what extent, discharges from facilities with NPDES permits were subject to the provisions of section 311.

On November 2, 1978, Congress amended section 311 and set forth three types of discharges of hazardous substances which will be subject to sections 402 and 309 of the Clean Water Act and excluded from section 311 liability. The three cases excluded are (1) discharges in compliance with a permit under section 402 of the Act, (2) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit, and (3) continous or anticipated intermittent discharges from a point source, identified in a permit or a permit application under section 402 of the Act, which are caused by events occurring within the scope of relevant operating or treatment systems. These excluded discharges are exempted from the

reporting requirements, civil penalties and clean-up cost liabilities under section 311 and are instead subject to sections 402 and 309 of the Act.

On February 16, 1979, EPA proposed regulations addressing the 1978 amendments to section 311 (44 FR 10271, 40 CFR § 117.12). The proposed regulations include detailed criteria for exclusions from section 311. The preamble to that proposal contained an extensive discussion of the criteria for section 311 exemptions. Interested persons are advised to review that proposal. When the section 311 regulations are published in final form, they will be incorporated into NPDES regulations as appropriate.

The Agency is presently developing revised application requirements which will be announced in the near future in the form of proposed regulations and a draft revised NPDES permit application form (reserved § 122.14(a)). The new requirements will afford applicants the opportunity to identify discharges and spills of hazardous substances. Where adequate treatment equipment or management practices are available to control such events, permits will contain appropriate requirements reflecting such control. Coverage of these discharges or spills by permits will result in exemption from the requirements of section 311.

VII. Conforming Amendments to the General Pretreatment Regulations 40 CFR Part 403.

This rulemaking contains a series of technical amendments to the General Pretreatment Regulations for New and Existing Sources of Pollution (40 CFR Part 403, 43 FR 27736–27762, June 26, 1978). These amendments will conform the pretreatment regulations to both the final NPDES regulations and the Public Participation Regulations (40 CFR Part 25, 44 FR 10286–10297 February 16, 1979). Since the provisions in the pretreatment regulations were based on the proposed or draft versions of both the regulations, changes are necessary. The majority of these changes are in the nature of cross-reference corrections in 40 CFR Part 403.

The most significant revision is that the process for EPA review and approval of State pretreatment programs is now governed by 40 CFR § 123.61 rather than 40 CFR § 403.11. This was done to assure that EPA has a uniform process for approving revisions to State NPDES programs. The time deadlines for applying for State pretreatment program approval and the contents of the application will continue to be governed by § 403.10. It is anticipated that further amendments to the pretreatment regulations will be made in the near future.

Note.—The Enivronmental Protection Agency has determined that this document does not constitute a major regulation requiring preparation of an economic impact statement under Executive Order 12044. In accordance with Executive Order 12044, EPA is committed to evaluating significant new regulations within five years of implementation. The evaluation plan for this regulation was not included in the August 21, 1978 proposal since the Agency policy was established several months subsequent to publication of the proposed regulation. Since an evaluation plan was not included in the proposed regulations, an evaluation plan is not included in this final rule. However, these NPDES regulations will be incorporated into the EPA consolidated permit regulations schedule to be proposed sometime in June 1979. A proposed evaluation plan for these NPDES regulations will be incorporated into the overall evaluation plan for the consolidated permit regulations. EPA anticipates the evaluation plan will include assessments of: reporting requirements; elimination of duplicative requirements for permit applicants and NPDES States; new permit procedures designed to reduce unnecessary delay and the effectiveness of the reorganization of the regulations for greater clarity.

Authority.—These regulations are issued under authority of the Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 *et seq.*

Date: May 22, 1979

Douglas M. Costle,

Administrator.

PART 6—PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

1. 40 CFR Part 6, Subpart I, is amended by deleting §§ 6.906, 6.909 6.916 (b) and (c) and 6.918.

PART 115—REQUIREMENTS FOR APPROVAL OF AQUACULTURE PROJECTS [DELETED]

2. 40 CFR Part 115 is deleted.

PART 121—STATE CERTIFICATION OF ACTIVITIES REQUIRING A FEDERAL LICENSE OR PERMIT

3. 40 CFR Part 121 is redesignated from 40 CFR Part 123.

4. Part 122 is revised to read as follows:

PART 122—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart A—General

Sec.

122.1 Purpose and scope.
122.2 Law authorizing NPDES permits.
122.3 Definitions.
122.4 Exclusions.
122.5 Signatories.

Subpart B—NPDES Permit Application and Issuance

122.10 Application for a permit.
122.11 Permit issuance; effect of permit.
122.12 Duration of permits and continuation of expiring permits; Transferability of permits.
122.13 Prohibitions.
122.14 Conditions applicable to all permits.
122.15 Applicable limitations, standards, prohibitions, and conditions.
122.16 Calculation and specification of effluent limitations and standards.
122.17 Schedules of compliance.

Subpart C—Permit Compliance

122.20 Monitoring.
122.21 Recording of monitoring results.
122.22 Reporting of monitoring results and compliance by permittees.
122.23 Noncompliance reporting.

Subpart D—Permit Modification, Revocation and Reissuance, and Termination

122.30 General.
122.31 Modification, revocation and reissuance, and termination.

Subpart E—Special NPDES Programs

122.40 General.
122.41 Disposal of pollutants into wells, into publicly owned treatment works or by land application.
122.42 Concentrated animal feeding operations.
122.43 Concentrated aquatic animal production facilities.
122.44 Aquaculture projects.
122.45 Separate storm sewers.
122.46 Silvicultural activities.
122.47 New sources and new dischargers.
122.48 General permit program.
122.49 Special considerations under Federal law.

Subpart F—Miscellaneous

122.60 Delegation of authority.
Appendix A.—Point Source Categories and Permit Expiration Dates.

Authority.—Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq; Administrative Procedure Act, 5 U.S.C. 551 et seq.

Subpart A—General

§ 122.1 Purpose and scope.

(a) The regulations in this Part define the National Pollutant Discharge Elimination System (NPDES) program including permit programs under sections 402, 318 and 405 of the Act. They apply to the program as administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(b) The regulations in Parts 123, 124, and 125 also apply to the NPDES program as follows:

(1) Part 123 describes the requirements for State participation in

the NPDES permit program and in the permit program established under section 404 of the Act ("section 404 program").

(2) Part 124 describes certain permitting procedures for the NPDES program; these procedures apply in their entirety to the program as it is administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(3) Part 125 describes some of the criteria and standards for making certain determinations in the NPDES program; these criteria and standards apply to the program as administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(c) Section 402 of the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act), (Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576) establishes the NPDES program. The NPDES program also includes permit program requirements under sections 318 and 405 of the Act. This program regulates the discharge of pollutants from point sources and related activities into the waters of the United States. All such discharges or activities are unlawful absent an NPDES permit. After a permit is obtained, a discharge not in compliance with all permit terms and conditions is unlawful.

(d) NPDES permits are issued by the State Director, or by the EPA Regional Administrator where there is no approved State program or where the permit is for discharges resulting from activities on Indian lands over which the States has no jurisdiction.

[*Comment:* Throughout this Part, the Regional Administrator is designated as the EPA permit issuing authority where no State NPDES program is approved. However, reference to the "Regional Administrator" for purposes of permit issuance should be read to include the Enforcement Division Director. Similarly, the term "State Director" includes the delegated representative of the State Director.]

§ 122.2 Law authorizing NPDES permits.

(a) Section 301(a) of the Act provides that "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful."

(b) Section 402(a)(1) of the Act provides in part that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, . . . upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of [the] Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of [the] Act."

(c) Section 318(a) of the Act provides that "The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision pursuant to section 402 of this Act."

(d) Section 405 of the Act provides, in part, that "where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 402 of the Act."

(e) Sections 402(b), 318 (b) and (c), and 405(c) of the Act authorize EPA approval of State permit programs for discharges form point sources, discharges to aquaculture projects, and disposal of sewage sludge.

(f) Section 404 of the Act authorizes EPA approval of State permit programs for the discharge of dredge or fill material.

(g) Section 304(i) of the Act provides that the Administrator shall promulgate guidelines establishing uniform application forms and other minimum requirements for the acquisition of information from discharges in approved States and establishing minimum procedural and other elements of approved State NPDES programs.

(h) Section 501(a) of the Act provides that "The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

(i) Section 101(e) of the Act provides that "Public participation in the development, revision, and enforcement of any regulations, standard, effluent limitations, plan, or program established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes." Public participation requirements set forth in these regulations carry out the purposes of 40 CFR 25 and supersede the requirments of that Part as they apply to actions controlled by Parts 121–125 of these regulations.

§ 122.3 Definitions.

The following definitions apply to this Part and to Parts 123, 124 and 125:

[*Comment:* Terms used in this Part and in Parts 123, 124 and 125 which are defined in the Act, and are not defined here shall have the meaning provided in the Act.]

(a) "Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576, 33 U.S.C. 1251 *et seq.*

(b) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(c) "Application" means:

(1) The EPA standard national forms for applying for an NPDES permit, including any subsequent additions, revisions or modifications, or

(2) Substantially similar forms approved by EPA for use in approved States at the time of a program approval under Part 123, including any approved subsequent additions, revisions or modifications.

[*Comment:* EPA is presently developing a new application form. The essential elements of this new application form will be required to be used by the States.]

(d) "Applicable standards and limitations" means all State, interstate and Federal standards and limitations to which a discharge or related activity is subject under the Act, including, but not limited to, effluent limitations, water quality standards, standards of performance, toxic effluent standards and prohibitions, best management practices, and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 218, 403 and 405 of the Act.

(e) "Approved State program" means a State or interstate permit program which meets the requirements of section 402(b) of the act, and which has been submitted to and approved by EPA under §123.51 and section 402(c) of the Act. Approved State programs must include authority to regulate discharges specified in sections 318 and 405 of the Act through the NPDES program.

(f) "Best management practices" "BMPs" includes treatment requirements, operating and maintenance procedures, schedules of activities, prohibitions of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage. BMPs may be imposed

in addition to or in the absence of other applicable standards and limitations.

(g) "Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

(h) "Direct discharge" means the discharge of a pollutant or the discharge of pollutants.

(i) "Director" means the "Regional Administrator" or the "State Director," as appropriate.

[Comment: Where there is no approved State program, the term "Director" refers to the Regional Administrator. Where there is an approved State program, the term "Director" normally refers to the State Director. In some circumstances, however, EPA retains authority to take certain actions even where there is an approved State program. E.g., where EPA issued a permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see §123.1(d). In such cases, the term"Director" means the Regional Administrator and not the State Director.]

(j) "Discharge" when used without qualification includes a discharge of a pollutant and a discharge of pollutants.

(k) "Discharge of a pollutant" and "discharge of pollutants" each means:

(1) Any addition of any pollutant or combination of pollutants to navigable waters from any point source, or

(2) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft when being used as a means of transportation.

This definition includes discharge into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality or other party which do not lead to treatment systems; and discharges through pipes, sewers, or other conveyances, leading into treatment systems owned in whole or in part by a third party other than a State or a municipality.

(l) "Discharge Monitoring Report ("DMR") means the EPA uniform national form, including any subsequent additions, revisions or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by approved States as well as by EPA.

[Comment: EPA will supply DMRs to any approved State upon request. The EPA uniform national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's]

(m) "Effluent limitation" means any restriction imposed by the Director on quantities, rates, and concentrations of pollutants which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean.

(n) "Enforcement Division Director" means the Director of the Enforcement Division within the appropriate Regional Office of the Environmental Protection Agency.

(o) "Environmental Protection Agency" ("EPA") means the United States Environmental protection Agency.

(p) "Indirect discharger" means a non-municipal, non-domestic discharger introducing pollutants to a publicly owned treatment works, which introduction does not constitute a "discharge of pollutants."

(q) "Interstate agency" means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(r) "Municipality" means a city, town, borough, county, parish, district, association or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act.

(s) "NPDES" ("National Pollutant Discharge Elimination System") means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits pursuant to sections 402, 318, and 405 of the Act. The term includes any State or interstate program which has been approved by the Administrator.

(t) "Navigable waters" means "waters of the United States, including the territorial seas." This term includes:

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) Interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats and wetlands, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All inpoundments of waters otherwise defined as navigable waters under this paragraph;

(5) Tributaries of waters identified in paragraphs (1)–(4) of this section, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragaphs (1)–(5) of this section ("Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally included playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds); *provided that* waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

[Comment:] For purposes of clarity the term "waters of the United States" is primarily used throughout the regulations rather than "navigable waters"]

(u) "New discharger" means any building, struture, facility or installation: (1) which on October 18, 1972, has never discharged pollutants; (2) which has never received a finally effective NPDES permit; (3) from which there is or may be a new or additional discharge of pollutants; and (4) which does not fall within the definition of "new source."

(v) "New source" means any building, structure, facility or installation from which there is or may be a discharge of pollutants the contruction of which commences:

(1) After promulgation of standards of performance under section 306 of the Act which are applicable to such source; or

(2) After proposal of standards of performance under section 306 which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal.

[*Comment*: See § 122.47 for the criteria and standards to be used in determining whether a source has commenced construction within the meaning of this definition, for the types of construction activities which result in new sources or new dischargers, and for the effect of a new source determination.]

(w) "Permit" means any permit issued by EPA under the authority of section 402 of the Act or by an approved State under the authority of State law, controlling the discharge of pollutants into the waters of the United States.

[*Comment*: Approved States are not required to use the EPA standard permit form. However, State permit forms are reviewed and approved at the time of NPDES program approval. See § 123.3(a)(5).]

(x) "Person" means an individual, corporation, partnership, association, Federal agency, State, municipality, commission, or political subdivision of a State or any interstate body.

(y) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(z) "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(1) Sewage from vessels or

(2) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation or ground or surface water resources.

[*Comment*: The legislative history of the Act reflects that "radioactive materials" as included within the definition of "pollutant" in section 502 of the Act means only radioactive materials which are not encompassed in the definition of source, by-product, or special nuclear materials as defined by the Atomic Energy Act of 1954, as amended, and regulated under the Atomic Energy Act. Examples of radioactive materials not covered by the Atomic Energy Act and, therefore, included within the term "pollutant" are radium and accelerator produced isotopes. See *Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976).]

(aa) "Process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(bb) "Publicly owned treatment works" ("POTW") means a treatment works as defined in section 212 of the Act, which is owned by a State or municipality, excluding any sewers or other conveyances not leading to a facility providing treatment.

(cc) "Regional Administrator" means the Regional Administrator of the appropriate Regional Office of the Enviromental Protection Agency or the delegated representative of the Regional Administrator.

(dd) "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with applicable standards or limitations or other permit requirements. Unless otherwise provided in these regulations, each schedule shall culminate in a specific requirement to achieve expeditious final compliance with all applicable standards and limitations.

(ee) "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

(ff) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of the Act, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition, "graywater" means galley, bath, and shower water.

(gg) "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a publicly owned treatment works. "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

(hh) "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(ii) "State Director" means the chief administrative officer of a State water pollution control agency or interstate agency approved by EPA to administer the NPDES program, or the delegated representative of the State Director. If responsibility for water pollution control and enforcement is divided within a State agency or among two or more State or interstate agencies, "State Director" means the administrative officer authorized to perform the particular procedure or function to which reference is made.

(jj) "Variance" means any mechanism or provision under sections 301 or 316 of the Act and Part 125, or in the applicable effluent limitation guidelines which allow modification to or waivers of the effluent limitation requirements of the Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors and sections 301(c), 301(g), 301(h), and 316(a) of the Act, where appropriate.

(kk) "Waters of the United States" means "navigable waters."

§ 122.4 Exclusions.

(a) The following discharges do not require an NPDES permit:

(1) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when a vessel is being used as an energy or mining facility, a storage facility, or a seafood processing facility, or is secured to the bed of the ocean, contiguous zone, or waters of the United States for the purpose of mineral or oil exploration or development;

(2) Discharges of dredged or fill material into waters of the United States and regulated under section 404 of the Act.

(3) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers.

[*Comment:* This exclusion applies only to the actual introduction of pollutants into publicly owned treatment works. Plans or agreement to switch to this method of disposal in the future do not relieve dischargers of the obligation to apply for and receive permits until all discharges of pollutants to waters of the United States are actually eliminated. All applicable pretreatment standards promulgated under section 307(b) of the Act must also be complied with, and may be included in the permit to the publicly owned treatment works. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other

conveyances owned by a State, municipality, or other party not leading to treatment works. See § 122.3(k)].

(4) Any introduction of pollutants from agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to:

(i) Discharges from concentrated animal feeding operations as defined in § 122.42;

(ii) Discharges from concentrated aquatic animal production facilities as defined in § 122.43;

(iii) Discharges to aquaculture projects as defined in § 122.44; and

(iv) Discharges from silvicultural point sources as defined in § 122.46.

(b) The exemption of a discharge from NPDES requirements in paragraph (a) of this section does not preclude State regulation of the exempted discharge under State authority, in accordance with section 510 of the Act.

§ 122.5 Signatories.

(a) All permit applications shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a muncipality, State, Federal, or other public facility, by either a principal executive officer or ranking elected official.

(b) All other reports or requests for information required by the permit issuing authority shall be signed by a person designated in paragraph (a) or a duly authorized representative of such person, if:

(1) The representative so authorized is responsible for the overall operation of the facility from which the discharge originates, e.g., a plant manager, superintendent or person of equivalent responsibity;

(2) The authorization is made in writing by the person designated under paragraph (a); and

(3) The written authorization is submitted to the Director.

(c) Any changes in the written authorization submitted to the permitting authority under paragraph (b) which occur after the issuance of a permit shall be reported to the permitting authority by submitting a copy of a new written authorization which meets the requirements of paragraph (b) (1) and (2).

(d) Any person signing any document under paragraph (a) or (b) shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document; and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

[*Comment:* The permit application will be revised to incorporate this statement. Where a permit program document does not contain the statement, the certification must accompany the appropriate document.]

(e) This section is applicable to approved States (see § 123.12). States may adopt language which is equivalent to, but not identical to, the certification statement in paragraph (d), if such equivalent language is approved by the Regional Administrator.

Subpart B—NPDES Permit Application and Issuance

§ 122.10 Application for a permit.

(a) Any person who discharges or proposes to discharge pollutants, except persons covered by general permits under § 122.48 or excluded under § 122.4, shall complete, sign, and submit an application (which includes a BMP program if necessary under § 125.102) to the Director in accordance with Part 124, Subpart B.

(b) Persons currently discharging who have:

(1) Existing permits shall submit a new application under paragraph (c) of this section where facility expansions, production increases, or process modifications will:

(i) Result in new or substantially increased discharges of pollutants or a change in the nature of the discharge of pollutants, or

(ii) Violate the terms and conditions of the existing permit.

(2) Expiring permits shall submit new applications at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director.

(c) A person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Regional Administrator.

[*Comment:* Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay. In addition, information required by § 124.12(b)(1) must be submitted before on-site construction, which normally will commence long before the permit application is required.]

§ 122.11 Permit issuance; effect of permit.

(a) The receipt of a complete application by the Director initiates the permit issuance process described in Part 124.

(b) Following the permit issuance process the Director may issue or deny a finally effective permit. Where EPA is the permitting authority, EPA action shall not be final for the purpose of judicial review under section 509(b) of the Act until this issuance or denial has taken place. (See § 124.61).

(c) Compliance with a permit during its term constitutes compliance, for purposes of sections 309 and 505, with applicable standards and limitations of the Act, except for any standard imposed under section 307 for a toxic pollutant injurious to human health. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as described in § 122.31.

(d) The issuance of a permit does not:

(1) Convey any property rights of any sort, or any exclusive privileges;

(2) Authorize any injury to private property or invasion of other private rights, or any infringement of Federal, State, or local laws or regulations; or

(3) Preempt any duty to obtain State or local assent required by law for the discharge.

§ 122.12 Duration of permits and continuation of expiring permits; transferability of permits.

(a) *Duration of Permits.* All permits shall be issued for fixed terms not to exceed five years. Permits of less than five years duration may be issued in appropriate circumstances (see paragraph (c)). Permits may be modified, revoked and reissued, or terminated as specified in Subpart D. Except for the continuation provisions of paragraph (b) for expiring permits, the term of a permit shall not be extended beyond five years from its original date of effectiveness by modification, extension or other means.

(b) *Continuation of expiring permits.* (1) Where EPA is the permit issuing authority, the terms and conditions of an expired permit are automatically continued under 5 U.S.C. § 558(c) pending issuance of a new permit if:

(i) The permittee has submitted a timely and sufficient application for a new permit under § 122.10(a); and

(ii) The Regional Administrator is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit

(e.g., where it is impracticable due to time and/or resource constraints).

(2) Permits continued under paragraph (b)(1) remain fully effective and enforceable against the discharger.

(3) Where the permittee is not in compliance with the terms and conditions of the expiring permit:

(i) The permit may be continued under this section pending a final determination by the Regional Administrator on the application for a new permit and enforcement action may be taken based upon the continued permit; or

(ii) The Regional Administrator may make a determination to deny the application for a new permit in accordance with the procedures specified in Part 124. The discharger would then be subject to enforcement action for discharging without a permit.

(4) States authorized to administer the NPDES may continue permits in a similar manner if so authorized by State law. However, a permit is not continued under Federal law where EPA originally issued the permit, but the State is the permitting authority at the time the permit expired. In such case, the discharger is discharging without a permit, from the time the EPA-issued permit expires to the time that the State-issued permit is effective.

(c) No permit issued to a discharger within an industrial category listed in Appendix A of this Part, prior to the applicable permit expiration date listed in Appendix A, may be issued to expire after that date, unless:

(1) The permit incorporates effluent limitations and standards applicable to the discharger which are promulgated or approved under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act; or

[*Comment:* EPA is presently reviewing and revising effluent limitations guidelines for industries listed in Appendix A. In some cases, EPA may approve existing guidelines or choose not to develop new guidelines. If EPA decides not to develop new effluent guidelines, it will publish notice in the **Federal Register** as to that decision. Such a **Federal Register** notice would mean, in effect, that the guidelines are "approved" for the purpose of this regulation.]

(2) The permit incorporates:

(i) The "reopener clause" required by § 122.15(b)(1); and

(ii) Effluent limitations to meet the requirements of sections 301(b)(2) (A), (C), (D), (E) and (F) of the Act.

[*Comments:* (1) NPDES States are urged to issue short term permits expiring on or before the dates listed in Appendix A. This will ensure that all appropriate provisions of the Act, including compliance with the effluent limitations by the statutory deadlines, are met in permits issued after the promulgation of effluent guidelines under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2). Even if States issue long term permits with later expiration dates (in accordance with paragraph (c)(2)), dischargers are legally required to meet all applicable statutory deadlines and requirements, including compliance with any promulgated EPA effluent guidelines defining "best conventional pollutant control technology" (BCT) and "best available control technology economically achieveable" (BAT).

(2) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (c) is not conclusive as to the discharger's inclusion in that industrial category for any other prupose, and does not prejudice any rights to challenge or change that inclusion at the time a new permit based on that determination is formulated.]

(d) *Transferability of permits.* A permit may be transferred to another person by a permittee if:

(1) The permittee notifies the Director of the proposed transfer;

(2) A written agreement containing a specific date for transfer of permit responsibility and coverage between the current and new permittees (including acknowledgement that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on) is submitted to the Director; and

(3) The Director within 30 days does not notify the current permittee and the new permittee of his or her intent to modify, revoke and reissue, or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.

[*Comment.* A new application could be required under this paragraph where the change of ownership is accompanied by a change or proposed change in process or wastewater characteristics or a change or potential change in any circumstances that the permitting authority believes will affect the conditions or restrictions in the permit.]

§ 122.13 Prohibitions.

No permit shall be issued in the following circumstances:

(a) Where the terms or conditions of the permit do not comply with the applicable guidelines or requirements of the Act, or regulations.

(b) Where the applicant is required to obtain a State or other appropriate certification under section 401 of the Act and Part 124, Subpart C, and that certification has not been obtained or been waived.

(c) By the State Director where the Regional Administrator has objected to issuance of the permit under § 123.23.

(d) Where the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States as required by section 401(a)(2) of the Act.

(e) Where, in the judgment of the Secretary, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge.

(f) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste.

(g) For any discharge from a point source inconsistent with a plan or plan amendment approved under section 208(b) of the Act.

(h) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(1) Prior to the promulgation of the guidelines under section 403(c) of the Act, unless the Director determines permit issuance to be in the public interest; or

(2) After promulgation of guidelines under section 403(c) of the Act, where insufficient information exists to make a reasonable judgment as to whether the discharge complies with any such guidelines.

(i) To a facility which is a new source or a new discharger, if the discharge from the construction or operation of the facility will:

(1) Cause or contribute to the violation of water quality standards if the point of discharge is located in a segment that was an effluent limitation segment (as defined in 40 CFR § 130.2(o)(2)) prior to the introduction of the discharge from the new source or new discharger; or

(2) Exceed the total pollutant load allocation if the discharge is into a water quality segment as defined in 40 CFR § 130.2(o)(1).

The owner or operator of a facility which is a new source or new discharger into a water quality segment must also demonstrate, at the time of applying for a permit that there are sufficient remaining pollutant load allocations to allow the discharge and that the facility is entitled to these allocations.

§ 122.14 Conditions applicable to all permits.

The following conditions apply to all permits, whether issued by the Regional Administrator or the State Director. They shall be either expressly incorporated into the permit or incorporated by reference.

[*Comment:* If not incorporated by reference, the inclusion of the requirements of this section into permits may require some

wording changes. Where this is the case, the permit conditions should be worded substantially similar to the requirements of this section, and should be of equivalent force.]

(a) [Reserved]

[*Comment:* This paragraph is reserved pending publication of a revised NPDES application form. When a proposed revised application form is available this paragraph will be reproposed in a manner consistent with the proposed revised form. At that time EPA will outline a comprehensive scheme for the relationship between the data required in the application form, monitoring requirements, permit conditions, and the pollutants authorized to be discharged by the permit and not authorized to be discharged by the permit. The existing NPDES application forms should be utilized until the revised application form is available, except as otherwise provided in these regulations. See § 122.5.]

(b) All discharges shall be consistent with the terms and conditions of the permit.

(c) The permit may be modified, terminated, or revoked during its term for cause as described in § 122.31.

(d) If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant and that standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

[*Comment*: Effluent standards or prohibitions established under section 307(a) for toxic pollutants injurious to human health are effective within the time provided in the implementing regulations, even absent permit modification.]

(e) Any permittee who knows or has reason to believe that any activity has occurred or will occur which would constitute cause for modification or revocation and reissuance under § 122.31 must report its plans, or such information, to the Director so that the Director can decide whether action to modify or revoke and reissue a permit under § 122.31 will be required. The Director may then require submission of a new application. Submission of such application does not relieve the discharger of the duty to comply with the existing permit until it is modified or reissued.

(f) The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and such other documents as may be required by law:

(1) To enter upon the permittee's premises where a point source is located or where any records must be kept under the terms and conditions of the permit;

(2) To have access to and copy at reasonable times any records that must be kept under the terms and conditions of the permit;

(3) To inspect at reasonable times any monitoring equipment or method required in the permit;

(4) To inspect at reasonable times any collection, treatment, pollution management, or discharge facilities required under the permit; and

(5) To sample at reasonable times any discharge of pollutants.

(g) The permittee shall at all times maintain in good working order and operate as efficiently as possible all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes but is not limited to effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training, and adequate laboratory and process controls including appropriate quality assurance procedures.

(h)(1) If, for any reason, the permittee does not comply with or will be unable to comply with any maximum daily or average weekly discharge limitations or standards specified in the permit, the permittee shall, at a minimum, provide the Director with the following information as specified in paragraph (h)(2):

(i) A description of the discharge and cause of noncompliance;

(ii) The period of noncompliance, including exact dates and times and/or the anticipated time when the discharge will return to compliance; and

(iii) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

(2)(i) In the case of any discharge subject to any applicable toxic pollutant effluent standard under section 307(a), the information required by paragraph (1) regarding a violation of such standard shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. If this information is provided orally, a written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

(ii) In the case of other discharges which could constitute a threat to human health, welfare, or the environment, the Director may require that the information required by paragraph (1) be provided within 24 hours or five days from the time the permittee becomes aware of the circumstances. Where the Director requires 24-hour notice, if the information is provided orally, a written submission covering these points must be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

[*Comment:* Discharges that may be required to be reported within 24 hours under paragraph (h)(2)(ii) could include discharges containing section 311 pollutants or pollutants which could cause a threat to public drinking water supplies.]

(iii) Where a permittee orally reports a violation within 24 hours in accordance with paragraphs (h)(2) (i) or (ii), the Director may waive, on a case-by-case basis, the requirement that a written submission be provided within five days of the time the permittee becomes aware of the violation.

(iv) In all other cases this information shall be provided in the DMR in accordance with the requirements of § 122.22.

(i) The permittee shall take all reasonable steps to minimize any adverse impact to waters of the United States resulting from noncompliance with the permit.

(j) The permittee, in order to maintain compliance with its permit, shall control production and all discharges upon reduction, loss, or failure of the treatment facility unitl the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(k) *Bypass.*

(1) *Definitions.*

(i) "Bypass" means the intentional diversion of wastes from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) *Conditions necessary for bypass.* Bypass is prohibited unless the following four conditions are met:

(i) Bypass is unavoidable to prevent loss of life, personal injury or severe property damage;

(ii) There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down-time;

(iii) The permittee submits notice of an unanticipated bypass to the Director within 24 hours of becoming aware of the bypass (if this information is provided orally, a written submission must be provided within five days). Where the permittee knows or should have known in advance of the need for a bypass, this prior notification shall be submitted for approval to the director, if possible, at least ten days before the date of the bypass;

[*Comment:* Fully efficient operation of treatment systems is required at all times. Although this generally requires the use of all portions of an existing treatment system, in some cases, maintenance necessary to ensure efficient operation may require bypassing portions of a system. Where such a bypass will not cause applicable effluent limitations or standards to be exceeded, it may be done without notification to the permitting authority. Where, however, a bypass is undertaken for reasons other than essential maintenance or where a bypass would cause effluent limitations or standards to be exceeded, it may be undertaken only in accordance with the provisions of this section.]

(iv) The bypass is allowed under conditions determined to be necessary by the Director to minimize any adverse effects. The public shall be notified and given an opportunity to comment on bypass incidents of significant duration, to the extent feasible.

(3) *Prohibition of bypass.* The Director may prohibit bypass in consideration of the adverse effect of the proposed bypass or where the proposed bypass does not meet the conditions set forth in paragraphs (k)(2) (i) and (ii).

[*Comment:* When a bypass occurs, the burden is on the discharger to demonstrate compliance with this paragraph. If the reason for the bypass was the need for regular preventive maintenance, for which backup equipment should have been provided by the discharger, in accordance with paragraph (2)(ii), the bypass will not be allowed. If there is any doubt as to the necessity of the bypass or the availability of methods to reduce or eliminate the discharge, appropriate enforcement action may be taken.]

(l) *Upset.*—(1) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) *Effect of an upset.* An upset shall constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (1)(3) are met.

(3) *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(ii) The permitted facility was at the time being operated in a prudent and workman-like manner and in compliance with proper operation and maintenance procedures;

(iii) The permittee submitted information required in § 122.14(h)(1) within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days), and

(iv) The permittee complied with any remedial measures required under § 122.14(i).

(4) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset shall have the burden of proof.

[*Comments:* (1) Upset is only available for permit limits which are based on technology. It is not available for non-technology-based requirements such as water quality standards, State laws, or health or environmentally based toxic pollutant effluent standards. (2) Although in the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that noncompliance was caused by an upset, no determination made in the course of the review constitutes final Agency action subject to judicial review. Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations.]

§ 122.15 Applicable limitations, standards, prohibitions, and conditions.

Each NPDES permit shall provide for and ensure compliance with all applicable requirements of the Act and regulations promulgated under the Act. For the purposes of this section, an applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit issued by a State with an approved NPDES program, or, in the case of a permit issued by EPA, which takes effect prior to the issuance of the permit except as provided in § 124.86(c). Permits shall ensure compliance with the following as applicable:

(a) Effluent limitations and standards under sections 301, 302, 303, 304, 307, 318, and 405 of the Act, including any interim final limitations and standards.

(b) For a discharger within any industrial category listed in Appendix A, requirements under section 307(a)(2) of the Act, as follows:

(1) Prior to the applicable permit expiration date listed in Appendix A,

(i) If applicable standards or limitations have not yet been issued:

(A) The permit shall include conditions stating that, if an applicable standard or limitation is issued or approved under sections 301(b)(2) (C) and (D), 304(b)(2) and 307(a)(2) and such effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or, alternatively, revoked and reissued in accordance with such effluent standard or limitation and any other requirements of the Act then applicable.

[*Comment:* The following language is an acceptable permit condition for the purposes of this section:

"This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable standard or limitation promulgated or approved under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

(i) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or

(ii) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable."]

(B) The Director shall promptly modify, or alternatively revoke and reissue, the permit to incorporate an applicable standard or limitation under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) is issued or approved if such effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

[*Comment:* The requirements of this section are intended to assure compliance with the

1984 statutory deadline for the achievement of best available technology economically achievable for pollutants now listed under section 307(a)(1) of the Act. When a permit is modified or revoked and reissued pursuant to subparagraph (B), additional limitations may be included in the permit to assure achievement of applicable statutory requirements (e.g., best conventional pollutant control technology for "conventional" pollutants and best available technology economically achievable for "non-conventional" pollutants) by appropriate statutory deadlines.]

(ii) If applicable standards or limitations have been issued, the permit shall include those standards or limitations.

(2) Any permit issued after the applicable permit expiration date listed in Appendix A, shall include effluent limitations and a compliance schedule to meet the requirements of sections 301(b)(2) (A), (C), (D), (E), and (F) of the Act, whether or not applicable effluent limitations guidelines have been promulgated or approved. Such permits need not incorporate the clause required by paragraph (b)(1)(i)(A) of this section.

(c) Standards of performance for new sources under section 306 of the Act, including any promulgated interim final effluent limitations and standards.

(d) If the permit is for a discharge from a publicly owned treatment works, a condition requiring the permittee to:

(1) Provide adequate notice to the Director of the following:

(i) Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to sections 301 or 306 of the Act if it were directly discharging those pollutants; and

(ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

[*Comment:* For purposes of this paragraph, adequate notice shall include information on (1) the quality and quantity of effluent to be introduced into such POTW and (2) any anticipated impact of such change in the quantity or quality of effluent to be discharged from such POTW.]

(2) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under section 307(b) of the Act and 40 CFR Part 403.

(3) Establish a local program when required by and in accordance with 40 CFR Part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR Part 403.

(4) Require any indirect discharger to such POTW to comply with the reporting requirements of sections 204(b), 307, and 308 of the Act, including any requirements established under 40 CFR Part 403.

(e) Any conditions imposed in grants made by the Administrator to POTWs under sections 201 and 204 of the Act which are reasonably necessary for the achievement of effluent limitations under section 301 of the Act.

[*Comment:* Among other things, this paragraph contemplates permit conditions embodying measures to protect the POTW against overloading and schedules of compliance which are consistent with, and determined from, construction grant award dates.]

(f) Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 where necessary to:

(1) Achieve water quality standards established under section 303 of the Act;

(2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of the Act;

(3) Conform to the conditions of a State certification under section 401 of the Act where EPA is the permit issuing authority;

(4) Conform to applicable water quality requirements under section 401(a)(2) of the Act when the discharge affects a State other than the certifying State;

(5) Incorporate any more stringent limitations, treatment standards or schedules of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of the Act;

(6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of the Act;

(7) Incorporate section 403(c) criteria under Part 125 Subpart M for ocean discharges;

(8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under Part 125 Subpart D;

(9) Incorporate other requirements, or conditions, or limitations into a new source permit under the National Environmental Policy Act 42 U.S.C. §§4321 *et seq.* and section 511 of the Act, where EPA is the permit issuing authority;

(10) Establish on a case-by-case basis technology-based limitations controlling a pollutant not included in promulgated effluent limitation guidelines or standards in accordance with §125.3.

(g) Best management practices to control or abate the discharge of pollutants where:

(1) Authorized under section 304(e) of the Act for the control of toxic and hazardous pollutants from ancillary industrial activities;

(2) Numeric effluent limitations are infeasible; or

(3) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes of the Act.

[*Comment:* Examples of best management practices which may be imposed under (g)(2) include: a) proper operator qualifications of treatment facility personnel (see Decision of the General Counsel No. 19), and b) sludge-handling requirements (see Decision of General Counsel No. 33). Examples of best management practices which may be imposed under (g)(3) include: a) coal mining operation's diversion of water from an active coal mining area to prevent contact between water and iron pyrites which could react to form sulfuric acid and wastewaters with low pH values; (b) the construction of sheds over material storage piles to prevent rainfall from leaching materials from these piles and creating a source of pollution; (c) ditching and diversion of rainfall runoff for treatment prior to discharge; and (d) the use of solid, absorbent materials for cleaning up leaks and drips as opposed to washing these materials down a floor drain creating additional sources of pollution. Although these best management practices under (g)(2) and (3) would be required under the authority of *NRDC* v. *Costle,* (Runoff Point Sources) 568 F.2d 1369 (D.C. Cir. 1977) they are similar to those in (g)(1) and Subpart K of Part 125 imposed for toxic and hazardous materials under section 304(e).]

(h) Requirements under section 405 of the Act governing the disposal of sewage sludge from publicly owned treatment works, in accordance with any applicable regulations.

(i) Where a permit is renewed or reissued, interim limitations, standards, or conditions which are at least as stringent as the final limitations, standards or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.31). Where effluent limitations were imposed under section 402(a)(1) of the Act in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, this paragraph shall apply unless:

(1) The discharger has installed the treatment facilities contemplated by the discharger in connection with the issuance of the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent that required by the subsequently promulgated effluent guidelines);

(2) In the case of an approved State, State law prohibits permit conditions more stringent than an applicable effluent guideline; or

(3) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (section 301(b)(2)(E) of the Act).

(j) In the case of a permit issued to a facility that may operate at certain times as a means of transportation over water, a general condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, and storage of pollutants.

(k) Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired.

§ 122.16 Calculation and specification of effluent limitations and standards.

(a)(1) All permits shall impose final, and where necessary, interim final effluent limitations, standards and prohibitions under §§ 122.14 and 122.15 for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.15(g)(2) and § 122.16(i).

(2) Except in the case of POTWs, permit limitations, standards or prohibitions shall be calculated based on the actual production and not the designed production capacity of the facility where the promulgated effluent guideline limitations and standards are based on production.

[*Comment:* Where design capacity is not representative of actual production, permit limitations will be calculated to reflect a reasonable measure of actual production, such as the high month during the previous year, or the monthly average for the highest year of the previous five years, for facilities where such data is available. For new sources, or new discharges, actual production generally will be projected production based on market data, and permit limitations may require modification once actual production figures are available.]

(3) In the case of POTWs, permit limitations, standards, or prohibitions shall be calculated based on design flow.

(b) All interim and final permit effluent limitations, standards, or prohibitions established under §§ 122.14 and 122.15 for a metal shall be expressed in terms of the total metal (i.e., the sum of the dissolved and suspended fractions of the metal) unless:

(1) The promulgated effluent limitation and standard under the Act specifies the limitation for the metal in the dissolved or valent form; or

(2) In establishing permit limitations on a case-by-case basis, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of the Act.

(c) For continuous discharges all interim and final permit effluent limitations, standards, and prohibitions established under §§ 122.14 and 122.15, including those necessary to achieve water quality standards, shall be stated as maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works, and average weekly and average monthly discharge limitations for POTWs.

For the purposes of this part:

(1) A "continuous discharge" means a discharge which occurs without interruption, except for infrequent shutdowns for maintenance, process changes, or other similar activities throughout the operating hours of the facility.

(2) The "maximum daily discharge" is the total mass of a pollutant discharged during the calendar day or, in the case of a pollutant limited in terms other than mass pursuant to paragraph (d), the average concentration or other measurement of the pollutant specified during the calendar day or any 24-hour period that reasonably represents the calendar day for the purposes of sampling. The maximum daily discharge limitation may not be violated during any calendar day.

(3) The "average monthly discharge limitation" is the total mass, and concentration in the case of POTWs, of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month. The average monthly discharge limitation may not be violated during any calendar month.

(4) The "average weekly discharge limitation" is the total mass and concentration of all daily POTW discharges during any calendar week on which daily discharges are sampled and/or measured, divided by the number of daily discharges sampled and/or measured during such calendar week. The average weekly discharge limitation may not be violated during any calendar week.

[*Comment:* Calculations for all such limitations which require averaging of measurements or of daily discharges, shall utilize an arithmetic mean average, unless otherwise specified or approved by the Director.]

(d) Paragraph (c) is not applicable:

(1) For pH, temperature, radiation or other pollutants which cannot be appropriately expressed by mass; or

(2) Where applicable promulgated effluent guideline limitations, standards, or prohibitions are expressed in other terms than mass, e.g., as concentration levels.

(e) Except as provided in paragraph (f), effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

(f)(1) Upon request of the discharger, effluent limitations or standards imposed in a permit will be calculated on a "net" basis, i.e., adjusted to reflect credit for pollutants in the discharger's intake water, if the discharger demonstrates that its intake water is drawn from the same body of water into which the discharge is made and if:

(i)(A) The applicable effluent limitations and standards contained in Subchapter N of this Chapter specifically provide that they shall be applied on a net basis; or

(B) The discharger demonstrates that pollutants present in the intake water will not be substantially removed by the treatment systems operated by the discharger; and

(ii) The permit contains conditions requiring the permittee to conduct additional monitoring (i.e., for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any such adjustments.

The discharger shall notify the Director if this monitoring indicates that eligibility for an adjustment under this section has been altered or no longer exists. In such case, the permit shall be modified or revoked and reissued under § 122.31.

(2) Permit effluent limitations or standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the

discharger. Adjustments under this paragraph shall be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the discharger. In addition, effluent limitations or standards shall not be adjusted when the pollutants in the intake water vary physically, chemically or biologically form the pollutants limited by the permit. Nor shall effluent limitations or standards be adjusted when the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.

(g) Discharges which are not continuous, as defined in paragraph (c), shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency (e.g., a batch discharge shall not occur more than once every 3 weeks);

(2) Total mass (e.g., not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(3) Maximum rate of discharge of pollutants during the discharge (e.g., not to exceed 2 kilograms of zinc per minute); and

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (e.g., shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (¼ kilogram) of zinc in any discharge).

(h) Where permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams prior to mixing with other waste streams or cooling water streams. In such instances, the monitoring required by Subpart C shall also be applied to the internal waste streams.

[*Comment:* Limits on internal waste streams will only be imposed in exceptional circumstances, such as where the final discharge point is inaccessible (e.g., under 10 meters of water), where the wastes at the point of discharge are so diluted as to make monitoring impracticable, or where the interferences among pollutants at the point of discharge would make detection and/or analysis impracticable.]

§ 122.17 Schedules of compliance.

(a) Permits shall contain schedules of compliance requiring the permittee to take specific steps where necessary to achieve expeditious compliance with applicable standards and limitations and other requirements. Schedules of compliance shall require compliance as soon as possible, but in no case later than an applicable statutory deadline.

(b) If any permit allows a time for achieving final compliance which exceeds 9 months from the date of permit issuance, the schedule of compliance in the permit shall set forth interim requirements and the dates for their achievement. Examples of interim requirements include the following events: submit complete Step 1 construction grant (for POTWs); let contract (for nonPOTWs); commence construction and complete construction.

(1) In no event shall more than 9 months elapse between dates specified for interim requirements.

(2) If the time necessary for completion of any interim requirements (such as the construction of a treatment facility) is more than nine months and is not readily divisible into stages for completion, the permit shall specify interim dates not more than nine months apart for the submission of reports of progress toward completion of the interim requirements.

(c) A permittee may terminate its direct discharge by cessation of operation or discharge to a POTW rather than achieve applicable standards and limitations by the final date for compliance established in its permit or in the Act under the following circumstances:

(1) If the decision to terminate a direct discharge is made after issuance of a permit:

(i) The permit shall be modified or revoked and reissued to contain a schedule of compliance leading to termination of the direct discharge by a date which is no later than the statutory deadline; or

(ii) The permittee shall terminate direct discharge before noncompliance with any interim requirement specified in the schedule of compliance in the permit.

(2) If the decision to terminate a direct discharge is made before issuance of the permit, the permit shall contain a schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline.

(3) If the permittee contemplates but has not made a final decision to terminate the direct discharge before the issuance of the permit, the permit shall contain alternative schedules leading to compliance as follows:

(i) The schedule shall contain an interim requirement requiring such a final decision no later than a date which allows sufficient time to comply with applicable limitations and standards in accordance with paragraph (c)(3)(iii) of this section, (i.e., a milestone event for commencement of construction of control equipment); and

(ii) A subsequent schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline; and

(iii) A subsequent alternative schedule leading to compliance with applicable standards and limitations, no later than the statutory date; and

(iv) A requirement that after the permittee has made a decision pursuant to paragraph (c)(3)(i) of this section, it shall:

(A) Follow the Schedule required by paragraph (c)(3)(ii) of this section if the decision is to terminate its discharge, or

(B) Follow the schedule required by paragraph (c)(3)(iii) of this section if the decision is not to terminate its discharger; and

(4) If the permittee has made a decision to terminate its direct discharge in accordance with this section, it shall post a bond within 30 days of permit issuance, or the date of the decision, in the amount of the cost of compliance with applicable limitations and standards, payable to the permit issuing authority in the event that termination or compliance with applicable limitations and standards is not achieved by the statutory deadline or the date set forth in the permit, if earlier.

(5) In all cases, the permittee's decision to terminate its direct discharge of pollutants shall be evidenced by a Board of Directors resolution which has been made public or by such other means as EPA determines evidences a firm public commitment.

[*Comment*: A permittee may evidence a firm public commitment: (1) by a resolution of the Board of Directors signed by the Chairman of the Board and the Chief Executive Officer; (2) in the case of a public facility, by appropriate action by either the principal executive officer or elected official or (3) as otherwise appropriate for partnerships, sole proprietorship, etc.]

(d) The Director may, upon request of the applicant, modify a schedule of compliance in an issued permit if he or she determines good and valid cause (such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control or remedy) exists for such modification under § 122.31. In no case shall the compliance schedule be modified to extend beyond an applicable statutory treatment deadline.

(e) In the case of a POTW which has received a grant under section 202(a)(3) of the Act, to fund 100% of the costs to modify or replace facilities construction

with a grant for innovative and alternative wastewater technology under section 202(a)(2), the schedule of compliance may be modified to reflect the amount of time lost during construction of the innovative and alternative facility. In no case shall the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance.

(f) New sources, new dischargers, sources which recommence discharging after terminating operations and those sources which had been indirect dischargers which commence discharging into navigable waters do not qualify for compliance schedules under this section and are subject to § 122.47(d)(4).

Subpart C—Permit Compliance

§ 122.20 Monitoring.

(a) To assure compliance with permit terms and conditions, all permittees shall monitor as specified in the permit:

(1) The amount, concentration, or other measurement specified in § 122.16 for each pollutant specified in the permit;

(2) The volume of effluent discharged from each point source; and

(3) As otherwise specifically required in the permit, e.g., as required under § 122.16(g)(2).

(b) For purposes of paragraph (a), the Director shall specify the following monitoring requirements in the permit:

(1) Requirements concerning proper installation, use, and maintenance of monitoring equipment or methods (including biological monitoring methods where appropriate);

(2) Monitoring frequency, type, and intervals sufficient to yield continuing data representative of the volume of effluent flow and the quantity of pollutants discharged. Variable effluent flows and pollutant quantities shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant quantities; and

(3) Test procedures for the analysis of pollutants meeting the requirements of paragraph (c) of this section.

(c)(1) Test procedures identified in 40 CFR Part 136 shall be utilized for pollutants or parameters listed in that Part, unless an alternative test procedure has been approved under that Part.

(2) Where no test procedure under 40 CFR Part 136 has been approved, the Director shall specify a test method in the permit.

(3) Notwithstanding paragraph (c)(1) of this section, the Director may specify in a permit the test procedure used in developing the data on which an effluent limitations guideline was based, or specified by the standards and guidelines.

(4) Where a method approved under 40 CFR Part 136 for any pollutant or parameter was used in developing the applicable standards and limitations or is specified by the standards and limitations, the same method shall be specified in the permit.

(d) The sampling frequency and other monitoring requirements specified by the Director under paragraph (b) of this section shall, to the extent applicable, be consistent with monitoring requirements specified in a standard or effluent limitations guideline on which the effluent limitations in the permit are based.

(e) If the permittee believes that the monitoring requirements specified by the Director under paragraph (b) of this section in any draft permit under § 124.31 are not sufficient to yield data representative of the volume of effluent flow and the quantity of pollutants discharged, it should request that additional monitoring requirements sufficient to yield such data be included in the final permit. Compliance with effluent limitations contained in the permit will be determined in accordance with the monitoring requirements specified in the permit which, when finally effective, are deemed to yield data representative of the volume of effluent flow and the quantity of pollutants discharged.

(f) The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this section shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

§ 122.21 Recording of monitoring results.

(a) Any permittee required to monitor under § 122.20 shall maintain records of all monitoring information and monitoring activities, including:

(1) The date, exact place and time of sampling or measurements;

(2) The person(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The person(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

(b) All records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records) shall be retained by the permittee for three years. The three-year period shall be extended:

(1) Automatically during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or regarding promulgated effluent guidelines applicable to the permittee, or

(2) As requested by the Director.

(c) The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document required to be maintained under this section shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

§ 122.22 Reporting of monitoring results and compliance by permittees.

(a) Permittees shall report to the Director, using Discharge Monitoring Reports, the results of any monitoring specified by the permit. This includes reporting of the results of monitoring required by § 122.20 to the Director, as often as required by the permit, but in no case less than once per year. Other monitoring data not specifically required in the permit (such as internal process or internal waste stream data) or data collected by third parties need not be submitted unless it indicates a violation, but it shall be identified and referenced as a supplement to the DMR.

[*Comment:* Reporting frequency depends upon the nature and effect of the discharge. For discharges such as small volume, non-contact cooling water, annual report submission may be sufficient. Discharges which require more frequent reporting include: variable discharges; discharges which contribute significant amounts of pollutants to the waters of the United States; discharges which contain toxic or hazardous pollutants or other pollutants of concern; and discharges which apply new treatment or control methods.]

(b) If the permittee monitors any pollutant more frequently than required by the permit, using approved analytical methods, the results of this monitoring shall be reported in the DMR. For purposes of this paragraph, "approved analytical methods" are those test procedures for the analysis of pollutants which conform to 40 CFR 136 or are specified in the permit.

(c) Within 14 days after each interim or final permit compliance schedule date, the permittee shall provide the Director with written notice of the permittee's compliance or

noncompliance with the interim or final requirements.

(d) The Act provides that any person who knowingly makes any false statement, representation, or certification in the monitoring report or notice of compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

§ 122.23 Noncompliance reporting.

(a) On the last working day of February, May, August, and November, the State Director shall submit to the Enforcement Division Director information concerning noncompliance with NPDES permit requirements by major dischargers in the State in accordance with the reporting schedule contained in paragraph (g). The Enforcement Division Director shall submit such information, and shall also prepare and submit information for EPA-issued permits, to the EPA Office of Water Enforcement in accordance with paragraph (g).

(b) The reports required by paragraph (a) shall include the following information:

(1) *Failure to complete construction elements.* Noncompliance shall be reported:

(i) When the permittee has failed to complete by the date specified in the permit, an element of the compliance schedule (e.g., award of contract, preliminary plans, begin construction or attain operational level); and

(ii) The permittee has not returned to compliance by accomplishing the requirements of the permit within 30 days from the date a report is due under § 122.22(c).

(2) *Failure to complete or provide compliance schedule reports.* Noncompliance shall be reported in the following circumstances:

(i) When the permittee fails to complete or provide a report required in the permit compliance schedule or under § 122.22 (e.g., progress reports or notification of compliance or noncompliance); and

(ii) The permittee has not returned to compliance by submitting the report within 30 days from the date it is due under § 122.22(c).

(3) *Noncompliance with applicable standards and limitations.* Noncompliance shall be reported:

(i) When the permittee has violated an applicable standard or limitation and has not returned to compliance with the NPDES permit requirements within 45 days from the date that the DMR or notification of noncompliance under § 122.14(h) was due; or

(ii) When a pattern of noncompliance with applicable standards or limitations as determined by the Director exists for any major discharger over a period of 12 months prior to the end of the current reporting period. This pattern of noncompliance is based on violation of monthly averages and excludes parameters where there is continuous monitoring. A pattern of noncompliance shall be reported whenever there is:

(A) Any violation of the same permit or limitation or standard in two consecutive quarters; and

(B) Any violation of one or more permit limitations or standards in each of four consecutive quarters; or

(iii) When, as determined by the Director, a significant discharge of a pollutant occurs, such as a discharge of a toxic or hazardous substance.

(4) *Failure to Report Effluent Data.* Noncompliance shall be reported where the permittee has failed to provide a DMR within 30 days of the date it is due or where the permittee has exceeded effluent limitations and has failed to report this noncompliance.

(5) *Deficient Reports.* Noncompliance shall be reported where the required reports provided by the permittee are so deficient as to cause misunderstanding by the permit issuing authority and thus impede the review of the status of compliance.

(6) *Modifications to schedules of compliance under § 122.17(d).* Noncompliance resulting from or constituting the basis for a modification under § 122.17(d) shall be reported.

[*Comment:* Noncompliance reported under paragraph (b) shall be reported in successive reports until the noncompliance is resolved. The resolution of noncompliance shall be reported, and when the noncompliance is reported as resolved, it will not appear in subsequent reports.]

(c) The narrative information required under paragraph (b) shall:

(1) Include the following data in the following order:

(i) Name, location, and permit number of each noncomplying permittee;

(ii) A brief description and date of each instance of noncompliance;

(iii) The date(s) and a brief description of the action(s) taken by the Director to insure compliance;

(iv) Status of the instance of noncompliance with the date of the action or resolution;

(v) Any details which tend to explain or mitigate an instance of noncompliance; and

(2) Provide separate lists for non-POTWs, POTWs, and Federal permittees:

(3) Combine information concerning schedule and effluent noncompliance in a single entry for each permittee; and

(4) Alphabetize all narrative listings by permittee name. Where two or more permittees have the same name, the lowest permit number shall govern the order of entry, i.e., the lowest number shall be entered first.

(d) Statistical information shall be reported quarterly on all other instances of noncompliance with permit requirements by major dischargers not set forth in paragraph (b) of this section.

(e) For minor dischargers whose compliance has been reviewed by the permitting authority, statistical information on the types of noncompliance listed under paragraph (b) of this section shall be reported annually. In addition, a separate list of minor dischargers which are one or more years behind in construction phases of the compliance schedule shall be submitted annually in alphabetical order by name and permit number.

(f) *Reporting schedules:* (1) The schedule for reporting noncompliance by major dischargers under paragraphs (b), (c), and (d) of this section shall be as follows:

Quarters [1]	Dates for completion of reports
January, February, and March	May 31.[2]
April, May, and June	August 31.[2]
July, August, and September	November 30.[2]
October, November, and December	February 28.[2]

[1] Covered by reports on noncompliance by major dischargers.

[2] Report made available to the public on this date.

(2) The annual reporting period for noncompliance by minor dischargers under paragraph (e) of this section shall end at the end of the Federal fiscal year (currently September 30), with reports completed and available to the public no more than 60 days later.

(g) All reports prepared under this section shall be made available to the public for inspection and copying.

[*Comment:* The distinction between "major" and "minor" dischargers is established in EPA's annual operating guidance for the EPA Regional Offices and the States.]

Subpart D—Permit Modification, Revocation and Reissuance, and Termination

§ 122.30 General.

Permits shall be (a) modified, (b) revoked and reissued, or (c) terminated

only as authorized in this Subpart, and then only in conformance with applicable provisions of Part 124.

§ 122.31 Modification, revocation and reissuance, and termination.

(a) An issued permit may be modified in whole or in part, revoked and reissued, or terminated during its term for cause as specified in this section.

(b) Permit modifications shall not be used to extend the term of a permit beyond 5 years from the original date of issuance.

(c) Modification, revocation and reissuance, or termination of an issued permit may be initiated by the Director under applicable provisions of Part 124. Any interested person may request the Director to modify, revoke and reissue, or terminate an issued permit.

(d) Causes for modification, revocation and reissuance, or termination include the following:

(1) Violation of any term or condition of the permit;

(2) Failure of the permittee to disclose fully all relevant facts or misrepresentation of any relevant facts by the permittee in the application or during the permit issuance process;

(3) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (e.g., plant closure, termination of discharge by connection to a POTW, the promulgation of any applicable effluent standard or prohibition under section 307 of the Act, any change in State law that requires the reduction or elimination of the discharge, etc.);

(4) Information indicating that the permitted discharge poses a threat to human health or welfare; or

(5) A change in ownership or control of a source which has a permit, where required by the Director in accordance with § 122.12(d).

(e) In addition to the provisions of paragraph (d) of this section, causes for modification, or revocation and reissuance, but not termination, of a permit include the following:

(1) Material and substantial alterations or additions to the discharger's operation which were not covered in the effective permit (e.g., production changes, relocation or combination of discharge points, changes in the nature or mix of products produced), provided that such alterations do not constitute total replacement of the process or production equipment causing the discharge which converts it into a new source;

[*Comment:* Certain reconstruction activities may cause the new source provisions of section 306 to become applicable to the discharger. (See § 122.47.) In such cases the new source permit issuance procedures of § 124.12 should be followed rather than the modification procedures of § 124.13.]

(2) The existence of a factor or factors which, if properly and timely brought to the attention of the Director, would have justified the application of limitations or other requirements different from those required by applicable standards or limitations but only if the requester shows that such factor or factors arose after the final permit was issued;

(3) Revision, withdrawal, or modification of water quality standards or EPA promulgated effluent limitations guidelines (including interim final effluent limitations guidelines), *but only when:*

(i) The permit term or condition requested to be modified or revoked was based on a promulgated effluent limitations guideline or an EPA approved or promulgated water quality standards

(ii)(A) EPA has revised, withdrawn, or modified that portion of the effluent limitations guidelines on which the permit term or condition was based; or

(B) EPA has approved a State action with regard to a water quality standard on which the permit term or condition was based; and

(iii) A request for modification, or revocation and reissuance, is filed in accordance with § 124.13 (or applicable State procedures meeting the requirements of § 124.13) within ninety (90) days after **Federal Register** notice of:

(A) Revision, withdrawal, or modification of that portion of the effluent limitations guidelines; or

(B) EPA approval of State action regarding a water quality standard;

(4) Judicial remand of EPA promulgated effluent limitations guidelines, if the remand concerns that portion of the guidelines on which the permit term or condition was based and the request is filed within ninety (90) days of the judicial remand;

(5) Any modification, or revocation and reissuance of permits specifically authorized by the Act, e.g., sections 301(c), 301(g), 301(h), 301(i) or 301(k);

(6) As necessary under §§ 122.14(d), 122.15(b) and 122.17 (c) and (e); or

(7) Failure of an approved State to notify another State whose waters may be affected by the discharge from the approved State, as required by section 402(b)(3) of the Act.

(f) The following permit modifications shall not require public notice and opportunity for hearing under Part 124 unless they would render the applicable standards and limitations in the permit less stringent, or unless contested by the permittee:

(1) Correction of typographical errors;

(2) A change requiring more frequent monitoring or reporting by the permittee;

(3) A change in an interim compliance date, but not beyond 120 days and not where the change would interfere with the attainment of a final compliance date;

(4) A change in ownership or control of a source which has a permit where no other change in the permit is necessary and where transfer is accomplished in accordance with § 122.12(d);

(5) A change in the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under § 122.47(d)(4); and

(6) Deletion of a point source outfall, where the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

Subpart E—Special NPDES Programs

§ 122.40 General.

The following sections described NPDES program coverage for certain categories of point source dischargers.

§ 122.41 Disposal of pollutants into wells, into publicly owned treatment works, or by land application.

(a) Where part of a discharger's process waste water is not being discharged into waters of the United States or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States, applicable effluent limitations and standards for the discharge in the permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(1) If none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards;

(2) In all cases other than those described in paragraph (1), effluent

limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under Part 125, Subpart D to make them more stringent if dischargers to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

[*Comments* This method may be algebraically expressed as:
$P = E \times N / T$; where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.]

(b) Paragraph (a) shall not apply where promulgated effluent limitations guidelines:

(1) Control concentrations of pollutants discharged, but not mass; or

(2) Specify a different specific technique for adjusting effluent limitations to account for well injection.

(c) Paragraph (a) does not alter a discharger's obligation to meet any more stringent requirements established under §§ 122.14 and 122.15.

§ 122.42 Concentrated animal feeding operations.

(a) Concentrated animal feeding operations are point sources subject to the NPDES permit program.

(b) *Definitions.*

(1) "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be, stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(2) "Concentrated animal feeding operation" means an animal feeding operation which meets the criteria set forth in paragraphs (b)(2) (i), (ii), or (iii) of this section:

(i) More than the numbers of animals specified in any of the following categories are confined:

(A) 1,000 slaughter and feeder cattle,

(B) 700 mature dairy cattle (whether milked or dry cows),

(C) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),

(D) 500 horses,

(E) 10,000 sheep or lambs,

(F) 55,000 turkeys,

(G) 100,000 laying hens or broilers (if the facility has a continuous overflow watering),

(H) 30,000 laying hens or broilers (if the facility has a liquid manure system),

(I) 5,000 ducks, or

(J) 1,000 animal units; or

(ii) More than the following numbers and types of animals are confined:

(A) 300 slaughter or feeder cattle,

(B) 200 mature dairy cattle (whether milked or dry cows),

(C) 750 swine each weighing over 25 kilograms (approximately 55 pounds),

(D) 150 horses,

(E) 3,000 sheep or lamb,

(F) 16,500 turkeys,

(G) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(H) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),

(I) 1,500 ducks, or

(J) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or pollutants are discharged directly into navigable waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation. Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event.

(iii) The Director determines that the operation is a significant contributor of pollution to waters of the United States, in accordance with paragraph (c).

(3) The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds), multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(4) The term "man-made" means constructed by man and used for the purpose of transporting wastes.

(c) *Case-by-case designation of concentrated animal feeding operations.*

(1) Notwithstanding any other provision of this section, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of pollution to the waters of the United States. In making this designation the Director shall consider the following factors:

(i) The size of the animal feeding operation and the amount of wastes reaching waters of the United States;

(ii) The location of the animal feeding operation relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the United States; and

(v) Other such factors relative to the significance of the pollution problem sought to be regulated.

(2) No animal feeding operation with less than the numbers of animals set forth in paragraphs (b)(2) (i) and (ii) of this section designated as a concentrated animal feeding operation unless:

(i) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) In no case shall a permit application be required from a concentrated animal feeding operation designated under this paragraph until there has been an onsite inspection of the operation and a determination that the operation should and could be regulated under the permit program.

§ 122.43 Concentrated aquatic animal production facilities.

(a) Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Concentrated aquatic animal production facility"

means a hatchery, fish farm, or other facility which contains, grows, or holds:

(i) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

(A) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(B) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(ii) Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:

(A) Closed ponds which discharge only during periods of excess runoff; or

(B) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

(2) "Cold water aquatic animals" include, but are not limited to, the *Salmonidae* family of fish, e.g., trout and salmon.

(3) "Warm water aquatic animals" include, but are not limited to, the *Ameiuride, Centrarchidae* and *Cyprinidae* families of fish, e.g., respectively catfish, sunfish, and minnows.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* Any warm or cold water aquatic animal production facility not otherwise falling within the definitions provided in paragraph (b) may be designated as a concentrated aquatic animal production facility where the facility is determined to be a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

(1) The location and quality of the receiving waters of the Unites States;

(2) The holding, feeding, and production capacities of the facility;

(3) The quantity and nature of the pollutants reaching waters of the United States; and

(4) Other such factors relating to the significance of the pollution problem sought to be regulated.

In no case shall a permit application be required from a concentrated aquatic animal production facility designated under this paragraph until there has been an on-site inspection of the facility and a determination that the facility should and could be regulated under the permit program.

§ 122.44 Aquaculture projects

(a) Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of the Act, and in accordance with Part 125, Subpart B.

(b) *Definitions.* (1) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(2) "Designated project area" means the portions of the waters of the United States within which the applicant for a permit plans to confine the cultivated species, using a method or plan or operation (including, but not limited to physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants permitted under this section and be harvested within a defined geographic area.

§ 122.45 Separate storm sewers.

(a) Separate storm sewers, as defined in this section, are point sources subject to the NPDES permit program. Separate storm sewers may be covered either under individual NPDES permits or under the general permit program (see § 122.48).

(b) *Definition.* "Separate storm sewer" means a conveyance or system of conveyances (including but not limited to pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and either:

(1) Located in an urbanized area as designed by the Bureau of Census according to the criteria in 39 FR 15202 (May 1, 1974); or

(2) Not located in an urbanized area but designated as a significant contributor of pollution under paragraph (c).

"Separate storm sewer" does not include any conveyance which discharges process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the United States or into separate storm sewers. Such discharges are subject to the general provision of this Part.

[*Comment:* Whether or not a system of conveyances is or is not a separate storm sewer for purposes of this Part shall have no bearing on whether or not the system is eligible for funding under Title II of the Act, see 40 CFR § 35.925-21.]

(c) *Case-by-case designation of separate storm sewers.* The Director may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category or when:

(1) A Water Quality Management plan under section 208 of the Act, which contains requirements applicable to such point sources is approved; or

(2) A storm sewer is determined to be a significant contributor of pollution to the waters of the United States. In making this determination the following factors shall be considered:

(i) The location of the storm sewer with respect to waters of the United States;

(ii) The size of the storm sewer;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other such factors relating to the significance of the pollution problems sought to be regulated.

[*Comment:* An NPDES permit for discharges into waters of the United States from a separate storm sewer covers all conveyances which are a part of that separate storm sewer system, even though there may be several owners-operators of such conveyances. However, discharges into separate storm sewers from point sources which are not part of the separate storm sewer systems may also require a permit.]

§ 122.46 Silvicultural activities.

(a) Silvicultural point sources, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States.

[*Comment:* The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation, and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, and road construction and maintenance from which there is runoff during precipitation events. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a section 404 permit (see 33 CFR § 209.120).]

(2) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel and riprap (see 40 CFR Part 436, Subpart B, and the effluent limitations guidelines pursuant thereto).

(3) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, i.e. logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart J, and the effluent limitations guidelines pursuant thereto.)

§ 122.47 New sources and new dischargers.

(a) *Definitions.* (1) "New source" and "new discharger" are defined in § 122.3 (u) and (v).

(2) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants;

(3) "Existing source" means any source which is not a new source or a new discharger;

(4) "Site" means the land or water area upon which a source and its water pollution control facilities are physically located, including but not limited to adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing, or water pollution treatment processes.

(5) "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent a substantial commitment to construct. It does not include facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(b) *Criteria and standards for new source determination.* (1) The following construction activities result in a new source as defined in § 122.3.

(i) Construction of a source on a site where another source is not located, or

(ii) Construction of a source on a site where another source is located, provided that the process or production equipment which causes the discharge of pollutants from the other source is totally replaced by this construction or the construction results in a new or additional discharge.

[*Comment:* The fact that a source is constructed on a site so that it shares or uses common land or water areas of another source for utility systems, repair, storage, or shipping does not prevent that source from being considered a new source.]

(2) The modification of an existing source by changing existing process or production equipment, replacing existing process or production equipment (except as provided in paragraph (b)(1)), or by the addition of such equipment on the site of the existing source which results in a change in the nature or quantity of pollutants discharged is not a new source under this section. Modifications of this nature are subject to the provisions of § 122.31(e)(2).

(3) Construction of a new source as defined under § 122.3(v) has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment;

(B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered a binding contractual obligation for the purchase of facilities or equipment which is intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(c) *Requirement of an Environmental Impact Statement.* (1) The issuance of a permit to a new source:

(i) By EPA may be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* and is subject to the environmental review provisions of NEPA as set out in 40 CFR 6, Subpart I. EPA will determine whether an Environmental Impact Statement (EIS) is required under § 124.12 and 40 CFR 6, Subpart I;

(ii) By an NPDES-approved State is not a Federal action and therefore does not require EPA to conduct an environmental review.

(2) The EIS shall include a recommendation on whether the permit is to be issued or denied.

(i) If the recommendation is to deny the permit, the final EIS shall contain the reasons for the recommendation and list those measures, if any, which the applicant could take to cause the recommendation to be changed;

(ii) If the recommendation is to issue the permit, the final EIS shall recommend the actions which the permittee should take to prevent or minimize any adverse environmental impacts;

(3) The Regional Administrator shall issue or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse environmental impacts and a review of the recommendations contained in the EIS.

(4)(i) No on-site construction of a new source for which an EIS is required shall commence before issuance of a final permit incorporating appropriate EIS-related requirements, or before execution by the applicant of a legally binding written agreement which requires compliance with all such requirements, unless such construction is determined by the Regional Administrator not to cause significant adverse environmental impact.

(ii) No on-site construction of a new source for which no EIS is required shall commence before 15 days following issuance of a finding of no significant impact, unless the new source requests permission to construct and the Regional Administrator determines that a finding of no significant impact will probably be made.

(5) The permit applicant must notify the Regional Administrator of any on-site construction which begins before the times specified in paragraph (c)(4) of this section. If on-site construction begins in violation of this paragraph, the Regional Administrator shall advise the owner or operator that it is proceeding with construction at its own risk, and that such construction activities constitute grounds for denial of a permit. The Regional Administrator may seek a court order to enjoin construction in violation of this paragraph.

(d) *Effect of compliance with new source performance standards.* (1) Except as provided in paragraph (d)(2), any new discharger on which construction commenced after October 18, 1972, or any new source, which meets the applicable promulgated new source performance standards before the commencement of discharge, shall not be subject to any more stringent new source performance standards, or to any more stringent technology-based standards under section 301(b)(2) of the Act for the shortest of the following periods:

(i) Ten years from the date that construction is completed;

(ii) Ten years from the date the source begins to discharge process or other non-construction related wastewater; or

(iii) The period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

[*Comment:* The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources nor new dischargers or otherwise do not meet the requirements of this paragraph.]

(2) The protection from more stringent standards of performance afforded by paragraph (d)(1) of this section does not apply to:

(i) Additional or more stringent permit conditions which are not technology based, e.g., conditions based on water quality standards, or effluent standards or prohibitions under section 307(a); and

(ii) Additional permit conditions controlling pollutants listed as toxic under section 307(a) of the Act or as hazardous substances under section 311 of the act and which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic or hazardous where control of those other pollutants has been specifically identified as the method to control the toxic or hazardous pollutant.

(3) Where an NPDES permit issued to a source enjoying a "protection period" under paragraph (d)(1), will expire on or before the expiration of the protection period, such permit shall require the owner or operator of the source to be in compliance with the requirements of section 301 and any other than applicable requirements of the act immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed.

(4) The owner or operator of a new source, a new discharger, a source recommencing discharge after terminating operations, or a source which had been an indirect discharger which commences discharging into navigable waters shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the terms and conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit terms and conditions.

(5) After the effective date of new source performance standards, in accordance with section 306(e), it shall be unlawful for any owner or operator of any new source to operate such source in violation of those standards applicable to such source.

§ 122.48 General permit program.

(a) *Definitions.* (1) The term "separate storm sewer" is defined in § 122.45.

(2) The term "general permit program area" ("GPPA") means any area so designated under paragraph (c) of this section in which all owners or operators of separate storm sewers or other categories of point sources are subject to the same general permit, other than owners or operators of such sources to whom individual NPDES permits have been issued.

[*Comment:* All draft general permits for point sources other than separate storm sewers must be sent to the EPA Deputy Assistant Administrator for Water Enforcement during the public comment period for a 90-day review. If the draft general permit does not meet the criteria of § 122.48(b)(2), the EPA Deputy Assistant Administrator may object to the issuance of the general permit within those 90 days. See § 123.12(a)(14) and 124.32(a)(2).]

(3) The term "general permit" means an authorization to discharge which,

(i) Where issued by EPA, is published in the **Federal Register** or,

(ii) Where issued by a State, published in accordance with applicable State procedures, and

(iii) Is applicable to all owners and operators of separate storm sewers or other categories of point sources in a designated GPPA, other than owners and operators of such sources to whom individual NPDES permits have been issued.

(b) The Director may regulate the following discharges under general permits:

(1) Separate storm sewers; and

(2) Such other categories of point sources if there are a number of minor point sources operating in a geographical area that:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same types of wastes;

(iii) Would require the same effluent limitations or operating conditions;

(iv) Would require the same similar monitoring requirements; and

(v) In the opinion of the director, would be more appropriately controlled under a general permit than under an individual NPDES permit.

(c) Each general permit shall be applicable to a class or category of dischargers meeting the criteria of paragraph (b) within a GPPA designated by the Director.

(1) The GPPA shall correspond with existing geographic or political boundaries such as:

(i) Designated planning areas under sections 208 and 303 of the Act;

(ii) Sewer districts or sewer authorities;

(iii) City, county or State political boundaries;

(iv) State highway systems;

(v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(vi) Urbanized areas as defined by the Bureau of Census (see § 122.45(b)(1)); or

(vii) Any other appropriate divisions or combinations of the above boundaries which will encompass the sources subject to the same general permit.

(2) Any designation of any GPPA is subject to review by the Director at the expiration of the general permit for the GPPA, or if individual permits have been issued to all the owners and operators in the categories of point sources within the GPPA, or as necessary to address water quality problems effectively.

(3) General permits shall be issued in accordance with the applicable requirements of Part 124.

[*Comment:* The permit issuing authority is encouraged to provide as much actual notice of the draft general permit to the permitees as possible. This notice would be in addition to the public notice requirements in § 124.41(f) and could include notice in trade association journals and newsletters.]

(d) *Scope of General Permits.* (1) Each general permit shall cover all owners and operators of separate storm sewers or other designated categories of point sources in the GPPA for which the general permit is issued, except:

(i) As provided in paragraph (e); and

(ii) Owners and operators of separate storm sewers or other categories of point sources, who are already subject to individual NPDES permits prior to the effective date of the general permit;

(2)(i) All sources not excluded from general permit coverage for these reasons are permittees subject to the terms and conditions of the general permit.

(ii) Source excluded from general permit coverage solely because they already have an individual NPDES permit may request that the individual permit be revoked, and that they be covered by the general permit. Upon revocation of the individual NPDES permit, the general permit shall apply to such point source.

(e) *Case-by-case designation.* (1) Under § 124.14, the Director may revoke a general permit as it applies to any

person and require such person to apply for and obtain an individual NPDES permit. Interested persons may petition the Director to take action under this paragraph if one of the six cases listed below occurs. Cases where individual NPDES permits may be required include the following:

(i) The covered discharge(s) is a significant contributor of pollution;

(ii) The discharger is not in compliance with the terms and conditions of the general permit;

(iii) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the covered point source;

(iv) Effluent limitations guidelines are subsequently promulgated for point sources covered by the general permit;

(v) A Water Quality Management plan containing requirements applicable to such point source is approved; or

(vi) The requirements of paragraph (b)(2)(i) through (iv) are not met.

(2) Where EPA is the permit issuing authority, the Regional Administrator may revoke a general permit as it applies to any person and require such person to apply for an individual NPDES permit if:

(i) There has been an on-site inspection of the facility and a determination that the point source should and could be regulated under an individual permit; and

(ii) The owner or operator has been notified in writing of the revocation of the general permit and that a permit application is required. This notice shall include an application form, a statement that the owner or operator has sixty days from receipt of notice to file the application, and a statement that the general permit no longer authorizes the owner or operator to discharge pollutants.

(3) Any owner or operator subject to a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit such application, with reasons supporting the request, to the Director no later than ninety days after the publication by EPA of the general permit in the **Federal Register** or the publication by the State in accordance with applicable State law. All such requests shall be granted by issuance of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(4) Where an individual NPDES permit is issued to an owner or operator otherwise subject to a general permit, the general permit as it applies to the individual NPDES permittee is automatically revoked on the effective date of the individual permit.

(5) Any owner or operator applying for an individual NPDES permit under this paragraph is subject to the procedures set forth in Part 124.

§ 122.49 Special considerations under Federal law.

Under section 301(b)(1)(C) of the Act, permits shall be consistent with and reflect requirements under applicable Federal laws other than the Act, and to the extent authorized by law, requirements under Executive Orders. For permits issued by the Regional Administrators, such Federal requirements include but are not limited to the following:

(a) Executive order 11990 (Protection of Wetlands).

(b) Executive Order 11988 (Preservation of Floodplains).

(c) Sections 3, 4, and 5 of the Wild and Scenic Rivers Act, 16 U.S.C. 1273 et seq.

(d) The National Historic Preservation Act of 1966, 42 U.S.C. 4321 et seq. (and the related Executive Order 11593).

(e) The Land and Water Conservation Act, 16 U.S.C. 460, et seq.

(f) Section 7 of the endangered Species Act, 16 U.S.C. 1531 et seq.

(g) Section 307 of the Coastal Zone Management Act, 16 U.S.C. 1451 et seq.

[*Comment:* NPDES permits must be consistent with approved coastal zone management plans by virtue of sections 307(c)(3)(A) (Federally issued permits) and 307(c)(1) (approval and oversight of State permit programs).]

(h) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.

(i) The Safe Drinking Water Act, 42 U.S.C. 300f et seq.

(j) The Marine Protection, Research, and Sanctuaries Act (the Ocean Dumping Act), 33 U.S.C. 1401 et seq.

(k) The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.

(l) The Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq.

Subpart F—Miscellaneous

§ 122.60 Delegation of authority.

Subject to the appeal provisions of Part 124, the following authorities are hereby delegated to each of the Regional Administrators for the Region in which they are located:

(a) The authority to issue, condition, revoke, modify, deny, monitor, and enforce permits for discharges regulated by the NPDES program under sections 318, 402 and 405 of the Act.

(b) The authority to receive permit applications and related documents from States and to object in writing to the issuance of permits under section 402(d)(2) of the Act or (if such permits are outside the guidelines and requirements of the Act) under sections 402(d) (1), (2) and (4) of the Act.

(c) The authority under section 403(c) of the Act to issue permits under section 402 of the Act for a discharge into the territorial sea, the contiguous zone, or the oceans before the promulgation of guidelines under section 403(c) of the Act, including the determination that issuance is in the public interest.

(d) The authority granted to the Administrator by sections 308(a) and 308(b) of the Act.

(e) The authority to grant variances granted to the Administrator under sections 301(c), 301(g), and 316(a) of the Act.

(f) The authority to grant time extensions of statutory compliance dates under sections 301(i) and 301(k) of the Act.

(g) The authority to establish water-quality-related effluent limitations under section 302 of the Act.

(h) These authorities may be redelegated to the Enforcement Division Director of each Region. Permit issuance authority may not be redelegated below the Enforcement Division Director.

Appendix A—Point Source Categories and Permit Expiration Dates

Point source category	Permit expiration dates
Adhesives	June 30, 1981.
Aluminum Forming	June 30, 1981.
Auto & Other Laundries	June 30, 1981.
Battery Manufacturing	June 30, 1981.
Coal Mining	December 31, 1980.
Coil Coating	June 30, 1981.
Copper Forming	June 30, 1981.
Electric & Electronic Components	June 30, 1981.
Electroplating	June 30, 1981.
Explosives Manufacturing	June 30, 1981.
Foundries	June 30, 1981.
Gum & Wood Chemicals	June 30, 1981.
Inorganic Chemicals	March 31, 1981.
Iron & Steel	September 30, 1980.
Leather Tanning and Finishing	September 30, 1980.
Mechanical Products	June 30, 1981.
Nonferrous Metals	December 31, 1980.
Ore Mining	December 31, 1980.
Organic Chemicals	March 31, 1981.
Paint & Ink	December 31, 1980.
Pesticides	June 30, 1981.
Petroleum Refining	September 30, 1980.
Pharmaceuticals	June 30, 1981.
Photographic Supplies	June 30, 1981.
Plastics Processing	June 30, 1981.
Plastic & Synthetic materials	March 31, 1981.
Porcelain Enamel	June 30, 1981.
Printing & Publishing	December 31, 1980.
Pulp & Paper	March 31, 1981.
Rubber	March 31, 1981.
Soaps & Detergents	June 30, 1981.
Steam Electric	September 30, 1980.
Textile Mills	March 31, 1981.
Timber	September 30, 1980.

5. A new Part 123 is added as follows:

PART 123—STATE PERMIT PROGRAM REQUIREMENTS

Subpart A—General

Sec.
123.1 Purpose and scope.
123.2 Definitions.
123.3 Elements of a program submission.
123.4 Program description.
123.5 Memorandum of Agreement with the Secretary for section 404 programs.
123.6 Attorney General's Statement.
123.7 Memorandum of Agreement with the Regional Administrator.
123.8 Sharing of information.

Subpart B—Requirements of State Programs

123.11 Requirement to obtain a permit.
123.12 Operational requirements.
123.13 Control of disposal of pollutants into wells.
123.14 Inspections, monitoring, entry, and reporting.

Subpart C—Transfer of Information, Objections to Permits

123.21 Receipt and use of Federal information.
123.22 Transmission of information to EPA.
123.23 Objections to proposed NPDES permits.
123.24 Prohibitions.

Subpart D—Enforcement Provisions

123.31 Compliance evaluation programs.
123.32 Enforcement.

Subpart E—Planning and Conflict of Interest Requirements

123.41 Continuing planning process.
123.42 Agency board membership.

Subpart F—Procedures for Approval of State Permit Programs

123.51 Section 402 approval process.
123.52 Section 404 approval process.

Subpart G—Revisions to Approved Programs

123.61 Procedure for revision of State permit programs.
123.62 NPDES program revisions under the Clean Water Act of 1977.

Authority: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq.

Subpart A—General

§ 123.1 Purpose and scope.

(a)(1) This Part specifies the requirements of State section 404 (discharges of dredged or fill material) and NPDES (sections 318, 402, and 405) permit programs which must be met in order to obtain approval of the Administrator under the Clean Water Act.

(2) This Part also specifies the process for approving and modifying State programs and for EPA objection to proposed State permits.

(b) A State permit program which conforms to this Part shall be approved by the Administrator. A State permit program will not be approved by the Administrator under section 402 of the Act unless it has authority to control the discharges specified in sections 318 and 405(a) of the Act. Except as provided below, State section 402 permit programs approved by EPA prior to the date of promulgation of these regulations may implement sections 318 and 405 of the Act. If a State lacks authority to implement these sections, it shall notify EPA and revise its program in accordance with § 123.62. Permit programs under sections 318 and 405 will not be approved independent of a section 402 permit program.

(c) Upon approval (and upon subsequent notification from the State that it is administering the permit program for purposes of section 404), the Administrator or the Secretary (in the case of section 404 programs), shall suspend the issuance of permits for those activities subject to the approved program.

(d) After program approval EPA or the Secretary (in the case of section 404 programs) shall retain jurisdiction over any permits (including general permits) which have been issued by the Federal government unless arrangements have been made with the State in the Memorandum of Agreement for the State to assume responsibility for these permits. Retention of jurisdiction shall include the processing of any permit appeals, modification requests or variance requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request or variance request is not finally resolved when the Federally issued permit expires, EPA or the Secretary (in the case of section 404 programs) when agreed to by the State, may continue to retain jurisdiction until the matter is resolved. Under section 404(h)(5) of the Act States are entitled, after program approval, to administer and enforce general permits issued by the Secretary. However, if the State chooses not to administer and enforce these permits the Secretary retains jurisdiction until they expire.

(e) Any State permit program approved by the Administrator shall at all times be conducted in accordance with the requirements of this Part (including, where incorporated by reference, provisions of Parts 122, 124, and 125).

(f) These regulations are promulgated under the authority of sections 304(i), 101(e) and 501(a) of the Act, and implement the requirements of those sections.

[*Comment:* No partial program approvals may be granted. States must have authority to issue permits for all discharges into all waters of the United States within the State's jurisdiction. (In appropriate circumstances more than one State Agency can be approved to issue NPDES permits; see § 123.4(b).) In addition, States (including States which have previously been approved) must implement the Clean Water Act of 1977, (Pub. L. 95–217), amendments to sections 313 (Federal facilities); 304(e) (best management practices); and 402(b)(8) (pretreatment) of the Act. Similarly, all the requirements of section 404 must be satisfied prior to approval of a State section 404 program. The section 404 and NPDES programs are independent; a State may obtain approval for one without the other.

Although these regulations require States to administer complete programs, EPA recognizes that, as a matter of Federal law, a State may lack authority to exercise jurisdiction over discharges from facilities on Indian lands. The lack of such authority does not constitute grounds for refusal to authorize State administration of a program. However, to the extent that States have authority to exercise jurisdiction, they are required to do so.]

(g) Nothing in this Part precludes a State from:

(1) Adopting or enforcing any standard, limitation, or other requirement which is more stringent than required under the Act; or

(2) Operating a permit program with a greater scope of coverage than required under the Act.

(h) A State permit program approved under this Part is established and operated under State law.

[*Comment:* EPA has a continuing statutory responsibility to assure that the operation of State programs in in accordance with Federal law. States must cooperate with EPA and assure that it has access to information which it requests in order to carry out this responsibility. See §§ 123.8 and 123.61(d).]

§ 123.2 Definitions.

(a) The definitions in Part 122 apply to this Part.

(b) "Draft permit" means the permit prepared pursuant to §§ 124.31 or 124.32 indicating the State Director's tentative determination to issue or modify a permit with specified conditions.

(c) "Proposed permit" means a state permit or permit modification prepared after the public comment period (and, where applicable, any public hearing) which is sent to EPA for review before final issuance by the State. In the case of section 404 programs, proposed permits are not required unless requested by EPA.

[*Comment:* Where EPA has waived permit review no proposed permit is required under these regulations. The State may issue a final permit after meeting the requirements of §§ 124.31, 124.41, 124.42 and 124.44.]

(d) "Memorandum of Agreement" means the agreement entered into pursuant to § 123.7 between the Regional Administrator and the State Director, governing the relationship, duties, and rights of the parties in operating a State NPDES program.

(e) "State/EPA Agreement" means an agreement between the Regional Administrator and the State which integrates and coordinates EPA and State activities, responsibilities and programs under the Clean Water Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act. The scope of the State/EPA Agreement may be expanded in the future to cover other environmental programs. Guidance for these agreements will be published from time to time in the **Federal Register** (see, e.g., 44 FR 17294 March 21, 1979).

§ 123.3 Elements of a program submission.

(a) EPA will not initiate formal review of a proposed State program until it receives three copies of a complete program submission. If a submission made by a State is not complete, the statutory review period (i.e., the period of time allotted for EPA review under the Act) shall not commence until the deficiency is corrected. The submission shall contain the following elements:

(1) A letter from the Governor of the State requesting program approval;

(2) An Attorney General's Statement as required by § 123.6;

(3) A Memorandum of Agreement as required by § 123.7;

(4) A complete program description as required by § 123.4;

(5) Copies of the permit application and permit forms which the State intends to employ in its program. Except for Discharge Monitoring Reports, forms used by States need not be identical to the forms used by EPA or the Secretary but should require the same basic information. The State need not provide copies of uniform national forms it intends to use but should note that it intends to use these:

[*Comment:* The States are encouraged to use uniform national forms established by the Administrator in the case of NPDES, or the Secretary in the case of section 404 programs. States are required to use uniform national Discharge Monitoring Reports, see § 122.31(1). Regulations will be proposed in the near future specifying information required on State NPDES and section 404 application forms. Uniform national forms may be modified to substitute the State Agency's name, address, logo, and other similar information, as appropriate, in place of EPA's.]

(6) Copies of all applicable statutes and regulations, including those governing applicable State administrative procedures; and

(7) In the case of section 404 programs, a Memorandum of Agreement between the State and the Secretary as required by § 123.5.

(b) If the State's submission is materially changed during the statutory review period, the review period shall recommence.

§ 123.4 Program description.

Any State desiring to administer a permit program shall submit to the Administrator a complete description of the program it proposes to establish and administer under State law or under an interstate compact. The program description shall include:

(a) A description of how the State intends to carry out its responsibilities under the Act.

(b)(1) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the permit program. NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities. Where more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.3 before formal EPA review will commence. In the case of section 404 programs, the State must designate one agency to be responsible for issuing section 404 permits.

(2) In the case of section 404 programs, the program description shall describe how the State section 404 agency will interact with other State and local agencies.

[*Comment:* There is no restriction limiting the number and type of state agencies implementing the NPDES program. However, EPA favors the use of a single agency.]

(c) A description of State procedures for the issuance of permits (including general permits if the State chooses to implement § 122.48), and any State appellate review procedures.

(d) A description of the State's priorities for issuance of permits.

(e) A description of the State's priorities for enforcement of permits, including a complete description of the State's compliance tracking and enforcement programs. In addition, in the case of section 404 programs the State must explain how it will coordinate its enforcement strategy with that of the Corps of Engineers and EPA.

(f) A description of the funding arrangements and personnel qualifications for the State's program, including the following information:

(1) A description of the agency staff who will be engaged in carrying out the State program, including the number and occupations of the employees;

(2) A list of the proposed or actual costs of establishing and administering the program, including the cost of the personnel listed in paragraph (f)(1) of this section, the cost of administrative support, and the cost of technical support;

(3) A description of the funding, including Federal grant money, available to the State Director to meet the costs listed in paragraph (f)(2) of this section, including any restriction or limitation upon this funding. Where the State proposes to administer a program of greater scope than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the federally required portion of the program; and

(4) For section 404 programs, a description of the categories and sizes of dicharges of dredged or fill material to which the State Director proposes to issue permits. For each category, the following information shall be given:

(i) Estimated number within the category which must file for a permit; and

(ii) Number and percent within each category for which the State has already issued a State permit or equivalent document regulating the discharge.

(g) In the case of section 404 programs, a description of the specific best management practices requirements proposed to be used to satisfy the exemption provisions of section 404(f)(1)(E) for construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment in accordance with applicable regulations.

[*Comment:* Regulations governing these BMPs will be proposed in the near future.]

§ 123.5 Memorandum of Agreement with the Secretary for section 404 programs.

In the case of section 404 programs the State shall enter into a Memorandum of Agreement with the Secretary, which shall include:

(a) An identification of those waters in which the Secretary will suspend the issuance of section 404 permits (pursuant to section 404 (h)(2) and (g)(1))

upon approval of the State program by the Administrator;

(b) Where an agreement is reached, procedures for joint processing of permits for activities which require both a section 404 permit from the State and a section 9 or 10 permit from the Secretary under the River and Harbor Act of 1899.

(c) An identification of those individual and general permits, if any, issued by the Secretary, the terms and conditions of which the State intends to administer and enforce (including inspection, monitoring, and surveillance responsibilities) upon receiving approval of its program, and a plan for transferring these permits to the State.

[*Comment:* See *Comment* to § 123.7(b)(1).]

(d) Procedures whereby the Secretary will transfer to the State pending section 404 permit applications and other relevant information, as specified in § 123.21.

(e) Assurance that the State will not issue any section 404 permit for a discharge which, in the judgment of the Secretary after consultation with the Secretary of the Department in which the Coast Guard is operating, would substantially impair anchorage or navigation.

(f) Those "classes or categories" if any, of proposed State permits for which the Secretary waives the right to review.

(g) Other matters not inconsistent with this Part that the Secretary and the State deem appropriate.

[*Comment:* States that regulate the discharge of dredged or fill material into those traditionally navigable waters which, by virtue of section 404(g)(1), will also require a section 404 permit from the Secretary after State program approval, are strongly encouraged to establish in this Memorandum of Agreement procedures for joint processing of permits, including joint public notices and public hearings.]

§ 123.6 Attorney General's Statement.

(a) Any State desiring to administer a permit program shall submit a statement from the State Attorney General (or the attorney for those State agencies which have independent legal counsel), that the laws of the State, or the interstate compact, as the case may be, provide adequate authority to carry out the program described under § 123.4 and to meet the requirements of this Part. The Attorney General's Statement shall include citations to specific statutes, administrative regulations, and, where appropriate, judicial decisions to demonstrate adequate legal authority.

[*Comment:* To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State in court on all matters pertaining to the State program.]

(b) Where juridiction may be exercised over activities on Indian lands, the statement shall certify that the State has such authority.

(c) In the case of section 404 programs, in addition to certifying the authorities described in paragraph (a), the Attorney General's Statement shall also contain:

(1)An analysis of the State's law prohibiting the taking of private property without just compensation, including any applicable judicial interpretations, and assurance that this will not adversely affect the successful implementation of the State's regulation of the discharge of dredged or fill material; and

(2) A certification that the State has authority to prohibit, deny, restrict, or withdraw the specification of disposal sites for the discharge of dredged or fill material in any defined area of those waters for which the State receives section 404 authority, including:

(i) Authority to apply the criteria contained in 40 CFR Part 230;

(ii) Authority (similar to EPA's authority under section 404(c)) to prohibit the discharge of dredged or fill material into areas where such discharges would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas.

[*Comment:* The above authority to prohibit, deny, restrict, or withdraw the specification of disposal sites should not be limited to situations where an application for a 404 permit has been made, but should also include the authority to designate areas which will not be available for disposal site specification, as described in 40 CFR § 230.7(d). Nothing in subparagraph (c)(2)(ii) is intended to limit the Administrator's authority to take similar actions under section 404(c) of the Act.]

(d) The authorities cited by the State Attorney General or other legal officer as authority to meet the requirements of this Part shall be in the form of lawfully adopted State statutes or regulations which shall be in full force and effect at the time the statement is signed.

[*Comment:* This Part sets forth a number of procedural requirements. For example, § 123.22 requires approved States to transmit information to EPA and other agencies. Not all such procedural requirements need be embodied in State regulations. However, the State must show it has adequate authority to carry out all the requirements of this Part, and that no State statute or regulation is inconsistent with those requirements.]

§ 123.7 Memorandum of Agreement with the regional administrator.

(a) Before the Administrator approves any State NPDES or section 404 program, the State Director and the Regional Administrator shall execute a Memorandum of Agreement (MOA), which shall be approved by the Administrator not later than the time of program approval. In addition to including the requirements of paragraph (b), the Memorandum of Agreement may include other terms, conditions, or agreements relevant to the administration and enforcement of the State's regulatory program which are not inconsistent with this Part. No Memorandum of Agreement shall be approved which restricts EPA's statutory oversight responsibility. The Memorandum of Agreement shall be available for inspection and comment before the public hearing required by §§ 123.51 or 123.52.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions implementing § 123.21 for the prompt transfer of any pending permit applications or any other relevant information not already in the possession of the State Director. Where existing permits are transferred to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring responsibility for these permits. Where existing permits are not transferred, § 123.1(d) applies.

[*Comment:* In many instances States will lack the authority to directly administer permits issued by EPA. However, a procedure may be established to transfer responsibility for these permits. For example, a State could issue permits identical to the outstanding EPA permits which could be simultaneously revoked.]

(2) Provisions implementing §§ 123.22 and 123.23 specifying the basis and procedures for EPA to receive permits and permit applications from the State for review, comment, and objection. In the case of a State section 404 program the State shall assure that it will transmit copies of all proposed permits to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service at the same time such permits are transmitted to EPA, subject to the right of any of these agencies to waive, in whole or in part, the right to receive such permits.

(3)(i) In the case of section 402 programs, provisions specifying the extent to which EPA review of State-issued permits will be waived under sections 402(d)(3), (e) or (f) of the Act. While the Regional Administrator and

the State may agree to waive EPA review of certain "classes or categories" of permits, no waiver of review may be granted for the following discharges:

(A) Discharges into the territorial sea or contiguous zone;

(B) Discharges which may affect the waters of a State other than the one in which the discharge originates;

(C) Proposed NPDES general permits (see § 122.48);

(D) Discharges from publicly owned treatment works with a daily average discharge exceeding 1 million gallons per day;

(E) Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day;

(F) Discharges from any major discharger or from any discharger within any of the industrial categories listed in Appendix A to Part 122;

(G) Discharges from other sources with a daily average discharge exceeding 0.5 million gallons per day, except that EPA review of permits for discharges of non-process wastewater may be waived, regardless of flow, with the prior concurrence of the EPA Deputy Assistant Administrator for Water Enforcement;

(ii) In the case of section 404 programs, provisions specifying the extent to which EPA review of permit applications and State-issued permits will be waived under sections 404(k) or (l) of the Act. While the Regional Administrator and the State, in consultation with the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, may agree to waive Federal review of certain "classes or categories" of permits no waiver may be granted for the following activities:

(A) Discharges which may affect the waters of a State other than one from which the discharge originates;

(B) Discharges incidental to activities described in section 404(f)(2) of the Act (i.e., activities having as their purpose bringing an area of the waters of the United States into a new use, where the flow and circulation of waters may be impaired or their reach reduced);

(C) Proposed section 404 general permits; or

(D) Discharges known or suspected to contain toxic or hazardous pollutants in significant amounts.

(iii) Whenever a waiver is granted under paragraph (b)(3) (i) or (ii) of this section, a statement that the Regional Administrator retains the right to terminate the waiver, in whole or in part, at any time by sending the State Director written notice of termination. The waiver shall not affect the duty of the State to supply EPA with copies of all permit applications, public notices and final permits.

(4) Provisions, consistent with this Part, specifying the frequency and content of reports, documents and other information which the State must submit to EPA.

(5) Provisions on the State's enforcement program including:

(i) Provisions for compliance monitoring by the State and by EPA and for the coordination of these efforts. These provisions may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection;

(ii) Fiscal arrangements for effective litigation support for the State attorney general or other appropriate legal officers;

(iii) The establishment of an enforcement management system implementing the requirements of § 123.31.

(6) Where appropriate, provisions for joint processing of permits by the State and EPA.

[*Comment:* To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance. Likewise, States are encouraged to consolidate their own permit programs and activities.]

(7) Provisions for modification of the Memorandum of Agreement with the approval of the Administrator.

(c) The Memorandum of Agreement and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended in accordance with procedures set forth in this Part. The State/EPA Agreement may not override the Memorandum of Agreement.

[*Comment:* Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. Where this is the case, it may still be appropriate to specify in the MOA the basis for such detailed agreements, for example, a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA Agreement.]

§ 123.8 Sharing of information.

(a) Any information obtained or used pursuant to a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must pass that claim on to EPA. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2. If EPA obtains information from a State that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA may furnish information to States in order to implement these regulations. In the case of information claimed as confidential by submitters, State access will be subject to the rules in 40 CFR Part 2, Subpart B.

Subpart B—Requirements of State Programs

§ 123.11 Requirement to obtain a permit.

(a) State NPDES permit programs must have a statute or regulation, enforceable in State courts, which prohibits the discharge of pollutants by any person except as authorized by a permit in effect under the State program or under section 402 of the Act, except that States need not regulate discharges exempt from the Federal permit requirement under § 122.4.

(b) State section 404 permit programs must have a statute or regulation, enforceable in State courts, which prohibits the discharge of dredged or fill material into waters subject to the State's jurisdiction by any person except as authorized by a permit in effect under the State program or under section 404 of the Act, except that States need not regulate discharges exempt from the Federal permit requirement under section 404(r) or under the regulations implementing section 404(f)(1) of the Act.

[*Comment:* § 123.1(g) provides that States are not preempted from adopting more stringent standards or regulating more activities than the Act requires. For example, States may choose to regulate certain minor categories of discharges of dredged or fill material which have been exempted from the Federal program by section 404(f)(1) of the Act. Likewise, States are not precluded from regulating activities which, by virtue of section 404(g)(1) of the Act, also require a 404 permit from the Secretary. Although State permits in waters described in section 404(g)(1) are not section 404 permits, section 404(t) of the Act provides that a State is not preempted from requiring permits for discharges into these waters. It should be noted that the regulations of the Corps of Engineers encourage joint Corps-State processing of permits, including joint public notices and hearings (33 CFR § 320.4(j)). The Secretary attaches considerable weight to State determinations (33 CFR § 320.4(j)(1)–(7).]

§ 123.12 Operational requirements.

(a) State section 402 programs must have legal authority to implement each of the following provisions and must be administered in conformance with each of the following provisions:

(1) § 122.5—(Signatories);

(2) § 122.11(d)—(Permit issuance; effect of permit);

(3) §122.12(a), (c) and (d)—(Duration and transferability of permits);

(4) §122.13—(Prohibitions);

(5) §122.14—(Conditions applicable to all permits);

(6) §122.15—(Applicable limitations, standards, prohibitions and conditions);

(7) §122.16—(Calculation and specification of effluent limitations and standards);

(8) §122.17(a), (b), (d), (e) and (f)—(Schedules of compliance);

(9) §122.20—(Monitoring);

(10) §122.21—(Recording of monitoring results);

(11) §122.22—(Reporting of monitoring results);

(12) § 122.23—(Noncompliance reporting);

(13) § 122.31—(Modification, revocation and reissuance, and termination);

(14) Part 122, Subpart E except §§ 122.40, 122.47(a)–(c) and 122.49—(Special NPDES Programs)—*provided,* States are not required to implement the general permit program under § 122.48. If a State chooses to issue general permits such action is subject to the following conditions:

(i) Any general permit shall be issued in accordance with § 122.48;

(ii) Prior to, or at the time of proposal of any general permit, the State Attorney General (or other legal officer as appropriate, see § 123.6) shall certify that the State has adequate legal authority to issue and enforce general permits;

(iii) EPA shall have 90 days to review any proposed general permit; and

(iv) All general permits, except those for separate storm sewers, may be objected to on EPA's behalf by the EPA Deputy Assistant Administrator for Water Enforcement. The State shall transmit a copy of any such proposed general permit to the EPA Deputy Assistant Administrator for Water Enforcement at the same time the proposed permit is transmitted to the EPA Regional Office.

(15) § 124.13—(Modification requests);

(16) § 124.31(b)—(Draft permits);

(17) § 124.32(a)—(Other draft permits);

(18) § 124.33—(Statement of basis);

(19) § 124.34—(Fact sheet);

(20) § 124.41—(Public notices);

(21) § 124.42—(Public comments and hearing);

(22) § 124.44—(Comments from government agencies);

(23) § 124.51—(Time requirements for variances), *provided,* State programs are not required to provide for any or all of the variances listed in § 124.51;

(24) § 124.52—(Decision on variances);

(25) § 124.63(a)—(Response to comments);

(26) § 124.131(a)—(Public access);

(27) Subparts A, B, C, D, H, I, J, K and L of Part 125—(NPDES Determinations); and

(28) 40 CFR Parts 129, 133 and Subchapter N.

(b) States seeking approval of section 404 programs should consult with EPA on the operational aspects of their programs.

[*Comment:* Regulations governing the operational aspects of State section 404 programs will be proposed in the near future.]

§ 123.13 Control of disposal of pollutants into wells.

State section 402 permit programs must have authority to issue permits to control the disposal of pollutants into wells. Such authority shall enable the State Director to protect the public health and welfare and to prevent the pollution of ground and surface waters by prohibiting well discharges or by permitting them with appropriate permit terms and conditions.

[*Comment:* States which are authorized to administer the NPDES permit program under section 402 of the Act are encouraged to rely on existing statutory authority, to the extent possible, in developing a State underground injection control (UIC) program under section 1422 of the Safe Drinking Water Act. Section 402(b)(1)(D) of the Clean Water Act requires that NPDES States have the authority "to issue permits which . . . control the disposal of pollutants into wells." In many instances, therefore, NPDES States will have statutory authority to regulate well disposal which satisfies the requirements of the UIC program. However, the Clean Water Act excludes certain types of well injections from the definition of "pollutant." If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.]

§ 123.14 Inspections, monitoring, entry, and reporting.

Any State permit program shall provide adequate authority to inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of the Act.

Subpart C—Transfer of Information, Objections To Permits

§ 123.21 Receipt and use of Federal information.

Upon receiving EPA approval, the State agency administering a permit program shall be sent any relevant information which was collected by EPA or, where appropriate, the Secretary. The Memoranda of Agreement under §§ 123.5 and 123.7 shall provide for the following, in such manner as the State Director and the Regional Administrator or, where appropriate, the Secretary, shall agree:

(a) Prompt transmission to the State Director from the Regional Administrator or the Secretary of copies of any pending permit applications or any other relevant information collected before the approval of the State permit program and not already in the possession of the State Director. Where existing permits are transferred to the State Director (e.g., for purposes of compliance monitoring, enforcement, or reissuance), relevant information includes support files for permit issuance, compliance reports, and records of enforcement actions.

(b) Procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Regional Administrator or the Secretary which the Regional Administrator or the Secretary identifies as incomplete or otherwise deficient until the State Director receives information sufficient to correct the deficiency.

§ 123.22 Transmission of information to EPA.

(a) Each State agency administering a permit program shall transmit to the Regional Administrator (and in the case of section 404 programs, to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service), copies of permit program forms and any other relevant information to the extent and in the manner agreed to by the Director and the Regional Administrator in the Memorandum of Agreement and not inconsistent with this Part. EPA review of proposed NPDES general permits is governed by § 123.12(a)(14). The Memorandum of Agreement shall provide for the following:

(1) Prompt transmission to the Regional Administrator of a copy of any complete permit applications received by the State Director.

(2) Prompt transmission to the Regional Administrator and any affected State of notice of every action

taken by the State agency related to the consideration of any permit application, including a copy of each proposed or draft permit and any terms, conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit. In the case of section 404 programs, the above shall be transmitted to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service at the same time they are transmitted to EPA. The State program shall provide:

(i) A period of time (up to 90 days) in which the Regional Administrator, or where appropriate, the EPA Deputy Assistant Administrator for Water Enforcement (see § 123.12(a)(14)), may comment upon, object to, or make recommendations with respect to the proposed permit and, in the case of section 404 programs, on the permit application. A copy of any comment, objection, or recommendation shall be sent to the permit applicant by EPA. In the case of NPDES general permits, EPA shall have 90 days to comment upon, object to, or make recommendations with respect to the proposed permit.

(ii) In the case of a draft or proposed permit which includes a tentative determination to approve a variance request which may only be authorized by EPA (see § 124.52(b)), formal EPA review of the permit shall not begin under this section and § 123.23 until EPA rules on the variance request.

[*Comment:* Normally EPA review time is substantially less than 90 days. However, EPA reserves the right to take a full 90 days to supply specific grounds for objection where a general objection is filed within the review period of the Memorandum of Agreement. In making comments, objections or recommendations on proposed State section 404 permits, the Regional Administrator will consider any timely written comments submitted to him by the Secretary, the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.]

(3) Transmission to the Regional Administrator of a copy of every issued permit following issuance, along with any and all terms, conditions, requirements, or documents which are related to or affect the authorization of the permit.

(b) In the case of NPDES programs, transmission by the State Director to EPA of:

(1) Notices from publicly owned treatment works under § 122.15(d) and 40 CFR Part 403, upon request of the Regional Administrator;

(2) A copy of any significant comments presented in writing pursuant to the public notice and the response to comments prepared pursuant to § 124.63(a) if:

(i) The Regional Administrator requests this information; or

(ii) The proposed permit contains requirements significantly different from those contained in the tentative determination and draft permit; or

(iii) Significant comments adverse to the tentative determination and draft permit have been presented at the hearing or in writing pursuant to the public notice; and

(3) A quarterly noncompliance report in accordance with § 122.23.

(c) Within the time period agreed upon in the Memorandum of Agreement (or 90 days in the case of proposed NPDES general permits), the Regional Administrator (or, where appropriate, the EPA Deputy Assistant Administrator for Water Enforcement), pursuant to the right to object provided in the Act and § 123.23, may comment upon, object to, or make recommendations with respect to any proposed permit. In the case of section 404 programs, the Regional Administrator shall notify the State Director of his or her intent to comment upon or object to a proposed permit within 30 days of receipt.

(d) The Regional Administrator may, by agreement with the State Director in the Memorandum of Agreement (see § 123.7(b)(3)), waive the right to review, object to, or comment upon permit applications and proposed permits for classes, types, or sizes of discharges within any category of point sources, including the right to receive information under paragraphs (a)(2) and (b)(2) of this section.

(e) Any State section 404 permit program shall provide for transmission by the State Director to the Regional Administrator of the quarterly and annual reports on the permit program, in accordance with applicable regulations.

[*Comment:* Regulations governing reporting requirements for State section 404 programs will be proposed in the near future.]

(f) Any State permit program shall keep such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this Part.

§ 123.23 Objections to proposed NPDES permits.

(a)(1) Within the period of time provided under the Memorandum of Agreement, the Regional Administrator shall notify the State Director of any objection to issuance of a proposed permit (except as provided in paragraph (a)(2) of this section for proposed general permits). This notification shall set forth in writing the general nature of the objection.

(2) Within 90 days following receipt of the proposed permit which has been objected to under subparagraph (a)(1) of this section, or in the case of general permits, within 90 days after the receipt of the proposed general permit, the Regional Administrator, or, in the case of general permits other than for separate storm sewers, the EPA Deputy Assistant Administrator for Water Enforcement shall set forth in writing and transmit to the State Director:

(i) A statement of the reasons for the objection (including the section of the Act or regulations that support the objection), and

(ii) The actions that must be taken by the State Director in order to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by EPA).

[*Comment:* This paragraph, in effect, modifies any existing agreement between EPA and the State which provides less than 90 days for EPA to supply the specific grounds for an objection. However, where an agreement provides for an EPA review period of less than 90 days EPA must file a general objection, in accordance with paragraph (a)(1) within the time specified in the agreement. This general objection will be followed by a specific objection within the 90-day statutory period. This modification to the MOA's is necessary for EPA review of general permits and since the Clean Water Act of 1977 now requires EPA to provide detailed information concerning acceptable permit terms and conditions. To avoid possible confusion, MOA's should be changed to reflect this.]

(b) The Regional Administrator may object to the issuance of a proposed permit as being outside the guidelines and requirements of the Act. This objection must be based upon one or more of the following grounds:

(1) The permit fails to apply, or to ensure compliance with, any applicable requirement of this Part;

[*Comment:* Under the provisions of this section, a permit not requiring the achievement of required effluent limitations by applicable statutory deadlines shall be subject to objection by the Regional Administrator.]

(2) In the case of any proposed permit for which notification is required under section 402(b)(5) of the Act, the written recommendations of an affected State have not been accepted by the permitting State and the Regional Administrator finds the reasons for rejecting the recommendations are inadequate;

(3) The procedures followed in connection with formulation of the proposed permit failed in a material respect to comply with procedures required by the Act, or by regulations thereunder or by the Memorandum of Agreement;

(4) Any finding made by the State Director in connection with the proposed permit misinterprets the Act or any guidelines or regulations under the Act, or misapplies them to the facts;

(5) Any provisions of the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including effluent standards and limitations required by the Act, by the guidelines and regulations issued under the Act, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable standards and limitations under sections 301, 304, 306, 307, 318, 403 and 405 of the Act have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of the Act or of any regulations issued under the Act;

[*Comment:* The provisions of this paragraph apply to determinations made pursuant to § 125.3(c)(2) in the absence of applicable guidelines and to best management practices under section 304(e) of the Act, which must be incorporated into permits as requirements under sections 301, 306, 307, 318, 403, or 405 as the case may be.]

(7) Issuance of the proposed permit would in any other respect be outside the requirements of the Act, or regulations issued under the Act.

(c) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (b) of this section, the Regional Administrator:

(1) Shall consider all data transmitted pursuant to § 123.22;

(2) May, if the information provided is inadequate to determine whether the proposed permit meets the guidelines and requirements of the Act, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record that the Regional Administrator determines are necessary for review. If this request is made within 30 days of receipt of the State submittal under § 123.22, it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in the Memorandum of Agreement for the Regional Administrator's review shall recommence when the Regional Administrator has received such record or portions; and

(3) May, in his or her discretion and to the extent feasible within the period of time available under the Memorandum of Agreement, afford to every interested person an opportunity to comment on the basis for an objection.

(d) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or any interested person may request that a public hearing be held by the Regional Administrator on the objection. Following a request, the Regional Administrator may provide public notice and hold a public hearing in accordance with the procedures of §§ 124.41 and 124.42 if warranted by significant public interest. A hearing shall be held whenever requested by the State which proposed the permit.

(e) A public hearing held under paragraph (d) shall be conducted by an EPA panel in an orderly and expeditious manner. Members of this panel shall include the Regional Administrator, the Assistant Administrator for Enforcement, the General Counsel, or their respective representatives.

(f) At the conclusion of the public hearing the Regional Administrator shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall notify the State of this decision.

(g) Where the Regional Administrator has objected to a proposed permit under this section, he or she may issue the permit in accordance with Parts 121, 122 and 124 and any other guidelines and requirements of the Act in the following circumstances:

(1) If no public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection within 90 days of receipt of the objection; or

(2) If a public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection or modified objection within 30 days of the date of the Regional Administrator's notification under paragraph (f) of this section.

[*Comment:* Where the time set out in this paragraph expires without acceptable State action, exclusive authority to issue the permit passes to EPA.]

(h) In the case of proposed general permits for discharges other than from separate storm sewers substitute "EPA Deputy Assistant Administrator for Water Enforcement" for "Regional Administrator" whenever it appears in paragraphs (b), (c), (d), (f) and (g).

§ 123.24 Prohibitions.

Any State permit program shall provide that no permit shall be issued when EPA has objected in writing under section 402(d) or section 404(j) of the Act, whichever is applicable, and in the case of section 404 programs, in any defined area as to which the administrator has made a determination to prohibit or withdraw specification for disposal under section 404(c) of the act. In addition, no permit shall be issued if objected to by the Secretary pursuant to sections 402(b)(6) or 404(h)(1)(F) of the Act.

Subpart D—Enforcement Provisions

§ 123.31 Compliance evaluation programs.

(a) Any State program shall have procedures for receipt, evaluation, and investigation for possible enforcement action of all notices and reports required of permittees (or failure to submit such notices and reports).

(b) Any State section 402 permit program shall have procedures and ability for:

(1) The maintenance of a comprehensive inventory of all sources covered by NPDES permits and a forecast of all reporting requirements to the agency. Any compilation, index or inventory of such sources shall be made available to the Regional Administrator upon request;

(2) Initial screening (i.e., pre-enforcement evaluation) of all permit or grant-related compliance information to identify violations and to establish the priority for further substantive technical evaluation;

(3) Following the initial screening, a substantive technical evaluation, where warranted, of all permit or grant-related compliance information to determine the appropriate agency response;

(4) The maintenance of a management information system which supports and guides the activities of this paragraph and paragraph (c).

(c) Any State program shall have inspection and surveillance procedures to determine, independent of information supplied by dischargers, compliance or noncompliance with applicable program requirements, standards and limitations, filing requirements and permit terms or conditions, including the following:

(1) A program which is capable of surveying State waters to identify dischargers subject to regulation who have failed to apply for permits;

(2) A program for periodic inspections of the activities subject to regulation. The facilities of major dischargers (for a discussion of "major discharger", see *Comment* to § 122.23) shall be inspected at least annually. These inspections shall:

(i) Determine compliance or noncompliance with issued permit terms and conditions and other program requirements, and, in particular, compliance or noncompliance with specific standards and limitations, operation and maintenance requirements, and schedules of compliance;

(ii) Verify the accuracy of information submitted by permittees in reporting forms and other forms supplying monitoring data;

(iii) Verify the adequacy of sampling, monitoring and other methods used by permittees to develop that information; and

(3) A program for investigating evidence of violations of applicable program requirements, standards and limitations, filing requirements, or permit terms and conditions indicated by reports and notifications evaluated under paragraph (b) or by the survey, inspection, and surveillance activities in paragraphs (c) (1) and (2) of this section. This program shall include procedures for receiving and ensuring proper consideration of evidence submitted by the public about violations. Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.

(d) Inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner that will produce evidence admissible in an enforcement proceeding or in court.

§ 123.32 Enforcement.

Any State agency administering a permit program shall have the following powers and procedures and recourse to criminal and civil remedies:

(a) In the case of Section 402 programs, procedures which enable the State Director immediately and effectively to halt or eliminate any imminent or substantial endangerment to the public health or welfare resulting from the discharge of pollutants:

(1) By an order or suit in the appropriate State court to immediately restrain any person causing or contributing to the discharge of pollutants; or

(2) By a procedure for immediate telephone notice to the Regional Administrator of any actual or threatened endangerment to the public health or welfare resulting from the discharge of pollutants.

(b) In the case of section 404 programs, procedures which enable the State Director immediately and effectively to halt or eliminate any unauthorized discharges of dredged or fill material, including the authority to do each of the following:

(1) Issue a cease and desist or an interim protective order to any person responsible for or involved in an unauthorized discharge;

(2) Sue in the appropriate State court to immediately restrain any person responsible for or involved in an unauthorized discharge; and

(3) Immediately notify the Regional Administrator by telephone of any actual or threatened endangerment to the public health or welfare resulting from any discharge of dredged or fill material.

(c) Procedures which enable the State Director to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any permit term or condition without the necessity of a prior revocation of the permit.

(d) Procedures which enable the State Director to enter any premises in which a source of a discharge, including a treatment facility, is located or in which records must be kept under terms or conditions of a permit, and otherwise to investigate, inspect or monitor any suspected violations of applicable standards and limitations or of permit terms or conditions.

(e) Procedures which enable the State Director to require compliance with and to assess or to sue to recover in court civil penalties, for the violation by any person of the following:

(1) Any applicable standards and limitations;

(2) Any permit term or condition;

(3) Any filing requirements;

(4) Any duty to allow or carry out inspection, entry, or monitoring activities;

(5) any order issued by the State Director under paragraph (a) or (b) of this section; or

(6) Any rules, regulations, or orders issued by the State Director.

(f) Procedures which enable the State Director to seek criminal fines for the willful or negligent violation by any person of any of the following:

(1) Any applicable standard or limitations;

(2) Any permit term or condition; or

(3) Any filing requirements.

(g) Procedures which enable the State Director to seek criminal fines against any person who knowingly makes any false statement, representation, or certification in any permit program form or any notice or report required by the terms and conditions of any issued permit or who knowingly renders inaccurate any monitoring device or method required to be maintained by the State Director.

[*Comment:* It is understood that in many States the State Director is represented in State courts by the State Attorney General or other appropriate legal officer. While the State Director need not appear in court actions under this section, he or she should have the power to request that such actions be brought.]

(h)(1) The maximum civil penalties and criminal fines that can be sought by the State Director under paragraphs (e), (f) and (g) of this section shall be comparable to similar maximum amounts that can be sought by the Administrator under section 309 of the Act. The maximum amounts of these civil penalties or criminal fines shall be applicable to each violation specified in paragraphs (e), (f) and (g) of this section, or, if the violation is continuous, to each day the discharge occurs.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraphs (e), (f) and (g) shall be no greater than the burden of proof or degree of knowledge or intent EPA must show when it brings an action under section 309 of the Act.

[*Comment:* For example, this requirement is not met if the State law includes any mental state as an element of proof for civil violations.]

(i) Any civil penalty assessed, sought, or agreed upon by the State Director under paragraph (e) of this section shall be appropriate to the violation. A civil penalty agreed upon by the State Director in settlement of administrative or judicial litigation may be adjusted by a percentage which represents the likelihood of success of establishing the underlying violation or violations in such litigation. In the event that such a civil penalty would be so severely disproportionate to the resources of the owner or operator of the violating facility that its imposition, together with the costs of expeditious compliance, would jeopardize its continuance in business, the payment of the penalty may be deferred or the penalty may be forgiven in whole or in part, as circumstances may warrant. For violations resulting from a source's failure to bring itself into initial compliance with a statutory or final permit deadline, "appropriate to the

violation" as used in this paragraph, means a penalty which is equal to:

(1) An amount appropriate to redress the harm or risk of harm to public health or the environment; plus

(2) An amount appropriate to remove the economic benefit gained or to be gained from delayed compliance; plus

(3) An amount appropriate as a penalty for the violator's degree of recalcitrance, defiance, or indifference to requirements of the law; plus

(4) An amount appropriate to recover unusual or extraordinary enforcement costs thrust upon the public; minus

(5) An amount, if any, appropriate to reflect any part of the noncompliance attributable to the Government itself; minus

(6) An amount appropriate to reflect any part of the noncompliance caused by factors completely beyond the violator's control (e.g., floods, fires, etc.)

[*Comment:* The following enforcement options, while not mandatory, are highly recommended:

(i) Procedures for assessment by the State Director or by a State court of the costs of an investigation, inspection, or monitoring survey which led to the establishment of the violation;

(ii) Procedures which enable the State Director to assess or to sue any person responsible for an unauthorized discharge for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon water quality resulting from the unauthorized discharge, whether or not accidental; and

(iii) Procedures which enable the State Director to sue for compensation for any loss or destruction of wildlife, fish, or aquatic life, and for any other actual damages caused by an unauthorized discharge either on behalf of the State, on behalf of any residents of the State who are directly aggrieved by the unauthorized discharge, or both.]

Subpart E—Planning and Conflict of Interest Requirements.

§ 123.41 Continuing planning process.

Any State permit program shall have an approved continuing planning process under 40 CFR Part 35, Subpart G and shall assure that its approved planning process is at all times consistent with the Act.

§ 123.42 Agency board membership.

(a) Each State permit program shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous two years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(b) For the purposes of this section:

(1) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits in the first instance, as modified or reissued, or on appeal.

(2) "Significant portion of income" shall mean 10 percent of gross personal income for a calendar year, except that it shall mean 50 percent of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(3) "Permit holders or applicants for a permit" shall not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(4) "Income" includes retirement benefits, consultant fees, and stock dividends.

(c) for the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

Subpart F—Procedures for Approval of State Permit Programs

§ 123.51 Section 402 approval process.

(a) After determining that a State program submission is complete, EPA shall publish notice of the State's application in the **Federal Register**, in enough of the largest newspapers in the State to attract statewide attention, and mail notice to persons known to be interested in such matters, including all people on EPA mailing lists under § 124.41(b) and appropriate State mailing lists and all permit holders and applicants within the State. This notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the **Federal Register**;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(b) Within 90 days of the receipt of a complete program submission under § 123.3 the Administrator shall approve or disapprove the program based on the requirements of this Part and of the Act and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(c) If the Administrator approves the State's section 402 program he or she shall notify the State and publish notice in the **Federal Register.** The Regional Administrator shall suspend the issuance of permits by EPA as of the date of program approval.

(d) If the Administrator disapproves the State program he or she shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

§ 123.52 Section 404 approval process.

(a) Within 10 day of receipt of a State section 404 program submission under § 123.3 of this Part, the Administrator shall provide copies of the State's submission to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

(b) After determining that a State program submission is complete, EPA shall publish notice of a State's application in the **Federal Register,** in enough of the largest newspapers in the State to attract Statewide attention, and mail notice to persons known to be interested in such matters, including all people on appropriate State, EPA, and Corps of Engineers mailing lists and all permit holders and applicants within the State. This notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the **Federal Register;**

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(c) Within 120 days of the receipt of a complete program submission under § 123.3 the Administrator shall approve or disapprove the program based on the requirements of this Part and of the Act and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(d) If the Administrator approves the State's section 404 program he or she shall notify the State and the Secretary and publish notice in the **Federal Register.** The Secretary shall suspend the issuance of section 404 permits by the Corps of engineers within the State, except for those waters specified in section 404(g)(1) of the Act as identified in the Memorandum of Agreement between the State and the Secretary (see § 123.5(a)).

(e) If the Administrator disapproves the State program he or she shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

Subpart G—Revisions to Approved Programs

§ 123.61 Procedure for revision of State permit programs.

(a) Program revision may be initiated at the request of either EPA or the State. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State Director shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority or its forms, procedures or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's Statement, Memorandum of Agreement, or other documents as are necessary under the circumstances.

(2) If EPA determines that the proposed program modification(s) is substantial, the Agency shall issue public notice and provide at least 30 days for the public to comment. The public notice shall be mailed to interested persons and shall be published in enough of the largest newspapers in the State to attract statewide attention. The public notice shall summarize the proposed modifications and provide for the opportunity to request a public hearing. A hearing will be held if there is significant public interest.

(3) The program modification shall become effective upon the approval of the Administrator. Notice of approval of substantial program modifications shall be published in the **Federal Register.** Non-substantial program modifications may be approved by a letter from the Agency.

(c) The State Director shall notify EPA whenever the State proposes to transfer all or part of any program from the approved State agency to any other agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator. Organizational charts required under § 123.4(b) shall be revised and resubmitted.

(d) If the Administrator has reason to believe that circumstances may have changed with respect to a State program, he or she may request, and the State shall provide a supplemental Attorney General's Statement, program description, other document or information as necessary.

§ 123.62 NPDES program revisions under the Clean Water Act of 1977.

(a) Approved State NPDES permit programs shall be revised, if necessary:

(1) To include authority to require permits for the discharges specified in sections 318 and 405(a) of the Act (see § 123.1(b)).

(2) To ensure that permits comply with the requirements of section 304(e) of the Act and Part 125, Subpart K (best management practices).

(3) To comply with the amendment to section 402(b)(8) of the Act, and with 40 CFR Part 403 (pretreatment programs).

(4) To authorize State issuance, monitoring (including reporting, entry, and inspection), and enforcement of permits to Federal facilities to the same extent as any person.

[*Comment:* Facilities on Indian lands are not necessarily Federal facilities.]

(b) All new programs must comply with these regulations upon approval. Any approved State section 402 permit program which requires modification to conform to this Part shall be so modified within one year of the date of promulgation of these regulations, unless a State must amend or enact a statute in order to make the required modification in which case such modification shall take place within two years, except that revision of State programs to implement the requirements of 40 CFR Part 403 (pretreatment) shall be accomplished as provided in 40 CFR § 403.10. In addition, approved States shall submit, within six months, copies of their permit forms for EPA review and approval.

[*Comment:* EPA anticipates that many approved States may need to revise their permit forms to comply with these regulations, particularly § 122.14.]

(c) Failure of an approved State to modify its permit program under this section constitutes grounds for withdrawal of program approval.

6. Part 124 is revised to read as follows:

PART 124—PROCEDURES FOR DECISIONMAKING REGARDING NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS

Subpart A—Applicability

Sec.

124.1 Purpose and scope.
124.2 Definitions.

Subpart B—The Application Process

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124.12 Special provisions for applications from new sources.
124.13 Requests for modification, revocation and reissuance, or termination.
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Subpart C—State Certification

124.21 Circulation of applications and draft permits to certifying States.
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124.31 Draft permit after application.
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Subpart F—Special Provisions for Variances and Statutory Modifications

124.51 Time deadlines for applications for variances from and modifications of effluent limitations.
124.52 Decisions on variances and modifications.
124.53 Procedures for variances and modifications where EPA is the permit issuing authority.
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124.61 Issuance and effective date of permit; stays.
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Subpart I—Non-Adversary Procedures for Initial Licensing

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124.112 Relation of other Subparts.
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124.116 Notice of hearing.
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124.118 Submission of written comments on draft permit.
124.119 Presiding Officer.
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124.121 Opportunity for cross-examination.
124.122 Record for final permit.
124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.
124.124 Recommended decision.
124.125 Appeal from or review of recommended decision.
124.126 Final decision.
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Subpart J—Miscellaneous

124.131 Public access to information.
124.132 Delegation of authority; time limitations.
124.133 EPA Headquarters' approval of stipulation or consent agreement.
124.134 Additional time after service by mail.
124.135 Effective date of Part 124.

Authority.—Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq; Administrative Procedure Act, 5 U.S.C. 551 et seq.

Subpart A—Applicability

§ 124.1 Purpose and scope.

This Part specifies the procedures governing EPA's issuance of NPDES permits and permit appeals. The portions of this Part listed in § 123.12 apply to State permit programs approved under Part 123. This Part organizes permit decisions into a sequence of seven procedural stages. First, an application must be made in proper form (Subpart B). This application will then be circulated to affected States for certification or the State will certify the draft permit under section 401 (Subpart C). EPA will then prepare a draft permit or permit denial (Subpart D), which will be made available for public comment (Subpart E or I). This is the stage for interested governmental agencies, other than certifying States, to express their views of the permit. After these comments have been considered, EPA will issue a final permit (Subpart G or I), and any interested person may then request an evidentiary hearing on any factual questions involved. The initial decision made after that hearing may then be appealed to the Administrator. Under Part 124, decisions on variance requests will ordinarily be made during the permit issuance process (Subpart F). Requests for permit modifications and other changes in permit terms will be made where possible, through the same procedures that apply in making decisions on initial permits. Each such decision must move through the same procedures of notice-and-comment and potential hearings as the basic permit.

§ 124.2 Definitions.

(a) The definitions of Parts 122, 123 and 125 apply to this Part.

(b) "BAT" or "Best Available Technology" means the level of treatment of best available technology economically achievable as determined by the Administrator.

Subpart B—The Application Process

§ 124.11 Application for a permit.

(a) Any person who discharges or proposes to discharge pollutants, except persons covered by general permits under § 122.48, or excluded under § 122.4, shall complete, sign, and submit an application to the Regional Administrator, in accordance with Part 122, Subpart B.

(b) Expect as provided by § 124.32(a) no NPDES permit other than a general permit shall be issued until the applicant has filed a complete application that complies with the filing requirements in this Subpart and Part 122. If an applicant fails or refuses to correct deficiencies in its NPDES application form, the permit may be denied or appropriate enforcement action may be taken under sections 308, 309, or 402(h) of the Act.

(c) Permit applications shall comply with the signature and certification requirements of § 122.5.

(d) If the Director determines that further information or a site visit is necessary in order to evaluate the discharge completely and accurately, the applicant shall be notified and a date shall be scheduled for receipt of the requested information and for any necessary site visit.

(e) Special procedures for applications for variances and statutory modifications are provided in Subpart F.

§ 124.12 Special provisions for applications from new sources.

(a) The owner or operator of any facility which may be a new source as defined in § 122.3(v) and which is located in a State without an approved NPDES program must comply with the provisions of this section in addition to the requirements of § 124.11.

(b)(1) Before beginning any on-site construction as defined in § 122.47, the owner or operator of any facility which may be a new source must submit information to the Regional Administrator so that he or she can determine if the facility is a new source. The Regional Administrator may request any additional information needed to

determine whether the facility is a new source.

(2) The Regional Administrator shall make an initial determination whether the facility is a new source within 30 days of receiving all necessary information under paragraph (b)(1).

(c) The Regional Administrator shall issue a public notice in accordance with § 124.41 of the new source determination under paragraph (b). The notice shall state that the applicant, if determined to be a new source, must comply with the environmental review requirements of 40 CFR § 6.900 *et seq.*

(d) Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under § 124.74 within 30 days of issuance of the public notice of the initial determination. The Regional Administrator may defer the evidentiary hearing on the determination until after a final permit decision is made under § 124.61, and consolidate the hearing on the determination with any hearing on the permit.

§ 124.13 Requests for modification, revocation, and reissuance, or termination.

(a) If a discharger with a permit or an interested person believes that a modification, revocation or reissuance, or termination is justified under the standards of § 122.31, it may request a modification, revocation and reissuance, or termination from the Director in writing. The request shall set forth all facts or reasons known to the requester which may be relevant to a decision on the modification request.

(b)(1) If the Director agrees that the modification or revocation and reissuance request appears to meet the requirements of § 122.31, the Director shall formulate a draft permit under § 124.32 incorporating the changes. If additional information is needed to prepare a draft permit, the Director may request it under § 124.11(d) or in appropriate cases may require the submission of a complete new permit application under § 124.11(a). When a request for a modification under this section is granted and a new draft permit is formulated, only those terms dependent on the request will be reopened. All other aspects of the permit will remain in force until the expiration of the permit. If the permit is revoked and reissued, the draft permit is subject to the same procedures as if the permit had expired and was being reissued.

(2) If the Director agrees that the termination request appears to meet the requirements of § 122.31, the Director shall prepare a notice of intent to terminate under § 124.32.

(3) If the Director decides that the modification request does not appear to meet the requirements of § 122.31 the Director shall reply in writing to the discharger (and the person requesting the modification, if different) briefly setting forth in writing the reasons for that decision.

§ 124.14 Permits required on a case-by-case basis.

(a) Various sections of Part 122 allow the Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations (§ 122.43), aquatic animal production facilities (§ 122.44), separate storm sewers (§ 122.46), and certain other facilities covered by general permits (§ 122.48) that do not generally require individual permits may be required to obtain one because of their contribution to water pollution.

(b) Whenever the Regional Administrator decides that an individual permit should be required under this section, the Regional Administrator shall inform the discharger in writing of that decision, the reasons underlying it and shall include an application form in such notice. The discharger must apply under § 124.11 for a permit within 60 days of such notice. The question whether the initial designation was proper will remain open for consideration during the public comment period under Subpart D and any subsequent hearing.

§ 124.15 Decisions on permit denials and terminations.

(a) The decision to deny a permit which has been applied for shall be made through the same procedures as any other decision on a permit. A draft notice of intent to deny will be issued and made available for public comment, accompanied by a fact sheet or statement of basis. A response to comments and final decision will then be prepared, and an evidentiary hearing with a right of appeal to the Administrator may be requested on the issues raised.

(b) The decision to terminate a permit shall be made through the same procedures that apply to any other permit action initiated by EPA under § 124.32.

(c) References to a "permit" or to decisionmaking on a permit in this Part shall be read to include decisions on permit denial or termination where necessary to carry out the intent of this section.

Subpart C—State Certification

§ 124.21 Circulation of applications or draft permits to certifying States.

(a) Under section 401(a)(1) of the Act, EPA may not issue a permit until a certification is granted or waived in accordance with that section by the State in which the discharge originates or will originate.

(b) When an application is received which does not include a State certification, the Regional Administrator shall forward the application to the certifying State agency with a request that certification be granted or denied.

(c) If State certification has not been received by the time the draft permit is prepared, the Regional Administrator shall send the certifying State agency:

(1) A copy of the draft permit;

(2) A statement that the EPA cannot issue or deny the permit until the certifying State agency has granted or denied certification under § 124.22, or waived its right to certify; and

(3) A statement that the right to certify will be deemed waived unless exercised within a specified reasonable time which shall not exceed 60 days from the date the draft permit is sent to the State unless the Regional Administrator finds that unusual circumstances require a longer time.

§ 124.22 State certification.

(a) Any State certification shall be issued or denied within the reasonable time specified under § 124.21(c)(3). The State shall provide notice of its action, including a copy of any certification, to the applicant and the Regional Administrator.

(b) A State certification shall be made in writing and shall include:

(1) The terms and conditions which will result in compliance with the applicable provisions of sections 208(e), 301, 302, 303, 306, and 307 of the Act and with appropriate requirements of State law;

(2) Where the State certifies a draft permit instead of an application, any conditions, more stringent than those in the draft permit, which the State finds necessary to comply with the requirements listed in paragraph (b)(1) of this section. For each such condition, the provision of the Act or State law which forms the basis for the condition shall be identified. Failure to provide such a statement shall be deemed a waiver of the right to certify with respect to such condition; and

(3) A statement with respect to each term and condition of the draft permit of the extent to which such term or condition can be made less stringent

without violating the requirements of State law including water quality standards. Failure to provide such a statement shall be deemed a waiver of the right to certify with respect to any such less stringent term or condition which may be established during the EPA permit issuance process.

[*Comment:* The requirement of paragraph (b)(3) of this section is necessary to enable the certification to serve its statutory function without requiring continual resubmission to the State. For example, a State might certify that a draft permit containing a technology-based limitation of 300 kg/day of BOD will meet State water quality standards and other State law requirements. However, if during the permit issuance process EPA decides that 400 kg/day is the appropriate technology requirement, it is not clear at present whether the previous State certification continues to be valid. It would be impracticable and would add to delay in permit issuance if EPA resubmitted such permits to the State each time EPA considered setting a less stringent limitation than contained in the draft permit. The requirement that States clearly identify what conditions are necessary to meet State law will simplify the permit issuance process and make certification more useful. However, States may not require EPA to adopt less stringent requirements. See § 124.23(c).]

§ 124.23 Effect of State certification.

(a) Where certification is required under section 401(a)(1) of the Act, no final permit shall be issued:

(1) If certification is denied, or

(2) Unless the final permit incorporates any requirements specified in the certification under § 124.22(b)(1) and (2).

(b) If the State law upon which a certification is based changes, or if a State court stays, vacates, or remands a certification, a State which has issued a certification under § 124.22 may issue a modified certification or notice of waiver and forward it to EPA. If the modified certification is received prior to final Agency action on the permit, the permit shall be issued consistent with any more stringent conditions which are based upon State law identified in such certification. If the certification or notice of waiver is received after final Agency action on the permit, the Regional Administrator may modify the permit only to the extent necessary to delete any conditions based on a condition in a certification found invalid by a State court.

(c) A State may not condition a certification or deny a certification on the grounds that State law requires a less stringent condition. The Regional Administrator shall disregard any such certification conditions, and will consider such denials of certification to constitute waivers of certification.

[*Comment:* State certification rights proceed from the authority of States under section 510 of the Act to set more stringent limitations than those required by the Act. States may not require EPA to disregard or downgrade Federal requirements.]

(d) A permit may be modified during Agency review in any manner consistent with a certification meeting the requirements of § 124.22(b). No such modifications shall require EPA to submit the permit to the State for recertification.

(e) Review and appeals of conditions specified by the State shall be made through the applicable procedures of the State and may not be made through the procedures in this Part.

§ 124.24 Special provisions for State certification and concurrence in applications for section 301(h) modifications.

(a) Where an application for a permit incorporating a request under 301(h) of the Act is submitted to the State, the appropriate State official may either:

(1) Deny the request for the modified permit under section 301(h) (and so notify the applicant and EPA) and if the State is an approved NPDES State and the permit is due for reissuance, proceed to process the permit application under normal procedures; or

(2) Forward a certification meeting the requirements of this Subpart to the Administrator or a person designated by the Administrator.

(b) Where EPA issues a tentative determination on the request for a modified permit under section 301(h), and no certification has been received under paragraph (a), the Administrator or a person designated by the Administrator shall forward the tentative determination to the State in accordance with § 124.21(c) specifying a reasonable time for State certification and concurrence. If the State fails to deny or grant certification and concurrence under paragraph (a) within such reasonable time, certification will be deemed to be waived and the State will be deemed to have concurred in the issuance of a modified permit under section 301(h).

(c) Any certification provided by a State under paragraph (a)(2) shall constitute the State's concurrence (as required by section 301(h)) in the issuance of the section 301(h) modified permit subject to any conditions specified therein by the State.

[*Comment:* Section 301(h) certification/concurrence under this section will not be forwarded to the State by EPA for recertification after the permit issuance process. Accordingly, States must specify any conditions required by State law, including water quality standards, in the certification.]

Subpart D—Preparation of Draft Permit

§ 124.31 Draft permit after application.

(a) If a permit has been properly requested under § 124.11, the Director, after analyzing the data and other information concerning a permit furnished under Subparts B and C, and any other relevant information, shall tentatively decide whether to issue or deny the permit. Any Environmental Impact Statement prepared under 40 CFR § 6.912, and any other applicable factors listed in 40 CFR § 6.920, shall be considered by the Regional Administrator in deciding whether to issue a permit for a new source under this section.

(b) If the Director tentatively decides to issue a permit, a draft permit shall be prepared containing:

(1) All conditions, limitations, or requirements specified in § 122.14;

(2) All effluent limitations, standards, prohibitions, and conditions required by § 122.15, including, where applicable, any conditions certified by a State agency under Subpart C, and all variances or other modifications that are to be included under Subpart F. All effluent limitations and standards shall be calculated and specified as required by § 122.16;

(3) All compliance schedules required by § 122.17; and

(4) All monitoring requirements required by § 122.20.

(c) Any draft permit formulated by EPA shall be based on the administrative record required by § 124.35.

(d) If the Regional Administrator determines under 40 CFR § 6.910 that an EIS shall be prepared for a new source the public notice of the draft permit under this section shall occur at the same time or after a draft EIS is issued.

§ 124.32 Other draft permits.

(a) In the following cases the Director may formulate a draft permit without having received an application from a discharger.

(1) If the Director decides that a permit should be modified, or revoked and reissued under § 122.31, the Director shall formulate a draft permit reflecting the modifications or a draft reissued permit including a notice of intent to revoke the existing permit. If the Director decides that a permit should be terminated, the Director shall issue a notice of intent to terminate.

(2) General permits to be issued either by EPA or by States under § 122.48 shall be proposed in draft form, shall contain the designation of the General Permit Program Area (as defined in § 122.48(a)(2)) and, except for general permits for separate storm sewers, shall be sent to the EPA Deputy Assistant Administrator for Water Enforcement for concurrence or objection during the public comment period. No final permit shall be issued if the EPA Deputy Assistant Administrator for Water Enforcement objects to the general permit. Such objection must be made within 90 days from the date of publication of the public notice for the draft general permit under § 124.41(f).

(b) Any draft permit or notice of intent to revoke or terminate, issued under paragraph (a), shall be based on the administrative record defined in § 124.35.

§ 124.33 Statement of basis.

A statement of basis shall be prepared for every draft permit formulated under §§ 124.31 or 124.32 where a fact sheet is not required under § 124.34. The statement of basis shall briefly describe the derivation of the terms and conditions of the permit and the reasons for them. For instance, if effluent limitations in a permit are based upon the application of treatment technologies, the statement of basis shall identify the technologies and the degree of effluent reduction or control which the treatment technologies are assumed to achieve. The statement of basis shall be part of the administrative record and shall be made available to the discharger and other members of the public on request.

§ 124.34 Fact sheet.

(a) A fact sheet shall be prepared for every draft permit for a major discharger (as established in EPA's annual operating guidance for EPA Regional Offices and the States), any draft permit which incorporates a variance or modification, general permits under § 124.48, and every draft permit which the Regional Administrator or State Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the major facts and the significant factual, legal, methodological, and policy questions considered in setting the terms of the draft permit. The Director shall send this fact sheet to the applicant, to the District Engineer of the Corps of Engineers, to the Regional Director of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, to other interested State and Federal agencies, (including EPA where the draft permit is prepared by the State) and to any other person on request. Any of these persons may waive their right to receive a fact sheet for any classes and categories of permits.

(b) The fact sheet shall include: (1) A brief explanation of the express statutory or regulatory provisions on which permit requirements are based, and for permits issued by EPA, appropriate supporting references to the administrative record required by § 124.35;

(2) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable guideline or development documents or standard provisions as required under § 122.15 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(3) Where appropriate, a sketch or detailed description of the location of the discharge described in the application;

(4) A quantitative description of the discharge described in the application;

(5) Reasons requested variances or modifications do or do not appear justified;

(6) For EPA-issued permits the results of any State certification under Subpart C;

(7) Name and telephone number of a person who can provide additional information; and

(8) Any information, not otherwise specified herein, required by § 124.33.

§ 124.35 Administrative record for EPA draft permits.

(a) Decisions by the Regional Adminstrator to formulate a draft permit under § 124.31 or § 124.32 shall be made on the basis of the administrative record defined in this section.

(b) The record for a draft permit under § 124.31 shall consist of:

(1) The initial application and any supporting data furnished by the applicant;

(2) The draft permit;

(3) The statement of basis required by § 124.33 or fact sheet prepared under § 124.34;

(4) All documents cited in the fact sheet or the statement of basis;

(5) Other documents contained in the supporting file for the permit, including correspondence, telephone and meeting memoranda, compliance reports, etc;

(6) All comments submitted on a new source determination under § 124.12, and any other documents EPA considers relevant to the determination; and

(7) Any environmental assessment, Environmental Impact Statement, negative declaration, or environmental impact appraisal that may have been prepared.

(c) The record for formulating a draft permit under § 124.32 shall consist of the draft permit, the statement of basis required by § 124.33 or fact sheet prepared under § 124.34 and all documents cited in the fact sheet or the statement of basis.

(d) Material readily available at the issuing Regional Office or published material which is generally available, and which is included in the administrative record under the standards of paragraphs (b) and (c), does not need to be physically included in the same file as the rest of the record as long as it is specifically referenced in the statement of basis or the fact sheet.

(e) No later than the time a draft permit is issued, a Record Clerk shall be designated with responsibility for maintaining the records established under this section. Copying of any documents in the record shall be allowed under appropriate arrangements to prevent their loss. The charge for such copies shall be made in accordance with the written schedule contained in 40 CFR Part 2.

[*Comment:* The administrative record for draft permits under this section will comprise the bulk of the material for the final administrative record. See § 124.64.]

§ 124.36 Applicability of Subpart D to draft permits incorporating section 301(h) modifications.

Subpart D is applicable to draft permits incorporating section 301(h) modifications except that the terms "Administrator or a person designated by the Administrator" shall be substituted for the terms "Regional Administrator" as appropriate.

Subpart E—Public Comment and Hearings

§ 124.41 Public notice regarding permits and permit hearings.

(a) Notices shall be circulated in a manner designed to inform interested persons of a hearing or determination dealing with permit denial or issuance. Notice of a draft permit shall allow at least 30 days for public comments and notice of a hearing shall be given 30 days before the hearing.

[*Comment:* At the discretion of the Director, this could include press releases or the use of additional means to elicit public participation.]

(b) Notice of the formulation of any draft permit and notice of all hearings shall be given by the Director:

(1) By mailing a copy to the applicant; to the U.S. Army Corps of Engineers, to Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources and to other appropriate governmental authorities including any affected State; to any person on request and to all persons on a mailing list developed from those who request to be on the list and by using the following methods:

(i) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(ii) Notifying the public as to the availability of mailings of public notices through periodic press publication and notices in such publications as Regional and State funded newsletters, environmental bulletins or State Law Journals. The mailing list may be updated from time to time by requesting an indication of continued interest in being on the mailing list; and

(2) By any of the following methods:

(i) By publication of a notice meeting the requirements of paragraph (c) in a daily or weekly newspaper within the area affected by the discharge; or

(ii) By posting a copy of the information required under paragraph (c) and (d) at the principal office of the municipality or political subdivision affected by the facility or discharge, and by posting a copy at the United States Post Office serving those premises; or

(iii) Where the State is the permit issuing authority in any other manner constituting legal notice under State law.

(3) Any person otherwise entitled to receive notice under paragraph (1) of this section may waive the right to receive notice for any classes and categories of permits.

(c) All public notices issued under this section shall contain the following information:

(1) Name and address of the office processing the application or conducting the hearing;

(2) Except in the case of general permits, name and address of the applicant and the discharger (if different from the applicant) and a general description of the location of each existing or proposed discharge point, including the receiving water;

(3) Name of a person, and an address and telephone number where interested persons may obtain further information, including copies of the draft permit, the statement of basis or fact sheet;

(4) For EPA-issued permits, the location of the administrative record required by § 124.35 and the times at which it will be open for public inspection;

(5) If the applicant has properly applied under section 316(a) for a thermal variance, a statement to that effect. The notice shall state that all data submitted by the applicant are available as part of the administrative record for public inspection during office hours. The notice shall also state that any person may comment in writing under § 124.42 upon the applicant's desired alternative effluent limitations and may also request a hearing.

(d) Mailed public notice to those identified in paragraph (b)(1) shall contain the information required under paragraph (c) and the following:

(1) A brief description of the applicant's activities or operations that result in the discharge described in the application, and a statement whether the application pertains to a new or existing discharge;

(2) A brief description of the comment procedures required by § 124.42, including the time and place of any public hearing that will be held.

(3) If the discharge is from a new source, a statement of the Regional Administrator's decision as to whether an Environmental Impact Statement will be or has been prepared.

(4) A statement of the right and procedures to request a public hearing.

(e) In addition to the information required by paragraphs (c) and (d) above, mailed public notice of a draft permit for a discharge where a section 316(a) application has been filed under § 124.51(b)(6) shall include:

(1) A statement that the thermal component of the discharge is subject to effluent limitations under sections 301 or 306 of the Act and a brief description including a quantitative statement of the thermal effluent limitations proposed under sections 301 or 306; and

(2) A statement that a section 316(a) application has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under section 316(a) and a brief description including a quantitative statement of the alternative effluent limitations, if any, included in the application.

(3) If the applicant has filed an early screening application for a section 316(a) variance under § 125.72, a statement that the applicant has submitted such a plan.

(f) Notice of the formulation of a draft general permit and the issuance of a final general permit under § 122.48 shall meet:

(1) The requirements of paragraphs (c) and (d) and shall be published in a daily or weekly newspaper within the area affected by the discharge and in the **Federal Register** for EPA-issued permits or in a manner constituting legal notice under State law for State-issued permits.

(2) The public notice for general permits shall also include:

(i) A brief description of the types of activities or operations to be covered by the general permit;

(ii) A map or description of the General Permit Program Area; and

(iii) The basis for choosing the General Permit Program Area.

(3) The Director shall use all other reasonable means to notify affected dischargers of the draft and final general permit.

(g) In addition to the information required under paragraph (c), public notice of a public hearing held under § 124.42(b) shall contain the following information:

(1) Reference to the date of the public notice of the draft permit;

(2) Date, time and place of the hearing; and

(3) In the case of a mailed public notice, a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(h) A public notice of the grant of an evidentiary hearing under Subpart H shall contain the information required under paragraph (c), (g)(1), (g)(3) and a mailed public notice of such a hearing shall also include:

(1) Reference to any public hearing under § 124.42 on the disputed permit;

(2) Name and address of the person(s) requesting the evidentiary hearing;

(3) Brief description of the permit terms and conditions which have been contested and for which the evidentiary hearing has been granted;

(4) Brief description of the nature and purpose of the hearing including the following declarations:

(i) Any person seeking to be a party must file a request to be admitted as a party to the hearing within 15 days of the date of publication of this notice;

(ii) Any person seeking to be a party may, subject to the requirements of § 124.76, propose material issues of fact or law not already raised by the original requester or another party;

(iii) The terms and conditions of the permit(s) at issue may be amended after the evidentiary hearing and any person interested in those permit(s) must request to be a party in order to preserve any right to appeal or otherwise contest the final administrative determination.

(5) Names or organizational description of the EPA employees who shall constitute "Agency trial staff" and the "decisional body" under § 124.78 who are subject to the *ex parte* communication rules.

(6) The name, address and office telephone number of the Regional Hearing Clerk.

(i) A public notice for a draft permit that will be processed under Subpart I shall include the information in paragraphs (c) and a statement that any hearing will be held under the non-adversary initial licensing procedures. In addition, a mailed public notice shall include:

(1) The information in paragraph (d) except that a public hearing under paragraph (d)(2) is discretionary with the Regional Administrator;

(2) A statement that the permit will be processed under the nonadversary procedures for initial licensing of Subpart I, together with a brief description of those procedures. This description shall state explicitly the manner and timing for any person to request a hearing on the permit. If EPA has decided on its own motion to hold a hearing, the notice shall so state, and shall also contain the information required by § 124.41(j);

(3) A statement that written comments on the draft permit and, in the case of a section 301(h) application, the tentative determination to grant or deny the application submitted to EPA with thirty (30) days of the date of the notice will be considered by EPA in making a final decision on the application. This 30-day period may be extended up to 60 days *sua sponte* or on request of an interested party;

(4) In the case of the public notice of the draft permit or denial of an application for a modified permit under section 301(h) shall include:

(i) A summary of the information contained in the application; and

(ii) A summary of the tentative determination prepared under § 124.114(f).

(j) A notice of a grant of a panel hearing requested under Subpart I shall include the applicable information from paragraph (i). In addition, the mailed public notices shall include:

(1) Name and address of the person requesting the hearing, or a statement that the hearing is being held by order of the Regional Administrator, and the name and address of each known party to the hearing;

(2) Names or organization description of the EPA employees who shall constitute the "decisional body" and the "Agency trial staff," under § 124.78 who are subject to the *ex parte* communication rules;

(3) A statement whether the recommended decision will be issued by the Presiding Officer or by the Regional Administrator;

(4) The due date for filing a written request to participate in the hearing under § 124.117;

(5) The due date for filing comments under § 124.118; and

(6) The name, address, and office telephone number of the Regional Hearing Clerk.

§ 124.42 Public comments and hearings.

(a) A comment period of at least 30 days following the date of public notice of the formulation of a draft permit shall be provided. During this period any interested persons may submit written comments on the draft permit and administrative record and may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issues to be raised. All comments shall be considered in preparing the final permit and shall be responded to as provided in § 124.63.

(b)(1) In appropriate cases, including cases where there is significant public interest, the Director may hold a public hearing on a draft permit or permits. Public notice of that hearing shall be given as specified in § 124.41.

(2) Any person appearing at such a hearing may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

§ 124.43 Obligation to raise points and provide information during the comment period.

All persons, including applicants, who believe any of the terms of a draft permit are not appropriate either because one of the variances or modifications listed in Subpart F should be granted or for some other reason, must raise all reasonably ascertainable issues and submit all arguments and factual grounds supporting their position, including all supporting material by the close of the public comment period (including any public hearing period) required by § 124.42.

§ 124.44 Terms requested by the Corps of Engineers and other governmental agencies.

(a) If the District engineer of the Corps of Engineers advises the Director in writing during the public comment period that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of a denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this Part.

(b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any State or other Federal Agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Act.

(c) In appropriate cases the Director may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

§ 124.45 Reopening of comment period.

If any information or arguments submitted during the public comment period, including information or arguments whose submission is required under § 124.43, appears to raise substantial new questions concerning a permit, the Director may conclude that one of the following actions is necessary for an informed decision:

(a) Formulation of a new draft permit, appropriately modified, under § 124.42;

(b) Preparation of a fact sheet or revised fact sheet under § 124.34 and reopening the comment period under § 124.42; or

(c) Reopening of the comment period under § 124.42 to give interested persons an opportunity to comment on the information or arguments submitted.

In each case the notice required by § 124.41 shall be given.

Subpart F—Special Provisions for Variances and Statutory Modifications

§ 124.51 Time deadlines for applications for variances from and modifications of effluent limitations.

(a) Except as provided in paragraph (d), applications for variances from and

modification of effluent limitations under the statutory and regulatory provisions of the Act shall be made as provided in paragraph (b) and (c).

(b) *Dischargers other than publicly owned treatment works.* (1) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based, shall be made by the close of the public comment period under § 124.42. The request shall explain why the requirements of § 124.43 and Part 125, Subpart D have been met.

(2) A request for a variance from the BAT requirements for section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) because of the economic capability of the owner or operator; or pursuant to section 301(g) because of certain environmental considerations, where those requirements were based on effluent limitation guidelines, must be made by:

(i) Submitting an initial application to the Regional Administrator and the State Director stating the name of the applicant, the permit number, the outfall number(s), the applicable effluent guideline, and whether the applicant is applying for a section 301(c) or section 301(g) modification or both. This application shall be filed not later than:

(A) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(B) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977;

(ii) Submitting a completed request demonstrating that the requirements of § 124.43 and the applicable requirements of Part 125 have been met no later than the close of the public comment period under § 124.42.

(iii) Requests for variance of effluent limitations based on other than effluent limitation guidelines, shall comply only with paragraph (ii) and need not submit an initial application under paragraph (i).

(3) An extension under section 301(i)(2) of the statutory deadlines in sections 301(b)(1)(A) or (b)(1)(C) based on delay in completion of a publicly owned treatment work into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days after the relevant publicly owned treatment works requests an extension under paragraph (c)(2) of this section, whichever is later. The request shall explain why the requirements of Part 125, Subpart J have been met.

(4) An extension under section 301(k) from the statutory deadline of section 301(b)(2)(A) for best available control technology based on the use of innovative technology may be requested no later than the close of the public comment period under § 124.42 for the discharger's initial permit requiring compliance with best available control technology. The request shall explain why the requirements of § 124.43 and Part 125, Subpart C have been met.

(5) A modification under section 302(b)(2) of requirements under section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under § 124.42 on the permit from which the variance is sought. The request shall explain why the requirements of that section have been met.

(6) A variance under section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under § 124.11. If thermal effluent limitations are established under section 402(a)(1) or are based on water quality standards the application shall by filed by the close of the public comment period under § 124.42. A copy of the application as required under Part 125, Subpart H shall be sent simultaneously to the appropriate State or interstate certifying agency. (See § 124.56 for special procedures for section 316(a) thermal variances.)

(c) *Publicly owned treatment works.* (1) A preliminary application for a modification under section 301(h) from requirements of section 301(b)(1)(B) for discharges into marine waters must have been submitted to the Agency no later than September 25, 1978. A final application must be submitted in accordance with the filing requirements of Part 125, Subpart G, after that Subpart is promulgated, and shall demonstrate on its face that all the requirements of Part 125, Subpart G have been met. (See § 124.55 for special rules for section 301(h) modifications.)

(2) An extension under section 301(i)(1) from the statutory deadlines in sections 301(b)(1)(B) or (b)(1)C) based on delay in the construction of publicly owned treatment works must have been requested on or before June 26, 1978.

(3) A modification under section 302(b)(2) of the requirements under section 302(a) for achieving water quality based effluent limitations may be requested no later than the close of the public comment period under § 124.42 on the permit from which the modification is sought.

(d)(1) Notwithstanding any later time specified in paragraphs (b) and (c), the Director may notify the applicant before a draft permit is published pursuant to § 124.41 that the draft permit will likely contain limitations which are eligible for variances or modifications. In such notice the Director may require the applicant as a condition of consideration of any potential variance request to submit a full application within a specified reasonable time before the draft permit is formulated. This notice can be sent before the application under § 124.11 has been submitted.

[*Comment:* This paragraph is intended to reduce the time for permit issuance, especially in those cases where it is clear that a variance or modification will be applied for, such as where the discharger has submitted a variance application under § 124.51(b)(2)(i) even before the permit application is filed under § 124.11.]

(2) A discharger who cannot file a complete request required under paragraphs (b)(2)(ii), (b)(2)(iii), (b)(3)(ii) or (b)(3)(iii) may request an extension to apply. Extensions shall be limited to the time the Director determines is necessary to satisfy the requirements of the appropriate regulations, but shall be no more than six months in duration. The request may be granted or denied in the discretion of the Director.

§ 124.52 Decisions on variances and modifications.

(a) The Director may grant or deny the following modifications or variances (subject to EPA objection under § 123.23 for State permits):

(1) Extensions under section 301(i) based on delay in completion of a publicly owned treatment works;

(2) After consultation with the Regional Administrator, extensions under section 301(k) based on the use of innovative technology; or

(3) Variances under section 316(a) for thermal pollution.

(b) The State Director may deny, or forward to the Regional Administrator with a written concurrence or submit to EPA without recommendation a completed application for:

(1) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(2) A variance based on the economic capability of the applicant under section 301(c) of the Act;

(3) A variance based upon certain water quality factors under section 301(g); of

(4) A modification of section 302(b)(2) requirements under section 302(a) (water quality related effluent limitations).

(c) The Regional Administrator may deny, or may forward to the EPA Deputy Assistant Administrator for Water Enforcement with recommendation for approval, an application for a variance listed in paragraph (b) which is forwarded by the State Director, or submitted to the Regional Administrator by the applicant where EPA is the permitting authority.

(d) The EPA Deputy Assistant Administrator for Water Enforcement may approve or deny any variance application submitted under paragraph (c). If the EPA Deputy Assistant Administrator approves the variance, the Director may formulate a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that determination under § 124.54.

§ 124.53 Procedures for variances and modifications where EPA is the permit issuing authority.

(a) In states where EPA is the permit issuing authority and an application for a variance or modification is filed as required by § 124.51, the application shall be processed as follows:

(1) If at the time an application for a variance or modification is submitted the Regional Administrator has received an application under § 124.11 for issuance or renewal of that permit but has not yet formulated a draft permit under § 124.31 covering the discharge in question, the Regional Administrator after obtaining any necessary concurrence of the EPA Deputy Assistant Administrator for Water Enforcement under § 124.52, shall set forth a tentative determination on the request at the time the draft permit is formulated as specified in § 124.31, unless this would significantly delay the processing of the permit. In that case the processing of the variance or modification request may be separated from the permit in accordance with paragraph (3), and the processing of the permit shall proceed without delay.

(2) If at the time an application for a variance or modification is filed the Regional Administrator has formulated a draft permit under § 124.31 covering the discharge in question, but that permit has not yet become final under § 124.101, administrative proceedings concerning that permit may be stayed and the Regional Administrator shall formulate a new draft permit including a tentative determination on the request, and the fact sheet required by § 124.34. However, if this will significantly delay the processing of the existing permit or the Regional Administrator for other reasons considers combining the variance request and the existing permit inadvisable, the request may be separated from the permit in accordance with paragraph (3), and the administrative disposition of the existing permit shall proceed without delay.

(3) If the permit has become final under § 124.101 and no application under § 124.11 concerning it is pending or if the variance or modification request has been separated from a permit as described in paragraphs (1) and (2), the Regional Administrator shall formulate a new draft permit under § 124.31. This permit shall be accompanied by the fact sheet required by § 124.34, except that the only matters considered shall relate to the requested variance.

§ 124.54 Appeals of modifications and variances.

(a) Normally, the appeals of permit determinations are handled in one proceeding, either State or Federal. When a State issues a permit in which EPA has made a variance determination, a separate appeal on that determination is possible. In such cases, requests for appeal of the EPA permit conditions must be filed under Subpart I after the public notice of the grant or denial of the variance. If the owner or operator is challenging issues in a State proceedings on the same permit, the Regional Administrator will decide, in consultation with State officials, which case will be heard first.

(b) Appeals of modifications or variance determinations shall be governed by Subpart I unless the Regional Administrator determines that consolidation with an evidentiary hearing under Subpart H will expedite consideration of the issues presented.

[*Comment:* The panel proceedings of Subpart I will generally be utilized when there is a State-issued permit and only the variance issues are in the Federal forum.]

(c) *Stays for section 301(g) variances.* Under the authority of section 301(j)(2), if a request for an evidentiary hearing is granted regarding a variance under section 301(g), or if a petition for timely review of the denial of a request for an evidentiary hearing is timely filed with the Administrator under § 124.101 with respect to such a variance, any otherwise applicable standards and limitations under section 301 of the Act shall not be stayed unless:

(1) In the judgment of the Regional Administrator, the stay or the variance sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, or synergistic propensities; and

(2) In the judgment of the Regional Administrator, there is a substantial likelihood that the discharger will succeed on the merits of its appeal; and

(3) The discharger files any bond or other appropriate security which is required by the Regional Administrator to assure timely compliance with the requirements from which a variance is sought in the event that the appeal is unsuccessful.

(d) Stays for variances or modifications other than section 301(g) will be granted or denied pursuant to § 124.61.

§ 124.55 Special provisions for modifying the secondary treatment requirement under section 301(h).

(a) Where it is clear on the face of a section 301(h) application that the discharger is not entitled to a modification, the application shall be denied.

(b) In the case of all other section 301(h) applications the Administrator, or a person designated by the Administrator may either:

(1) Give written authorization to an applicant to submit information required by Part 125, Subpart G or the final application by a date certain, not to exceed 9 months, if:

(i) The applicant proposes to submit new or additional information and the applicant demonstrates that:

(A) The applicant made consistent and diligent efforts to obtain such information prior to submitting the final application;

(B) The failure to obtain such information was due to circumstances beyond the control of the applicant; and

(C) Such information can be submitted promptly; or

(ii) The applicant proposes to submit minor corrective information and such information can be submitted promptly; or

(2) Make a written request of an applicant to submit additional information by a date certain, not to exceed 9 months, if such information is necessary to issue a tentiative determination under § 124.114(g).

All additional information authorized or requested under this paragraph which is timely received, shall be considered part of the original application.

(c) Applications for modifications under section 301(h) shall be processed independently of any pending

application for the issuance or reissuance of a permit requiring the applicant to meet effluent limitations based on secondary treatment under section 301(b)(1)(B).

(d) No modified permit shall be issued granting a section 301(h) modification unless the appropriate State officials have concurred or waived concurrence pursuant to § 124.24. In the case of a permit issued to an applicant in an approved State, the State Director may:

(1) Revoke any existing permit as of the effective date of the EPA-issued modified permit; and

(2) Co-sign the modified permit, if the Director has indicated an intent to do so in the written concurrence.

(e) Appeals of determinations under section 301(h) shall be governed by Part 124, Subpart I.

§ 124.56 Special procedures for decisions on thermal variances (section 316(a)).

(a) Except as provided in § 124.53 the only issues connected with issuance of a particular permit on which EPA will make a final Agency decision before the final permit is issued under § 124.61 are whether alternative effluent limitations would be justified under section 316(a) and whether cooling water intake structures will use the best available technology under section 316(b). Applicants who wish an early decision on these issues should request it and furnish supporting reasons at the time their applications are filed under § 124.51(b)(6). The Regional Administrator will then decide whether or not to grant it. If it is granted, both the early decision on section 316 (a) or (b) issues and the grant of the balance of the permit shall be considered permit issuance under these regulations, and shall be subject to the same requirements of public notice and comment and the same opportunity for an evidentiary hearing.

(b) If the Regional Administrator, on review of the administrative record, determines that the information necessary to decide whether or not an alternative effluent limitation under section 316(a) should be granted to a source is not likely to be available by the time a decision on permit issuance must be made, the Regional Administrator may issue a permit under § 124.61 for a term of up to five years. This permit shall require that the point source achieve the effluent limitations initially proposed for the control of the thermal component of the discharge no later than the date otherwise required by applicable legal requirements. However, the permit shall also afford the permittee an opportunity to file a demonstration under section 316(a) after conducting such studies as are required under Part 125, Subpart H.

[*Comment:* A new discharger may not commence operation in violation of the thermal effluent limitations which are initially proposed unless and until the section 316(a) variance request is finally approved.]

(c) Any hearing scheduled under paragraph (a) shall be publicized as required by § 124.41 and shall be scheduled enough in advance of the final compliance date specified in the permit to allow the permittee to take necessary measures to comply by that date in the event its request for modification of thermal limits is eventually denied after the hearing is concluded.

(d) Whenever the Regional Administrator defers the determination under section 316(a), any determination under section 316(b) may be deferred.

Subpart G—Issuance and Effective Date of Permit

§ 124.61 Issuance and effective date of permit; stays.

(a)(1) After the close of the public comment period (including any public hearing period) required by § 124.42 on a draft permit, the Regional Administrator shall prepare and issue a final permit and shall serve notice as provided in § 124.80(c) of that action of the applicant, and on each person who has submitted written comments or requested notice of the issuance of the final permit. This notice shall include reference to the procedures available to contest the permit terms under § 124.74 *et seq.*

[*Comment:* A statement signed by a person in the Regional Office that an attached list of persons were mailed the notice of issuance of the final permit is sufficient to meet the requirements of § 124.80(c). The mailed notice need not be sent certified mail.]

(b) Any final permit issued under paragraph (a) constitutes final action of EPA, when it becomes effective under paragraph (c) unless a request for an evidentiary hearing under § 124.75 or a panel hearing under § 124.114 is granted.

(c) Except as provided in paragraphs (d), (e) and (f), a permit or modification shall become effective 30 days after the service of notice of the final permit under paragraph (a), unless a later effective date is specified in the permit.

(d) If a request for an evidentiary hearing is granted under § 124.75 or § 124.111(a)(3) regarding the initial permit issued for a new source or a new discharger, or if a petition for review of the denial of a request for an evidentiary hearing with respect to such a permit is timely filed with the Administrator under § 124.101, the applicant shall be without a permit for the proposed new source or new discharge, pending final Agency action under § 124.101.

(e)(1) If a request for a hearing is granted in whole or in part under § 124.75 or § 124.111(a)(3) regarding a permit for an existing source, or if a petition for review of the denial of a request for an evidentiary hearing with respect to such a permit is timely filed with the Administrator under § 124.101, the force and effect of the contested provisions of the final permit shall be stayed and shall not be subject to judicial review under section 509(b) of the Act, pending final Agency action under § 124.101. The Regional Administrator shall serve notice, in accordance with § 124.75, on the discharger and all parties identifying the terms of the final permit which are not contested and therefore are enforceable obligations of the discharger.

(2) Where effluent limitations are contested, but the underlying control technology is not, the notice shall identify the installation of the technology in accordance with the permit compliance schedules (if uncontested) as an uncontested, enforceable obligation of the permit.

(3) Where a combination of technologies is contested, but a portion of the combination is not contested, such portion shall be identified as uncontested if compatible with the combination of technologies proposed by the requester.

(4) A term or condition, otherwise uncontested, shall not be identified as uncontested if it is inseverable from a contested term or condition.

(5) Uncontested terms and conditions shall become enforceable 30 days after the date of such notice, provided, however, that if a request for an evidentiary hearing on a term or condition was denied and the denial is appealed under § 124.101, then such term or condition shall become enforceable upon the date of the notice of the Administrator's decision on the appeal if the denial is affirmed, or shall be stayed, in accordance with this section, if the Administrator reverses the denial and grants the evidentiary hearing on such permit term.

(6) Uncontested terms and conditions shall include:

(i) Permit requirements for which an evidentiary hearing has been requested but the hearing has been denied;

(ii) Preliminary design and engineering studies or other requirements necessary to achieve the

final permit term or conditions which do not entail substantial expenditures;

(iii) Permit conditions which will have to be met regardless of which party prevails at the evidentiary hearing;

(iv) Where the discharger proposed a less stringent level of treatment than that contained in the final permit, any permit conditions appropriate to meet the levels proposed by the discharger, if the measures required to attain such less stringent level of treatment are consistent with the measure required to attain the limits proposed by the Agency; and

(v) Construction activities such as segregation of waste streams or installation of equipment which would partially meet the final permit terms or conditions and could also be used to achieve the discharger's proposed alternative terms and conditions.

(7) If at any time after a hearing is granted and after the Regional Administrator's notice under paragraph (1), it becomes clear that a permit requirement is no longer contested, any party may request the Presiding Officer to issue an order identifying the requirements as uncontested. The requirement identified in such order shall become enforceable 30 days after the issuance of the order.

(f) Where an evidentiary hearing is granted under § 124.75 on an application for a renewal of an existing permit, all provisions of the existing permit, as well as uncontested provisions of the new permit, shall continue in full force and effect until final Agency action under § 124.101. (See § 122.12(b)). Upon written request from the applicant, the Regional Administrator may modify the existing permit to delete requirements which unnecessarily duplicate uncontested provisions of the new permit.

[*Comment:* The following examples demonstrate the application of § 124.61(e) and (f):

Example 1: The discharger requests and is granted an evidentiary hearing on its contention that the EPA's proposed effluent limitation for total suspended solids (TSS) at level X is too stringent and should be relaxed to level Y. Treatment technology A attains level Y whereas technology A plus B is necessary for level X. In this case, the discharger's obligation to install technology A is effective 30 days after service of the notice under § 124.75(b) and this obligation is not stayed by virtue of the contest as to the need for additional technology B. The discharger would be required to comply with all portions of the compliance schedule relating to design, construction and attainment of technology A, but would obtain a stay of such provisions with respect to technology B. This is true even if the schedule does not separate the two technologies. The discharger must of course also perform all basic work such as segregation of waste streams, site preparation, monitoring, reporting, and initial construction because this will be necessary regardless of the outcome of the contest. The additional obligations of technology B are stayed.

Example 2: The same facts as in Example 1 except that a public interest group has also requested and been granted participation in the evidentiary hearing. The group contends that TSS level X is too lenient and should be tightened to level Z. Treatment technology C, which is inconsistent with both A and B technologies, is required for level Z. In this case the discharger's obligation to install technologies A, A and B, or C are all stayed. The discharger's obligations to perform basic work such as segregation of waste streams, site preparation, monitoring, reporting, and perhaps initial construction are not stayed because they are unaffected by the contest.

Example 3: The discharger requests an evidentiary hearing on two issues: that the permits total suspended solids (TSS) limit and pH limit are each too strict. The Regional Administrator grants the evidentiary hearing on the TSS issue but denies it on the pH claim. The TSS and pH technologies are independent and severable and the discharger does not appeal the denial of hearing on the pH claim. In this case the discharger's obligation to install the pH control technology is not stayed and becomes effective 30 days after service of the Regional Administrator's notice under § 124.75(b). If the underlying technology for the TSS limit is at issue, the TSS limitation is stayed. However, as described in Examples 1 and 2, the discharger's obligations to perform all work unaffected by the stay (e.g., segregation of waste streams, site preparation, initial construction, etc.) are not stayed.

Example 4: The same facts as in Example 3 except that the equipment required for attaining the pH limit is achieved by the installation of the TSS equipment. In this case the Regional Administrator may determine that the pH permit term is inseverable from the TSS contest and thus the limits for both parameters would be stayed by virtue of the hearing on TSS, although as noted in the preceding examples, the discharger's obligations to perform all work unaffected by the stay are not stayed. Note however, that if the pH limit is achievable in an inexpensive and temporary alternative such as additional chemical treatment in the discharger's existing equipment, then the Regional Administrator may determine that the pH permit term is severale and refuse to stay the pH term.

Example 5: The same facts as in Example 3 except that the discharger appeals (to the Administrator) the Regional Administrator's denial of the evidentiary hearing on Issue No. 2 (the pH limit). In this case the pH limitation is also stayed (with the exceptions noted in the preceding examples) at least until the Administrator's decision on such appeal. If the Administrator affirms the denial of the evidentiary hearing on the pH limit then upon service of notice under § 124.75(b) the stay terminates. If the Administrator reverses and thus grants the evidentiary hearing on the pH term then the stay continues until final Agency action.

(g) When issuing a finally effective permit under Subpart I, the Regional Administrator shall extend the permit compliance schedule to the extent required by a stay under this section; provided that no such extension shall be granted which would:

(1) Result in the violation of an applicable statutory deadline; or

(2) Cause the permit to expire more than five years after issuance under § 124.61(a).

[*Comment:* Extensions of compliance schedules will not automatically be granted for a period equal to the period the stay is in effect for an effluent limitation. For example, if both the Agency and the discharger agree that a certain treatment technology is required by the Act where guidelines do not apply, but a hearing is granted to consider the effluent limitations which the technology will achieve, requirements regarding installation of the underlying technology will not be stayed during the hearing. Thus, unless the hearing extends beyond the final compliance date in the permit, it will not ordinarily be necessary to extend the compliance schedule. However, where application of an underlying technology is challenged, the stay for installation requirements relating to that technology would extend for the duration of the hearing.]

(h) For purposes of judicial review under section 509(b) of the Act, final administrative action on a permit does not occur unless and until a party has requested and exhausted its Administrative remedies under Subpart H and I and §124.101. Any party which neglects or fails to seek review under § 124.101 thereby waives its opportunity to exhaust available Agency remedies.

§ 124.62 Final environmental impact statement.

No final permit for a new source shall be issued until at least 30 days after the date of issuance of a final Environmental Impact Statement if one is required under 40 CFR § 6.916.

§ 124.63 Response to comments.

(a) At the time any final permit is issued, the Director shall also prepare a response to comments for that permit. This response to comments shall contain:

(1) A specific indication of which provisions of the draft permit have been changed in the final permit, and the reasons for the change; and

(2) A brief description of and response to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) For EPA-issued permits any documents cited in the response to

comments shall be included in the administrative record for the final permit as defined in § 124.64.

[*Comment:* If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new material to the administrative record.]

§ 124.64 Administrative record for final permit issued by EPA.

(a) Decisions to issue a final permit under § 124.61 shall be made on the basis of the administrative record defined in this section.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit and

(1) All comments received during the public comment period required by § 124.42;

(2) The tape or transcript of any hearing(s) held under § 124.42;

(3) The response to comments required by § 124.63;

(4) Any final Environmental Impact Statement;

(5) Other documents contained in the supporting file for the permit, including correspondence, telephone and meeting memoranda, compliance reports, etc.; and

(6) The final permit.

These documents shall be added to the record as soon as feasible after their receipt or publication by the Agency.

(c)(1) This section applies to all final permits where the draft permit was subject to the administrative record requirements of § 124.35.

(2) Whether or not a draft permit was formulated or final permit was issued subject to this Subpart, the Regional Administrator, at any time prior to the rendering of an initial decision in an evidentiary hearing on that permit, may withdraw the permit in whole or in part and formulate a new draft permit under § 124.31 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing, etc. as would apply to any other draft permit subject to this Part. Any portions of the permit which are not withdrawn and which are not stayed under § 124.61 shall remain in effect.

(d) Material readily available at the issuing Regional Office or published material which is generally available, and which is included in the administrative record under the standards of this section or of § 124.63 ("Response to Comments"), does not need to be physically included in the same file as the rest of the record as long as it is specifically referenced in the fact sheet or statement of basis or in the response to comments.

Subpart H—Evidentiary Hearings for EPA-Issued Permits

§ 124.71 Applicability.

The regulations in this Subpart govern all evidentiary hearings conducted by EPA under section 402 of the Act, except as otherwise provided in Subpart I. An evidentiary hearing is available to challenge any permit issued under § 124.61 except for a general permit. Persons affected by a general permit may not challenge the terms and conditions of a general permit; but may instead apply for an individual permit under § 124.11 as authorized in § 122.48 and then request an evidentiary hearing on the issuance or denial of an individual permit.

§ 124.72 Definitions.

For the purpose of this Subpart H and I, the following definitions are applicable:

(a) "Judicial Officer" means a permanent or temporary employee of the Agency appointed as a Judicial Officer by the Administrator under these regulations and subject to the following conditions:

(1) A Judicial Officer shall be a licensed attorney. A Judicial Officer shall not be employed in the Office of Enforcement or the Office of Water and Waste Management, and shall not participate in the consideration or decision of any case in which he or she performed investigative or prosecutorial functions.

(2) The Administrator may delegate any authority to act in an appeal of a given case under this Subpart to a Judicial Officer who, in addition, may perform other duties for EPA, provided that that delegation shall not preclude a Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer decides referral would be appropriate. The Administrator, in deciding a case, may consult with and assign the drafting of preliminary findings of fact and conclusions and/or a preliminary decision to any Judicial Officer.

(b) "Party" means the EPA trial staff under § 124.78 and any person whose request for a hearing under § 124.74 or whose request to be admitted as a party or to intervene under §§ 124.79 or 124.117 has been granted.

(c) "Presiding Officer" means an Administrative Law Judge appointed under 5 U.S.C. § 3105 and designated to preside at the hearing.

(d) "Regional Hearing Clerk" means an employee of the Agency designated by a Regional Administrator to establish a repository for all books, records, documents and other materials relating to hearings under this Subpart. A Regional Hearing Clerk may be the same person as the Record Clerk required by § 124.35.

§ 124.73 Filing and submission of documents.

(a) All submissions authorized or required to be filed with EPA under this Subpart shall be filed with the Regional Hearing Clerk, unless the regulations provide otherwise. Submissions shall be considered filed on the date on which they are mailed or delivered in person to the Regional Hearing Clerk.

(b) All such submissions shall be signed by the person making the submission, or by an attorney or other authorized agent or representative.

(c)(1) All data and information referred to or in any way relied upon in any such submissions shall be included in full and may not be incorporated by reference, unless previously submitted as part of the administrative record in the same proceeding, except for State or Federal statutes and regulations, judicial decisions published in a national reporter system, officially issued EPA documents of general applicability, and any other material which is generally available or of peripheral relevance, in which case the party relying on it shall file a written undertaking to make copies available as directed by the Regional Administrator or the Presiding Officer.

(2) If any part of the material submitted is in a foreign language, it shall be accompanied by an English translation verified under oath to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. Translations of literature or other material in a foreign language shall be accompanied by copies of the original publication.

(3) Where relevant data or information is contained in a document also containing irrelevant matter, either the irrelevant matter shall be deleted and only the relevant data or information shall be submitted or the relevant portions shall be briefly indicated.

(4) The failure to comply with the requirements of this section or any other requirement in this Subpart may result in the exclusion from consideration of any portion of the submission which

fails to comply. If the Regional Administrator or the Presiding Officer, on motion by any party or *sua sponte*, determines that a submission fails to meet any requirement of this Subpart, the Regional Administrator or Presiding Officer shall direct the Hearing Clerk to return the submission with a copy of the applicable regulations indicating those provisions not complied with in the submission. The party proposing to submit any materials previously rejected shall have 14 days to correct the errors and resubmit, unless the Regional Administrator or the Presiding Officer determines that there is good cause to allow a longer time.

(d) The filing of a submission shall not mean or imply that it in fact meets all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) The original of all statements and documents containing factual material, data, or other information shall be signed in ink and shall state the name, address and the representative capacity of the person making the submission. The person signing shall comply with the signature and certification procedures of § 122.5.

§ 124.74 Requests for evidentiary hearing.

(a) Within 30 days following the service of notice of the Regional Administrator's issuance of a final permit under § 124.61, any interested person may submit a request to the Regional Administrator under paragraph (b) for an evidentiary hearing to reconsider or contest the terms of that permit. If such a request is submitted by a person other than the permittee, the person shall simultaneously serve a copy of the request on the permittee.

(b) In accordance with § 124.76, such requests shall state each legal or factual question alleged to be at issue, and their relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for that adjudication. Information supporting the request or other written document relied upon to support the request shall be submitted as required by § 124.73 unless it is already in the administrative record required by § 124.64.

[*Comment:* This paragraph allows the submission of requests for evidentiary hearings even though both legal and factual issues may be raised, or only legal issues may be raised. In the latter case, because no factual issues were raised, the Regional Administrator would be required to deny the request. However, on review of the denial, the Administrator is authorized by § 124.101(a)(1) to review policy or legal conclusions of the Regional Administrator. EPA is requiring an appeal to the Administrator even of purely legal issues involved in a permit decision to ensure that the Administrator will have an opportunity to review any permit before it will be final and subject to judicial review.]

(c) Such requests shall also contain:

(1) The name, mailing address and telephone number of the person making such request;

(2) A clear and concise factual statement of the nature and scope of the interest of the requester;

(3) The names and addresses of all persons whom the requester represents; and

(4) A statement by the requester that, upon motion of any party, or *sua sponte* by the Presiding Officer and without cost or expense to any other party, the requester shall make available to appear and testify, the following:

(i) The requester;

(ii) All persons represented by the requester; and

(iii) All officers, directors, employees, consultants and agents of the requester and the persons represented by the requester.

(5) Specific references to the contested permit terms and conditions, as well as suggested revised or alternative permit terms and conditions (not excluding permit denial) which, in the judgment of the requester, would be required to implement the purposes and policies of the Act.

(6) In the case of challenges to the application of control or treatment technologies identified in the statement of basis or fact sheet, identification of the basis for the objection, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of the Act.

(7) Specific identification of each of the discharger's obligations which should be stayed if the request is granted. If the request contests more than one permit term or condition then each obligation which is proposed to be stayed must be referenced to the particular contested term warranting the stay.

(d) The Regional Administrator (upon notice to all persons who have already submitted hearing requests) may extend the time allowed for submitting hearing requests under this section for good cause.

§ 124.75 Decision on request for a hearing.

(a) Following the expiration of the time allowed by § 124.74 for submitting a request for an evidentiary hearing, the Regional Administrator shall determine whether the request shall be granted, denied or granted in part and denied in part. The Regional Administrator shall grant a request either in whole or in part only if the request conforms to the requirements of § 124.74 and sets forth material issues of fact relevant to the issuance of the permit.

(b) If the Regional Administrator grants a request for an evidentiary hearing, in whole or in part, the Regional Administrator shall state and identify the permit terms and conditions which have been contested by the requester and for which the evidentiary hearing has been granted. Permit terms and conditions which are not contested or for which the Regional Administrator has denied the hearing request shall not be affected by or considered at, the evidentiary hearing. The Regional Administrator shall specify these terms and conditions in writing and serve notice in accordance with § 124.61(e).

(c) If the Regional Administrator grants a request for an evidentiary hearing in whole or in part, in regard to a particular proposed permit, then any other request for an evidentiary hearing in regard to that permit shall be treated as a request to be a party and the Regional Administrator shall grant any such request which meets the requirements of paragraph (a) of this section.

(d) If a request for a hearing is denied in whole or in part, the Regional Administrator shall briefly state the reasons. That denial is then subject to review by the Administrator under § 124.101.

§ 124.76 Obligation to raise issues and submit evidence before a final permit is issued.

No evidence shall be submitted by any party to a hearing under this Subpart that was not submitted to the administrative record required by § 124.64 unless good cause is shown for the failure to submit it. No issues shall be raised by any such party that were not submitted to the administrative record required by § 124.64 unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise the new issues, or introduce new information, shows that it could not reasonably have ascertained the issues or made the information available within the time required by § 124.43.

§ 124.77 Notice of the grant of a hearing.

Public notice of the grant of an evidentiary hearing regarding a permit shall be given as provided in § 124.41(h) and in addition by mailing a copy to all persons who commented on the draft permit or submitted a request for a hearing. Before the issuance of such notice the Regional Administrator shall designate the Agency trial staff and the members of the decisional body (as defined in § 124.78).

§ 124.78 Ex parte communications.

(a)(1) No interested person outside the Agency or member of the Agency trial staff shall make or knowingly cause to be made to any members of the decisional body an *ex parte* communication relevant to the merits of the proceedings.

(2) No member of the decisional body shall make or knowingly cause to be made to any interested person outside the Agency or member of the Agency trial staff an *ex parte* communication relevant to the merits of the proceedings.

(3) A member of the decisional body who receives or who makes or knowingly causes to be made a communication prohibited by this subsection shall file with the Regional Hearing Clerk, for the public record of the hearing, all such written communications or memoranda stating the substance of all such oral communications together with all written responses and memoranda stating the substance of all oral responses.

(b) Upon receipt by any members of the decision making body of an *ex parte* communication knowingly made or knowingly caused to be made by a party in violation of this section, the person presiding at the stage of the hearing then in progress may, to the extent consistent with justice and the policy of the Act require the party to show cause why its claim or interest in the proceedings should not be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(c) The prohibitions of this section begins to apply upon issuance of the notice of the grant of a hearing under § 124.77 or § 124.116. This prohibition terminates at the date of final Agency action.

(d) For purposes of this section, the following definitions shall apply:

(1) "Agency trial staff" means those Agency employees, whether temporary or permanent, who have been designated by the Agency under § 124.77 or § 124.116 as available to investigate, litigate and present the evidence, arguments and position of the Agency in the evidentiary hearing or non-adversary initial licensing hearing. Appearance as a witness does not necssarily require a person to be designated as a member of the Agency trial staff;

(2) "Decisional body" means any Agency employee who is or may reasonably be expected to be involved in the decisional process of the proceeding including the Administrator, Judicial Officer, Presiding Officer, the Regional Administrator (if he does not designate himself as a member of the Agency trial staff) and any of their direct support staff participating in the decisional process. In the case of a nonadversary initial licensing proceeding, the decisional body shall also include the panel members whether or not permanently employed by the Agency;

(3) "*Ex parte* communication" means any communication written or oral relating to the merits of the proceeding between the decisional body and an interested person outside the Agency or the Agency trial staff where such communication was not originally filed or stated in the administrative record or in the hearing. *Ex parte* communications do not include:

(i) Communications between Agency employees other than between the Agency trial staff and the members of the decisional body;

(ii) Discussions between the decisional body and either

(A) Interested persons outside the Agency; or

(B) The Agency trial staff;

If all parties have received prior written notice of such proposed communications and have been given the opportunity to be present and participate therein.

(iii) Communications between Agency employees including trial staff but not the decisional body and any persons outside the Agency including interested persons outside the Agency.

(4) "Interested person outside the Agency" includes the permit applicant, any person who filed written comments in the proceeding, any person who requested the hearing, any person who requested to participate or intervene in the hearing, any participant or party in the hearing and the attorney of record for such persons.

§ 124.79 Additional parties and issues.

(a) Any person may submit a request to be admitted as a party within 15 days after the date of mailing, publication or posting of notice of the grant of an evidentiary hearing, whichever occurs last. The Presiding Officer shall grant such requests as meet the requirements of § 124.74 and § 124.76. Such request must specifically identify those issues already raised which the requester seeks to address at the hearing.

(b) After the expiration of the time prescribed in paragraph (a) any person may file a motion for leave to intervene as a party. This motion must meet the requirements of §§ 124.74 and 124.76 and set forth the grounds for the proposed intervention provided, however, that no factual or legal issues in addition to those raised by timely hearing requests may be proposed except for good cause. Any motion to intervene must also contain a verified statement showing good cause for the failure to file a timely request to be admitted as a party. The Regional Administrator, or the Presiding Officer if one has been assigned, shall grant such motion only upon an express finding on the record that:

(1) Extraordinary circumstances justify granting the motion;

(2) The intervener has consented to be bound by:

(i) Prior written agreements and stipulations by and between the existing parties; and

(ii) All orders previously entered in the proceedings; and

(3) Intervention will not cause undue delay or prejudice the rights of the existing parties.

§ 124.80 Filing and service.

(a) An original and one (1) copy of all written submissions relating to an evidentiary hearing filed after the notice of hearing is published shall be filed with the Regional Hearing Clerk.

(b) The party filing any submission shall serve a copy of such submission upon the Presiding Officer and each party of record. Service shall be by mail or personal delivery.

(c) Every submission shall be accompanied by an acknowledgement of service by the person served or proof of service in the form of a statement of the date, place, time, and manner of service and the names of the persons served, certified by the person who made service.

[*Comment:* A signed statement that an attached list of persons were mailed the submission is sufficient to meet the requirements of this paragraph. Certified mail is not required.]

(d) The Regional Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address and telephone number of all parties and their attorneys or duly authorized representatives.

§ 124.81 Assignment of administrative law judge.

No later than the date of mailing, publication or posting of the notice of a grant of an evidentiary hearing, whichever occurs last, the Regional Administrator shall refer the proceeding to the Chief Administrative Law Judge who shall make an assignment of an Administrative Law Judge to serve as Presiding Officer for the hearing.

§ 124.82 Consolidation and severance.

(a) The Administrator, Regional Administrator or Presiding Officer, has the discretion to consolidate, in whole or in part, two or more proceedings to be held under this Subpart, whenever it appears that a joint hearing on any or all of the matters in issue would expedite or simplify consideration of the issues and that no party would be prejudiced thereby. Consolidation shall not affect the right of any party to raise issues that might have been raised had there been no consolidation.

(b) If the Presiding Officer determines consolidation is not conducive to an expeditious, full and fair hearing, any party or issues may be severed and heard separately.

§ 124.83 Prehearing conferences.

(a) The Presiding Officer, *sua sponte*, or at the request of any party, may direct the parties or their attorneys or duly authorized representatives to appear at a specified time and place for one or more conferences before or during a hearing, or to submit written proposals or correspond for the purpose of considering any of the matters set forth in paragraph (c) of this section.

(b) The Presiding Officer shall allow a reasonable period before the hearing begins for the orderly completion of all prehearing procedures and for the submission and disposition of all prehearing motions. Where the circumstances warrant, the Presiding Officer shall call a prehearing conference to inquire into the use of available procedures contemplated by the parties and the time required for their completion, to establish a schedule for their completion, and to set a tentative date for beginning the hearing.

(c) In conferences held, or in suggestions submitted, under paragraph (a), the following matters may be considered:

(1) The necessity or desirability of simplification, clarification, amplification or limitation of the issues.

(2) The admission of facts and of the genuineness of documents, and the possibility of stipulations with respect to facts.

(3) The consideration of and ruling upon objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits, or other submissions proposed by a party, except that the administrative record required by § 124.64 shall be received in evidence subject to the provisions of § 124.85(d)(2). Notwithstanding the foregoing, at any time before the end of the hearing any party may make, and the Presiding Officer shall consider and rule upon, motions to strike testimony or other evidence other than the administrative record on the grounds of relevance, competency or materiality.

(4) The identification of matters of which official notice may be taken.

(5) The establishment of a schedule which includes definite or tentative times for as many of the following as are deemed necessary and proper by the Presiding Officer:

(i) The submission of narrative statements of position on each factual issue in controversy;

(ii) The submission of written testimony and documentary evidence (e.g., affidavits, data, studies, reports and any other type of written material) in support of such statements; or

(iii) Written requests to any party for the production of additional documentation, data, or other information relevant and material to the facts in issue.

(6) The grouping of participants with substantially like interests for purposes of eliminating duplicative or repetitive development of the evidence and making and arguing motions and objections.

(7) Such other matters as may expedite the hearing or aid in the disposition of the matter.

(d) At a prehearing conference or within some reasonable time set by the Presiding Officer, each party shall make available to all other parties the names of experts and other witnesses it expects to call. At its discretion or at the request of the Presiding Officer, a party may include a brief narrative summary of any witness's anticipated testimony. Copies of any written testimony, documents, papers, exhibits, or materials which a party expects to introduce into evidence, and the administrative record required by § 124.64, shall be marked for identification as ordered by the Presiding Officer. Witnesses, proposed written testimony and other evidence may be added or amended only upon a finding by the Presiding Officer that good cause existed for failure to introduce the additional or amended material within the time specified by the Presiding Officer. Agency employees and consultants shall be made available as witnesses by the Agency to the same extent that production of such witnesses is required of other parties under § 124.74(c)(4). (See also § 124.85(b)(16)).

(e) The Presiding Officer shall prepare a written prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing, unless a transcript has been taken and accurately reflects these matters. The order shall include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in connection therewith. This order shall control the subsequent course of the hearing unless modified by the Presiding Officer for good cause shown.

§ 124.84 Summary determination.

(a) Any party to an evidentiary hearing may move with or without supporting affidavits and briefs for a summary determination in his or her favor upon all or any part of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. Any such motion shall be filed at least 45 days before the date set for the hearing, except that upon good cause shown such motion may be filed at any time before the close of the hearing.

(b) Any other party may, within 30 days after service of the motion, file and serve a response to it or a counter-motion for summary determination. When a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the Presiding Officer, that there is a genuine issue of material fact for determination at the hearing.

(c) Affidavits shall be made on personal knowledge, shall set forth facts that would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) The Presiding Officer has the discretion to set the matter for oral argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law. The Presiding Officer shall rule on the motion not more than 30 days after the date responses to the motion are filed under paragraph (b) of this section.

(e) If all issues of material fact are decided on a motion for summary determination, no hearing will be held and the Presiding Officer shall thereupon prepare an initial decison under § 124.89. If the motion for summary determination is denied or if only a partial summary determination is granted, the Presiding Officer shall issue a memorandum opinion, and order, interlocutory in character, and the hearing will proceed on the remaining issues. Appeals from interlocutory rulings are governed by § 124.90.

§ 124.85 Hearing procedure.

(a)(1) The permit applicant always bears the burden of persuading the Agency that a permit authorizing pollutants to be discharged should be issued and not denied. This burden does not shift.

(2) The Agency has the burden of going forward to present an affirmative case in support of any challenged term or condition of a final permit.

[*Comment:* In many cases the documents contained in the administrative record, in particular the fact sheet or statement of basis and the response to comments should adequately discharge this burden.]

(3) Any hearing participant who, by raising material issues of fact, contends:

(i) That particular terms, conditions or requirements in the permit are improper or invalid, and who desires either:

(A) The inclusion of new or different terms, conditions or requirements; or

(B) The deletion of such terms, conditions or requirements; or

(ii) That the denial or issuance of a permit is improper or invalid, shall have the burden of going forward to present an affirmative case upon the issues.

(b) The Presiding Officer shall have the authority and duty to conduct a fair and impartial hearing, to take action to avoid unnecessary delay in the disposition of the proceedings, to maintain order and all powers necessary to these ends, including the power to:

(1) Establish the date, time and place of hearings and conferences;

(2) Establish the methods and procedures to be used in the development of the evidence;

(3) Prepare, after considering the views of the participants, written statements of areas of factual disagreement among the participants;

(4) Hold conferences to settle, simplify, determine or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(5) Administer oaths and affirmations;

(6) Regulate the course of the hearing and govern the conduct of participants;

(7) Examine witnesses;

(8) Identify and refer issues for interlocutory decision under § 124.90;

(9) Rule on, admit, exclude, or limit evidence;

(10) Establish the time for filing motions, testimony and other written evidence, briefs, findings, and other submissions;

(11) Rule on motions and other procedural matters pending before him, including but not limited to motions for summary determination in accordance with § 124.84;

(12) Order that the hearing be conducted in stages in cases where the number of parties is large or the issues are numerous and complex;

(13) Take any action not inconsistent with the provisions of this subpart for the maintenance of order at the hearing and for the expeditious, fair and impartial conduct of the proceeding;

(14) Provide for the testimony of opposing witnesses to be heard simultaneously or for such witnesses to meet outside the hearing to resolve or isolate issues or conflicts;

(15) Order that trade secrets be treated as confidential business information in accordance with § 124.131; and

(16) Allow such cross-examination as may be required for a full and true disclosure of the facts. No cross-examination shall be permitted on questions of law or policy, or regarding matters (such as the validity of effluent limitations guidelines) that are not subject to challenge in an NPDES proceeding. No Agency witnesses shall be required to testify or be made available for cross-examination on such matters. In determining whether cross-examination shall be permitted the Presiding Officer shall consider whether it is likely to result in clarifying or resolving a disputed issue of fact material to the decision, and whether the issue can be more economically clarified in other ways. The party seeking cross-examination has the burden of demonstrating that this standard has been met.

(c) All direct and rebuttal evidence at an evidentiary hearing shall be submitted in written form, unless, upon motion and good cause shown, the Presiding Officer determines that oral presentation of the evidence on any particular fact will materially assist in the efficient identification and clarification of the hearing issues. Written testimony shall be prepared in narrative form. To the extent that testimony is to be submitted in writing, the Presiding Officer may set dates for the filing of such evidence with the Regional Hearing Clerk as follows:

(1) The participant with the burden of going forward to present an affirmative case upon an issue (as defined in § 124.85(a) of these regulations) shall file direct testimony first.

(2) All participants other than the participants specified in the preceding subsection shall file their direct testimony on said issue not later than 20 days after the date of the filing of the testimony under the preceding subsection.

(3) All rebuttal testimony shall be filed no later than 30 days after the date of the filing of testimony under paragraph (c)(1) of this section.

(d)(1) The Presiding Officer shall admit all relevant, competent and material evidence, except evidence that is unduly repetitious. Evidence may be received at any hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

(2) The administrative record defined by § 124.64 shall be admitted and received in evidence. Any party may move that a sponsoring witness be provided for a portion or portions of the administrative record. The Presiding Officer, upon finding that the standards for cross-examination of § 124.85(b)(3) have been met and that the administrative record taken as a whole indicates legitimate doubt about such portion of the record, shall grant such motion and direct the appropriate party to produce such witness. If a sponsoring witness cannot be provided, the Presiding Officer may reduce the weight afforded the appropriate portion of the record as a factual statement accordingly.

[*Comment:* Receiving the administrative record into evidence automatically serves several purposes: (1) It documents the prior course of the proceeding; (2) it provides a record of the views of affected persons for consideration by the agency decisionmaker; and (3) it provides factual material for use by the decisionmaker. Subject to § 124.76, parties are free to contest the factual portions of the administrative record in the hearing, and to argue that portions of it should not be given weight unless sponsored by a witness who will be available for cross-examination.]

(3) Whenever any evidence or testimony is excluded by the Presiding Officer as inadmissible, all such evidence or testimony existing in written form shall remain a part of the record as an offer of proof. The party seeking the admission of oral testimony

may make an offer of proof, which shall consist of a brief statement on the record describing the testimony excluded.

(4) Where two or more parties have substantially similar interest and positions, the Presiding Officer may limit the number of attorneys or other party representatives who will be permitted to cross-examine and to make and argue motions and objections on behalf of such parties. Attorneys may, however, engage in cross-examination relevant to matters not adequately covered by previous cross-examination.

(5) Rulings of the Presiding Officer on the admissibility of evidence or testimony, the propriety of cross-examination, and other procedural matters shall appear in the record and shall control further proceedings, unless reversed as a result of an interlocutory appeal taken under § 124.90.

(6) All objections shall be made promptly or be deemed waived. Parties shall be presumed to have taken exception to an adverse ruling. No objection shall be deemed waived by further participation in the hearing.

(e) Parties may at any time stipulate to relevant facts or to settlement. However, all settlements to which the Agency is a party must be approved by the EPA Deputy Assistant Administrator for Water Enforcement in accordance with § 124.133.

§ 124.86 Motions.

(a) Any party may make a motion, (including a motion to dismiss a particular claim or a contested issue), to the Presiding Officer about any matter relating to the proceeding. All motions shall be filed and served as provided in § 124.80 except those made on the record during an oral hearing before the Presiding Officer.

(b) Within 10 days after service of any written motion, any party to the proceeding may file a response to the motion. The time for response may be shortened to three days or extended for an additional ten days by the Presiding Officer for good cause shown.

(c) Notwithstanding § 122.15, any party may file with the Presiding Officer a motion seeking to apply to the permit any regulatory or statutory requirement issued or made available after the issuance of the permit under § 124.61. The Presiding Officer shall grant any motion to apply a new statutory requirement unless he or she finds it contrary to legislative intent. The Presiding Officer may grant a motion to apply a new regulatory requirement where appropriate to carry out the purposes of the Act, and where no party would be unduly prejudiced thereby.

§ 124.87 Record of hearings.

(a) All orders issued by the Presiding Officer, transcripts of oral hearings or arguments, written statements of position, written direct and rebuttal testimony, and any other data, studies, reports, documentation, information and other written material of any kind submitted in the proceeding shall be a part of the record of the hearing, and shall be available except as provided in § 124.131 to the public in the office of the Regional Hearing Clerk promptly upon receipt in that office.

(b) Evidentiary hearings shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed. After the hearing, the reporter shall file with the Regional Hearing Clerk (i) the original of the transcript, and (ii) the exhibits received or offered into evidence at the hearing.

(c) The Regional Hearing Clerk shall promptly notify each of the parties of the filing of the certified transcript of proceedings. Any party who desires a copy of the transcript of the hearing may obtain a copy of the hearing transcript from the Regional Hearing Clerk upon payment of costs.

(d) The Presiding Officer shall allow witnesses, parties, and their counsel an opportunity to submit such written proposed corrections of the transcript of any oral testimony taken at the hearing, pointing out errors that may have been made in transcribing the testimony, as are required to make the transcript conform to the testimony. Except in unusual cases, no more than thirty days shall be allowed for submitting such corrections from the day a complete transcript of the hearing becomes available.

§ 124.88 Proposed findings of fact and conclusions; brief.

Within 45 days after the certified transcript is filed, any party may file with the Regional Hearing Clerk proposed findings of fact and conclusions and a brief in support thereof, each containing appropriate reference to the record. A copy of any such findings, conclusions and brief shall be contemporaneously served upon every other party and the Presiding Officer. The Presiding Officer, for good cause shown, may extend the time for filing the proposed findings and conclusions and/or the brief. The Presiding Officer may allow reply briefs.

§ 124.89 Decisions.

(a) The Presiding Officer shall review and evaluate the record, including the proposed findings and conclusions, any briefs filed by the parties and any interlocutory decisions pursuant to § 124.90 and shall issue and file his initial decision with the Regional Hearing Clerk. The Regional Hearing Clerk shall immediately serve copies of the initial decision upon all parties (or their counsel of record) and the Administrator.

(b) The initial decision of the Presiding Officer shall automatically become effective thirty (30) days after its service unless within such time:

(1) A party files a petition for review by the Administrator pursuant to § 124.101; or

(2) The Administrator *sua sponte* files a notice that he or she will review the decision pursuant to § 124.101.

§ 124.90 Interlocutory appeal.

(a) Except as provided in this section, appeals to the Administrator may be taken only under § 124.101. Appeals from orders or rulings may be taken under this section only if the Presiding Officer, upon motion of a party, certifies those orders or rulings to the Administrator for appeal on the record. Requests to the Presiding Officer for certification must be filed in writing within ten days of service of notice of the order, ruling, or decision and shall state briefly the grounds relied on.

(b) The Presiding Officer may certify an order or ruling for appeal to the Administrator if:

(1) The order or ruling involves an important question on which there is substantial ground for difference of opinion; and

(2) Either:

(i) An immediate appeal of the order or ruling will materially advance the ultimate completion of the proceeding, or,

(ii) A review after the final order is issued will be inadequate or ineffective; and,

(3) Such an appeal is necessary to prevent exceptional delay, expense or prejudice to any party.

(c) To the extent an appeal under this section involves issues of law, the Administrator shall refer those issues to the General Counsel for determination subject to his or her approval.

(d) If the Administrator decides that certification was improperly granted, he or she shall decline to hear the appeal. The Administrator shall accept or decline all interlocutory appeals within 30 days of their submission; if the Administrator takes no action within

that time, the appeal shall be considered dismissed. When the Presiding Officer declines to certify an order or ruling to the Administrator for an interlocutory appeal, it may be reviewed by the Administrator only upon appeal from the initial decision of the Presiding Officer, except when the Administrator determines upon motion of a party and in exceptional circumstances, that to delay review would not be in the public interest. Such motion shall be made within five days after receipt of notification that the Presiding Officer has refused to certify an order or ruling forr interlocutory appeal to the Administrator. Ordinarily, the interlocutory appeal will be decided on the basis of the submissions made to the Presiding Officer. The Administrator may, however, allow briefs and oral argument.

(e) The Presiding Officer may stay the proceeding pending a decision by the Administrator upon an order or ruling certified by the Presiding Officer for an interlocutory appeal, or upon the denial of such certification by the Presiding Officer. Only in exceptional circumstances shall proceedings be stayed.

(f) The failure to request an interlocutory appeal shall not foreclose a party from taking exception to an order or ruling in an appeal under § 124.101.

§ 124.101 Appeal to the Administrator.

(a)(1) Within 30 days after service of an initial decision, or the denial in whole or in part of a request for an evidentiary hearing, any party or requester, as the case may be, may appeal any matter set forth in such initial decision or denial or in any adverse order or ruling to which the party objected during the hearing, by filing with the Administrator notice of appeal and a petition for review. Proof of service upon all parties shall accompany such filing. The petition shall include a statement of the supporting reasons for such exceptions and, where appropriate, a showing that the initial decision contains:

(i) A finding of fact or conclusion of law which is clearly erroneous, or

(ii) An exercise of discretion or policy which is important and which the Administrator should, in his discretion, review.

(2) Within 15 days after service of a petition for review under paragraph (a)(1), any other party to the hearing in question may file a responsive petition.

(3) Policy or legal conclusions made in the course of denying a request for an evidentiary hearing may be reviewed and changed by the Administrator in an appeal under this section.

(b) Within 30 day of an initial decision or denial of an evidentiary hearing the Administrator may, *sua sponte*, review such decision. Within seven (7) days after the Administrator has decided under this section to review an initial decision or the denial of an evidentiary hearing, notice of that decision shall be served by mail upon all affected parties and the Regional Administrator.

(c) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the petition for review. When the Administrator grants a petition for review or determines under paragraph (b) to review a decision, the Administrator may notify the parties that only certain issues shall be briefed.

(d) Notwithstanding the grant of a petition for review or a determination under paragraph (b) to review a decision, the Administrator may summarily affirm without opinion an intitial decision or the denial of an evidentiary hearing.

(e) To the extent an appeal under this section involves issues of the law, the Administrator shall refer those issues to the General Counsel for determination subject to his or her approval.

(f) A petition to the Administrator under paragraph (a) for review of any initial decision or the denial of an evidentiary hearing is, under 5 U.S.C. § 704, a prerequisite to the seeking of judicial review of the final decision of the Agency.

(g)(1) If a party timely files a petition for review or if the Administrator *sua sponte* orders review, then, for purpose of judicial review under section 509(b) of the Act, final Agency action on an issue occurs after EPA review procedures are exhausted and the Administrator's decision is issued and is implemented as follows:

(i) If the Administrator denies review or summarily affirms without opinion as provided in § 124.101(d) then the initial decision or denial becomes effective upon the service of notice of such decision.

(ii) If the Administrator issues a decision without remanding the proceeding then the final permit, redrafted as required by the Administrator's decision, shall be reissued and served upon all parties to such appeal in accordance with paragraph (g)(2) of this section.

(iii) If the Administrator issues a decision remanding the proceeding then final Agency action occurs upon completion of the remanded proceeding, including any Administrator appeals to the Administrator therefrom.

(2) For purposes of judicial review under section 509(b) of the Act, final Agency action occurs ten days after a final permit is issued. After Agency review procedures are exhausted a final permit shall be prepared and issued by the Regional Administrator:

(i) When the Administrator issues notice to the parties that review has been denied if review is denied;

(ii) When the Administrator issues a decision if review is not denied and the Administrator does not remand the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded unless the Administrator's remand order specifically provides that appeal of the remand decision will be required in order to exhaust administrative remedies.

(h) The petitioner may file a brief in support of the petition within 21 days after the Administrator has granted a petition for review. Any other party may file a responsive brief within 21 days of service of a brief in support of the petition. The petitioner may file a reply brief within 14 days of service of the responsive brief and any person may file an *amicus* brief for the consideration of the Administrator. If the Administrator determines, *sua sponte*, to review an initial Regional Administrator's decision or the denial of an evidentiary hearing, the Administrator shall notify the parties of the briefing schedule.

(i) Review by the Administrator of an initial decision or the denial of an evidentiary hearing shall be limited to issues specified under paragraph (a) of this section, except after notice to all parties, the Administrator may raise and decide other matters which he or she considers material on the basis of the record.

Subpart I—Non-Adversary Procedures for Initial Licensing

§ 124.111 Applicability.

(a) Except as set forth in this Subpart, this Subpart applies in lieu of, and to the complete exclusion of, Subparts E through H in the following cases:

(1) In all proceedings for the issuance of a modified permit under section 301(h) of the Act, except that in such proceedings the terms "Administrator or a person designated by the Administrator" shall be substituted in this Subpart for the term "Regional Administrator"; and

(2) In any proceedings for the issuance of any other permit which constitutes "initial licensing" under the

Administrative Procedure Act, where the Regional Administrator elects to apply this Subpart and explicitly so states in the public notice of the draft permit.

(b) The parties to an evidentiary hearing that would otherwise be held under Subpart H may agree to conduct that hearing in accordance with this Subpart. Any applicant for an NPDES permit which is not an initial license may request, when requesting an evidentiary hearing under § 124.74, that its application be processed under the procedures of this Subpart. If the Regional Administrator agrees with this request, and if a hearing is granted, the notice of the hearing shall be issued under § 124.116 shall include a statement that the permit will be processed under the procedures set forth in this Subpart unless a written objection is received within 30 days. If no such objection is received, the application shall be processed in accordance with §§ 124.117–124.121 of this Subpart, except that any reference to a draft permit shall be taken as referring to the final permit. If an objection is received, Subparts F through H shall be applied instead.

(c) "Initial licensing" includes both the first grant of an NPDES permit to a discharger that has not previously held an NPDES permit and the first decision on any variance applied for by a discharger.

§ 124.112 Relation to other subparts.

The following provisions of Subparts E through H apply to proceedings under this Subpart:

(a) § 124.54 "Terms requested by the Corps of Engineers and other Government Agencies."

(b) § 124.62 "Final environmental impact statement."

(c) § 124.65 "Early decision on certain permit conditions."

(d) § 124.66 "Deferral of decision on certain permit conditions."

(e) § 124.72 "Definitions."

(f) § 124.73 "Filing."

(g) § 124.78 *"Ex parte* communications."

(h) § 124.80 "Filing and service."

(i) § 124.82 "Consolidation and severance."

(j) § 124.85(a) (burden of proof);

(k) § 124.86 "Motions."

(l) § 124.87 "Record of hearings."

(m) § 124.90 "Interlocutory appeal."

§ 124.113 Public notice regarding draft permits and permit conditions.

Public notice of the formulation of a draft permit under this Subpart shall be given as provided in § 124.41(i). At the discretion of the Regional Administrator, the comment period specified in this notice may include an opportunity for a public hearing under § 124.42.

§ 124.114 Hearings.

(a) By the close of the comment period set forth in § 124.113 (§ 124.41(i)), any person may request the Regional Administrator to hold a panel hearing on the draft permit by submitting a written request containing the following:

(1) A brief statement of the interest of the person requesting the hearing;

(2) A statement of any objections to the draft permit;

(3) A statement of the issues which such person proposes to raise for consideration at such hearing; and

(4) Statements meeting the requirements of § 124.74(c)(1)–(5).

(b) Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received and presents genuine issues of material fact, or (2) the Regional Administrator determines *sua sponte* that a hearing under this Subpart is necessary or appropriate, the Regional Administrator shall serve written notice of the determination on each person requesting such hearing and the applicant, and shall provide public notice of the determination in accordance with § 124.41(j). If the Regional Administrator determines that a request filed under paragraph (a) of this section does not comply with the requirements of paragraph (a) or does not present genuine issues of fact, the Regional Administrator may deny the request for the hearing and shall serve written notice of such determination on all persons requesting the hearing.

(c) The Regional Administrator may decide before a draft permit is formulated that a hearing should be held under this Part. In such a case the notice issued under § 124.113 shall so state and shall contain the information required by § 124.41(j).

§ 124.115 Effect of denial or absence of request for hearing.

If no request for a hearing is made under § 124.114, or if all such requests are denied under that section, the draft permit shall be treated procedurally as if it were a recommended decision issued under § 124.124 of this Subpart, except that for purposes of § 124.125 and § 124.126 the term "hearing participant" or "person who participated in the hearing" shall be construed to mean the applicant and any person who submitted comments under § 124.41(i)

§ 124.116 Notice of hearing.

Upon granting a request for a hearing under § 124.114 the Regional Administrator shall promptly publish a notice of the hearing as required under § 124.41(j). The mailed notice shall include a statement which indicates whether the Presiding Officer or the Regional Administrator will issue the recommended decision.

§ 124.117 Request to participate in hearing.

(a) Each person desiring to participate in any hearing noticed under this section, shall file a motion to participate with the Regional Hearing Clerk by the deadline set forth in the notice of the grant of the hearing. The request shall include:

(1) A brief statement of the interest of the person in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) Statements meeting the requirements of § 124.74(c)(1)–(5).

(5) If the request is submitted by an organization, a non-binding list of the persons to take part in the presentation.

(b) As soon as practicable, but in no event later than two weeks before the scheduled date of the hearing, the Presiding Officer shall make a hearing schedule available to the public and shall mail it to each person who requested to participate in the hearing.

§ 124.118 Submission of written comments on draft permit.

(a) No later than 30 days before the scheduled start of the hearing (or such other date as may be set forth in the notice of hearing), each party shall file all of its comments on the draft permit, based on information in the administrative record and any other information which is or reasonably could have been available to that person. All comments shall include any affidavits, studies, data, tests, or other materials relied upon for making any factual statements in the comments.

(b)(1) Written comments filed under paragraph (a) of this section shall constitute the bulk of the evidence submitted at the hearing. Oral statements at the hearing should be brief and in the nature of argument. They should be restricted either to points that could not have been made in written comments, or to emphasizing points which are made in the comments, but which the participant believes can be more effectively argued in the hearing context.

(2) Notwithstanding the foregoing, within two weeks prior to the deadline specified in paragraph (a) of this section for the filing of comments, any party who has filed a request to participate in the hearing may move to submit all or part of its comments orally at the hearing in lieu of submitting written comments and the Presiding Officer shall, within one week, grant such motion if the Presiding Officer finds that such person will be prejudiced if required to submit such comments in written form.

(c) Parties to any hearing may submit written material in response to the comments filed by other participants under paragraph (a) of this section at the time they appear at the panel stage of the hearing under § 124.120.

§ 124.119 Presiding Officer.

(a)(1) Upon the granting of a request for a hearing the Regional Administrator shall, as soon as practicable, request that the Chief Administrative Law Judge assign an Administrative Law Judge as Presiding Officer. The Chief Administrative Law Judge shall thereupon make such assignment.

(2) If all parties to the hearing waive in writing their statutory right to have an Administrative Law Judge preside at the hearing, the Regional Administrator shall name a lawyer permanently or temporarily employed by the Agency and without prior connection with the proceeding to serve as Presiding Officer.

(b) It shall be the duty of the Presiding Officer to conduct a fair and impartial hearing. The Presiding Officer shall have the authority:

(1) Conferred by § 124.85(b)(1)–(15), § 124.83(b) and (c); and

(2) To receive relevant evidence, provided that all comments under § 124.118, the record of the panel hearing under § 124.120, and the administrative record, as defined in § 124.35 (or in the case of voluntary use of these procedures under § 124.111(a)(3), the administrative record for the final permit under § 124.64) shall be received in evidence.

§ 124.120 Panel hearing.

(a) A Presiding Officer shall preside at each hearing held under this Subpart. An EPA panel shall also take part in the hearing. The panel shall consist of three or more temporary or permanent EPA employees having special expertise in areas related to the hearing issue, at least two of whom shall not have taken part in preparing the draft permit. If appropriate for the evaluation of new or different issues presented at the hearing, the panel membership may change or may include persons not employed by EPA.

(b) At the time of the hearing notice pursuant to § 124.116, the Regional Administrator shall designate the persons who shall serve as panel members for the hearing and the Regional Administrator shall file with the Regional Hearing Clerk the name, address and area of expertise of each person so designated. The Regional Administrator may also designate EPA employees who will provide staff support to the panel but who may or may not serve as panel members. Such designated person shall be subject to the *ex parte* rules in § 124.78. The Regional Administrator may also designate Agency trial staff as defined in § 124.78 for the hearing.

(c) At any time before the close of the panel hearing, the Presiding Officer, after consultation with the panel, may request that any person having knowledge concerning the issues raised in the hearing and not then scheduled to participate therein appear and testify at the hearing.

(d) The panel members may question any person participating in the panel hearing. Cross-examination by persons other than panel members shall not be permitted at this stage of the proceeding except where the Presiding Officer determines, after consultation with the panel, that such cross-examination would expedite consideration of the issues. However, the parties may submit written questions to the Presiding Officer for the Presiding Officer to ask the participants, and the Presiding Officer may, after consultation with the panel, and at his or her sole discretion, ask these questions or permit a panel member to ask them.

(e) Within ten days after the close of the hearing, any of the participants shall submit such additional written testimony, affidavits, information or material as such participant deems relevant or which the panel may request of such participant. These additional submissions shall be filed with the Regional Hearing Clerk and shall be a part of the hearing record.

§ 124.121 Opportunity for cross-examination.

(a) Any participant in a panel hearing may submit a written request to cross-examine on any issue of material fact. The motion shall be submitted to the Presiding Officer within 15 days after a full transcript of the panel hearing is filed with the Regional Hearing Clerk and shall specify:

(1) The disputed issue(s) of material fact regarding which cross-examination is requested. This shall include an explanation of why the questions at issue are factual, rather than of an analytical or policy nature, the extent to which they are in dispute in light of the record made up to that stage, and the extent to which they are material to the decision on the application; and

(2) The person(s) a participant desires to cross-examine, and an estimate of the time necessary. This shall include a statement as to why the cross-examination will result in resolving the issue of material fact involved.

(b) After receipt of all motions for cross-examination under paragraph (a), the Presiding Officer, after consultation with the hearing panel, shall promptly issue an order either granting or denying each such request. If any request for cross-examination is granted, the order shall specify:

(1) The issues on which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits for the examination of witnesses by each cross-examiner; and

(5) The date, time and place of the supplementary hearing at which cross-examination shall take place.

In issuing this ruling, the Presiding Officer may determine that one or more participants have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In such a case, the order shall simply assign time for cross-examination by that single representative without identifying the representative further. If said participants with the same or similar interests shall fail to designate such single representative, then the Presiding Officer shall divide the assigned time among the representatives of such participants or issue such other order as justice may require.

(c) The Presiding Officer and to the extent possible, the members of the hearing panel shall be present at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify any order issued under paragraph (b) of this section. A record will be made under § 124.87.

(d)(1) No later than the time set for requesting cross-examination, a hearing participant may request that alternative methods of clarifying the record (such as the submission of additional written information) be used in lieu of or in

addition to cross-examination. The Presiding Officer shall issue an order granting or denying such request at the time he issues (or would have issued) an order under paragraph (b) of this section. If the request is granted, the order shall specify the alternative provided and any other relevant information (e.g., the due date for submitting written information).

(2) In passing on any request for cross-examination submitted under paragraph (a) of this section, the Presiding Officer may, as a precondition to ruling on the merits of such request, require alternative means of clarifying the record to be used whether or not a request to do so has been made under the immediately preceding paragraph. The person requesting cross-examination shall have one week to comment on the results of utilizing such alternative means, following which the Presiding Officer, as soon as practicable, shall issue an order granting or denying such person's request for cross-examination.

(e) The provisions of § 124.85(d)(2) apply to proceedings under this Subpart.

§ 124.122 Record for final permit.

(a) The record on which the final permit shall be based in any proceeding under this Subpart (other than a proceeding by consent of the parties under § 124.111(a)(3)) consists of:

(1) The administrative record compiled under § 124.35;

(2) Any material submitted under § 124.78 relating to *ex parte* contacts;

(3) All notices issued under § 124.113;

(4) All requests for hearings, and rulings on those requests received or issued under § 124.114;

(5) Any notice of hearing issued under § 124.116;

(6) Any request to participate in the hearing received under § 124.117;

(7) All comments submitted under § 124.118, any motions made under that section and the rulings on them, and any comments filed under § 124.113(b)(9);

(8) The full transcript and other material received into the record of the panel hearing under § 124.120;

(9) Any motions for, or rulings, on cross-examination filed or issued under § 124.121;

(10) Any motions for, orders for and the results of, any alternatives to cross-examination under § 124.121; and

(11) The full transcript of any cross-examination held.

(b) In any proceedings under this Subpart involving a permit which is not an initial license and which are conducted under § 124.111(a)(3), the record for decision shall consist of:

(1) The administrative record under § 124.64;

(2) All requests for hearing submitted under § 124.74, and all rulings on those requests; and

(3) The items specified in subparagraph in subparagraphs (a)(4) though (a)(11) of this section.

§ 124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.

Unless otherwise ordered by the Presiding Officer, each party may, within 20 days after all requests for cross-examination are denied or after a transcript of the full hearing including any cross-examination becomes available, submit proposed findings of fact; conclusions regarding material issues of law, fact, or discretion; a proposed modified NPDES permit (if such person is urging that the draft permit should be modified); and a brief in support thereof; together with references to relevant pages of transcript and to relevant exhibits. Within 10 days thereafter each party may file a reply brief concerning matters contained in opposing briefs and containing alternative findings of fact; conclusions regarding material issues of law, fact, or discretion; and a proposed modified permit. Oral argument may be held at the discretion of the Presiding Officer on motion of any party or *sua sponte*.

§ 124.124 Recommended decision.

The person named to prepare the decision shall, as soon as practicable after the conclusion of the hearing, evaluate the record of the hearing and prepare and file a recommended decision with the Regional Hearing Clerk. That person may consult with, and receive assistance from, any member of the hearing panel in drafting the recommended decision, and may delegate the preparation of the recommended decision to the panel or to any member or members of it. This decision shall contain findings of fact, conclusions regarding all material issues of law, and a recommendation as to whether and in what respects the draft permit shall be modified. After the recommended decision has been filed, the Regional Hearing Clerk shall serve a copy of such decision on each party and upon the Administrator.

§ 124.125 Appeal from or review of recommended decision.

Within 30 days after service of the recommended decision, any party may take exception to any matter set forth in such decision or to any adverse order or ruling of the Presiding Officer to which such party objected, and may appeal such exceptions to the Administrator as provided in § 124.101, except that references in § 124.101 to "initial decision" will mean recommended decision under § 124.124.

§ 124.126 Final decision.

As soon as practicable after all appeal proceedings have been completed, the Administrator shall issue a final decision. Such final decision shall include findings of fact; conclusions regarding material issue of law, fact, or discretion, as well as reasons therefor; and a modified NPDES permit to the extent appropriate. It may accept or reject all or part of the recommended decision. The Administrator may delegate some or all of the work of preparing this decision to a person or persons without substantial prior connection with the matter. The Administrator or a person designated by the Administrator may consult with the Presiding Officer, members of the hearing panel or any other EPA employee in preparing the final decison. The Hearing and Record Clerk shall file a copy of the decision on all hearing participants.

§ 124.127 Final decision if there is no review.

If no party appeals a recommended decision to the Administrator, and if the Administrator does not elect to review it, the recommended decision is deemed the final decision of the Agency upon the expiration of the time for filing any appeals.

Subpart J—Miscellaneous

§ 124.131 Public access to information.

(a) All permit applications, effluent data, certifications issued under section 401 of the Act and Subpart C of this Part, comments of all governmental agencies on a permit application, and draft permits and fact sheets prepared shall be available to the public without restriction.

(b) Access to other information shall be governed by the provisions of 40 CFR Part 2.

§ 124.132 Delegation of authority; time limitations.

(a) The Administrator may delegate to a Judicial Officer any or all of his or her authority to act under this Subpart.

(b) The failure of the Administrator, Regional Administrator or Presiding Officer to do any act within the time periods specified herein shall not be construed as a waiver or in derogation of any rights, powers or authority of the

United States Environmental Protection Agency.

(c) Upon a showing by any party that it has been prejudiced by a failure of the Administrator, Regional Administrator, or Presiding Officer to do any act within the time periods specified herein, the Administrator, Regional Administrator, or Presiding Officer, as the case may be, may grant such party such relief of a procedural nature (including extension of any time for compliance or other action) as may be appropriate.

§ 124.133 EPA headquarters' approval of stipulation or consent agreement.

No evidentiary hearing under Subpart H or non-adversary initial licensing hearing under Subpart I may be resolved, settled or decided, in either whole or substantial part, by the stipulation or consent of the parties thereto, unless and until the stipulation or consent agreement is approved and signed by the Deputy Assistant Administrator for Water Enforcement. No stipulation or consent without such approval and signature shall bind EPA or have any force or effect or be filed in any proceeding.

§ 124.134 Additional time after service by mail.

Whenever a party or interested person has the right or is required to do some act or take some proceeding within a prescribed period after the service of notice or other paper upon him or her by mail, three days shall be added to the prescribed time.

§ 124.135 Effective date of Part 124.

(a) All provisions of this Part shall apply to any permit were the draft permit was included in a public notice after October 12, 1979.

(b) All the provisions of Subpart H other then § 124.76 and the provisions of §§ 124.83(c) and 124.85(d)(1) for automatic receipt of the administrative record into evidence shall apply to all hearings for which the notice of hearing is issued after [60 days after date of issuance] *provided* that the Presiding Officer at any such proceeding may vary or suspend any of the terms of these regulations in any hearing that begins before January 1, 1980, to avoid inconvenience or injustice.

(c) Section 124.64(c)(2) provides a mechanism by which EPA may in effect make permits issued before the effective date of this Part subject to its provisions.

7. Part 125 is revised to read as follows:

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart A—Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Section 301(b) of the Act

Sec.
125.1 Purpose and scope.
125.2 Definitions.
125.3 Technology-based treatment requirements in permits.

Subpart B—Criteria for Issuance of Permits to Aquaculture Projects

125.10 Purpose and scope.
125.11 Criteria.

Subpart C—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology Under Section 301(k) of the Act [Reserved]

Subpart D—Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2) (A) and (E), and 307(b) of the Act

125.30 Purpose and scope.
125.31 Criteria.
125.32 Method of application.

Subpart E—Criteria for Granting Economic Variances From Best Available Technology Economically Achievable Under Section 301(c) of the Act [Reserved]

Subpart F—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act [Reserved]

Subpart G—Criteria for Modifying the Secondary Treatment Requirement Under Section 301(h) of the Act [Reserved]

Subpart H—Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Act.

125.70 Purpose and scope.
125.71 Definitions.
125.72 Early screening of applications for section 316(a) variances.
125.73 Criteria and standards for the determination of alternative effluent limitations under section 316(a).

Subpart I—Criteria Applicable To Cooling Water Intake Structures Under Section 316(b) of the Act [Reserved]

Subpart J—Criteria for Extending Compliance Dates Under Section 301(i) of the Act

125.90 Purpose and scope.
125.91 Definition.
125.92 Requests for permit modification and issuance under section 301(i)(1) of the Act.
125.93 Criteria for permit modification and issuance under section 301(i)(1) of the Act.
125.94 Permit terms and conditions under section 301(i)(1) of the Act.
125.95 Requests for permit modification or issuance under section 301(i)(2) of the Act.
125.96 Criteria for permit modification or issuance under section 301(i)(2) of the Act.
125.97 Permit terms and conditions under section 301(i)(2) of the Act.

Subpart K—Criteria and Standards for Best Management Practices Under Section 304(e) of the Act

125.100 Purpose and scope.
125.101 Definition.
125.102 Applicability of best management practices.
125.103 Permit terms and conditions.
125.104 Best management practices programs.

Subpart L—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act [Reserved]

Subpart M—Ocean Dumping Criteria Under Section 403 of the Act [Reserved]

Authority: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq.

Subpart A—Criteria and Standards for Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Act

§ 125.1 Purpose and scope.

This Subpart establishes criteria and standards for the imposition of technology-based treatment requirements in permits under section 301(b) of the Act, including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations under section 402(a)(1) of the Act.

§ 125.2 Definitions.

Unless otherwise noted, the definitions in Parts 122, 123, and 124 apply to this Part.

§ 125.3 Technology-based treatment requirements in permits.

(a) *General.* Technology-based treatment requirements under section 301(b) of the Act represent the minimum level of control that must be imposed in a permit issued under section 402 of the Act. (See §§ 122.14 and 122.15 for a discussion of additional or more stringent effluent limitations and conditions.) Permits shall contain the following technology-based treatment requirements in accordance with the following statutory deadlines;

(1) For POTW's, effluent limitations based upon:

(i) Secondary treatment—from date of permit issuance; and

(ii) The best practicable waste treatment technology—not later than July 1, 1983; and

(2) For dischargers other than POTW's except as provided in § 122.47(d), effluent limitations requiring:

(i) The best practicable control technology currently available (BPT)—from date of permit issuance;

(ii) For conventional pollutants, the best conventional pollutant control technology (BCT)—not later than July 1, 1984;

(iii) For all toxic pollutants referred to in Committee Print No. 95–30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT) — not later than July 1, 1984;

(iv) For all toxic pollutants other than those listed in Committee Print No. 95–30, effluent limitations based on the BAT not later than three years after the date such effluent limitations are incorporated into an NPDES permit; and

(v) For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT not later than three years after the date such effluent limitations are incorporated into an NPDES permit, or July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(b) *Statutory variances and extensions.* (1) The following variances from technology-based treatment requirements are authorized by the Act and may be applied for under § 124.51:

(i) For POTW's, a section 301(h) marine discharge variance from secondary treatment (Subpart G);

(ii) For dischargers other than POTW's;

(A) A section 301(c) economic variance from BAT (Subpart E);

(B) A section 301(g) water quality related variance from BAT (Subpart F); and

(C) A section 316(a) thermal variance from BPT, BCT and BAT (Subpart H).

(2) The following extensions of deadlines for compliance with technology-based treatment requirements are authorized by the Act and may be applied for under § 124.51:

(i) For POTW's a section 301(i) extension of the secondary treatment deadline (Subpart J);

(ii) For dischargers other than POTW's:

(A) A section 301(i) extension of the BPT deadline (Subpart J); and

(B) A section 301(k) extension of the BAT deadline (Subpart C).

(c) *Methods of imposing technology-based treatment requirements in permits.* Technology-based treatment requirements may be imposed through one of the following three methods:

(1) Application of EPA-promulgated effluent limitations developed under section 304 of the Act to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been remanded or withdrawn. However, in the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variances from these effluent limitations under § 124.51 and Subpart D of this Part.

(2) On a case-by-case basis under section 402(a)(1) of the Act, to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors listed in section 304 of the Act, and shall consider:

(i) The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information (including EPA draft or proposed development documents or guidance); and

(ii) Any unique factors relating to the applicant.

[*Comment:* These factors must be considered in all cases, regardless of whether the permit is being issued by EPA or an approved State.]

(3) Through a combination of the methods in paragraphs (c) (1) and (2) of this section. Where promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to regulation on a case-by-case basis in order to carry out the provisions of the Act.

(d) Technology-based treatment requirements are applied prior to or at the point of discharge.

(e) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(1) The technology-based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(2) The discharger agrees to waive any opportunity to request a variance under sections 301 (c), (g) or (h) of the Act; and

(3) The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(f) Technology-based effluent limitations shall be established under this Subpart for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

Subpart B—Criteria for Issuance of Permits to Aquaculture Projects

§ 125.10 Purpose and scope.

(a) These regulations establish guidelines under sections 318 and 402 of the Act for approval of any discharge of pollutants associated with an aquaculture project.

(b) The regulations authorize, on a selective basis, controlled discharges which would otherwise be unlawful under the Act in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially. EPA policy is to encourage such projects, while at the same time protecting other beneficial uses of the waters.

(c) Permits issued for discharges into aquaculture projects under this Subpart are NPDES permits and are subject to the applicable requirements of Parts 122, 123 and 124. Any permit shall include such conditions (including monitoring and reporting requirements) as are necessary to comply with those Parts. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

§ 125.11 Criteria.

(a) No NPDES permit shall be issued to an aquaculture project unless:

(1) The Director determines that the aquaculture project:

(i) Is intended by the project operator to produce a crop which has significant direct or indirect commercial value (or is intended to be operated for research into possible production of such a crop); and

(ii) Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

(2) The applicant has demonstrated, to the satisfaction of the Director, that the use of the pollutant to be discharged to the aquaculture project will result in an increased harvest of organisms under

culture over what would naturally occur in the area;

(3) The applicant has demonstrated, to the satisfaction of the Director, that if the species to be cultivated in the aquaculture project is not indigenous to the immediate geographical area, there will be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

(4) The Director determines that the crop will not have a significant potential for human health hazards resulting from its consumption;

(5) The Director determines that migration of pollutants from the designated project area to water outside of the aquaculture project will not cause or contribute to a violation of water quality standards or a violation of the applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

(b) No permit shall be issued for any aquaculture project in conflict with a plan or an amendment to a plan approved under section 208(b) of the Act.

(c) No permit shall be issued for any aquaculture project located in the territorial sea, the waters of the contiguous zone, or the oceans, except in conformity with guidelines issued under section 403(c) of the Act.

(d) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area. For example, the designated project area shall not include the entire width of a watercourse, since all organisms indigenous to that watercourse might be subjected to discharges of pollutants that would, except for the provisions of section 318 of the Act, violate section 301 of the Act.

(e) Any modifications caused by the construction or creation of a reef, barrier or containment structure shall not unduly alter the tidal regimen of an estuary or interfere with migrations of unconfined aquatic species.

[*Comment:* Any modifications described in this paragraph which result in the discharge of dredged or fill material into navigable waters may be subject to the permit requirements of section 404 of the Act.]

(f) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

Subpart C—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology Under Section 301(k) of the Act—[Reserved]

Subpart D—Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2) (A) and (E), and 307(b) of the Act.

§ 125.30 Purpose and scope.

(a) This Subpart establishes the criteria and standards to be used in determining whether effluent limitations or standards alternative to those required by promulgated EPA effluent limitations guidelines or standards under sections 301, 304, and 307(b) of the Act (hereinafter referred to as "national limits") should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This Subpart applies to all national limits promulgated under sections 301, 304 and 307(b) of the Act, except for those contained in 40 CFR Part 423 (steam electric generating point source category).

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(b), 304(g) and 307(b) of the Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under § 124.51(b)(1). In addition, such a variance may be proposed by the Director in the draft permit (see § 123.22(a)(2)(ii)).

§ 125.31 Criteria.

(a) A request for the establishment of effluent limitations under this Subpart (fundamentally different factors variance) shall be approved only if:

(1) There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

(2) Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limits; and

(3) The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of Part 124.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines shall be approved only if:

(1) The alternative effluent limitation or standard requested is no less stringent than justified by the fundamental difference; and

(2) The alternative effluent limitation or standard will ensure compliance with sections 208(e) and 301(b)(1)(C) of the Act; and

(3) Compliance with the national limits (either by using the technologies upon which the national limits are based or by other control alternatives) would result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be approved only if:

(1) The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

(2) Compliance with the alternative effluent limitation or standard would not result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more

adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

(1) The nature or quality of pollutants contained in the raw waste load of the applicant's process wastewater;

[*Comment:* (1) In determining whether factors concerning the discharger are fundamentally different, EPA will consider, where relevant, the applicable development document for the national limits, associated technical and economic data collected for use in developing each respective national limit, records of legal proceedings, and written and printed documentation including records of communication, etc., relevant to the development of respective national limits which are kept on public file by EPA. (2) Waste stream(s) associated with a discharger's process wastewater which were not considered in the development of the national limits will not ordinarily be treated as fundamentally different under paragraph (a). Instead, national limits should be applied to the other streams, and the unique stream(s) should be subject to limitations based on section 402(a)(1) of the Act. See § 125.2(c)(2).]

(2) The volume of the discharger's process wastewater and effluent discharged;

(3) Non-water quality environmental impact of control and treatment of the discharger's raw waste load;

(4) Energy requirements of the application of control and treatment technology;

(5) Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

(6) Cost of compliance with required control technololgy.

(e) A variance request or portion of such a request under this section shall not be granted on any of the following grounds:

(1) The infeasibility of installing the required waste treatment equipment within the time the Act allows.

[*Comment:* Under this section a variance request may be approved if it is based on factors which relate to the discharger's ability ultimately to achieve national limits but not if it is based on factors which merely affect the discharger's ability to meet the statutory deadlines of sections 301 and 307 of the Act such as labor difficulties, construction schedules, or unavailability of equipment.]

(2) The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;

[*Comment:* Review of the Administrator's action in promulgating national limits is available only through the judicial review procedures set forth in section 509(b) of the Act.]

(3) The discharger's ability to pay for the required waste treatment; or

(4) The impact of a discharge on local receiving water quality.

(f) Nothing in this section shall be construed to impair the right of any State or locality under section 510 of the Act to impose more stringent limitations than those required by Federal law.

§ 125.32 Method of application.

(a) A written request for a variance under this Subpart shall be submitted in duplicate to the Director in accordance with Part 124 Subpart F.

(b) The burden is on the person requesting the variance to explain that:

(1) Factor(s) listed in § 125.31(b) regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The requester should refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication, etc., relevant to the regulations which are kept on public file by the EPA;

(2) The alternative limitations requested are justified by the fundamental difference alleged in paragraph (b)(1) of this section; and

(3) The appropriate requirements of § 125.31 have been met.

Subpart E—Criteria for Granting Economic Variances from Best Available Technology Economically Achievable Under Section 301(c) of the Act—[Reserved]

Subpart F—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act—[Reserved]

Subpart G—Criteria for Modifying the Secondary Treatment Requirement Under Section 301(h) of the Act—[Reserved]

Subpart H—Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Act

§ 125.70 Purpose and scope.

Section 316(a) of the Act provides that:

"With respect to any point source otherwise subject to the provisions of section 301 or section 306 of this Act, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the projection [sic] and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections on such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on that body of water."

This Subpart describes the factors, criteria and standards for the establishment of alternative thermal effluent limitations under section 316(a) of the Act in permits issued under section 402(a) of the Act.

§ 125.71 Definitions.

For the purpose of this Subpart:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under section 316(a) and this Subpart.

(b) "Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish and wildlife in the body of water into which a discharge of heat is made.

(c) The term "balanced, indigenous community" is synonymous with the term "balanced, indigenous population" in the Act and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with section

301(b)(2) of the Act; and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to section 316(a).

§ 125.72 Early screening of applications for section 316(a) variances.

(a) Any initial application for a section 316(a) variance shall include the following early screening information:

(1) A description of the alternative effluent limitation requested;

(2) A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

(3) A general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and

(4) Such data and information as may be available to assist the Director in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a), the discharger shall consult with the Director at the earliest practicable time (but not later than 30 days after the application is filed) to discuss the discharger's early screening information. Within 60 days after the application is filed, the discharger shall submit for the Director's approval a detailed plan of study which the discharger will undertake to support its section 316(a) demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies; representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the Director shall either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the Director subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the demonstration.

(c) Any application for the renewal of a section 316(a) variance shall include only such information described in paragraphs (a) and (b) of this section and § 124.73(c)(1) as the Director requests within 60 days after receipt of the permit application.

(d) The Director shall promptly notify the Secretary of Commerce and the Secretary of the Interior, and any affected State of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a section 316(a) application before the ruling on any other necessary permit terms and conditions, (as provided by § 124.57), it shall so request upon filing its application under paragraph (a) of this section. This request shall be granted or denied in the discretion of the Director.

[*Comment:* At the expiration of the permit, any discharger holding a section 316(a) variance should be prepared to support the continuation of the variance with studies based on the discharger's actual operation experience.]

§ 125.73 Criteria and standards for the determination of alternative effluent limitations under section 316(a).

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the director that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration must show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the Director may consider any information contained or referenced in any applicable thermal water quality criteria and thermal water quality information published by the Administrator under section 304(a) of the Act, or any other information he deems relevant.

(c)(1) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

(i) That no appreciable harm has resulted from the normal component of the discharge (taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made; or

(ii) That despite the occurrence of such previous harm, the desired alternative effluent limitations (or appropriate modifications thereof) will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(2) In determining whether or not prior appreciable harm has occurred, the Director shall consider the length of time in which the applicant has been discharging and the nature of the discharge.

Subpart I—Criteria Applicable to Cooling Water Intake Structures Under Section 316(b) of the Act [Reserved]

Subpart J—Criteria for Extending Compliance Dates Under Section 301(i) of the Act

§ 125.90 Purpose and scope.

Under sections 301(i)(1) and (2) of the Act, extensions of the 1977 statutory deadline for compliance with certain treatment requirements may be granted by the Director through permit issuance or modification. This Subpart establishes criteria for granting these extensions and the method for incorporating these extensions into permits issued under section 402(a) of the Act.

§ 125.91 Definition.

For purposes of this Subpart, "construction" includes any one of the following: preliminary planning to determine the feasibility of treatment works; engineering, architectural, legal fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items

provided that completion of the facility and attainment of operational level by no later than July, 1, 1983, is a reasonable expectation.

§ 125.92 Requests for permit modification and issuance under section 301(i)(1) of the Act.

Any owner or operator of a publicly owned treatment works (POTW) that requires construction to achieve limitations under sections 301(b)(1)(B) or 301(b)(1)(C) of the Act may request modification or issuance of a permit extending the date for compliance with these limitations in accordance with the provisions of § 124.51(c).

§ 125.93 Criteria for permit modification and issuance under section 301(i)(1) of the Act.

No request for a permit modification or issuance under section 301(i)(1) shall be granted unless the Director finds that the POTW requires construction to achieve limitations under sections 301(b)(1)(B) or 301(b)(1)(C) of the Act and did not complete construction for either of the following reasons:

(a) The issuance of a notice to proceed under a construction contract for any segment of Step 3 project work (or if notice to proceed is not required, the execution of the construction contract) occurred before July 1, 1977, but construction could not physically be completed by July 1, 1977, despite all expeditious efforts of the POTW (see initiation of construction as defined in 40 CFR § 35.905 for Step 3); or

(b) Federal financial assistance was not available, or was not available in time for construction required to achieve these limitations, and the POTW did not in any significant way contribute to this unavailability or delay.

§ 125.94 Permit terms and conditions under section 301(i)(1) of the Act.

(a) All permits modified or issued by the Director under section 301(i)(1) of the Act shall contain at a minimum the following permit terms and conditions:

(1) the shortest reasonable schedule of compliance for achievement of limitations under sections 301(b)(1) (B) and (C) but in no event later than July 1, 1983. This schedule shall be based upon the earliest date that Federal financial assistance will be available and construction can be completed and on any additional information submitted by the POTW or otherwise available.

(i) When a facility plan has been approved in accordance with 40 CFR 35, Subpart E, this schedule shall contain dates certain for the completion of actions leading toward the attainment of statutory treatment limitations.

(ii) When the POTW has not completed Step 1 of the construction grants process in accordance with 40 CFR 35, Subpart E, this schedule shall contain a date certain for the submission of a facility plan (completion of Step 1) upon which date the permit should be set to expire. In this case, in order to assure compliance by the POTW by July 1, 1983, the following requirements must be met:

(A) Certification by the State, based on its one or five year project priority list developed pursuant to 40 CFR 35.915(c), that funding will be available in time to ensure compliance by July 1, 1983; and

(B) Reporting once a year (if necessary) by the POTW as to its progress in obtaining Federal funding.

[*Comment:* EPA recognizes that the date for submission of the facility plan may not take into account all the uncertainties of the Step 1 planning process. Because of the uncertainties inherent in the Step 1 planning process, EPA recommends that section 301(i)(1) requests (and permit issuance) for projects that are presently in Step 2 or 3 should be acted on *before* requests from projects in Step 1. When Federal funding in the form of a Step 2 construction grant award is made available, and the Step 1 permit has expired, the permit is to be reissued containing a date certain schedule derived from the facility plan and coordinated with the State Project Priority List.]

(2) A statement ensuring compliance with requirements under sections 201 (b) through (g) of the Act consistent with the terms of the POTWs construction grant.

(3) Abatement practices and interim effluent limitations reflecting optimum operation and maintenance of the existing facilities. These shall include:

(i) Adequate operator staffing and training;

(ii) Adequate laboratory and process controls; and

(iii) Effluent limitations derived from reports of operation and maintenance inspections conducted by EPA or the State, or other guidance.

[*Comment:* Only in exceptional circumstances should in-depth plant evaluations be conducted, e.g., when existing information does not represent the true capabilities of the plant.]

(4) Interim effluent limitations reflecting other non-capital intensive measures for increased pollution control. This shall include any possible minor facility modifications such as piping changes, additional metering and instrumentation or the use of skimming and vacuuming equipment. When an existing POTW is currently violating limitations imposed under section 301(b)(1)(C) of the Act, interim effluent limitations shall be established to minimize adverse water quality impact; these limitations shall not be made less stringent or allow more pollutants to be discharged than are currently being discharged during the term of an extension granted under section 301(i)(1) of the Act.

(b) If a POTW has industrial users, any permit issued or modified by the Director under section 301(i)(1) shall contain any terms and conditions necessary to ensure compliance with 40 CFR 403.

§ 125.95 Requests for permit modification or issuance under section 301(i)(2) of the Act.

Any owner or operator of a point source other than a POTW that will not achieve the requirements of sections 301(b)(1)(A) and 301(b)(1)(C) of the Act because it was scheduled to discharge into a POTW that is presently unable to accept the discharge without construction, may request modification or issuance of a permit extending the date of compliance with these limitations in accordance with the provisions of § 124.51(b).

§ 125.96 Criteria for permit modification or issuance under section 301(i)(2) of the Act.

No request for a permit modification or issuance under section 301(i)(2) of the Act shall be granted unless the Director finds that the discharger has failed to achieve the requirements of sections 301(b)(1)(A) and 301(b)(1)(C) of the Act because it was scheduled to discharge into a POTW that is presently unable to accept the discharge without construction, and:

(a) The discharger has indicated an intent to discharge into the POTW before July 1, 1977, in one of the following ways:

(1) The discharger was issued a permit before July 1, 1977, based upon a discharge into a POTW;

(2) The discharger had a binding contractual obligation before July 1, 1977, (enforceable against the discharger) to discharge into a POTW. Contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this paragraph.

(3) A construction grant application made by the POTW before July 1, 1977, clearly demonstrated that the discharger was to discharge into the POTW; or

(4) Engineering plans, architectural plans or working drawings prepared for

the POTW before July 1, 1977, clearly demonstrated the discharger was to discharge into the POTW. Plans and drawings, such as those accompanying a bona fide application for a Federal construction grant, are sufficient only to the extent that they were truly representative of the intent of the discharger and the POTW;

(b) The Director finds that the discharger has acted in good faith in its efforts to effectuate discharge into the POTW and to minimize or abate pollution prior to discharge into the POTW. This shall include the following findings:

(i) Failure of the discharger to meet the July 1, 1977, deadline was for reasons beyond its control;

(ii) A history of a high degree of commitment to meet the requirements of the Act as manifested by cooperation with the State or EPA in attempting to resolve disputed issues;

(iii) No history of unjustified delay;

(iv) No past serious or intentional violations of the Act; and

(v) All reasonable measures are being taken to expedite compliance.

[*Comment:* The Director may also consider whether the discharger has operated its facilities competently and responsibly and the exent to which the discharger has completed the necessary prerequisites to having its waste treated by the POTW.]

(c) The POTW will be in operation and available to the discharger July 1, 1983;

(d) The POTW will be able to meet secondary treatment and water quality standard effluent limitations by July 1, 1983, after receiving the waste from the discharger;

(e) The discharger and the POTW have entered into an enforceable contract providing that:

(i) The discharger agrees to discharge its waste to the POTW;

(ii) The POTW agrees to accept and treat that waste by a date certain; and

(iii) The discharger agrees to pay all user charges and industrial cost recovery charges required under section 204 of the Act; and

(f) In the case of a discharge into an existing POTW, such POTW has been granted an extension under section 301(i)(1) of the Act.

§ 125.97 Permit terms and conditions under section 301(i)(2) of the Act.

All permits modified or issued by the Director under section 301(i)(2) of the Act shall contain at a minimum the following permit terms and conditions:

(a) The shortest reasonable schedule of compliance leading to discharge into the POTW, not to extend beyond the earliest date practicable for compliance, or beyond the final compliance date of any extension granted to the appropriate POTW under section 301(i)(1) of the Act, but in no event later than July 1, 1983. This schedule shall be based upon the earliest date by which the appropriate POTW can receive the waste from the discharger and the discharger can complete the necessary prerequisites to having its waste treated by that POTW.

(b) Achievement of effluent limitations and standards under sections 301(b)(1)(A) and 301(b)(1)(C) of the Act by the same final date in the schedule established in paragraph (a) of this section in the event that the permittee does not discharge its wastes to the POTW by the date established under paragraph (a) of this section.

(c) Abatement practices and interim effluent limitations reflecting optimum operation and maintenance of the discharger's existing facilities. These shall include:

(1) Effective performance of facility design removals;

(2) Adequate operator staffing and training; and

(3) Adequate laboratory and process control.

(d) Interim effluent limitations reflecting other non-capital intensive measures for increased pollution control.

(e) Requirements to meet applicable toxic effluent standards and prohibitions after they are promulgated under section 307(a) of the Act.

(f) Requirements to ensure compliance with:

(1) Pretreatment requirements imposed by the POTW pursuant to any extension granted to the POTW under section 301(i)(1);

(2) Any State or local pretreatment requirements; and

(3) Pretreatment standards as promulgated under section 307(b) of the Act.

[*Comment:* The legislative history cites the following example: "[I]f an industry is planning on participating in a municipal system which will not be available until January 1983, that industry would still have to install and operate pretreatment facilities within the time specified for compliance at the time the applicable pretreatment standard was promulgated and in no event later than three years from the date of said promulgation. Thus, if the pretreatment regulations are promulgated March 1, 1979, and require compliance within two years, that industry would be required to comply by March 1, 1981." H.R. Rep. No. 95–830, 95th Cong., 1st Sess., 12712 (daily ed. Dec. 6, 1977).]

(g) Any water conservation requirements necessary to carry out the provisions of the Act or imposed by the POTW pursuant to the contract executed between the discharger and the POTW.

[*Comment:* The existence of such a contract is a prerequisite to granting an extension under section 301(i)(2)(B) of the Act and § 125.96(e).]

Subpart K—Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act

§ 125.100 Purpose and scope.

This Subpart describes how best management practices (BMPs) for ancillary industrial activities under section 304(e) of the Act shall be reflected in permits, including best management practices promulgated in effluent limitations under section 304 and established on a case-by-case basis in permits under section 402(a)(1) of the Act. Best management practices authorized by section 304(e) are included in permits as requirements for the purposes of sections 301, 302, 306, 307, or 403 of the Act, as the case may be.

§ 125.101 Definition.

"Manufacture" means to produce as an intermediate or final product, or by-product.

§ 125.102 Applicability of best management practices.

Dischargers who use, manufacture, store, handle or discharge any pollutant listed as toxic under section 307(a)(1) of the Act or any pollutant listed as hazardous under section 311 of the Act are subject to the requirements of this Subpart for all activities which may result in significant amounts of those pollutants reaching waters of the United States. These activities are ancillary manufacturing operations including: materials storage areas; in-plant transfer, process and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas.

§ 125.103 Permit terms and conditions.

(a) Best management practices shall be expressly incorporated into a permit where required by an applicable EPA promulgated effluent limitations guideline under section 304(e);

(b) Best management practices may be expressly incorporated into a permit on a case-by-case basis where determined necessary to carry out the provisions of the Act under section 402(a)(1). In issuing a permit containing BMP

requirements, the Director shall consider the following factors:

(1) Toxicity of the pollutant(s);

(2) Quantity of the pollutant(s) used, produced, or discharged;

(3) History of NPDES permit violations;

(4) History of significant leaks or spills of toxic or hazardous pollutants;

(5) Potential for adverse impact on public health (e.g., proximity to a public water supply) or the environment (e.g., proximity to a sport or commerical fishery); and

(6) Any other factors determined to be relevant to the control of toxic or hazardous pollutants.

(c) Best management practices may be established in permits under paragraph (b) of this section alone or in combination with those required under paragraph (a) of this section.

(d) In addition to the requirements of paragraphs (a) and (b) of this section, dischargers covered under § 125.102 shall develop and implement a best management practices program in accordance with § 125.104 which prevents, or minimizes the potential for, the release of toxic or hazardous pollutants from ancillary activities to waters of the United States.

§ 125.104 Best management practices programs.

(a) BMP programs shall be developed in accordance with good engineering practices and with the provisions of this Subpart.

(b) The BMP program shall:

(1) Be documented in narrative form, and shall include any necessary plot plans, drawings or maps;

(2) Establish specific objectives for the control of toxic and hazardous pollutants.

(i) Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the United States due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc.

(ii) Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;

(3) Establish specific best management practices to meet the objectives identified under paragraph (b)(2) of this section, addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the United States;

(4) The BMP program:

(i) May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the Act and 40 CFR Part 151, and may incorporate any part of such plans into the BMP program by reference;

[*Comment:* EPA has proposed section 311(j)(1)(c) regulations (43 FR 39276) which require facilities subject to NPDES to develop and implement SPCC plans to prevent discharges of reportable quantities of designated hazardous substances. While Subpart K requires only procedural activities and minor construction, the proposed 40 CFR 151 (SPCC regulations) are more stringent and comprehensive with respect to their requirements for spill prevention. In developing BMP programs in accordance with Subpart K, owners or operators should also consider the requirements of proposed 40 CFR 151 which may address many of the same areas of the facility covered by this Subpart.]

(ii) Shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) (40 U.S.C. 6901 *et seq).* Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and

(iii) Shall address the following points for the ancillary activities in § 125.102:

(A) Statement of Policy;

(B) Spill Control Committee;

(C) Material Inventory;

(D) Material Compatibility;

(E) Employee Training;

(F) Reporting and Notification Procedures;

(G) Visual Inspections;

(H) Preventive Maintenance;

(I) Housekeeping; and

(J) Security.

[*Comment:* Additional technical information on BMPs and the elements of a BMP program is contained in a publication entitled "NPDES Best Management Practices Guidance Document." Copies may be obtained by written request to Edward A. Kramer (EN-336), Office of Water Enforcement, Environmental Protection Agency, Washington, D.C. 20460.]

(c)(1) The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Director shall approve or modify the program in accordance with the requirements of this Subpart. The BMP program as approved or modified shall be included in the draft permit (§ 124.31). The BMP program shall be subject to the applicable permit issuance requirements of Part 124, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

(2) Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the Director for approval. If the Director approves the proposed BMP program modification, the permit shall be modified in accordance with § 122.31, *provided* that the Director may waive the requirements for public notice and opportunity for hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance unless the Director specifies a later date in the permit.

[*Comment:* A later date may be specified in the permit, for example, to enable coordinated preparation of the BMP program required under these regulations and the SPCC plan required under 40 CFR 151 or to allow for the completion of construction projects related to the facility's BMP or SPCC program.]

(d) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the Director upon request.

(e) The owner or operator of a facility subject to this Subpart shall amend the BMP program in accordance with the provisions of this Subpart whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the United States.

(f) If the BMP program proves to be ineffective in achieving the general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under paragraph (b) of this section, the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

Subpart L—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act [Reserved]

Subpart M—Ocean Dumping Criteria Under Section 403 of the Act [Reserved]

PART 402—COOLING WATER INTAKE STRUCTURES [DELETED]

8. 40 CFR Part 402 is deleted.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION.

9. 40 CFR Part 403 is amended as follows:

A. The Table of Contents is amended by revising the heading for § 403.11 to read as follows:

* * * * *

§ 403.11 Approval procedures for POTW pretreatment programs and revision of categorical pretreatment standards.

* * * * *

B. Section 403.7 is amended by revising paragraph (e)(3) to read as follows:

§ 403.7 [Amended]

* * * * *

(e) * * * (3) The Regional Administrator may agree, in the Memorandum of Agreement under 40 CFR 123.7, to waive the right to review and object to Submissions for authority to revise discharge limits under this section. Such an agreement shall not restrict the Regional Administrator's right to comment upon or object to permits issued to POTWs except to the extent permitted under 40 CFR 123.7(b)(3)(i)(D).

* * * * *

C. Section 403.8 is amended by revising the first sentence of paragraph (f)(2)(vii) to read as follows:

§ 403.8 [Amended]

* * * * *

(f) * * * (2) * * * (vii) Comply with the public participation requirements of 40 CFR Part 25 in the enforcement of National Pretreatment Standards.

* * * * *

§ 403.9 [Amended]

D. Section 403.9(d) is deleted and §§ 403.9(e) and (f) are redesignated as §§ 403.9(d) and (e), respectively.

§ 403.10 [Amended]

E. Section 403.10(d)(1) is amended by deleting the words "set forth in § 403.10(b)" from the first and second sentences.

F. Section 403.10 is amended by revising paragraph (f)(1) to read as follows:

* * * * *

(f) * * * (1) Legal Authority. The Attorney General's Statement submitted in accordance with paragraph (g)(1)(i) shall certify that the Director has authority under State law to operate and enforce the State pretreatment program to the extent required by this Part and by 40 CFR 123.32. At a minimum, the Director shall have the authority to:

* * * * *

G. Section 403.10 is amended by revising paragraph (g)(1) to read as follows:

* * * * *

(g)(1)(i) A statement from the State Attorney General (or the Attorney for those State agencies which have independent legal counsel) that the laws of the State provide adequate authority to implement the requirements of this Part. The authorities cited by the Attorney General in this statement shall be in the form of lawfully adopted State statutes and regulations which shall be in full force and effect before the time of approval of the State pretreatment program.

(ii) Copies of all State statutes and regulations cited in the above statement.

* * * * *

H. Section 403.10 is amended by revising paragraph (g)(3) to read as follows:

* * * * *

(g) * * *

(3) Any modifications or additions to the Memorandum of Agreement (required by 40 CFR 123.7) which may be necessary for EPA and the State to implement the requirements of this Part.

* * * * *

I. Section 403.10 is amended by revising paragraph (h)(2) to read as follows:

* * * * *

(h) * * *

(2) Commence the program revision process set out in 40 CFR 123.61. For purposes of that section all requests for approval of State pretreatment programs shall be deemed substantial program modifications. A comment period of at least 30 days and the opportunity for a hearing shall be afforded the public on all such proposed program revisions.

* * * * *

J. Section 403.10(i) is amended by substituting the words "this Part" for the words "paragraph (g) of this section" in both places they appear.

K. The heading of § 403.11 is revised to read as follows:

§ 403.11 Approval Procedures for POTW Pretreatment Programs and Revision of Categorical Pretreatment Standards.

L. Section 403.11 is amended by revising the first sentence to read as follows:

"The following procedures shall be followed in approving or denying requests for POTW Pretreatment Program approval:"

* * * * *

M. Section 403.11 is amended by deleting all references to § 403.10(f) and (g).

N. Section 403.11(a) is amended by changing the reference in two places from "§ 403.9(e) and (f)" to "§ 403.9(d) and (e)."

O. Section 403.11(b)(1)(i) is amended by deleting from the first sentence the words "shall be published in the **Federal Register** in the case of a State Submission and"

P. Section 403.11(b)(1)(i)(A) is deleted and subparagraphs (B) and (C) are redesignated to (A) and (B) respectively.

Q. Section 403.11 is amended by revising subparagraph (b)(1)(i)(B), (formerly (b)(1)(i)(C)), to read as follows:

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) Publication of a notice of request for approval of the Submission in the largest daily newspaper within the jurisdiction(s) served by the POTW.

* * * * *

R. Section 403.11 is amended by substituting the words "30 days" wherever the words "45 days" appear.

S. Section 403.11(b)(2)(ii) is amended by deleting the words "a State or."

T. Section 403.11(e) is amended by deleting the words "or Director."

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Thursday
June 7, 1979

Part III

Department of Commerce

Office of the Secretary

Regional Action Planning Commissions Operations; Administration

DEPARTMENT OF COMMERCE

Office of the Secretary

[13 CFR Part 540]

Regional Action Planning Commissions Operations; Administration

AGENCY: The Special Assistant for Regional Development, Office of the Secretary, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The Department of Commerce proposes to amend its existing reuglations on the Regional Action Planning Commissions to include requirements governing Commissions' administrative responsibilities and the administrative requirements they apply to financial assistance recipients. The objectives of the revisions are to include some requirements previously specified in Secretarial Guidelines, to make general improvements in existing regulations, to add administrative procedures based on past experience in implementing Commission programs, and to make the regulations easily understandable. If adopted, the new rules will enable the Commissions to handle their administrative responsibilities in a more efficient, economical manner. The rules will also be consistent with standard Federal fiscal policies and will insure that grantees and contractors fulfill their responsibilities as recipients of public funds. The proposed rules porvide that individual Commissions may adopt internal codes which, when approved by the Secretary, will supplant these regulations.

DATES: Comments must be received on or before August 6, 1979.

ADDRESS: Send comments to: Office of Regional Development, Room 2092, Main Commerce Building, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Lollis, Office of Regional Development, Room 2092, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: (202) 377–5203.

SUPPLEMENTARY INFORMATION: In March, 1978, the Special Assistant for Regional Development of the Department of Commerce and the Federal Cochairmen of the Regional Action Planning Commissions authorized under Title V of the Public Works and Economic Development Act (42 U.S.C. 3181 *et seq.*) initiated discussions regarding the development of minimum administrative policies and procedures applicable to the Regional Commissions. The need for new guidelines or regulations arose for the following reasons:

(1) Basic administrative and program guidelines and rules had not been thoroughly reviewed since 1970 and new requirements affecting Federal programs have been added and others changed;

(2) The commissions are not federal agencies nor are the Federal Cochairmen employees of the Department of Commerce, so that the management procedures of the Department do no apply;

(3) Since the Commissions are neither state nor local governments, they are subject to none of the procedures applicable to these grantees;

(4) To strengthen the State-Federal partnership and provide the necesssary accountability by both partners, clear standards were needed for operation of the commissions;

(5) More comprehensive and precise management procedures were needed to allow for better management by the Commissions and to prevent improprieties.

In order to be enforceable by the Secretary, the rules applicable to the Commissions must be in the form of regulations, developed after public comment; at the same time, any administrative code adopted by the Commissions require both the approval of the Secretary and minimum adherence to the published regulations.

As a result of these discussions, Department of Commerce staff prepared for review a set of draft administrative regulations, which were presented to the Federal Cochairmen in June, 1978. At the request of the Federal Cochairmen, it was agreed in July, 1978, that the Cochairmen also would develop a comprehensive draft document, in consultation with the regional commissions and the Department, incorporating the draft regulations and treating additional areas of internal Commission management. It was further agreed that publications of these regulations would be delayed pending the submission of a draft of the code. On April 9, 1979, the Federal Cochairmen transmitted this draft, entitled the "Uniform Commission Code," to the Secretary, the Commissions and the member Governors for review and comment.

The rules proposed today respond to problems cited in the now completed audit reviews of commission programs and incorporate portions of the Uniform Code which properly may be classified as administrative rules. The Department views this publication as a continuation of the consultation process involving the Department, the Federal Cochairmen, the member Governors, Commission staff, and the public. Also, proposed § 540.201 provides that a commission may adopt its own administrative code which, when approved by the Secretary as meeting the standards of these regulations, will take effect instead of the regulations. The Department anticipates that most Commissions will choose to adopt their own code. We intend to work closely with the Federal Cochairmen and the Governors to insure that any codes include those minimum standards and procedures which will assure sound fiscal management and proper accountability to the public, the Congress and the President. These regulations will be the basic reference for development of the codes in those areas involving the use of Federal funds.

What is the plan for obtaining public comment?

By publication of the proposed regulations, the Department invites interested members of the public to submit their comments. Simultaneously, we are forwarding copies of the proposed rules to the Federal Cochairmen and the Governors who are members of the Commissions, the Chairmen of the House and Senate committees and subcommittees charges with oversight of the commission program, and to the Advisory Commission on Intergovernmental Relations and the National Governors Association. Depending upon the nature and extent of comments received, the Department may initiate a second cycle of public comments.

Are these "significant regulations" as defined in Executive Order 12044?

Executive order 12044 and Department of Commerce Administrative Order 218–7 set forth requirements for improving significant regulations issued by the Department of Commerce. The Special Assistant for Regional Development has determined that these proposed administrative regulations are not "significant," primarily because: they have limited impact on the public; the standards are the minimum for good management and compliance will not be burdensome; the programmatic authorities of the commissions are not affected; and the standards prescribed will not cause major shifts of resources within a commission's budget. Although Executive Order 12044 does not apply to these regulations, the Department feels that is has met the purposes of the Order by its consideration of the need for

regulations and the examination of alternatives, the previous and proposed consultation procedures, and the adherence to standards of plain English during the drafting process.

What will these regulations accomplish?

These regulations reflect the delegation of the Secretary's project approval process and the consequent administrative duties flowing from that delegation. The Regional Development Commissions are joint State/Federal entities authorized to engage in a variety of development planning and financial assistance actitivies. They receive their funding from the Secretary of Commerce, who exercises administrative and program oversight, along with each Commission's Presidentially-appointed Federal Cochairman. Under Executive Order 11386, the Secretary provides Federal policy guidance to the Federal Cochairmen. Under Section 701 of the Public Works and Economic Development Act, 42 U.S.C. 3211, the Secretary is authorized to adopt regulations applicable to the Regional Commissions and the Secretary's functions. The proposed regulations have been drafted under this authority and are applicable to the operations of the Regional Commissions. They do not apply to the operation of each Federal Cochairman's office (or staff), which remains subject to Federal laws and standards.

The application of minimum fiscal and management standards for commissions is an objective shared by the Congress, the Department of Commerce, the Federal Cochairmen and the Governors in improving the accountability for the use of public funds by the commissions. The present administrative standards have proved to the inadequate to meet changing conditions, Federal requirements and authorities since 1970. The Commissions and the Department have found that many problems have arisen due to out-dated or non-existant policies and procedures, especially in the area of grant and contract administration. Accordingly, these proposed regulations are intended to provide minimum standards for Commission's administrative policies and procedures in order to prevent problems and assure that public funds are bing utilized efficiently for the purposes authorized by Congress. These proposed regulations are based on the OMB Circulars A–110 and A–102 relating to grants administration and they impose the same basic requirements on the commissions as the Circulars impose on other federal grantees. Should the Commissions wish they can develop rules for themselves over and above these new requirements.

The proposed regulations are divided into two subparts. Subpart A deals with the transfer of funds to the commissions for their administrative expenses. Subpart B contains minimum administrative requirements applicable to the following Commission activities:

1. Annual Financial Planning and Fiscal Management;
2. Property Management;
3. Records Management;
4. Procurement;
5. Personnel
   a. Duties of the Executive Director
   b. Pay, Benefits and Expenses
   c. Employee Conduct
6. Specific Uses of Funds
7. Commission Financial Assistance
   a. Administrative Standards
   b. Cost Principles
   c. Use of Grants of Contracts
   d. Provisions of Financial Assistance Agreements
   e. Nondiscrimination

Generally, the standards in Subpart B are those which other Federal agencies apply to recipients of financial assistance and with which Federal grantees are familiar.

Accordingly, it is proposed to revise Part 540 of Title 13 CFR to read as follows:

PART 540—ADMINISTRATION

Subpart A—Administrative Expense Grants

Sec.

540.101 Authority and purpose.
540.102 Procedure for obtaining administrative expenses.

Subpart B—General Administrative Provisions Governing Federally Funded Activities and Expenses of the Commissions

540.201 Purpose.
540.202 Financial plan and fiscal management.
540.203 Cost principles applicable to Commissions.
540.204 Records.
540.205 Property management.
540.206 Procurement by Commissions.
540.207 Personnel.
540.208 Prohibition on use of federal funds.
540.209 Administrative requirements for recipients of Commission assistance.
540.210 Nondiscrimination.
540.211 Remedies for noncompliance.

Authority: 42 U.S.C. 3161 et seq., 42 U.S.C. 3204, 42 U.S.C. 3211, E.O. 11386, Department Organization Order 15–5.

Subpart A—Administrative Expense Grants

§ 540.101 Authority and purpose.

(a) The Secretary is authorized by section 505(b) of the Act (42 U.S.C. 3185(b)) to review and approve the administrative expenses of each Regional Commission, and to pay such expenses as the Secretary approves from Federal funds appropriated for such purposes. For the period ending with the last day of the second full fiscal year following the date of establishment of a Commission, the entire administrative expenses of the Commission shall be paid by the Federal Government. Thereafter 50 per centum of such expenses shall be paid by the Federal Government and 50 per centum by the States in the region, except that the administrative expenses of the Federal Cochairman and the staff shall be paid solely by the Federal Government.

(b) The purpose of this subpart is to outline the procedures by which such administrative expenses will be paid by the Federal Government and to set forth provisions governing the expenditure of those funds.

§ 540.102 Procedure for obtaining administrative expenses.

(a) As a condition to receiving administrative expense funds from the Federal Government, each Commission through the Federal Cochairman shall submit for approval a financial plan to the Secretary in such form as the Secretary may prescribe.

(b) Such administrative expense funds as are approved shall be made available on a quarterly basis. Approved funds will be deposited into a special trust account established by the U.S. Treasury for the exclusive use of the Regional Commissions. Expenditures from such trust funds shall be made only upon the proper certification of a duly authorized officer of the Commission.

Subpart B—General Administrative Provisions Governing Federally Funded Activities and Expenses of the Commissions

§ 540.201 Purpose

(a) The purpose of this part is to assure that all Regional Commissions follow standard and acceptable procedures in administering programs authorized by the Act and assure that they are administratively accountable for the Federal funds which they receive.

(b) A Commission may adopt a code governing the policies and procedures of

that Commission. Any code duly adopted by a Commission and approved by the Secretary as meeting all the requirements of §§ 540.202–209 of these regulations may be used in lieu of such sections. All amendments to such codes shall be approved by the Secretary before they may become effective. A violation of any provision of a code duly adopted by a Commission and approved by the Secretary under this section may be deemed by the Secretary a violation of these regulations and the terms of the grant.

(c) This Subpart shall become effective on October 1, 1979.

§ 540.202 Financial plan and fiscal management

(a) *General.* Each fiscal year each Commission shall prepare an annual financial plan detailing the anticipated administrative and program expenses of the Commission for the fiscal year as prescribed by the Secretary including, but not limited to, the items set forth below:

(1) For all program areas (i.e., Supplemental Grants, Technical Assistance, Planning, Demonstration Programs) the financial plan shall specify estimated quarterly and total expenditures by appropriate sub-program areas.

(2) For the administrative expenses of the Commission, the financial plan shall specify estimated quarterly and total expenditures by object class.

On or before August 1 of each year, the Commission shall have prepared and voted approval of a financial plan for the next fiscal year.

(b) After approval by the Commission, such plan shall be transmitted through the Federal Cochairman to the Secretary of Commerce for review and approval.

(c) Federal grant assistance may be used only in the performance of the activities and work program outlined in the Commission's approved financial plan prepared pursuant to this section.

(d) When required by the Secretary of Commerce or the General Accounting Office policies and procedures, the Commission shall select qualified certified public accountants to make an annual audit of the financial accounts of the Commission.

(e) *Federal Fiscal Management.* (1) Each Federal Cochairman, working with the Commission, will prepare: (i) All budget requests for Commission activities in appropriate form for presentation before budget authorities and congressional committees;

(ii) All requested Federal financial plans and other documentation required in order to receive appropriated Federal funds from the Department of Commerce.

(2) Under the delegated authority of the Secretary of Commerce (DOO 15–6), the Federal Cochairman acts as grantor of Federal funds to the Commission and insures adherence to the Act and to all Federal guidelines and regulations applicable to such grants. As the Federal member in the Commission, the Federal Cochairman is a recipient with the State Cochairman and the States, of the Federal funds. He or she, similarly, has trusteeship equal with that of the States' for the Commission's trust fund containing program and administrative monies.

(3) As the Federal member on the Commission, the Federal Cochairman acts to effect transfers of supplemental grant funds to appropriate Federal grant-in-aid agencies for projects approved by the Commission. He or she insures that all applicable requirements of the Public Works and Economic Development Act (42 U.S.C. 3181 *et seq.*) and Commission requirements are adhered to by the recipient Federal grant-in-aid agency.

(f) Cash management (reserved).

§ 540.203 Cost principles applicable to commissions

The Secretary and the Federal Cochairman shall apply the principles and standards of Federal Management Circular 74–4 for the purpose of determining the reasonableness, allowability and allocability of costs incurred by the Commission.

§ 540.204 Records

(a) The Commissions shall keep such records as will fully disclose the amount and disposition by the recipients of all the funds received from the Federal Government and all other grantors, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources. These records shall also include (1) a record of key action on individual projects which relate to both award and post-award monitoring, evaluation and close-out, in sufficient detail to understand the history of the project and its current status, and (2) such other records as will facilitate an effective audit.

(b) Each Commission shall assure retention of financial records, supporting documents, statistical records, and all other records pertinent to its activities for a minimum period of three years, with the following qualifications:

(1) If any litigation, claim or audit is started before the expiration of the three-year period, the Commission shall retain the records until all litigations, claims or audit findings involving the records have been resolved and the records released by the Secretary.

(2) If a record or set of records is covered by the Records Control Schedule for Regional Action Planning Commissions (U.S. Department of Commerce, March, 1978), the Commissions shall follow the requirements of the Records Control Schedule.

(c) Unless the Records Control Schedule provides another standard, a record retention period starts from one of the following two dates, whichever is later:

(1) The last day of the Federal fiscal year during which the activities occurred for which the record is kept, or

(2) If the record concerns a project, the last day of the Federal fiscal year in which the project was completed.

(d) A Federal Cochairman or the Secretary may transfer certain Commission records to the custody of the Federal Government when either official determines that the records possess long-term value and gives written notice to the Commission.

(e) The Secretary of Commerce, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers and records of a Commission for the purpose of making audits, examinations, excerpts and transcripts.

(f) A Commission shall provide for public access to the records of grantees that are pertinent to a grant. However, the Commission may impose limitations on access when it can demonstrate to the Secretary of Commerce or his or her designee that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal Government.

§ 540.205 Property management

(a) Each Commission shall observe the standards in this section relating to the utilization and disposition of property furnished to the Commission by the Federal Government or acquired by the Commission in whole or in part with Federal funds. A Commission may adopt its own standards and procedures governing the management of property acquired by it as long as the provisions of this section are included in the Commission's standards.

(b) The following definitions apply for the purposes of this section:

(1) *Real property.* Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(2) *Personal property.* Property of any kind except real property, i.e. tangible (having physical existence) or intangible (having no physical existence, such as patents, inventions, and copyrights).

(3) *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Commission may use its own definition of non-expendable personal property provided that such definition would at least include all tangible personal property as defined above.

(4) *Expendable personal property.* Expendable personal property refers to all tangible personal property other than nonexpendable property.

(5) *Excess property.* Excess property means Federal property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs or discharge of its responsibilities.

(6) *Acquisition cost of purchased nonexpendable personal property.* Acquisition cost of an item of purchased nonexpendable personal property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installations, transportation, taxes, duty, or protective intransit insurance, may be included in the unit acquisition cost.

(c) *Real property.* No Commission shall use any Federal funds provided by the Federal Cochairman or by other Federal sources to purchase real property. This prohibition does not apply to bona fide Commission grantees, whose acquisition of real property is governed by other regulations in this Part. This prohibition has no relationship to a gift or donation of real property under the authority of 42 U.S.C. 3186(a)(6), which provides the administrative powers of Regional Commissions. If a Commission acquires real property from a recipient of Commission assistance, it shall request and abide by disposition instructions from the Federal Cochairman.

(d) *Nonexpendable personal property furnished by the Federal Government.* Title to Federally owned property furnished to a Commission remains vested in the Federal Government.

(e) *Inventory.* Each Commission shall submit annually to the Federal Cochairman an inventory listing of Federally owned property in its custody. When a Commission no longer needs the property, it shall report the property to the Federal Cochairman for further Federal utilization. If the Federal Cochairman or the Federal agency from which the property was acquired has no further need for the property, it shall be declared excess and reported to the General Services Administration. After completion of Federal review, appropriate disposition instructions will be issued to the Commission.

(f) *Other nonexpendable property.* When nonexpendable tanible property is acquired by a Commission in part or in whole with funds provided by the Federal Cochairman, title shall not be taken by the Federal Government but shall vest in the Commission subject to the following conditions:

(1) For items of nonexpendable personal property having a unit acquisition cost of $1000 or more, the Federal Government reserves the right to transfer title to the Federal Government or to another Commission named by the Federal Government. Title will be transferred only after the Federal Cochairman identifies the property to the Commission in writing and gives thirty days notice to the Commission that the Federal Government intends to transfer title. When the Federal Government exercises the right to take title, the personal property shall be subject to the provisions for federally-owned nonexpendable property discussed in paragraphs (d) and (e) of this section.

(2) The Commission shall use the property for the activities for which it was acquired. When it is no longer needed for the original activity, the Commission may use the property in its other activities sponsored with Federal funds.

(3) Use of any property for non-Commission activities is prohibited unlesss approved by the Federal Cochairman and the Secretary. The Federal Cochairman may require a Commission to impose user charges if appropriate. (Department of Commerce Administrative Order 203–5 provides guidance relating to the imposition of user charges.)

(4) When the Commission can no longer use the property:

(i) For nonexpendable property with a unit acquisition cost of less than $1,000, it may sell the property and put the proceeds into the account which funded the purchase;

(ii) For nonexpendable personal property with a unit acquisition cost of $1,000 or more, the Commission shall request disposition instructions from the Federal Cochairman, who shall determine whether the property can be used by the Federal Government. If directed to do so, the Commission shall sell the property and reimburse the Federal Cochairman an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original purchase. The Commission may deduct and retain $100 from the Federal share or ten percent of the proceeds, whichever is greater, for the Commission's selling and handling expenses, but this amount shall not exceed 10 percent of the proceeds.

(g) *Intangible Property.* (1) Inventions and Patents. When a program produces patentable items, patent rights, processes or inventions in whole or in part with funds provided by the Federal Cochairman, such facts shall be promptly and fully reported to the Federal Cochairman. The Federal Cochairman will then determine whether to protect the invention or discovery and how the rights in the invention or discovery, including rights under any patents issued thereon, shall be allocated and administered, consistent with Federal patent policies.

(2) Copyrights. The Commission shall reserve to the Federal Cochairman a royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use and authorize others to use for Government purposes, any copyrighted materials to which the Commission has such rights.

(h) *Property management standards for personal property.* Each Commission shall have property management standards for personal property which include the following minimum requirements:

(1) Property records shall include—

(i) A description of the property;

(ii) Identifying serial numbers;

(iii) Name of the holder of the title to the property;

(iv) Acquisition date, cost and the name of the vendor;

(v) Percentage of Federal participation in the cost of the activity for which the property was acquired;

(vi) Unit acquisition cost; and

(vii) Ultimate disposition data.

(2) Property owned by the Federal Government shall be marked to indicate Federal ownership.

(3) Except as specified in paragraph (f) of this section, each Commission shall take a physical inventory of property and reconcile the results with the

property records at least once every two years. The Commission shall report results, discrepancies and follow-up to the Federal Cochairman, who will take appropriate action.

(i) *Expendable personal property.* Title to expendable personal property shall vest in the Commission upon acquisition.

(j) Any nonexpendable disposition or inventory adjustment of Commission property shall be noted in the applicable financial records.

(k) *Program Income.* The purpose of this section is to provide standards for Commissions to account for program income resulting from activities financed in whole or in part with Federal funds. Program income means gross income earned by a Commission from activities supported by Federal funds. Such earnings exclude interest earned or advances and may include, but will not be limited to, income from service fees, sales, user charges, and royalties.

(1) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with paragraphs (c) and (f) of this section pertaining to Property Management.

(2) All program income earned during a fiscal year shall be retained by the Commission and, in accordance with the transfer of funds from the Federal Cochairman, shall be:

(i) Added to funds committed to the particular activity from which the program income arose and used to further eligible objectives; or

(ii) Deducted from the total costs of the particular activity for the purpose of determining the next costs on which the Federal share of costs will be based.

(3) Each Commission shall provide for recording the reciept and expenditure of revenues as a part of an activity's transactions when such revenues are specifically earmarked for an activity in accordance with the transfer of funds from the Federal Cochairman.

§ 540.206 Procurement by commissions.

This section prescribes minimum standards for use by each Commission in establishing its own procedures for the procurement of supplies, equipment, and other services in part or in whole with funds provided by the Federal Cochairman. These standards are furnished to insure that such materials and service are obtained in an effective and economical manner.

(a) *Commission responsibility.* The standards contained in this section do not relieve a Commission of the contractural responsibilities arising under its contracts. The Commission is the responsible authority, without recourse to the Department of Commerce, or to the Federal Government, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into by the Commission in support of activities under financial assistance provided by the Federal Cochairman, subject to any rights of legal appeal which a contractor may have. This includes, but is not limited to: disputes; claims; protests of awards; source evaluations or other matters of a contractural nature. Matters concerning criminal violation of law are to be referred by the Federal or State Cochairmen, Commission members or the staff immediately to the local, state, and/or Federal authority as may have proper jurisdiction.

(b) *Procurement regulations.* A Commission may adopt its own procurement regulations which reflect any applicable State and local law, rules or regulations, provided that procurement made in part or wholly with Federal funds must adhere to the minimum standards set forth in this section.

(c) *Code of conduct for procurement.* Each Commission shall adopt a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts. The Commission shall include in this code the standards for employees required by § 540.207 of these regulations.

(d) *Extent of competition.* A Commission shall conduct all procurement transactions (regardless of whether by formal advertising or by negotiation and without regard to dollar value) in a manner that provides maximum open and free competition consistent with these regulations. A Commission shall not award a contract when competition is restricted or eliminated. Examples of restriction of competition or restraint of trade include unreasonable requirements placed on firms in order for them to qualify to do business or situations involving noncompetitive practices among firms. In order to insure objective contractor performance and eliminate unfair competitive advantage, a contractor that develops or drafts for a particular procurement specifications; requirements; a statement of work; or invitations for bids or requests for proposals shall be excluded from competing for and performing work under the ensuing procurement except when the Federal Cochairman gives written approval to a Commission's request to waive this requirement for a particular procurement. A request for a waiver shall include at least the reason for the waiver and the benefits expected from the waiver compared with the required procedures.

(e) *Procurement procedures.* Each Commission shall establish procurement procedures which provide for, at a minimum, the following procedural requirements:

(1) Before making an award, Commission officials shall review proposed procurement actions to avoid purchasing unnecessary or duplicative items. Where appropriate, these officials shall make an analysis of lease and purchase alternatives to determine which procurement approach would result in the most economical, practical procurement.

(2) Solicitations of offers, whether by formal advertising or negotiations, shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to the procured. Such description shall not, in competitive procurement, contain features which unduly restrict competition.

(3) Each Commission shall make positive efforts to utilize small business concerns and minority owned business enterprises as sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing Federal funds.

A Commission must obtain the approval of the Federal Cochairman and the Secretary prior to beginning any steps to procure for itself construction or repair work to realty. At the time of approval, these officials shall provide appropriate guidance to the Commission governing procurement procedures for construction or repair contracts.

(f) *Type of procuring instruments.* The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, purchase order, etc.), shall be appropriate for the particular procurement and for promoting the best interest of the Commission program involved. (41 CFR 1–3.403 may be used for guidance in selecting the appropriate contract type.) The "cost-plus-a-percentage-of-cost-fee" method of contracting shall not be used.

(g) *Selection of procurement method.*

(1) Whenever feasible, formal advertising, with adequate purchase description, sealed bids, and public openings shall be the preferred method of procurement. However, procurements of $10,000 or less need not be so advertised unless otherwise required by

a State law or regulations. Where such advertised bids are obtained, the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the Commission, price and other factors considered. (Factors such as discounts, transportation costs, taxes and life cycle costs may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the Commission. Any or all bids may be rejected when it is in the Commission's interest to do so, and such rejections are in accordance with applicable State law, rules, and regulations.

(2) The Commission may negotiate if it is impracticable and unfeasible to use formal advertising. Generally, the Commission may negotiate procurements if:

(i) The public exigency will not permit the delay incident to advertising;

(ii) The material or service to be procured is available from only one person or firm;

(iii) The aggregate amount involved does not exceed $10,000;

(iv) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution;

(v) The material or services are to be procured and used outside the limits of the United States and its possessions;

(vi) No acceptable bids have been received after formal advertising. (In such cases, notification of intention to negotiate and reasonable opportunity to negotiate must be given to each responsible bidder who submitted a bid in response to the invitation for bids.);

(vii) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture. (Notwithstanding the existence of circumstances justifying negotiation, competition should be obtained to the maximum extent practicable.)

(3) All contemplated sole source procurements where the aggregate expenditure is expected to exceed $10,000 shall be referred to the Federal Cochairman for prior written approval. The file shall include the justification for the sole source procurement and the Federal Cochairmen's written approval.

(h) *Responsible contractors.* A Commission shall award a contract only to a responsible contractor who possesses the demonstrated ability to perform successfully under the terms and conditions of a proposed procurement. The Commission shall give consideration to such matters as contractor integrity, record of past performance, and financial and technical resources or accessibility to necessary resources.

(i) *Commission procurement records.* Each Commission shall maintain records or files sufficient to detail the significant history of a procurement. These records or files shall include, but are not necessarily limited to, information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection, and the basis for the cost or price negotiated including the basis for the decision that the cost was reasonable, that the product could be delivered for the price and within the time schedule proposed, evidence of the administering and monitoring actions during contract administration.

(j) *Contract administration.* Each commission shall maintain a system for contract administration to ensure that contractors conform with the terms, conditions, and specifications of the contract or purchase order including modifications, to identify and endeavor to resolve conditions that might adversely affect the Commission's interest, and to ensure that the Commission makes adequate and timely followups of all purchases.

(k) *Contract provisions.* Each Commission shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all procurement contracts or, where applicable, purchase orders:

(1) Contracts shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contracts violate or breach contract terms, and provide for such sanctions, penalties, and remedial actions as may be appropriate.

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the Commission including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded by a Commission and its contractors as subgrantees having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order 11264, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60–1).

(4) Where applicable, all procurements by a Commission in excess of $2,500 that involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327–330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week.

(5) All contracts (except those of $10,000 or less) awarded by a Commission shall include a provision to the effect that the Commission, the Federal Cochairman, the Secretary of Commerce and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audit, examination, excerpts, and transcriptions.

(6) A Commission shall require its contractors to maintain all required records for three years after the Commission makes final payments.

(7) Contracts of amounts in excess of $100,000 shall contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, (42 USC 1857 et seq.), and the Federal Water Pollution Control Act (13 USC 1252 et seq.), as amended. A Commission shall report violations to the Federal Cochairman, and the Regional Office of the Environmental Protection Agency.

(l) *Technical Evaluations and Cost or Price analysis.* Each commission shall perform and document in the project files a technical evaluation and a cost or price analysis in connection with every negotiated procurement action including

contract modifications. 41 CFR 1–1.305, 306 and 307 provide guidance as to how to perform a technical evaluation. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. The method and degree of analysis, however, is dependent on the facts surrounding the particular procurement. The Commission shall perform cost analysis when the offeror is required to submit the elements of his/her estimated cost for sole source procurements, and when adequate price competition is lacking, e.g., when only a single bid is received and it is inpossible to perform a valid price analysis. Price analysis shall be used in all other instances to determine the reasonableness of the proposed contract price.

(m) *Federal review of proposed contracts.* The Secretary of Commerce or his or her designee may require Department of Commerce approval of proposed contracts and related procurement documents (such as requests for proposal and invitations for bids) whenever a Commission's procurement procedures do not comply with this section and the Federal Cochairman and the Commission are notified in writing as to what corrective action is needed. The Secretary shall send copies of such notifications to the Office of Management and Budget.

(n) *Cooperative intergovernmental agreements.*

(1) To foster greater economy and efficiency in public procurement, each Commission is encouraged to enter into cooperative Federal, Commission or State intergovernmental agreements for procurement and/or use of common goods and services. Before such cooperative purchasing agreements are entered into, a Commission shall determine that joint purchases will be, or are being made, in accordance with the procurement standards in this section.

(2) To benefit from federal purchasing resources, a Commission's procurement of supplies, materials, equipment, furniture and services should be channeled through the central procurement office of the Department of Commerce.

§ 540.207 Personnel.

(a) An Executive Director of a Commission is chief administrative officer of the Commission. Subject to the policies and procedures adopted by the Commission and any applicable laws, regulations and guidelines, an Executive Director is responsible for the efficient administrative operation of the Commission and is responsible to the State and Federal Cochairmen of the Commission. Each commission shall assign such duties to the Executive Director as it deems appropriate, but, at a minimum the Executive Director shall have the authority to perform the following duties:

(1) To supervise and manage the Commission staff in carrying out day-to-day operations and to assure that proper administrative functions are accomplished;

(2) To develop the internal administrative structure of the Commission's staff and to assign functions and duties to employees;

(3) In accordance with Commission policies and after any required approval, to develop and execute for an on behalf of the Commission—

(i) Contracts and purchase orders;

(ii) Grant agreements;

(iii) Leases;

(iv) Personnel actions;

(v) Travel orders;

(vi) Any certifications required for the payment of legitimate expenses;

(4) To insure that Commission procedures and practices reflect applicable ethics requirements, codes of conduct and any laws applicable to Commission officials and employees;

(5) To develop a procurement system consistent with applicable requirements and Commission policies;

(6) To prepare an annual Commission budget for presentation to the Commission and such others as directed by the Commission;

(7) To accept, on behalf of the Commission, funds from the Federal Government and the member States;

(8) To develop a system of budget control to insure that obligations never exceed available unencumbered funds.

(b) Each Commission shall provide for legal assistance to assure adequate preparation and review of documents requiring Commission action and qualified legal advice to the Commission and its staff.

(c) An Executive Director of a Commission, and such other officers and employees as the Commission may determine, shall be bonded in such form and amounts as are determined by the Commission.

(d) *Pay, Benefits, Expenses.* (1) Rate of Compensation—The rate of compensation for positions paid in part or in whole from funds provided to a Commission by the Federal Government shall not exceed the rate paid by the Federal Government for similar positions. Each Commission shall establish for Commission employees experience and education requirements comparable to the Federal requirements (or the requirements of the participating State chosen in paragraph (d)(2)(i) of this section) for similar positions. Each Commission shall keep an up-to-date position description for each of its authorized positions, ensure that it is applicable and made available to the employee occupying that position.

(2) Level of Benefits—(i) No Commission shall establish benefits or adopt benefit policies which exceed the policies or levels of benefits provided by the Federal Government to its employees, unless a Commission contracts with a participating State Government for inclusion in a suitable retirement and employee benefit system as provided in 42 U.S.C. 3186(a)(5). Benefits include, but are not limited to, annual and sick leave and other leave, health insurance, life insurance, and retirement benefits.

(ii) No Commission shall permit any employee to carry forward into any calendar year more than 30 days of accumulated annual leave, computed at the beginning of the first complete pay period in the year.

(iii) Any employee who has been advanced annual or sick leave and who terminates his employment before repaying the advance shall make a payment to the Commission for the amount of advanced annual or sick leave outstanding.

(iv) No Commission shall pay or reimburse any employee for any sick leave accrued during service with the Commission, with the Federal Government, or with any State or local government.

(3) Number and Cost of Employees. Each Commission shall list in the annual financial plan the funding source for all persons employed or to be employed by the Commission for the period covered by the financial plan. Each Commission shall limit both the number of persons employed by it and the amount of funds spent for personnel costs to the number and amount set forth in its financial plan as approved by the Secretary. This limitation does not apply to additional employees not in any way compensated from funds provided to a Commission by the Federal Government.

(4) Specific Salary Prohibitions. No Commission shall pay a salary to or supplement, or make any contribution to, the salary of a State Member of a Commission, or a State Alternate, or any person who acts as a State Alternate at

any time. No persons detailed to serve a Commission under authority of Section 3186 (a)(4) of Title 42, United States Code, relating to Commissions' administrative powers, shall receive any salary or any contribution to or supplementation of salary for his services on the Commission from any source other than one of the following:

(i) The State, local, or intergovernmental department or agency from which the person was detailed; or

(ii) The Commission. No Commission shall use any funds provided by the Federal Cochairman for any purpose in order to circumvent these prohibitions. State Members of a Commission, State Alternates, persons acting as State Alternates at any time and persons on detail to a Commission are referred to Section 3188 (c), Title 42, United States Code, to determine their responsibilities and potential liabilities.

(5) Travel Expenses. Reimbursement for travel costs, including transportation, food and lodging costs, incurred by all Commission personnel in performance of their official duties while away from their regular place of duty, shall not exceed the reimbursement provided by the standard travel regulations of the United States Department of Commerce. Each Commission shall adopt as its own policies for authorizing travel the standard travel requlations of the Department of Commerce, contained in Departmental Administrative Order 204–1, except that for air travel.

(i) For a Commission which has an Executive Director, the Executive Director shall authorize and approve first-class air travel and maintain a record of the reason for authorized air travel for a period of three years. No less than every six months (in September and March) the Executive Director shall report to the Federal Cochairman any first-class air travel by Commission employees.

(ii) For a Commission which has no Executive Director, the Federal Cochairman shall be the official to authorize an approve first-class air travel. The Federal Cochairman shall maintain a record of the reason for all authorized air travel for a period of three years.

(6) Payroll and Attendance. Each Commission shall keep time and attendance records on all persons employed by it to assure proper control over the recording of attendance, overtime, sick and annual leave and other absences from duty and the proper distribution of hours by project. Each payroll period, an authorized Commission supervisor or official shall verify, approve and sign the time and attendance records.

(e) *Conduct.* (1) Standards for Employees—Each Commission shall adopt standards governing the conduct and reponsibilities of its officers and employees. These standards shall incorporate, but not be limited to, all standards made applicable to Commission officers and employees by Federal or State laws, regulations and policies, including the requirements of these regulations. These standards, at a minimum, shall address the following subjects:

(i) Conflicts of interest;

(ii) Outside financial interests;

(iii) Persons engaged in the award and administration of contracts and grants;

(iv) Gifts;

(v) Entertainment;

(vi) Honoraria;

(vii) Reimbursement for expenses;

(viii) Travel and related expenses;

(ix) Use of public funds and public facilities;

(x) Political activities;

(xi) Use and disclosure of official information;

(xii) Non-discrimination;

(xiii) Nepotism;

(xiv) Lobbying.

(2) *Nepotism.* No Commission supervisor or officer shall appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the Commission in which he or she serves or exercises jurisdiction or control, any individual who is a relative of the supervisor or officer. From the effective date of this regulation, any individual appointed, employed, promoted or advanced in violation of this section shall not receive any pay derived in whole or in part from funds provided to a Commission by the Federal Government. Relative means an individual who is related to a supervisor or officer as father, mother, son, daughter, brother, sister, uncle, husband, wife, father-in-law, son-in-law, sister-in-law, brother-in-law, stepbrother, stepsister, half brother, or half sister.

(3) *Personal financial interests.* (i) Except as provided in paragraph (e)(3)(ii) of this section, no State Member, Alternate, officer, employee or agent of a Commission shall participate in any proceeding, application, award, selection, determination, grant, contract, procurement, claim, or any other activity in which, to his knowledge, at least one of the following has a financial interest that might cause a conflict of interest or create the appearance of a conflict of interest:

(A) The person himself or herself;

(B) His or her spouse;

(C) His or her minor child;

(D) His or her business partner;

(E) Any organization (other than a State or political subdivision of the State) which employs any person listed in paragraph (e)(3)(i) (A), (B), (C) or (D) of this section;

(F) Any organization (other than a State or political subdivision of the State) in which the person is serving as officer, director, trustee, partner or employee;

(G) Any person with whom he or she is serving as officer, director, trustee, partner or employee in any organization;

(H) Any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment.

(ii) Exceptions to paragraph (e)(3)(i) of this section may be obtained if the State Member, Alternate, person acting as an Alternate, officer, employee or agent—

(A) First advises the Commission of the nature and circumstances of the activity;

(B) Makes full disclosure of the financial interest in writing; and

(C) Receives *in advance* a written determination made by the full Commission that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Commission expects from the individual involved.

The Commission shall forward a copy of each of the determinations made under this Rule to the Secretary.

(iii) A Commission may declare void and rescind any contract or other agreement in relation to which it finds that paragraph (e)(3)(i) of this section has been violated. If a Commission chooses not to void and rescind a contract or agreement under these circumstances, it shall forward to the Secretary a report which states:

(A) The factual situation surrounding the contract or agreement;

(B) The personal financial interest involved; and

(C) The reasons for not voiding the contract or agreement.

(iv) State Members, State Alternates, persons acting as State Alternates, officers, and employees of a Commission should refer to 42 U.S.C. 3188, which details prohibitions and penalties for certain personal financial interests.

(v) Paragraph (e)(3) of this section, does not apply to—

(A) The Federal Cochairman; or

(B) Any Federal officer or employee detailed to a Commission pursuant to 42 U.S.C. (a)(3).

These persons remain subject to Sections 202 through 209 of Title 18, United States Code, which proscribe bribery, graft and certain conflicts of interest by Federal officers and employees. A Commission may void and rescind any contract or other agreement in relation to which it finds that any provision of 18 U.S.C. 202–209 has been violated.

(4) *Statement of employment and financial interests.* (i) Each Commission shall identify in its code, regulations or by-laws those officer and employee positions which are subject to the requirement of filing a statement of employment and financial interests.

(ii) At a minimum, each Commission shall require statements of employment and financial interests from the following employees:

(A) The Executive Director; and

(B) Employees in positions whose basic duties and responsibilities require the person to exercise judgment in making a Commission decision or in taking Commission action on

(*1*) Contracting or procurement; or

(*2*) Administering or monitoring grants or contracts.

(iii) A Commission may require other employees to submit a statement if it determines they are in positions having duties and responsibilities which require them to report their employment and financial interests in order to avoid involvement in a possible conflicts of interest situation and to protect the integrity of the Commission.

(iv) At a minimum, the required statement of employment and financial interest shall include the following:

(A) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations and education or other institutions—

(*1*) With which the employee is connected as an employee, officer, owner, director, trustee, partner, adviser, or consultant; or

(*2*) In which he or she has any continuing financial interests, through a pension or retirement plan, shared income, or otherwise, as a result of any current or prior employment or business or professionals association; or

(*3*) In which he or she has any financial interest through the ownership of stocks, bonds, or other securities;

(B) A list of the names of creditors, other than those to whom the employee may be indebted by reason of a mortgage on a property which he or she occupies as a personal residence or to whom he or she may be indebted for current and ordinary household and living expenses; and

(C) A list of interests in real property or rights in lands, including mortgages and trusts, other than property which he or she occupies as a personal residents.

(v) An employee required to submit a statement of employment and financial interests under these regulations shall submit that statement to the Federal Cochairman no later than 90 days after the effective date of these regulations if employed on or before that effective date, or 30 days after his entrance on duty.

(vi) Each employee shall report to the Federal Cochairman changes in, or additions to the information in an employee's statement of employment and financial interests on Sept. 30 each year. If there are no changes or additions, a report indicating that fact is required. Notwithstanding the filing of the annual supplementary statement, each employee shall at all times avoid acquiring a financial interest that could result, or taking any action that would result, in a violation of the financial interest and conflicts-of interest provisions of these regulations and the standards adopted by the Commission.

(vii) The interest of a spouse, a minor child, or a blood relation who is a full-time resident of the employee's immediate household is considered to be an interest of the employee.

(viii) If any information required to be included on a statement or a supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information on his behalf.

(ix) A Commission shall not require an employee to submit in a statement or supplementary statement any information about the employee's connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic or political organization, or a similar organization not conducted as a business enterprise. For this purpose, educational and other institutions doing research or related work involving grants of money from or contracts with the Commission are considered business enterprises and are required to be included in an employee's statement of employment and financial interests.

(x) The Federal Cochairman shall hold each statement of employment and financial interests, and each supplemental statement, in confidence. The Federal Cochairman, the State Cochairman, and the Secretary are authorized to review and retain the filed statements. They shall not allow access to, or information to be disclosed from, a statement for any reason other than to carry out the purpose of this section. They shall not disclose information from a statement except as the Federal Cochairman determines for good cause shown.

(xi) The Federal Cochairman and the State Cochairman shall review statements filed under this Section to ascertain whether or not there exists any conflict or apparent conflict between the personal interest of any employee and the interest of the Commission. If any information or any statement discloses a conflict or apparent conflict, the Federal Cochairman shall advise the employee of the apparent conflict and give him an opportunity to explain it.

(xii) The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by any law, or the regulations of any other Federal agency.

(xiii) If necessary, the Federal Cochairman shall take immediate remedial action to resolve any apparent conflict of interest, including changing the employee's assigned duties, disqualifying the employee for a particular assignment, or requesting the employee to divest himself of his conflicting interest. The Federal Cochairman shall refer for immediate processing cases involving suspension in accordance with § 540.207(e)(7).

(5) *Gifts, entertainment.* (i) A Commission's standards for employees on gifts and entertainment, at a minimum, shall contain the following provisions:

(A) Except as provided in paragraph(e)(5)(i)(B) of this section, no Commission employee or officer shall accept or solicit, directly or indirectly, any gift, gratuity, entertainment, loan or any other thing of monetary value, from a person who—

(*1*) Has or seeks contracts or grant relations or other business or financial relations with the Commission; or

(*2*) Has interests that may be substantially affected by the performance or nonperformance of the employee's or officer's official duty.

(B) Nothing in paragraph (e)(5)(i)(A) of this section shall prohibit—

(*1*) The solicitation or acceptance of any gift, gratuity, favor, loan, entertainment or any other thing of value which arises out of obvious family or personal relationships, such as those between the parents, children or spouse of the employee and the employee, so

long as it is clear from the circumstances that it is the family or personal relationship rather than the business of the person concerned that is the motivating factor;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) The acceptance of loans from banks or other financial insitutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value.

(ii) It is the intent of these requirements that an employee avoid any action, whether or not specifically prohibited, which might result in or create the appearance of using public office for private gain, giving preferential treatment to any person, impeding Commission efficiency or economy, losing complete independence or impartiality, making a Commission decision outside official channels, or affecting adversely the confidence of the public in the integrity of the Commission.

(6) *Other provisions.* (i) An employee shall not engage in outside employment or other activity not compatible with the full and proper discharge of the duties and responsibilities of his Commission employment.

(ii) For the purpose of furthering a private interest, an employee shall not, directly or indirectly use, or allow the use of official information obtained through or in connection with his Commission employment which has not been made available to the general public.

(iii) An employee shall not directly or indirectly use, or allow the use of, Commission property of any kind including property leased to the Commission, for other than officially approved activities. An employee has a positive duty to protect and conserve Commission property, including equipment, supplies, and other property entrusted or issued to him.

(7) *Reports, sanctions, appeals.* (i) Whenever it is reported that an employee has committed any act prohibited under any section of this Subpart or has any unresolved conflict of interest which may warrant the imposition of any of the sanctions provided in this Section, the reported violation or conflict shall be processed in substantial compliance with the procedure established in paragraphs (e)(7)(ii) through (iv) of this section. This procedure shall be in addition to any other procedure or sanction required by law.

(ii) Any report under paragraph (e)(7)(i) of this section shall be investigated by Commission staff or may be referred by the Federal Cochairman to the Department of Commerce for investigation. Any investigation shall have as its objective the development of all relevant and material facts and circumstances for the information of the Federal Cochairman and the State Cochairman. The results of the investigation shall be reported to the Federal Cochairman, the State Cochairman, and the Secretary. The two Cochairmen shall study all presented evidence and recommendations and allow the employee involved to present any evidence or statements. After consideration of all material, the two Cochairmen shall determine whether the employee has engaged in a prohibited activity or has an unresolved conflict of interest.

(iii) Any person subject to the Conduct Standards in this Section, who is determined under the procedure in paragraph (e)(7)(ii) of this section to have committed any act prohibited under any Section of this Chapter or to have unresolved conflict of interest which, it is deemed, impairs the Commission's integrity or public confidence in the Commission, shall be dismissed from employment with the Commission or shall undergo suspension (without pay), reprimand, loss of promotion or other sanction as the Federal Cochairman and the State Cochairman jointly deem suitable to impose or require under the circumstances. Such decision may be appealed as provided in the next paragraph.

(iv) An employee subjected to a sanction may appeal a decision of the Cochairmen to the full Commission for a final decision. During the pendency of the appeal, the decision of the Cochairmen shall not be implemented.

(8) *Notice to employees.* The contents of all conduct standards given in or required by this Subpart shall be brought to the attention of the employees of each Commission. Each employee shall certify in writing to the Executive Director that he has read and is familiar with the standards contained in this Subpart and the standards adopted by the Commission pursuant to this Subpart.

§ 540.208 Prohibition on use of Federal funds.

(a) No Commission shall use any funds received from the Federal Government to make, supplement or guarantee a loan.

(b) No part of the Federal grant funds shall be used by any recipient, either directly or indirectly, to assist, solicit, or encourage the relocating of any business establishment from one area to another or to assist, solicit, or encourage the transfer of contract or subcontract work which would result in a transfer of jobs causing unemployment in the area where work was previously performed, or to pay any part of the compensation or expense of employees who may at any time engage in such activities.

(c) No Commission shall use any funds received from the Federal Government for entertainment or gifts.

§ 540.209 Administrative requirements for recipients of Commission assistance.

(a) Each Commission shall adopt and apply the following standards for its recipients of financial assistance:

(1) For Grants to State and Local Governments, the following attachments in Office of Management and Budget (OMB) Circular A-102 (revised as of August 24, 1977)—

(i) A—Cash Depositories;

(ii) B—Bonding and Insurance;

(iii) C—Retention and Custodial Requirements for Records;

(iv) E—Program Income;

(v) F—Matching Share;

(vi) G—Standards for Grantee Financial Management Systems;

(vii) H—Financial Reporting Requirements;

(viii) I—Monitoring and Reporting Program In Performance;

(ix) K—Budget Revision Procedures;

(x) L—Grant Close-out Procedures;

(xi) N—Property Management Standards; and

(xii) O—Procurement Standards.

(2) For grants to and agreements with institutions of higher education, hospitals, and other nonprofit organizations, the following attachments in OMB Circular A-110—

(i) A—Cash Depositories;

(ii) B—Bonding and Insurance;

(iii) C—Retention and Custodial Requirements for Records;

(iv) D—Program Income;

(v)E—Cost Sharing and Matching;

(vi) F—Standards for Financial Management Systems;

(vii) G—Financial Reporting Requirements;

(viii) H—Monitoring and Reporting Program Performance;

(ix) J—Revision of Financial Plans;

(x) K—Closeout Procedures;

(xi) L—Suspension and Termination Procedures;

(xii) N—Property Management Standards; and

(xiii)O—Procurement Standards.

(b) The Federal Cochairman may grant exceptions from the requirements of the attachments listed in paragraphs (a) (1) and (a) (2) of this section when an exception is not prohibited under existing laws and in the best interests of the Commission or necessary to prevent undue hardships or inequity on a grantee or contractor. The Federal Cochairman shall inform the Office of Management and Budget (OMB) in writing with a copy to the Secretary, before granting a request by a Commission for an exception for a Commission financial assistance recipient or class of recipients. (It is the stated policy of the Office of Management and Budget to permit exceptions from Circular requirements only in unusual cases and the Federal Cochairmen are expected to reflect this in their decision.)

(c) If a Commission adopts a form which is a substitute for or is a deviation from a form specified in the attachments listed in paragraph (a) of this section, the Federal Cochairman shall inform OMB in writing with a copy to the Secretary, before the form is put into effect or use.

(d) *Cost principles and standards.* (1) *State and local governments.* When a Commission enters into a grant or contract with a State or local government, the Commission shall apply the principles and standards of Federal Management Circular (FMC) 74–4 for determining reasonableness, allowability and allocability of costs. Under this requirement, references in FMC 74–4 to the term Federal Government or Federal grantor agency shall be read as references to the Regional Commission. Except as authorized in Section C of Attachment B of the Circular, no Commission shall grant exceptions to the principles and standards of FMC 74–4 for any grantee or contractor.

(2) *Educational institutions.* When a Commission enters into a grant or contract with an educational institution, it shall apply the provisions of OMB Circular A–21 (formerly FMC 73–8) for determining the reasonableness, allowability and allocability of costs. Under this requirement, references in A–21 to the Federal Government or to the Federal grantor agency shall be read as references to the Regional Commission.

(3) When a Commission enter into any contract with an individual or a commercial organization, it shall apply the provisions of Subpart 1–15.2 of the Federal Procurement Regulations (41 CFR Subpart 1–15.2) for determining the reasonableness, allowability, and allocability of costs. Under this requirement, references in Subpart 1–15.2 to the term Government, Federal Government or Federal agency shall be read as references to the Regional Commission.

(4) When a Commission enters into an agreement with a nonprofit organization not covered under paragraphs (g)(1) or (2) of this section, it shall apply the provisions of Department of Commerce Cost Principles for Non-Profit Organizations or an equivalent set of Federal cost principles (such as 41 CFR 1–15.2) for determining the reasonableness, allowability and allocability of costs. Under this requirement, references in this document to the term Department, Government, Federal Government or Federal agency shall be read as references to the Regional Commission.

(5) Each Commission shall incorporate the appropriate requirements of this Section into the terms of its grants, contracts and agreements.

(e) In any specific situation involving the transfer of funds to a recipient, a Commission must decide whether to use a grant instrument or a contract.

(1) If the principal purpose of the instrument is the acquisition, by purchase, lease or barter, of property or services for the direct benefit or use of the Commission, the Commission shall use a contract and may not use a grant.

(2) If the principal purpose of the instrument is financial assistance to the recipient in order to accomplish a public purpose of support or stimulation authorized by Title V of the Public Works and Economic Development Act, the Commission should use a grant and not a contract. However, the Executive Director may determine in a specific instance that the use of a contract is appropriate.

(f) Financial assistance activities of a Commission shall meet the following requirements:

(1) A grant or contrat may be entered into by a Commission only for a purpose or purposes authorized by Title V of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3181 *et seq.*

(2) No grant or contract shall be awarded unless there is an approved application from the proposed recipient which discloses how the funds will be used. Each grant or contract shall contain a description of the work to be accomplished under the grant or contract (the "scope of work"). The scope of work shall identify the specific activities which are supported by the financial assistance and the final work products, if any. Each grant or contract shall identify the goals and objectives of the assistance and shall be supported by approved plans, budgets and other information submitted to the Commission by the applicant/recipient which indicate how the funds will meet these objectives and enable the Commission to perform technical evaluations and cost/price analyses.

(3) No grant or contract may be entered into by a Commission for the purpose of funding an individual's salaried position in a unit of government or for paying the salary of any individual. However, all or any part of the compensation (and allowable benefits) of an individual may be a cost charged to grant or contract funds as an expense of carrying out specific duties detailed in the scope of work for the grant or contract. The amount of cost charged will depend upon the services rendered and the extent of benefits received pursuant to grant or contract objectives in accordance with applicable cost principles. Under no circumstances shall grant or contract funds be used to pay any portion of the compensation of a Governor or an Alternate or any person who acts as an Alternate.

(4) A grant or contract with a unit of State or local government shall not provide for payments to cover expenses for general activities which the unit normally incurs to carry out its general governmental responsibilities. Such assistance would be an unauthorized subsidy. A grant or contract shall be for specific, defined tasks or projects.

(5) The Commission shall assess the results of each completed project in relation to its established objectives, measure the overall results of program accomplishments in terms of contributions to each Commission's basic goals and objectives and assure that the evaluation activities are fully documented in the project files. Monitoring and final evaluation and approval of performance under a grant or contract shall not be delegated or assigned to a person who is not an official or employee of the Commission.

(g) *Audit resolutions and project closeout.* (reserved)

(h) Each Commission shall adopt the following:

(1) Procedures for keeping apprised of the status of each project assisted;

(2) Procedures requiring that contract or grant changes be accomplished by formal amendment of the agreement.

that there be adequate consideration for the change if it involves increased funding, and that project files are kept up to date;

(3) Procedures to ensure that payments to recipients do not exceed identified requirements;

(4) Policies for differentiating administrative expenses from programmatic expenditures; and

(5) Requirements for the establishment and maintenance of an official file on each project.

(i) The Secretary shall assist each Commission, when appropriate, to adopt any regulations necessary to implement the provisions of this Section.

§ 540.210 Nondiscrimination

The provisions of Title IV of the Civil Rights Act of 1964 shall apply to the Commission as an agency empowered to extend Federal financial assistance and as a recipient of such assistance. The Commission shall adopt as its own the Regulations of the Department of Commerce implementing Title VI (15 CFR, Subtitle A, Part 8). The Commission and every program or activity receiving Federal assistance directly or indirectly from or through the Commission, shall be subject to an comply with those Regulations. Since a primary objective of such Federal financial assistance is to provide employment, the employment practices provisions of those Regulations shall be applicable to the Commission and to its Federally assisted programs and activities. The Commission may issue rules, regulations, orders and instructions to further implement Title VI and the Regulations, and may obtain assistance from the Department of Commerce, with its concurrence, to aid the Commission and the Federal Cochairman in carrying out its responsibilities under Title VI and the Regulations.

§ 540.211 Remedies for noncompliance

In appropriate circumstances, and after due notice and adequate opportunity for hearing, the Secretary may suspend the financial assistance provided under Title V of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3181 *et seq.*, upon the formal finding that the Commission is in violation of the terms of the grant offer or the provisions of these Regulations.

Robert M. Rauner,

Deputy, Office of Regional Development; Acting Special Assistant for Regional Development.

June 1, 1979.

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June 7, 1979

Part IV

Department of Transportation

Materials Transportation Bureau

Display of Hazardous Materials Identification Numbers; Improved Emergency Response Capability; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Part 172]

[Docket No. HM-126A: Notice No. 79-9]

Display of Hazardous Materials Identification Numbers; Improved Emergency Response Capability

AGENCY: Materials Transportation Bureau, Research and Special Programs. Administration, Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Materials Transportation Bureau (MTB) proposes to adopt a numerical identification system for hazardous materials transported in commerce. These identification numbers would be required to be displayed on shipping papers and packages in association with the required hazardous material descriptions. They would be required to be displayed on orange panels affixed to portble tanks, cargo tanks, and tank cars containing hazardous meterials. The purpose of the proposed regulations is to improve the capability of emergency response personnel (fire, police, et al) to quickly identify hazardous materials and to assure the accurate transmission of information to and from the scenes of accidents involving hazardous materials.

DATES: Comments must be received on or before August 7, 1979.

ADDRESS COMMENTS TO: Dockets Branch, Materials Transportation Bureau, Washington, D.C. 20590 (telephone: 202-472-2726). It is requested that five copies be submitted.

FOR FURTHER INFORMATION CONTACT: L. Metcalfe, Standards Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590, 202-426-0656.

SUPPLEMENTARY INFORMATION: This Notice proposes the adoption of an identification numbering system for hazardous materials based primarily on the system adopted for worldwide use by the United Nations Committee of Experts on the Transport of Dangerous Goods. Use of the identification numbering system will provide for improved identification of hazardous materials and the communication of information concerning the handling of such materials when they are involved in transportation accidents. Display of identification numbers would be required in connection with descriptions on shipping papers, on packages of 110 gallons capacity or less, and would be required on orange panels affixed to portable tanks, cargo tanks and tank cars. The MTB believes the use of identification numbers will provide an improved capability to quickly obtain and transmit accurate information about hazardous materials involved in accidents in order to obtain information necessary to deal with such accidents. Another element the MTB believes to be important in providing an improved emergency response capability is a manual it has under development. It will associate identification numbers with brief, concise instructions that will assist emergency personnel during the first minutes of a hazardous materials accident.

Many expressions of interest concerning the need to improve hazardous materials emergency response capabilities have been received from members of Congress, the National Transportation Safety Board, the Secretary of Transportation's Hazardous Materials Task Force, state officials, and most important, fire, police and other emergency service organizations. The MTB believes that the improvements proposed in this Notice will, if adopted, provide the basis for an improved emergency response capability that is not presently available through direct use of technical names; e.g., hexadecyltrichlorosilane (UN 1781), to identify hazardous materials and accurately and quickly communicate information about them.

The primary drafters of this Notice are Alan I. Roberts and Lee E. Metcalfe of the Materials Transportation Bureau.

Background

On June 25, 1975, the Hazardous Materials Regulations Board (HMRB) published in the **Federal Register** (40 FR 26688, Docket HM-126) a request for public comment on hazard information systems. The request listed nine factors to be considered in the evaluation of a hazard information system:

1. Capability of the general public to recognize the existence of the immediate dangers presented by a material;

2. Presentation of information in a manner so that the general public will be able to accurately transmit basic information to emergency response personnel;

3. Compatibility, intermodally and internationally;

4. Capability of application to both bulk and non-bulk shipments;

5. Capability of functioning without use of a manual or other subsidiary documents;

6. Capability to meet the needs of emergency response personnel, carriers, shippers, and the general public;

7. Capability of integration with documentation, packaging, and vehicle identification requirements to help insure accuracy;

8. Capability of implementation without undue economic burden on shippers and carriers; and

9. Capability of indicating degree of hazard.

The request for public comments went on to describe nine different systems that either had been proposed to the Department or were known to be supported by one or more segments of the affected industry or emergency response community. An exception was the DOT hazardous materials information system which was previously subject of a rulemaking proposal under Docket HM-103. The MTB has considered all of these systems and the comments that were received in response to the request, and is now of the view that none are acceptable for adoption. The following is a summary of some of the reasons for this conclusion:

1. At least two of the systems would employ a preassigned before shipment numbering technique to provide specific action information or an indication of the level of hazard (Hazchem, NFPA 704). Although preassignment of numbers presumably would be made by MTB, commenters have not recommended any criteria except for flammability. Use of preassigned numbers would impose substantial delays on the introduction of new materials into commerce and the extensive effort and resources necessary for implementation would make such a system unworkable.

2. Several of the systems would employ numbers or words based primarily on the hazards or properties of a material (HI, RID/ADR, USCG, IATA, Union Carbide, Air Products, Pennwalt). The MTB believes that reliance on the identification of hazards alone is no longer a feasible approach, that specific identification of many materials is essential to the accomplishment of an improved emergency response program. Communication of hazards is important in the initial phases of an accident, and appropriate first contact handling information can be based on hazards; however, many accident situations dictate the need for more detailed information on how to deal with specifically identified materials. This is particularly so in accidents involving

combinations of hazardous materials as is frequently the case in major train derailments.

3. One system would call for shippers to furnish the carrier an emergency response form that would move with each rail car (Canadian Transport Commission). While the basic idea has merit, the MTB considers that (1) such a system would result in the production of emergency response information widely varying in content based on subjective judgments of different shippers, except where industry associations might prepare response information for common materials; (2) the enforceability of such a requirement without detailed Government guidelines would be questionable; and (3) while such a program may be workable for bulk shipments and full loads, the huge amount of paperwork involved would make its implementation impracticable for less-than-carload shipments.

4. One system would call for display of the order of severity in three risk categories—health, flammability, and reactivity (NFPA 704). The MTB and its predecessor have examined the utility of such a system on several occasions. However, no criteria have been suggested for the health and reactivity presentation; therefore, qualitative evaluations must be made in assigning levels of hazard (hence, the preassignment factor discussed in 1 above). In addition, this proposed system places too many hazard factors into three fields, thereby precluding appropriate assessment. Examples are the assignment of health hazard level three to chlorine, liquid oxygen, sodium hydroxide (lye), hydrogen sulfide, and tetraethyl-lead, and the assignment of reactivity level one to calcium oxide (quicklime), antimony pentachloride and chromic acid. The kind of hazard and the extent of the hazard posed by each of these materials is very different from that posed by the others that share the same assigned number. The appropriate action required to handle accidents invoving these materials also is quite different in each case. Consequently such a system is not appropriate for use in a transportation emergency response situation.

The MTB believes that determination of the degree of hazard beyond an examination of the properties of a material requires an assessment of the environment and circumstances at the scene of an accident. In most instances, a preliminary determination of risk can be made based on the information obtained at the scene of an accident. If the initial assessment reveals that a potentially serious situation exists; e.g., a large spill from a tank vehicle placarded POISON and bearing an identification number, then, beyond that basic initial response information provided in the proposed manual, a call should be made to the central response information center to obtain expert advice in fully assessing the level of risk based on the accident environment; i.e., topography, wind direction, proximity to habitations, configuration of the accident, etc., and the properties and quantity of the spilled material in relation thereto. It is not conceivable that all the factors that must be considered in determining risk can be transmitted directly from placards on transport vehicles. Therefore, the identification numbering system has been selected as the best means to assist in quicker and more accurate determinations of risk.

The MTB extends its appreciation to the many individuals, companies, and organizations for their considerable efforts in preparing and submitting comments in reply to the Request for Public Comment. A number of comments were accepted and previously adopted under Docket HM–112, and others not directly related to the proposals in this Notice will be considered in a future rulemaking action.

Of all the comments received in response to the Request, the MTB finds those presented by the Association of American Railroads (AAR) particularly supportive of the concepts on which the proposals in this Notice are based. For this reason, we restate a large portion of the AAR comments:

The Basic Requirements of a Hazard Information System

The communication of hazard information is a very difficult task. It must be capable of use by many different groups, each with a different need for information, and it must be usable in an emergency environment without requiring the use of potentially unavailable supplementary materials. The information which it transmits must be easily recognized, quickly understood and accurately communicated.

Who Needs a Hazard Information System?

The most general answer to this question is that anyone who may potentially come in contact with a transportation accident involving hazardous materials needs an information system in order to be able to make intelligent decisions about the safety of his own life and property and about the lives and property of others.

The general public is the broadest and most inclusive subcategory of people with a need. This group includes both those who are at the scene of an incident and know it and those who are in proximity and are not aware of it. As a rule of thumb, it is probable that no system of hazard information will protect those who are not able to immediately view the sight of the incident except as it alerts those who are in proximity and then pass along the message.

Carrier and shipper personnel are the next group of people with a need for a hazard information system. They may be considered to have certain minimal training in either necessary response countermeasures or in the ability to communicate the fact that an incident involving hazardous materials has taken place.

Emergency response personnel, generally, are taken to be the police and fire departments serving the area in which the hazardous incident takes place. Despite the wide variation in training and competence of such personnel, they are assumed, at a minimum, to be familiar with routine fire fighting and evacuation procedures and, at a more sophisticated level, may be able to apply advanced levels of countermeasure technology.

Expert emergency response teams consist of those with special training in dealing with hazardous commodities. They may be in the employ of shippers and manufacturers, carriers, and governmental agencies. They consist of that group with the highest possible degree of knowledge about the specific commodities involved in particular incidents.

What Is Required of a Hazard Information System?

Each of the four groups outlined above has different needs for a system of hazard information.

The general public should be made aware immediately that a hazard exists and should be able to communicate the very basic facts of that hazard to experts with a higher level of knowledge. These basic facts include the location of the incident, the type of vehicle involved, the occurrence of leakeage, fire or explosion and, if vehicle markings are seen, transmission of the fact of such markings or of the wording on them.

Carrier and shipper personnel should be able to communicate all of the information possessed by the general public and, in addition, they should be able to identify the nature of the hazard involved. By having access to the

shipping papers, the carrier and shipper personnel will be able to pass along detailed information concerning the commodities involved to their superiors and to the first emergency units to arrive at the scene. In some instances, carrier and shipper personnel information such as that provided by CHEMTREC.

[Emergency] response personnel require immediate information on the nature of the hazards of the materials involved and any special handling requirements. They should be able to use the information obtained from lower levels of response sophistication to access more detailed data to assist them in handling the specific product involved under the circumstances prevailing at the time of the accident.

Expert emergency response teams need to be able to use the information obtained at the scene and from lower level response groups to provide the most detailed and sophisticated direction for the handling of the incident. They should also be able to assist in proper cleanup and disposal activities following the immediate minimumization of threats to life and property.

Summary

Having analyzed the abilities and needs of those who will have contact with any hazard information system, its essentials are easily stated:

- It must be immediately recognizable as a system describing the existence of a hazard.
- It must be readily understandable by anyone who comes in contact with it.
- The information gained by anyone who comes in contact with it must be readily communicable to all others with a need to know.
- For those with a greater degree of ability, it must be indicative of a reponse pattern applicable to the particular incident.
- It must be uniform among all transportation modes.
- It must be capable of accommodating new hazardous commodities and, for higher levels of sophistication, it would be desirable that it be capable to easy computer implementation.

The Components of the Hazard Information System Developed by the AAR

In this section of the AAR's comments, the primary component parts of our hazard information system will be discussed and, wherever possible, related to the needs of various parties as recognized above.

Shipping Papers

The railroad industry believes that primary reliance must be placed on the shipping papers for information on the name of the product involved and its hazards. Historically, the shipping paper has been seen as the only single source of complete identifying information which travels with a shipment of hazardous materials. Because of all the important exemptions which appear in the regulations for the labeling and placarding of hazardous materials, the complete identification of particular shipments can be accomplished only through the shipping papers which accompany it. The recognition of deficiencies in the current use and content of shipping papers has led to the development of recommendations by the AAR for their correction.

Currently, shipping papers identify only the required classification, that is, the "primary hazard" of the material. This is no longer sufficient; the regulations must be amended to require the inclusion of all major hazards ["major hazards" are those recognized to the tertiary level] for dangerous commodities. This will mean that a shipment of, for instance, sulphuric acid must now be listed on [the] shipping paper as "SULPHURIC ACID, corrosive material, poisonous liquid, Class B."

To make the presence of hazardous materials obvious on the shipping paper, the proper shipping name and all hazards must be listed first and consecutively in each commodity's freight description. The order of materials (regulated or non-regulated) as listed on the shipping paper can be random if this previously described format is employed. The uniform presentation of information on shipping papers will enable transportation and emergency response personnel to readily identify hazardous materials from their descriptions and classifications.

In order to hasten the ability of on-scene personnel to contact those with expert technical information about the commodities involved, an emergency telephone number must be added to the shipping document. This telephone number must provide, on a 24-hour basis, immediate access to emergency assistance from the shipper, a designated industry response group, CHEMTREC, The Bureau of Explosives, or whatever source is deemed by the shipper to be best. It is of the utmost importance that both the immediate and long-term response to a hazardous materials incident be initiated as quickly as possible. In view of the potential for reducing injury, danger to property and adverse environmental consequences, the requirement for an emergency telephone number on shipping documents, to be placed there by the shipper, is a minimal burden.

The railroads of the United States have established a numerical Standard Transportation Commodity Code (STCC) for identifying hazardous materials. The use of STCC numbers is required by mutual railroad agreement and the number is exhibited on waybills covering all shipments. Recent efforts by the STCC Technical Committee of the AAR have resulted in the development of a new series of STCC numbers whose purpose is to specifically identify discrete hazardous materials. This "49-series" was made effective January 1, 1976 and is the vehicle for hazardous materials management which the transportation industry has long needed.

STCC numbers are 7-digit combinations assigned to specific commodities based on hazard characteristics. Within the 7-digit STCC number a means is provided to allow the quick identification of primary, secondary and, in some cases, tertiary hazards, whether or not hazards subordinate to the primary hazard are now recognized by DOT. The 49-series begins with the first two digits, 49, as an identifier for hazardous materials. The next three digits identify the potential hazards of the materials and the final two digits identify the specific commodity * * *.

It is important to note that many materials properly shipped under a general classification, *i.e.*, "flammable liquids, n.o.s.", have now been given specific 49-series STCC numbers based on the specific tariff description currently used. Their movement in transportation is well documented, and therefore, these commodities, as listed in STCC Tariff 1–D (or subsequent revisions), should henceforth be listed in § 172.5 as proper shipping names. The railroads request that the Hazardous Materials Regulations require the shipper to insert the STCC numbers on all shipping papers tendered with goods for transportation. Only [the] shipper knows enough about the materials he produces and ships to ensure the accurate assignment of STCC numbers.

The STCC Code is designed to be flexible and to allow for future expansion to include both new commodities and new combinations of [hazard] classification; a section is already reserved in the STCC Code to designate substances which are environmentally hazardous as defined

by the Environmental Protection Agency.

The precise logic which has been employed to create the 49-series has resulted in numbers whose utility far surpasses those proposed by other organizations including MCA and the United Nations. The middle three digits provide a complete set of numbers to reveal all major potential hazards of each product and this unique feature does not exist in any other system of which the AAR is aware * * *.

The AAR insists that no secondary, untried system of "hazard numbers" be implemented. The 49-series STCC Code is now in existence and in use and the next revision of the Bureau of [Explosives] publication "Emergency Handling of Hazardous Materials in Surface Transportation" will contain a complete listing of all commodities in the 49-series code and the appropriate hazard information for handling emergency situations involving these commodities. A cross reference index will be supplied to locate commodity information if only the 49-series STCC number is known; in addition, a growing number of rail carriers will be able to provide hard copy information about the commodities involved by entering the STCC numbers of commodities involved in incidents into their computers.

Out of an abundance of caution, it must be emphasized that the STCC Code does *not* make the railroads' system just another "numbers game" Hazard Information System. STCC numbers allow precise commodity identification and verification, allow computer accessing for commodity information, provide a means for the retention of hazardous materials movement statistics and assist in the computer generation of shipping documents. They are not intended for use by the general public and, thus, require no first-level-of-response decoding. Their primary purpose is fulfilled at the shipper/carrier interface and in the ability of the shipper or carrier to make precise commodity information known to emergency personnel * * *.

Emergency Action Guide

A unique feature of the AAR Hazard Information System is the Emergency Action Guide for Hazardous Materials Incidents * * *.

The purpose of the Emergency Action Guide is to indicate, primarily for carrier personnel, an initial response pattern to be taken to save lives and prevent injuries. Such an initial response will usually not extend beyond the first fifteen minutes or so following an accident and, with this in mind, the Guide identifies the basic nature of the hazard for each classification of material and describes the "ground rules" for initial emergency action. The Guide, while not suggested as a mandatory requirement, is proposed to be included as part of a trainman's timetable for relevant operations and could be displayed by poster in cabooses and locomotives. When reproduced on durable material, and perhaps folded, such a guide could also be carried in truck cabs, fire engines, and police vehicles. Recommended procedures for using the Guide would include instructions to those to whom it is issued to read it in advance of an emergency in order that, when an emergency occurred, the particular applicable section of the Guide could be easily found.

A basic purpose of the Emergency Action Guide is to fill the gap between the accident and the receipt of information from the party responding to the emergency telephone number and, even if the Guide was not part of the information carried on local community emergency vehicles, it could be available from the train crew, or from the truck driver, to assist the first emergency units on the scene.

The above is not a complete reproduction of the AAR's comments, nor is the copyrighted AAR Emergency Action Guide reproducible in this notice. Sample pages submitted by the AAR may be reviewed in the docket file. However, the quoted comments are representative of AAR's viewpoints concerning matters covered by this Notice. The MTB agrees that primary reliance must still be placed on shipping papers for information relative to "non-bulk" shipments, and that while the display of information on shipping papers has considerably improved following the adoption of regulations under Docket HM–112, further improvements are necessary. The MTB agrees that an identification number should be assigned to hazardous materials for rapid communication of information and employment in the emergency response system. The MTB agrees with the AAR that an emergency action guide or emergency response manual should be employed in the improved system. However, the MTB does not fully agree with the AAR's recommendations on how to accomplish improvements in these three areas.

The Identification Numbers

The MTB is proposing that the UN numbering system be used as the basis for implementation of an improved emergency response system. For a number of years, the United Nations Committee of Experts on the Transport of Dangerous Goods has been assigning identification numbers to specific chemicals and generic descriptions for "dangerous goods." This system is becoming more and more recognized on a worldwide basis. It is referenced in the Dangerous Good Code of the International Maritime Consultative Organization and is under consideration for adoption in the forthcoming standards to be implemented by the International Civil Aviation Organization. This system also is referenced in variouis procedural documents under development pertaining to international trade documentation. The MTB recently was advised by its Canadian Government counterpart, Transport Canada, that UN identification numbers will be used within Canada in connection with shipments of hazardous materials and that the numbers will be the basis for the Canadian emergency response system.

Several important factors were considered by the MTB in deciding to propose the use of the basic UN numbering system for improved emergency response information:

1. The numbers are assigned by Governmental authorities under the aegis of the Economic and Social Council of the United Nations and have the same meaning throughout worldwide commerce.

2. They have been assigned specifically to identify hazardous materials (dangerous goods) and are intended to have no other meaning or use. Thus, their formulation and application is not dictated by any other competing or overriding considerations.

3. They are assigned, for the most part, to materials requiring separate recognition that are shipped in commercial quantities. Therefore, only four digits are necessary. Other chemical identifier systems have as many as nine digits. The fewer the digits in an identification number, the greater its reliability in an emergency response system employing radio and telephone communications.

4. Numbers are assigned on the basis of the next open number without regard to the particular chemical properties of a material, thereby, avoiding any problems in the availability of numbers for future assignments. Availability of numbers almost inevitably would be a problem if the internal arrangement of digits was meant to have some special meaning; e.g., a chemical grouping or properties assignment. The use of

identification numbers will (1) serve to verify descriptions of chemicals; (2) provide for rapid identification of materials when it may be inappropriate or, even worse, confusing to require display of lengthy chemical names on vehicles; (3) assist in preparation of correct documentation when language translation is necessary; and (4) be an aid in speeding communication of information on materials from accident scenes and the return of more accurate emergency response information. For example, the UN number for acetone is 1090, while the number for acetone cyanohydrin in 1541—a distinction of great importance in conveying appropriate emergency response information.

It is proposed to list UN or U.S. identification numbers in a new column 3a of § 172.101. The number will be preceded by "UN" if the description preceding it is exactly the same or sufficiently similar to the international description (as displayed in the IMCO Code). If the description in § 172.101 is significantly different but addresses the same material as a UN entry, it will be given the same number but will be preceded by "NA" in the United States and Canada. A four-digit number beginning with "9" indicates there is no corresponding UN description (specific or generic) for the material assigned that number. This is the mechanism the MTB and Transport Canada propose to use to assign identification numbers to materials, such as hazardous substances, that have not as yet been assigned numbers by the United Nations Committee of Experts.

The AAR is to be complimented on its attempts to implement a hazardous materials identification numbering system. Its efforts in this regard have, in MTB's opinion, led the way towards providing an improved emergency response capability for hazardous materials. This Standard Transportation Commodity Code (STCC) system, in the absence of any established alternative, is being used in U.S. rail transport with increased frequency. Nevertheless, the MTB believes that what it is proposing in this Notice is preferable to the STCC system as a national, multimodal system for the following reasons:

1. While the 49 STCC series is not to be used for economic purposes, by necessity its formulation was constrained by the need for it to "bridge" into other STCC series numbers established for freight rating/statistical purposes. The following STCC listings illustrate this point:

Specified name in STCC tariff 1-G	STCC number
Combustible liquid n.o.s. (asphalt tile plasticizer)	49 154 08
Combustible liquid n.o.s. (plasticizers, paint, lacquer or varnish)	49 154 10
Combustible liquid n.o.s. (belt dressing)	49 154 16
Combustible liquid n.o.s. (electric wire saturating or finish compound, paraffin base)	49 154 18
Combustible liquid n.o.s. (bay rum)	49 154 20
Combustible liquid n.o.s. (perfumery)	49 154 22
Combustible liquid n.o.s. (after shave lotions)	49 154 24
Combustible liquid n.o.s. (polishing wheel cement thinner)	49 154 26

It is obvious that many STCC entries would serve no useful purpose for improved emergency response. There are a number of entries in Section 172.101 that are end-use terms, a practice which should not be expanded unless proven necessary.

2. If the descriptions in § 172.101 are greatly expanded, as suggested by the AAR, the undesirable result would be reduced accuracy and rapidity of access to information that is essential.

3. The STCC identification numbering system is published in a tariff which is on file with the Interstate Commerce Commission. Additions or deletions are made by, or under the supervision of, representatives of the railroad industry. Neither the transfer of all the listings for hazardous materials in the STCC Tariff nor incorporation of the tariff by reference is appropriate for publication in the Department's Hazardous Materials Regulations. If the AAR believes there are materials inappropriately described by generic descriptions in § 172.101, it should petition the MTB to describe each of them by technical name, thereby affording public participation in a rulemaking proceeding.

4. Recognition of the STCC system is limited to the United States and even within the United States its acceptance and use is further limited—primarily to the shipment of materials by railroad. It is not recognized on a worldwide basis, nor is it likely to be in light of the now-established UN numbering system and the growing applicaton of that system.

Display of the Identification Number

The MTB proposes to require the display of the identification number, as listed in proposed column 3a of § 172.101, on all shipping papers as the third element of a basic description (immediately following the hazard class entry) and on the outside of packagings of 110-gallons capacity or less (immediately following the prescribed shipping name of contents). It also proposes to require that the number be displayed on orange panels affixed to portable tanks, cargo tanks, and tank cars. While not a part of this proposal, the MTB will consider in the future the need to expand the required display of the orange panel to other than bulk shipments of materials.

The MTB believes that the display of the identification numbers must be as uniform as possible to enable ready recognition by emergency response personnel. Further, the MTB recognizes that, with display of the identification numbers on vehicles, it may not be necessary to expand the name marking requirements for tank cars and cargo tanks—an alternative of questionable benefit when camplex chemcial names are involved. The display of the numbers on the orange panel will lead to rapid identification of contents. If an identification number addresses a generic description, and such a description is considered inadequate for a particular material, the MTB believes the material should be described in § 172.101 by technical name with an identification number assigned to it following an appropriate rulemaking proceeding. The MTB recognizes that it may have to consider a number of additions and changes to the list of hazardous materials in the future. Concerning the marking of identification numbers on packages, two major factors were considered. First, freight personnel often became the first contact "emergency" personnel when spills and leaks occur. The MTB visualizes that they will be able to make use of the manual in the same manner as emergency response personnel. Sole dependence on complex chemical names without reference to an identification number may lead to an erroneous response. This same view applies to emergency response personnel coming into contact with packages directly in vehicles, on freight docks, or elsewhere. The second factor is the value of the identification number in verifying the shipping information displayed on documents with the information displayed on packages to preclude error.

The Manual

One of the principal comments the HMRB received in response to its proposals under Docket HM-103 was the view that the proposed system (HI) placed heavy reliance on a manual that the HMRB suggested would be placed in each of the 392,000 emergency vehicles (fire, police, etc.) in the Nation. At approximately the same time as the initial proposal under HM-103, the Office of Hazardous Materials initiated distribution of its "Emergency Services Guide for Selected Hazardous Materials" which provides guidance

during the initial phases of an emergency for 45 selected materials that are transported in bulk quantities. To date, more than 880,000 copies of the Guide have been distributed to fire, police, and other emergency services organizations without charge. This fact, plus information that good use has been made of the manual, reinforces the MTB's view that a manual should be a viable part of this improved emergency response effort. It will serve to provide immediate emergency response information, especially important during the first minutes when many judgements and decisions must be made.

The MTB has undertaken the development of a manual of approximately 100 pages that will address virtually all hazardous materials transported in commerce. The manual is being developed on the principle that its statements of information and recommended actions must be concise and clearly understood. In examining other manuals, it is evident that there are only a limited number of recommendations (instructions) that can be given in a manual even though the recommendation may address hundreds of materials. Rather than write a manual with separate instructions for each material—a method that would be unduly burdensome, expensive, and unnecessary—the MTB is planning the manual according to the following format. At the beginning of the manual there will be two lists of virtually all domestic and international shipping names for hazardous materials. The first list will be arranged in numerical order of identification numbers, and the second list in alphabetical order. In both lists, there will be a page reference number associated with each entry. The numbered pages, approximately 60 to 70, will contain initial emergency response information and instructions. Many materials calling for the same initial emergency response action will be covered by the same page of information and instructions. The information pages are being developed in a style similar to those contained in the "HI" manual proposed under Docket HM-103.

The MTB believes that, in many instances, the manual will be all that is needed at the scene of an incident to terminate a minor event or to keep a minor event from becoming a major event of great consequence. However, when a situation requires further assistance, the manual refers the user to CHEMTREC (Chemical Transportation Emergency Center) and other organizations to obtain more detailed information and the help of technical experts.

Other features of the manual under development include (1) display of certain chemical descriptions in red to indicate when evacuation may be necessary; (2) evacuation tables related to small and large spills of the materials listed in red; (3) a page devoted to the display of placards with an indication that the recommendation on a particular page should be followed relative to each placard if, for some reason, shipping papers are not available or the identification number is not displayed; and (4) a typical shipping paper highlighting the description of a hazardous material and its identification number.

Exclusions

The proposals in this Notice do not apply to any material for which its proper shipping description does not have an associated identification number displayed in column 3a of § 172.101. Included in this category would be Consumer commodities, ORM-D and classes A and B explosives.

Consumer commodities properly classed ORM-D due to their quantity and form are not considered to pose a risk sufficient to warrant the application of these requirements. Classes A and B explosives, while under consideration for inclusion in the future, will have to be reviewed in greater detail to determine if a large number of identification numbers are necessary to make more finite distinctions in their risks or if a complete restructuring of the explosives descriptions would be appropriate. The MTB believes that, at the present time, it is desirable to use the "A" and "B" references for explosives presently displayed on shipping papers and placards for direct application in the manual and for communications.

Other Actions

This rulemaking proposal is considered to be a matter of high priority to the MTB. Therefore, other proposals pertaining to the hazardous materials communications regulations will be dealt with in two separate rulemaking actions. Included in these actions will be proposals to (1) permit the use of certain international descriptions (IMCO and forthcoming ICAO descriptions emanating primarily from the UN recommendations); (2) require further description for certain n.o.s. entries; (3) prescribe additional labeling requirements and permit use of certain newly adopted international labels; (4) require a special marking on portable tanks, cargo tanks and tank cars containing unodorized LP gas; and (5) address a number of petitions pertaining to shipping papers, certifications and placarding.

Implementation: Priorities and Costs

The MTB views the timing of the implementation of requirements proposed in this Notice as the major feature of its cost. This view is based on factors such as the present inventories of preprinted shipping documents, premarked (name of contents) inventories of packagings, and the necessary training and education associated with the implementation of the procedures necessary to comply with the regulations proposed herein if they are adopted. Therefore, the MTB believes it should make a statement concerning its contemplated implementation of the regulations proposed in this Notice.

The highest priority will be placed on implementation of documentation and identification (the orange panel) requirements applicable to transportation of hazardous materials in portable tanks, cargo tanks and tank cars. The MTB believes the mandatory compliance date should be no more than one year after the date of publication of the final rule.

The second highest priority will be placed on implementation of the documentation requirements for hazardous materials in packaging (other than bulk) excluding those, such as Consumer commodities, ORM-D, that will not be assigned identification numbers. The MTB believes the mandatory compliance date should be no longer than one year after the date of publication of the final rule.

The lowest priority will be assigned to packaging (less than 110-gallon capacity) markings. The MTB believes that two years should be provided for implementation or, as an alternative, a "grandfather clause" should be provided for packagings in stock prior to the effective date of the new regulations.

Concerning the display of identification numbers on orange panels, the MTB has obtained preliminary cost figures from a major supplier of labels and placards and has determined that, depending on the quantities ordered, the costs of prenumbered panels would be approximately as follows: Panels made of tag board for one time use—10 to 25 cents per panel; panels made of extruded vinyl for short term use—20 to 45 cents per panel; panels made of cast vinyl with plastic coating having an estimated life of five years—38 to 55 cents per panel. The vinyl panels would be adhesive backed to facilitate attachment.

The MTB expects the greatest costs will be incurred in the display of the orange panels on cargo tanks operated by common/contract carriers because of the high frequency in the change of usage of cargo tanks in this particular segment of the transportation industry. This fact is recognized in the existing regulations relative to the marking of the name of contents of cargo tanks. However, the MTB believes the added cost associated with implementation of these proposed requirements is warranted in the interest of providing an improved emergency response capability and is preferable to the alternative of extending the present tanks, as is presently required for portable tanks.

Specific views are invited concerning the proposed implementation of the regulations proposed in this Notice. Commenters should provide factual information concerning inventories of preprinted documents, adjustments in ADP programs, packaging turnover, and training. Broad generalized statements will not beneneficial to the MTB in its efforts to make a serious determination of how the rules are to be implemented, if they are adopted.

In further regard to implementation, the MTB was asked recently if any of the present regulations would preclude application of orange panels such as are proposed in this rulemaking. The MTB's response indicated there is no existing regulation that would prohibit the display of the United Nations identification number after the class entry on a shipping document, nor the display of an orange panel bearing an identification number.

The MTB originally considered that a rulemaking action of this type should be the subject of an advance notice of proposed rulemaking in order to solicit public comments relative to its development. On further consideration, the MTB has decided that a notice of proposed rulemaking is appropriate in order to expedite implementation since the proposals contained herein are confined to one basic issue; i.e., the display of an identification number, with other matters pertaining to improved communications being made the subject of separate rulemaking actions.

Conclusion

The MTB believes (1) adoption of the hazardous materials identification system proposed in this Notice will be a vital initial step in improving emergency response capabilities; (2) that, while the system can function without reliance on a manual, a manual of the type it has under development will significantly enhance emergency response capabilities, particularly during the first minutes of an emergency; (3) the proposed system is compatible intermodally and internationally and will be applicable to bulk and non-bulk shipment to an extent considered necessary; and (4) the proposed system is capable of integration with existing documentation, packaging and vehicle identification requirements that will insure the accuracy of information transmitted to and from emergency response personnel.

In consideration of the foregoing, it is proposed to amend Part 172 of Title 49, Code of Federal Regulations as follows:

1. In § 172.100 paragraph (d) would be amended by adding the following to the end of the paragraph.

§ 172.100 Purpose and use of the table.

* * * * *

(d) * * * Column 3(a) lists the identification numbers assigned to hazardous materials. Those preceded by a "UN" are associated with descriptions considered appropriate for international shipments as well as domestic shipments. Those preceded by an "NA" are associated with descriptions that are not recognized for international shipments, except to and from Canada. If an identification number is the "9000" series, it is either associated with the description of a material that is not appropriately covered by international hazardous materials (dangerous goods) shipping standards or not appropriately addressed by such standards for emergency response information purposes.

* * * * *

2. Section 172.101, the Hazardous Materials Table, would be revised by the addition of column 3(a) to read as follows:

BILLING CODE 4910-60-M

§172.101 Hazardous Materials Table

1

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Accumulator, pressurized (*pneumatic or hydraulic*), containing nonflammable gas	Nonflammable gas	NA1956	Nonflammable gas	173.306		No limit	No limit	1,2	1,2	
	Acetal	Flammable liquid	UN1088	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
EA	Acetaldehyde ammonia (*RQ-1000/454*)	ORM-A	UN1841	None	173.505	173.510	No limit	No limit			
E	Acetaldehyde (*ethyl aldehyde*) (*RQ-1000/454*)	Flammable liquid	UN1089	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
*E	Acetic acid (*aqueous solution*) (*RQ-1000/454*)	Corrosive material	UN2790	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	Stow separate from nitric acid or oxidizing materials
E	Acetic acid, glacial (*RQ-1000/454*)	Corrosive material	UN2789	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	Stow separate from nitric acid or oxidizing materials. Segregation same as for flammable liquids
E	Acetic anhydride (*RQ-1000/454*)	Corrosive material	UN1715	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	
	Acetone	Flammable liquid	UN1090	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
E	Acetone cyanohydrin (*RQ-10/4.54*)	Poison B	UN1541	Poison	None	173.346	Forbidden	55 gallons	1	5	Shade from radiant heat. Stow away from corrosive materials
	Acetone oil	Flammable liquid	UN1091	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Acetonitrile	Flammable liquid	UN1648	Flammable liquid	173.118	173.119	1 quart	10 gallons	1	4	Shade from radiant heat
	Acetyl benzoyl peroxide, solid	Forbidden									
	Acetyl benzoyl peroxide solution, *not over 40% peroxide*	Organic peroxide	NA2081	Organic peroxide	None	173.222	Forbidden	1 quart	1,2	1	
E	Acetyl bromide (*RQ-5000/2270*)	Corrosive material	UN1716	Corrosive	173.244	173.247	1 quart	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
E	Acetyl chloride (*RQ-5000/2270*)	Flammable liquid	UN1717	Flammable liquid	173.244	173.247	1 quart	1 gallon	1	1	Stow away from alcohols. Keep cool and dry. Separate longitudinally by an intervening complete compartment or hold from explosives
	Acetyl iodide	Corrosive material	UN1898	Corrosive	173.244	173.247	1 quart	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Acetyl peroxide solution, *not over 25% peroxide*	Organic peroxide	UN2084	Organic peroxide	173.153	173.222	Forbidden	1 quart	1,2	1	
	Acetylene	Flammable gas	UN1001	Flammable gas	None	173.303	Forbidden	300 pounds	1	1	Shade from radiant heat
A	Acetylene tetrabromide	ORM-A	UN2504	None	173.505	173.510	10 gallons	55 gallons			
	Acid butyl phosphate	Corrosive material	UN1718	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	Glass carboys in hampers not permitted under deck
	Acid carboy empty. *See* Carboy empty.										
*	Acid, liquid, n.o.s.	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	5 pints	1	4	Keep cool
*	Acid, sludge	Corrosive material	UN1906	Corrosive	None	173.248	Forbidden	1 quart	1,2	1	
E	Acrolein, inhibited (*RQ-1/.454*)	Flammable liquid	UN1092	Flammable liquid and Poison	None	173.122	Forbidden	1 quart	1,2	5	Keep cool. Stow away from living quarters
	Acrylic acid	Corrosive material	UN2218	Corrosive	173.244	173.245	1 quart	5 pints	1	1	
E	Acrylonitrile (*RQ-100/45.4*)	Flammable liquid	UN1093	Flammable liquid and Poison	None	173.119	Forbidden	1 quart	1,2	5	Keep cool
	Actuating cartridge, explosive(*fire extinguisher, or valve*)	Class C explosive	NA0276	Explosive C	173.114		50 pounds	150 pounds	1,2	1,2	Keep cool and dry
*	Adhesive, n.o.s. *See* Cement, liquid, n.o.s.		UN1133								
E	Adipic acid (*RQ-5000/2270*)	ORM-E	NA9077	None	None	173.510	No limit	No limit	2	2	
	Aerosol product, each aerosol container exceeding 50 cubic inches capacity. See Compressed gas, n.o.s.		UN1956								
*	Air, compressed	Nonflammable gas	UN1002	Nonflammable gas	173.306	173.302	150 pounds	300 pounds	1,2	1,2	
	Aircraft rocket engine (*Commercial*)	Flammable solid	NA2791	Flammable solid	None	173.238	Forbidden	550 pounds	1,3	5	
	Aircraft rocket engine igniter (*Commercial*)	Flammable solid	UN2792	Flammable solid	None	173.238	Forbidden	25 pounds	1,3	5	
	Airplane flare, See Fireworks, special										
*	Alcohol, n.o.s.	Flammable liquid	UN1987	Flammable liquid	173.118	173.125	1 quart	10 gallons	1,2	1	
*	Alcohol, n.o.s.	Combustible liquid	NA1987	None	173.118a	None	No limit	No limit	1,2	1,2	
EA	Aldrin, cast solid (*RQ-1/.454*)	ORM-A	NA2761	None	173.505	173.510	No limit	No limit			
EA	Aldrin mixture, dry, with 65% or less aldrin (*RQ-1/.454*)	ORM-A	NA2761	None	173.505	173.510	No limit	No limit			
E	Aldrin mixture, dry (*with more than 65% aldrin*) (*RQ-1/.454*)	Poison B	NA2761	Poison	173.364	173.376	50 pounds	200 pounds	1,2	1,2	
E	Aldrin mixture, liquid (*with more than 60% aldrin*) (*RQ-1/.454*)	Poison B	NA2762	Poison	173.345	173.361	1 quart	55 gallons	1,2	1,2	If flash point less than 141 deg F, segregation same as for flammable liquids
EA	Aldrin mixture, liquid, with 60% or less aldrin (*RQ-1/.454*)	ORM-A	NA2762	None	173.505	173.510	No limit	No limit			
E	Aldrin (*RQ-1/.454*)	Poison B	NA2761	Poison	173.364	173.376	50 pounds	200 pounds	1,2	1,2	
	Alkaline corrosive battery fluid	Corrosive material	NA2797	Corrosive	173.244	173.249 173.257	1 quart	5 gallons	1,2	1,2	
	Alkaline corrosive battery fluid with empty storage battery	Corrosive material	NA2797	Corrosive	None	173.258	Forbidden	5 pints	1,2	1,2	
*	Alkaline corrosive liquid, n.o.s.	Corrosive material	NA1760	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
*	Alkaline liquid, n.o.s.	Corrosive material	NA1760	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
*	Alkanesulfonic acid	Corrosive material	NA2584	Corrosive	173.244	173.245	5 pints	1 gallon	1,2	1	
	Alkyl aluminum halides. See Pyrophoric liquid, n.o.s.		NA2221								
A	Allethrin	ORM-A		None	173.505	173.510	No limit	No limit			

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§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
E	Allyl alcohol (*RQ-100/45.5*)	Flammable liquid	UN1098	Flammable liquid and Poison	173.118	173.119	1 quart	10 gallons	1,2	1	
	Allyl bromide	Flammable liquid	UN1099	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,2	1	
E	Allyl chloride (*RQ-1000/454*)	Flammable liquid	UN1100	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Allyl chlorocarbonate	Flammable liquid	UN1722	Flammable liquid	None	173.288	Forbidden	5 pints	1	5	Keep dry. Separate longitudinally by an intervening complete hold or compartment from explosives. Segregation same as for corrosive materials
	Allyl chloroformate. *See* Allyl chlorocarbonate		UN1722								
	Allyl trichlorosilane	Corrosive material	UN1724	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Aluminum alkyls. *See* Pyrophoric liquid, n.o.s.		NA2221								
	Aluminum bromide, anhydrous	Corrosive material	UN1725	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
	Aluminum dross, wet *or* hot. *See* Sec. 173.173										
	Aluminum hydride	Flammable solid	UN2463	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solid labeled Dangerous When Wet
*	Aluminum, liquid *or* paint. *See* Paint, enamel, lacquer stain, shellac, varnish, etc.		NA1263								
*	Aluminum, metallic, powder	Flammable solid	UN1396	Flammable solid	173.232	173.232	25 pounds	100 pounds	1,2	1,2	Keep dry. Segregation same as for flammable solids labeled dangerous when wet
	Aluminum nitrate	Oxidizer	UN1438	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
*	Aluminum phosphate solution	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Aluminum phosphide	Flammable solid	UN1397	Flammable solid and Dangerous when wet	None	173.154	Forbidden	25 pounds	1,2	1,2	Stow away from acids and oxidizing materials
EA	Aluminum sulfate (*RQ-5000/2270*)	ORM-B	UN1759	None	None	173.510	25 pounds	100 pounds	23	2	
	Amatol. *See* High explosive										
	2-(2-Aminoethoxy) ethanol	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	N-Aminoethylpiperazine	Corrosive material	UN2815	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	bis (Aminopropyl) piperazine	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Aminopropyldiethanolamine	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	N-Aminopropylmorpholine	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
E	Ammonia, anhydrous (*RQ-100/45.4*)	Nonflammable gas	UN1005	Nonflammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	Stow in well ventilated space
E	Ammonia solution (*containing more than 44% ammonia*) (*RQ-1000/454*)	Nonflammable gas	UN2073	Nonflammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	Stow in well ventilated space
	Ammonia solution (containing 44% or less ammonia in water). *See* Ammonium hydroxide		UN2672								
E	Ammonium acetate (*RQ-5000/2270*)	ORM-E	NA9079	None	None	173.510	No limit	No limit	2	2	
	Ammonium arsenate, solid	Poison B	UN1546	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	Stow away from alkaline corrosives
E	Ammonium benzoate (*RQ-5000/2270*)	ORM-E	NA9080	None	None	173.510	No limit	No limit	2	2	
E	Ammonium bicarbonate (*RQ-5000/2270*)	ORM-E	NA9081	None	None	173.510	No limit	No limit	2	2	
	Ammonium bifluoride. *See* Ammonium hydrogen fluoride		UN1727								
EA	Ammonium bisulfite, solid (*RQ-5000/2270*)	ORM-B	NA2693	None	None	173.510	25 pounds	100 pounds	2	2	
E	Ammonium bisulfite solution (*RQ-5000/2270*)	Corrosive material	UN2693	Corrosive	173.244	173.245	1 quart	5 gallons	2	2	
EA	Ammonium carbamate (*RQ-5000/2270*)	ORM-A	NA9083	None	None	173.510	50 pounds	No limit	2	2	Keep away from heat.
EA	Ammonium carbonate (*RQ-5000/2270*)	ORM-A	NA9084	None	None	173.510	50 pounds	No limit	2	2	Keep away from heat, acids, alum and salts of iron or zinc.
	Ammonium chlorate	Forbidden									
EA	Ammonium chloride (*RQ-5000/2270*)	ORM-E	NA9085	None	None	173.510	No limit	No limit	2	2	
E	Ammonium chromate (*RQ-1000/454*)	ORM-E	NA9086	None	None	173.510	No limit	No limit	2	2	
E	Ammonium citrate (*RQ-5000/2270*)	ORM-E	NA9087	None	None	173.510	No limit	No limit	2	2	
E	Ammonium dichromate (*ammonium bichromate*) (*RQ-1000/454*)	Oxidizer	UN1439	Oxidizer	173.153	173.154 173.235	25 pounds	100 pounds	1,2	1,2	
EA	Ammonium fluoborate (*RQ-5000/2270*)	ORM-B	NA9088	None	None	173.510	25 pounds	100 pounds	2	2	
EA	Ammonium fluoride (*RQ-5000/2270*)	ORM-B	UN2505	None	173.505	173.510 173.800	25 pounds	100 pounds			
E	Ammonium hydrogen fluoride, solid (*RQ-5000/2270*)	Corrosive material	UN1727	Corrosive	173.244	173.245b	25 pounds	100 pounds	2	2	
*E	Ammonium hydrogen fluoride solution (*RQ-5000/2270*)	Corrosive material	UN2817	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	Keep dry
A	Ammonium hydrogen sulfate	ORM-B	UN2506	None	173.505	173.510 173.800	25 pounds	100 pounds			
A	Ammonium hydrosulfide solution	ORM-A	NA2683	None	173.505	173.510 173.605	10 gallons	55 gallons			
*E	Ammonium hydroxide (*containing not more than 44% ammonia*) (*RQ-1000/454*)	Corrosive material	NA2672	Corrosive	173.244	173.245	2 gallons	2 gallons	4	4	
	Ammonium nitrate-carbonate mixture	Oxidizer	UN2068	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Ammonium nitrate fertilizer, *containing no more than 0.2% carbon*	Oxidizer	UN2067	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Ammonium nitrate-Fuel mixtures. *See* Blasting agent										

§172.101 Hazardous Materials Table (cont'd)

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(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Ammonium nitrate-Fuel mixtures. See High explosive										
*	Ammonium nitrate mixed fertilizer	Oxidizer	UN2069	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Ammonium nitrate (no organic coating)	Oxidizer	NA1942	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Ammonium nitrate (organic coating)	Oxidizer	NA1942	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
*	Ammonium nitrate-phosphate	Oxidizer	UN2070	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
E	Ammonium oxalate (*RQ-5000/2270*)	ORM-A	NA2449	None	None	173.510	25 pounds	100 pounds	2	2	
*	Ammonium perchlorate	Oxidizer	UN1442	Oxidizer	173.153	173.154 173.239a	25 pounds	100 pounds	1,2	4	Stow away from powdered metals
*	Ammonium perchlorate. *See* High explosives										
	Ammonium permanganate	Oxidizer	NA1482	Oxidizer	None	173.154	Forbidden	Forbidden	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide. This material may be forbidden in water transportation by certain countries
	Ammonium picrate. See High explosive										
	Ammonium picrate, wet (*with 10% or more water*)	Flammable solid	UN1310	Flammable solid	173.192		1 pound	1 pound	1	4	Stow away from heavy metals and their compounds
A	Ammonium polysulfide solution	ORM-A	UN2818	None	173.505	173.510 173.605	10 gallons	55 gallons			
EA	Ammonium silicofluoride (*RQ-1000/454*)	ORM-B	UN2854	None	None	173.510	25 pounds	100 pounds	2	2	
E	Ammonium sulfamate (*RQ-5000/2270*)	ORM-E	NA9089	None	None	173.510	No limit	No limit	2	2	
W	Ammonium sulfate nitrate	ORM-C	NA1477	None	173.505	172.910			1,2	1,2	Must not be accepted for transportation while hot. Separate by an intervening hold or compartment from Class A explosives. Separate from other explosives, corrosive materials, flammable solids, liquids, or gases, oxidizing materials, organic peroxides, or organic materials
*E	Ammonium sulfide solution (*RQ-5000/2270*)	Flammable liquid	UN2683	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
E	Ammonium sulfite (*RQ-5000/2270*)	ORM-E	NA9090	None	None	173.510	No limit	No limit	2	2	
E	Ammonium tartrate (*RQ-5000/2270*)	ORM-E	NA9091	None	None	173.510	No limit	No limit	2	2	
E	Ammonium thiocyanate (*RQ-5000/2270*)	ORM-E	NA9092	None	None	173.510	No limit	No limit	2	2	
E	Ammonium thiosulfate (*RQ-5000/2270*)	ORM-E	NA9093	None	None	173.510	No limit	No limit	2	2	
	Ammunition, chemical (containing a Poison A liquid or gas). See Chemical ammunition (containing a Poison A material)										
	Ammunition, chemical (contatning a Poison B material). See Chemical ammunition (containing a Poison B material)										
	Ammunition, chemical (containing an irritating liquid or solid). See Chemical ammunition (containing an irritating material)										
	Ammunition, chemical, explosive, with Poison A material	Class A explosive		Explosive A and Poison gas	None	173.59	Forbidden	Forbidden	6	5	No other cargo may be stowed in the same hold with these items
	Ammunition, chemical, explosive, with Poison B material	Class A explosive		Explosive A and Poison	None	173.59	Forbidden	Forbidden	6	5	No other cargo may be stowed in the same hold with these items
	Ammunition, chemical, explosive, with irritant	Class A explosive		Explosive A and Irritant	None	173.59	Forbidden	Forbidden	6	5	No other cargo may be stowed in the same hold with these items
	Ammunition for cannon with empty projectile	Class B explosive		Explosive B	None	173.89	Forbidden	Forbidden	1,2	5	
	Ammunition for cannon with explosive projectile	Class A explosive		Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with gas projectile	Class A explosive		Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with illuminating projectile	Class A explosive		Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with incendiary projectile	Class A explosive		Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with inert loaded projectile	Class B explosive		Explosive B	None	173.89	Forbidden	Forbidden	1,2	5	
	Ammunition for cannon with smoke projectile	Class A explosive		Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with solid projectile	Class B explosive		Explosive B	None	173.89	Forbidden	Forbidden	1,2	5	
	Ammunition for cannon with tear gas projectile	Class A Explosive		Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with tear gas projectile	Class B Explosive		Explosive B	None	173.89	Forbidden	Forbidden	1,2	5	
	Ammunition for cannon without projectile	Class B explosive		Explosive B	None	173.89	Forbidden	Forbidden	1,2	65	
	Ammunition for small-arms with explosive projectile	Class A explosive		Explosive A	None	173.58	Forbidden	Forbidden	6	5	
	Ammunition for small-arms with incendiary projectile	Class A explosive		Explosive A	None	173.58	Forbidden	Forbidden	6	5	
	Ammunition, non-explosive				173.55						
	Ammunition, rocket. See Rocket ammunition										
	Ammunition, small-arms. *See* Small-arms ammunition										
E	Amyl acetate (*RQ-1000/454*)	Flammable liquid	UN1104	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Amyl acid phosphate	Corrosive material	UN2819	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Amyl chloride	Flammable liquid	UN1107	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Amyl formate	Flammable liquid	UN1109	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Amyl mercaptan	Flammable liquid	UN1111	Flammable liquid	None	173.141	Forbidden	10 gallons	1,2	1	
	Amyl nitrite	Flammable liquid	UN1113	Flammable liquid	173.118	173.119	1 quart	10gallons	1,3	4	

4 **§172.101 Hazardous Materials Table (cont'd)**

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Amyl trichorosilane	Corrosive material	UN1728	Corrosive	None	173.280	Forbidden	10 gallons	1	5	Keep dry
	Amylamine	Flammable liquid	UN1106	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Amylene, *normal*	Flammable liquid	UN1108	Flammable liquid	173.118	173.119	1quart	10 gallons	1,3	1,3	
	Anhydrous ammonia. *See* Ammonia, anhydrous		UN1005								
	Anhydrous hydrazine. *See* Hydrazine, anhydrous		UN2029								
	Anhydrous hydrofluoric acid. *See* Hydrogen fluoride		UN1052								
	Aniline oil drum, empty *See* 173.347(d)	Poison B							1,2	1	Do not accept unless returnable package notice is on drum and the instructions thereon have been carried out
E	Aniline oil, liquid (*RQ-1000/454*)	Poison B	UN1547	Poison	None	173.347	Forbidden	55 gallons	1,2	1,2	Stow away from oxidizing materials and acids
	Anisoyl chloride	Corrosive material	UN1729	Corrosive	173.244	173.279	1 quart	1 quart	1	1	Keep dry
*	Antifreeze compound, liquid	Flammable liquid	NA1142	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Antifreeze compound, liquid	Combustible liquid	NA1142	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Antifreeze preparation, liquid	Flammable liquid	NA1142	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Antifreeze preparation, liquid	Combustible liquid	NA1142	None	173.118a	None	No limit	No limit	1,2	1,2	
	Antimonous chloride. *See* Antimony trichloride		UN1733								
A	Antimony lactate, solid	ORM-A	UN1550	None	173.606	173.510	No limit	No limit			
E	Antimony pentachloride (*RQ-1000/454*)	Corrosive material	UN1730	Corrosive	None	173.247	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
*E	Antimony pentachloride solution (*RQ-1000/454*)	Corrosive material	UN1731	Corrosive	173.244	173.245	1 quart	5 pints	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Antimony pentafluoride	Corrosive material	UN1732	Corrosive	None	173.246	Forbidden	25 pounds	1	5	Keep dry
EA	Antimony potassium tartrate solid (*RQ-1000/454*)	ORM-A	UN1551	None	173.505	173.510	No limit	No limit			
A	Antimony sulfide, solid	ORM-A	NA1325	None	173.505	173.510	No limit	No limit			
E	Antimony tribromide, solid (*RQ-1000/454*)	Corrosive material	NA1549	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
E	Antimony tribromide, solution (*RQ-1000/454*)	Corrosive material	NA1549	Corrosive	173.244	173.245	1 quart	5 pints	2	2	Keep dry
E	Antimony trichloride, solid (*RQ-1000/454*)	Corrosive material	UN1733	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
*E	Antimony trichloride solution (*RQ-1000/454*)	Corrosive material	NA1733	Corrosive	173.244	173.245	1 quart	5 pints	1	1	Keep dry
E	Antimony trifluoride, solid (*RQ-1000/454*)	Corrosive material	UN1549	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
E	Antimony trifluoride, solution (*RQ-1000/454*)	Corrosive material	UN1549	Corrosive	173.244	173.245	1 quart	5 pints	2	2	Keep dry
E	Antimony trioxide (*RQ-5000/2270*)	ORM-E	UN1549	None	None	173.510	No limit	No limit	2	2	
*	Aqua ammonia solution *(containing 44% or less ammonia). See* Ammonium hydroxide		NA2672								
*	Argon	Nonflammable gas	UN1006	Nonflammable gas	173.306	173.302 173.314	150 pounds	300 pounds	1,2	1,3	
*	Argon, liquid pressurized	Nonflammable gas	UN1951	Nonflammable gas	None	173.304	Forbidden	300 pounds	1,3	1,3	
	Arsenic acid, solid	Poison B	UN1553	Poison	173.364	173.366	50 pounds	200 pounds	1,2	1,2	
*	Arsenic acid solution	Poison B	UN1554	Poison	173.345	173.348	1 quart	55 gallons	1,2	1,2	
	Arsenic bromide, solid	Poison B	UN1555	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Arsenic chloride *(arsenious)* liquid. *See* arsenic trichloride		UN1560								
E	Arsenic disulfide. *See* Arsenic sulfide, solid		NA1557								
	Arsenic iodide, solid	Poison B	NA1557	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Arsenic pentoxide, solid (*RQ-5000/2270*)	Poison B	UN1559	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Arsenic, solid	Poison B	UN1554	Poison	173.364	173.366	50 pounds	200 pounds	1,2	1,2	
	Arsenic sulfide, solid	Poison B	NA1557	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	Keep dry
E	Arsenic trichloride, liquid (*RQ-5000/454*)	Poison B	UN1560	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
E	Arsenic trioxide, solid (*RQ-5000/454*)	Poison B and ORM-E	UN1561	Poison	173.364	173.366 173.368	50 pounds	200 pounds	1,2	1,2	
E	Arsenic trisulfide (*RQ-5000/2270*)	Poison B	NA1557	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
	Arsenic, white, solid. *See* Arsenic trioxide, solid		UN1561								
*	Arsenical compound n.o.s., liquid, *or* arsenical mixture, n.o.s., liquid	Poison B	UN1556	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
*	Arsenical compound n.o.s., solid, *or* arsenical mixture, n.o.s., solid	Poison B	UN1557	Poison	173.364	173.367	50 pounds	200 pounds	1,2	1,2	Keep dry
	Arsenical dip, liquid *(sheep dip)*	Poison B	UN1557	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Arsenical dust	Poison B	UN1562	Poison	173.364	173.368	50 pounds	200 pounds	1,2	1,2	
	Arsenical flue dust	Poison B	UN1562	Poison	173.364	173.368	50 pounds	200 pounds	1,2	1,2	
	Arsenious acid, solid. *See* Arsenic trioxide, solid		UN1560								
*	Arsenious and mercuric iodide solution	Poison B	NA2810	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Arsine	Poison A	UN2188	Poison gas and Flammable gas	None	173.328	Forbidden	Forbidden	1	5	
*	Asbestos	ORM-C	NA2590	None	173.1090(c)	173.1090(c)	No limit	No limit	1,2	1,2	Stow and handle to avoid airborne particles.
W	Asphalt, *at or above its flashpoint*	ORM-C	NA1368	None	None	None	Forbidden	Forbidden	1	5	When applicable, no fire or residue thereof may be present in the furnace heating the substance while the vehicle is on board a cargo vehicle
*	Asphalt, cut back	Flammable liquid	NA1993	Flammable liquid	173.118	173.131	1 quart	10 gallons	1,2	1	

§172.101 Hazardous Materials Table (cont'd)

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(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Asphalt, cut back	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
	Automobile, motorcycle, tractor, or other self-propelled vehicle. See Motor Vehicle										
	Automobile, motorcycle, tractor, or other self-propelled vehicle, engine, or other mechanical apparatus, with charged electric storage battery, wet. See Motor Vehicle										
	1-Aziridinyl phosphine oxide (tris). *See* Tris-(1-aziridinyl) phosphine oxide		UN2501								
	Bags, burlap, used.must be classed for the hazardous material previously contained in bag. See 173.28, 173.29										
	Bags, sodium nitrate, empty and unwashed	Flammable solid	UN1359	Flammable solid	None	173.155	Forbidden	25 pounds	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
*	Barium azide, wet, *50% or more water*	Flammable solid	UN1571	Flammable solid	None	173.239	Forbiddenn	1 pound	1,2	1,2	Stow away from heavy metals
	Barium chlorate	Oxidizer	UN1445	Oxidizer	173.153	173.163	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals
*	Barium chlorate, wet	Oxidizer	NA1445	Oxidizer	173.153	173.163	25 pounds	200 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals
E	Barium cyanide, solid (*RQ-10/4.54*)	Poison B	UN1565	Poison	173.370	173.370	25 pounds	200 pounds	1,2	1,2	Stow away from acids
	Barium nitrate	Oxidizer	UN1446	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
A	Barium oxide.	ORM-B	UN1884	None	173.505	173.510 173.800	25 pounds	100 pounds			
	Barium perchlorate	Oxidizer	UN1447	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Stow away from powdered metals
	Barium permanganate	Oxidizer	UN1448	Oxidizer	173.153	172.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Barium peroxide *(binoxide, dioxide)*	Oxidizer	UN2630	Oxidizer	173.153	173.156	25 pounds	100 pounds	1,2	1,2	Keep dry
	Barrel, empty. *See* Drum, empty										
	Battery charged with electrolyte (acid or alkaline battery fluid)	Corrosive material	NA2794	Corrosive	None	173.250	Forbidden	5 pints	1,2	1,2	
	Battery, dry. Not subject to Parts 170-189 of this subchapter										
	Battery, electric storage, wet	Corrosive material	NA2794	Corrosive	173.260		Forbidden	No limit	1,2	1,2	
	Battery, electric storage, wet, with automobile, auto parts, engine (*or other specifically named mechanical apparatus*)	Corrosive material	NA2794	Corrosive	173.250	173.260	No limit	No limit	1/2	1,2	Keep dry
	Battery, electric storage, wet with containers of corrosive battery fluid	Corrosive material	NA2794	Corrosive	None	173.258	Forbidden	2 gallons	1,2	1,2	
	Battery fluid. See Electrolyte (acid) *or* Alkaline battery fluid										
W	Battery parts *(plates, grids, etc. unwashed, exhausted)*	ORM-C		None	173.505	173.915			1,2	4	
	Benzaldehyde	Combustible liquid	UN1990	None	173.118a	None	No limit	No limit	1,2	1,2	
E	Benzene (benzol) (*RQ-1000/454*)	Flammable liquid	UN1114	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Benzene phosphorus dichloride	Corrosive material	UN2798	Corrosive	None	173.250a	Forbidden	5 pints	1	5	
	Benzene phosphorus thiodichloride	Corrosive material	UN2799	Corrosive	None	173.250a	Forbidden	5 pints	1	5	
*	Benzine	Flammable liquid	UN1115	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
E	Benzoic acid (*RQ-5000/2270*)	ORM-E	NA9094	None	None	173.510	No limit	No limit	2	2	
E	Benzonitrile (*RQ-1000/454*)	Combustible liquid	UN2224	None	173.118b	None	No limit	No limit	2	2	
E	Benzoyl chloride(*RQ-1000/454*)	Corrosive material	UN1736	Corrosive	173.244	173.247	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Benzoyl peroxide	Organic peroxide	NA2087	Organic peroxide	None	173.157 173.158	Forbidden	25 pounds	1,2	1	
	Benzyl bromide (*bromotoluene, alpha*)	Corrosive material	UN1737	Corrosive	None	173.281	Forbidden	5 pints	1	5	Keep dry
E	Benzyl chloride (*RQ-100/45.4*)	Corrosive material	UN1738	Corrosive	173.244	173.295	Forbidden	1 quart	1	4	Keep dry
	Benzyl chloroformate (*or Benzyl chlorocarbonate*)	Corrosive	UN1739	Corrosive	None	173.288	Forbidden	5 pints	1	5	Keep dry
E	Beryllium chloride (*RQ-5000/2270*)	Poison B	NA1566	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
*	Beryllium compound, n.o.s.	Poison B	UN1566	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Beryllium fluoride (*RQ-5000/2270*)	Poison B	NA1566	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
E	Beryllium nitrate (*RQ-5000/2270*)	Oxidizer	UN2464	Oxidizer	173.153	173.182	25 pounds	100 pounds	2	2	
	Black powder	Class A explosive		Explosive A	None	173.60	Forbidden	Forbidden	6	5	
	Black powder igniter with empty cartridge bag	Class C explosive	NA0325	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Blasting agent, n.o.s.	Blasting agent		Blasting agent	None	173.114a	Forbidden	100 pounds	1,2	1,2	
	Blasting caps--(*1,000 or fewer*) (*Show actual number*)	Class C explosive	NA0267	Explosive C	None	173.103	Forbidden	Forbidden	1,2	5	Portable magazine or metal locker. Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded.
	Blasting caps--electric (*1,000 or fewer*) (*Show actual number*)	Class C explosive		Explosive C	None	173.103	Forbidden	Forbidden	1,2	5	Portable magazine or metal locker. Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded.
	Blasting caps--electric (*more than 1,000*) (*Show actual number*)	Class A explosive		Explosive A	None	173.66	Forbidden	Forbidden	6	5	Magazine. Do not stow blasting caps with any high explosives. Do not handle blasting caps at the same time high explosives are being loaded.
	Blasting caps--(*more than 1,000*) (*Show actual number*)	Class A explosive		Explosive A	None	173.66	Forbidden	Forbidden	6	5	Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded.

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§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Blasting caps with metal clad mild detonating fuse--*(1,000 or fewer) (Show actual number)*	Class C explosive	NA0361	Explosive C	None	173.103	Forbidden	Forbidden	1,2	5	Portable magazine or metal locker. Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded.
	Blasting caps with safety fuse--*(1,000 or fewer) (Show actual number)*	Class C explosive	NA0361	Explosive C	None	173.103	Forbidden	Forbidden	1,2	5	Portable magazine or metal locker. Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded.
	Blasting caps with safety fuse--*(more than 1,000) (Show actual number)*	Class A explosive		Explosive A	None	173.66 173.67	Forbidden	Forbidden	6	5	Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded.
	Blasting gelatin. See High explosive										
	Blasting powder. See Black powder										
W	Bleaching powder, *containing 39% or less available chlorine*	ORM-C	UN2208	None	173.505	173.920			1,2	1,2	Keep dry. Stow separate from flammable liquids and acids. (Stow away from oils, grease, and similar organic materials.
*	Boiler compound, liquid	Corrosive material	UN1760	Corrosive	173.244	173.249	1 quart	10 gallons	1,2	1,2	
	Bomb, explosive. See Explosive bomb										
	Bomb, explosive with gas, smoke, or incendiary material. See Explosive bomb										
	Bomb, fireworks. See Fireworks, special										
	Bomb, gas, smoke, or incendiary, nonexplosive. See Chemical ammunition										
	Bomb, incendiary, or smoke without bursting charge. See Fireworks, special										
	Bomb, practice, with electric primer or electric squib (non-explosive)				173.55						
	Bomb, sand-loaded or empty (non-explosive)				173.55						
A	Bone oil	ORM-A		None	173.505	173.510	No limit	No limit			
	Booster, explosive	Class A explosive		Explosive A	None	173.69	Forbidden	Forbidden	6	5	
*	Bordeaux arsenite, solid	Poison B	NA2759	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Bordeaux arsenite, liquid	Poison B	NA2759	Poison	173.345	173,346	1 quart	55 gallons	1,2	1,2	
	Boron tribromide	Corrosive material	UN2692	Corrosive	None	173.251	Forbidden	1 quart	1	5	
	Boron trichloride	Corrosive material	UN1741	Corrosive	None	173.251	Fobidden	1 quart	1,2	5	Stow in well ventilated space. Shade from radiant heat. Segregation same as for nonflammable gases.
	Boron trifluoride	Nonflammable gas	UN1008	Nonflammable gas and Poison	None	173.302	Forbidden	Forbidden	1	5	Stow away from living quarters and foodstuffs
	Boron trifluoride-acetic acid complex	Corrosive material	UN1742	Corrosive	173.244	173.247	1 quart	1 gallon	1,2	1,2	
	Bottles, having previously contained a hazardous material and not cleaned. See 173.29										
*W	Box toe board (*nitrocellulose base*)	ORM-C		None	173.505	173.925			1,3	1,3	Provide cool stowage in a compartment having a temperature not exceeding 130 deg F., well away from any sources of heat, and in position to protect or move, even to jettison in event of fire. Separate from explosives, flammable liquids or gases, oxidizing materials, organic peroxides, or corrosive liquids.
*	Box toe gum	Combustible liquid	UN2060	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Box toe gum	Flammable liquid	UN2059	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Bromine	Corrosive material	UN1744	Corrosive	None	173.252	Forbidden	1 quart	1	5	Keep cool
	Bromine pentafluoride	Oxidizer	UN1745	Oxidizer	None	173.246	Forbidden	100 pounds	1	5	Shade from radiant heat. Segregation same as for corrosives
	Bromine trifluoride	Oxidizer	UN1746	Oxidizer and Poison	None	173.246	Forbidden	100 pounds	1	5	Shade from radiant heat. Segregation same as for corrosives
	Bromoacetic acid, solid	Corrosive material	UN1938	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
*	Bromoacetic acid solution	Corrosive material	UN1938	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permited under deck
	Bromoacetone, liquid	Poison A	UN1569	Poison gas	None	173.329	Forbidden	Forbidden	1	5	Segregation same as for flammable liquids
	Bromobenzene	Combustible liquid	UN2514	None	173.118a	None	No limit	No limit	1,2	1,2	
	Bromotoluene, alpha. *See* Benzyl bromide		UN1737								
	Brucine, solid (dimethoxy strychnine)	Poison B	UN1570	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
W	Burlap bags, cleaned (*vacuum cleaned, wheel cleaned, or otherwise mechanically brushed*). *See* Burlap cloth										
W	Burlap bags, new. *See* Burlap cloth										
AW	Burlap bags, used and unwashed, *or* not cleaned	ORM-C		None	173.930		No limit	No limit	1	1	Keep cool
W	Burlap cloth (*hessian*)	ORM-C		None	173.931				1,2	1,2	Keep dry. Stow away from organic liquids
	Burnt cotton, not repicked	Flammable solid	NA1325	Flammable solid	None	173.159	Forbidden	Forbidden	1	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Burnt fiber	Flammable solid	NA1325	Flammable solid	None	173.169	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials or organic peroxides.
	Burster, explosive	Class A explosive		Explosive A	None	173.69	Forbidden	Forbidden	6	5	
	Butadiene, inhibited	Flammable gas	UN1010	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	Stow away from living quarters
	Butane *or* Liquefied petroleum gas. *See* Liquefied petroleum gas		UN1011								
E	Butyl acetate (*RQ-5000/2270*)	Flammable liquid	UN1123	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	

§172.101 Hazardous Materials Table (cont'd)

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(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	n-Butyl acid phosphate. *See* Acid butyl phosphate		UN1718								
*	Butyl alcohol. *See* Alcohol, n.o.s.		UN1120								
	Butyl bromide, *normal*	Flammable liquid	UN1126	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Butyl chloride	Flammable liquid	UN1127	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Butyl ether	Flammable liquid	UN1149	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Butyl formate	Flammable liquid	UN1128	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	n-Butyl isocyanate	Flammable liquid	UN2485	Flammable liquid and Poison	173.118	173.119	1 quart	10 gallons	1,2	1	
	Butyl mercaptan	Flammable liquid	UN2347	Flammable liquid	None	173.141	Forbidden	10 gallons	1,3	5	
	Butyl phosphoric acid. *See* Acid butyl phosphate		UN1718								
E	n-Butyl phthalate (*RQ-100/45.4*)	ORM-E	NA9095	None	None	173.510	No limit	No limit	2	2	
	Butyl trichlorosilane	Corrosive material	UN1747	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
E	Butylamine (*RQ-1000/454*)	Flammable liquid	UN1125	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Butyraldehyde	Flammable liquid	UN1129	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
E	Butyric acid (*RQ-5000/2270*)	Corrosive material	UN2820	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
E	Cadmium acetate (*RQ-100/45.4*)	ORM-E	NA2570	None	None	173.510	No limit	No limit	2	2	
E	Cadmium bromide (*RQ-100/45.4*)	ORM-E	NA2570	None	None	173.510	No limit	No limit	2	2	
E	Cadmium chloride (*RQ-100/45.4*)	ORM-E	NA2570	None	None	173.510	No limit	No limit	1,2	1,2	If stowed under deck, must be stowed in a recoverable location
E	Calcium arsenate, solid (*RQ-1000/454*)	Poison B	UN1573	Poison	173.364	173.367 173.368	50 pounds	200 pounds	1,2	1,2	
E	Calcium arsenite, solid (*RQ-1000/454*)	Poison B	NA1574	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Calcium bisulfite solution. *See* Calcium hydrogen sulfite solution		NA2693								
E	Calcium carbide (*RQ-5000/2270*)	Flammable solid	UN1402	Flammable solid and dangerous when wet	None	173.178	Forbidden	25 pounds	1,2	1,2	Keep dry. Stow away from copper, its alloys, and salts
	Calcium chlorate	Oxidizer	UN1452	Oxidizer	173.153	173.163	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals and cyanide
	Calcium chlorite	Oxidizer	UN1453	Oxidizer	None	173.160	Forbidden	100 pounds	1,2	1,2	Separate from ammonium compounds, powdered materials, and cyanides
E	Calcium chromate (*RQ-1000/454*)	ORM-E	NA9096	None	None	173.510	No limit	No limit	2	2	
AW	Calcium cyanamide, not hydrated, containing more than 0.1% calcium carbide	ORM-C	UN1403	None	None	173.345	25 pounds	200 pounds	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet
*E	Calcium cyanide, solid *or* Calcium cyanide mixture, solid (*RQ-10/4.54*)	Poison B	UN1575	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from corrosive liquids. Keep dry
E	Calcium dodecylbenzenesulfonate (*RQ-1000/454*)	ORM-E	NA9097	None	None	173.510	No limit	No limit	2	2	
*	Calcium hydrogen sulfite solution	Corrosive material	UN1923	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	
EA	Calcium hydroxide (*RQ-5000/2270*)	ORM-B	NA9098	None	None	173.510	50 pounds	100 pounds	2	2	
E	Calcium hypochlorite mixture, *dry. (Containing more than 39% available chlorine)* (*RQ-10/4.54*)	Oxidizer	UN1748	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	Keep cool and dry
	Calcium, metal	Flammable solid	NA1401	Flammable solid and Dangerous when wet	173.153	173.154	25 pounds	100 pounds	1,2	4	Keep cool and dry. Segregation same as for flammable solids labeled Dangerous When Wet
	Calcium, metal, crystalline	Flammable solid	NA1401	Flammable solid and Dangerous when wet	None	173.231	Forbidden	25 pounds	1,2	5	Keep cool and dry. Segregation same as for flammable solids labeled Dangerous When Wet
*	Calcium nitrate (*See Sec. 173.182 Note*)	Oxidizer	UN1454	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
EAW	Calcium oxide (*RQ-5000/2270*)	ORM-B	UN1910	None	173.505	173.850	25 pounds	100 pounds	1,2	1,2	Keep dry. Stow away from explosives, acids, combustible materials, and ammonium salts
	Calcium permanganate	Oxidizer	UN1456	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Calcium peroxide	Oxidizer	UN1457	Oxidizer	173.153	173.156	25 pounds	100 pounds	1,2	1,2	Keep dry
	Calcium phosphide	Flammable solid	UN1360	Flammable solid and Dangerous when wet	None	173.181	Forbidden	25 pounds	1	5	Keep cool and dry. Segregation same as for flammable solids labeled Dangerous When Wet
	Calcium resinate	Flammable solid	UN1313	Flammable solid	None	173.166	Forbidden	125 pounds	1	5	
	Calcium resinate, fused	Flammable solid	UN1314	Flammable solid	None	173.166	Forbidden	125 pounds	1	5	
AW	Camphene	ORM-A	NA9011	None	173.505	173.610	No limit	No limit	1,3	1,3	Stow away from foodstuffs and living quarters
	Camphor oil	Combustible liquid	UN1130	None	173.118a	None	No limit	No limit	1,2	1,2	
	Cannon primers	Class C explosive	NA0378	Explosive C	None	173.107	50 pounds	150 pounds	1,3	5	
	Caprylyl peroxide solution	Organic peroxide	NA2129	Organic peroxide	173.153	173.221	1 quart	1 quart	1,2	4	Keep cool. Stow separate from combustible materials, explosives, or acids
	Caps, blasting. See Blasting caps										
	Caps, toy. See Toy caps										
EA	Captan (*RQ-10/4.54*)	ORM-A	NA2771	None	None	173.510	100 pounds	No limit	2	2	
EA	Carbaryl (*RQ-100/45.4*)	ORM-A	NA2757	None	173.505	173.510	No limit	No limit			
E	Carbofuran (*RQ-10/4.54*)	Poison B	NA2757	Poison	173.364	173.365	50 pounds	200 pounds	2	2	

8 **§172.101 Hazardous Materials Table (cont'd)**

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
E	Carbolic acid, liquid *or* Phenol, liquid (*liquid tar acid containing over 50% benzophenol*) (*RQ-1000/454*)	Poison B	NA2312	Poison	173.345	173.349	1 quart	55 gallons	1,2	1,2	
E	Carbolic acid, *or* Phenol (*RQ-1000/454*)	Poison B	NA1671	Poison	173.364	173.369	50 pounds	250 pounds	1,2	1,2	
E	Carbon bisulfide, *or* Carbon disulfide (*RQ-5000/2270*)	Flammable liquid	UN1131	Flammable liquid	None	173.121	Forbidden	Forbidden	1	5	Keep cool. Not permitted on any vessel transporting explosives
*	Carbon dioxide, liquefied	Nonflammable gas	UN2187	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
*	Carbon dioxide-nitrous oxide mixture	Nonflammable gas	UN1015	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
*	Carbon dioxide-oxygen mixture	Nonflammable gas	UN1014	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
AW	Carbon dioxide, solid, *or* Dry ice, *or* Carbonice	ORM-A	UN1845	None	None	173.615	440 pounds	440 pounds	1	1	Stow away from open ventilators. Stow away from cyanides or cyanide mixtures, liquid or dry
	Carbon monoxide	Flammable gas	UN1016	Flammable gas	173.306	173.302	Forbidden	150 pounds	1	4	
*	Carbon remover, liquid	Flammable liquid	UN1132	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
EAW	Carbon tetrachloride (*RQ-5000/2270*)	ORM-A	UN1846	None	173.505	173.620	1 quart	55 gallons	1,2	1,2	Stow away from living quarters
	Carbonyl chloride. See Phosgene		UN1076								
	Carboys, empty, must be classed for the hazardous material previously contained in carboy. See 173.29										
	Cartridge bags, empty, with black powder igniter	Class C explosive	NA0325	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Cartridge cases, empty, primed	Class C explosive	UN0379	Explosive C	None	173.107	50 pounds	150 pounds	1,3	1,3	
	Cartridge, practice ammunition	Class C explosive	NA0362	Explosive C	None	173.101a	50 pounds	150 pounds	1,2	1,2	
	Case oil. See Gasoline *or* Naptha										
	Casinghead gasoline. See Gasoline		UN1257								
W	Castor Beans	ORM-C		None	173.505	173.952			1,2	1,2	Stow away from living quarters and foodstuffs. Bulk shipments permitted in tight vans or containers only on cargo vessels (Castor beans only)
W	Castor pomace. *See* Castor beans										
*	Caustic, potash, dry, solid, flake, bead, *or* granular. *See* Potassium hydroxide, dry, etc.		UN1813								
*	Caustic potash, liquid *or* solution. *See* Potassium hydroxide solution		UN1814								
	Caustic soda, dry, solid, flake, bead, *or* granular. *See* Sodium hydroxide, dry, etc.		UN1823								
*	Caustic soda, liquid *or* solution. *See* Sodium hydroxide solution		UN1824								
W	*Cellosolve acetate. See* Ethylene glycol monoethyl ether acetate										
W	*Cellosolve. See* Ethylene glycol monoethyl ether										
*	Cement, adhesive, n.o.s. *See* Cement, liquid, n.o.s.		NA1133								
*	Cement, container, linoleum, tile, *or* wallboard, liquid	Flammable liquid	NA1133	Flammable liquid	173.118	173.132	1 quart	15 gallons	1,2	1	
*	Cement, leather	Flammable liquid	NA1133	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Cement, liquid, n.o.s.	Combustible liquid	NA1133	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Cement, liquid, n.o.s.	Flammable liquid	NA1133	Flammable liquid	173.118	173.132	1 quart	10 gallons	1,2	1	
*	Cement, pyroxylin	Flammable liquid	NA1133	Flammable liquid	173.118	173.132	1 quart	15 gallons	1,21,2	51	
*	Cement, roofing, liquid	Flammable liquid	NA1133	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Cement, rubber	Flammable liquid	NA1133	Flammable liquid	173.118	173.132	1 quart	15 gallons	1,2	1	
	Cesium metal	Flammable solid	UN1407	Flammable solid and dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
*	Charcoal, activated	Flammable solid	UN1362	Flammable solid	173.162	173.162	25 pounds	200 pounds	1,3	1,3	
	Charcoal briquettes *or* briquets	Flammable solid	NA1361	Flammable solid	173.162	173.162	50 pounds	50 pounds	1,2	1,2	
	Charcoal screenings, made from 'pinon' wood	Flammable solid	NA1361	Flammable solid	173.162	173.162	25 pounds	200 pounds	1,2	1,	
	Charcoal screenings, wet	Forbidden									
	Charcoal, shell	Flammable solid	NA1361	Flammable solid	173.162	173.162	25 pounds	200 pounds	1,2	1,2	
	Charcoal, wet	Forbidden									
	Charcoal, wood, ground, crushed, granulated, *or* pulverized	Flammable solid	NA1361	Flammable solid	173.162	173.162	25 pounds	200 pounds	1,2	1,2	
	Charcoal, wood, lump	Flammable solid	NA1361	Flammable solid	173.162	173.162	50 pounds	50 pounds	1,2	1,2	
	Charcoal wood screenings, other than 'pinon' wood screenings	Flammable solid	NA1361	Flammable solid	None	173.162	Forbidden	Forbidden	1	1	
	Charged oil well jet perforating gun (*total explosive contents in guns 20 pounds or more per motor vehicle*)	Class A explosive		Explosive A	None	173.53 173.80	Forbidden	Forbidden			Forbidden
	Charged oil well jet perforating gun (*total explosive contents in guns not exceeding 20 pounds per motor vehicle or special offshore down hole tool pallet*)	Class C explosive	NA0124	Explosive C	None	173.53 173.110	Forbidden	Forbidden	1,2	5	Forbidden

§172.101 Hazardous Materials Table (cont'd)

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(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Chemical ammunition explosive. See Ammunition, chemical, explosive										
	Chemical ammunition, nonexplosive (*containing a Poison B material*)	Poison B	UN2016	Poison	173.345	173.350	Forbidden	55 gallons			See correct shipping name of applicable Poison B material for stowage, special handling, and special segregation requirements
	Chemical ammunition, nonexplosive (*containing an irritating material*)	Irritating material	UN2017	Irritant	None	173.383	Forbidden	20 pounds			See correct shipping name of applicable Irritant material for stowage, special handling, and special segregation requirements
	Chemical ammunition, nonexplosive (*containing a Poison A material*)	Poison A	UN2016	Poison gas	None	173.330	Forbidden	Forbidden			See correct shipping name of applicable Poison A material for stowage, special handling, and special segregation requirements
*	Chemical kit	Corrosive material	NA1760	Corrosive	173.286		1 quart	1 quart	1,3	1,3	
*	Chlorate and borate mixture (*containing more than 28% chlorate*)	Oxidizer	UN1458	Oxidizer	173.153	173.229	25 pounds	100 pounds	1,2	4	Stow away from ammonium compounds and away from powdered metals
*	Chlorate and magnesium chloride mixture (*containing more than 28% chlorate*)	Oxidizer	UN1459	Oxidizer	173.153	173.229	25 pounds	100 pounds	1,2	4	Stow away from ammonium compounds, and away from powdered metals
	Chlorate explosive, dry. See High explosive										
	Chlorate, n.o.s.	Oxidizer	UN1461	Oxidizer	173.153	173.163	25 pounds	100 pounds	1,2	4	Stow away from ammonium compounds and away from powdered metals
*	Chlorate, n.o.s., wet	Oxidizer	NA1461	Oxidizer	173.153	173.163	25 pounds	200 pounds	1,2	4	Stow away from ammonium compounds and away from powdered metals
	Chlorate of potash. *See* Potassium chlorate		UN1485								
	Chlorate of soda. *See* Sodium chlorate		UN1495								
	Chlorate powder. *See* High explosive										
*E	Chlordane, liquid (*RQ-1/.454*)	Combustible liquid	NA2762	None	173.118a	None	No limit	No limit	1,2	1,2	
	Chloric acid. (*See* chlorine dioxide hydrate)		NA2626								
	Chloride of phosphorus. *See* Phosphorus trichloride		NA1809								
	Chloride of sulfur. *See* Sulfur chloride		NA1828								
W	Chlorinated lime (*chloride of lime.*) *See* Bleaching powder		NA2208								
	Chlorine dioxide hydrate, frozen	Oxidizer	NA2626	Oxidizer and Poison	None	173.237	Forbidden	Forbidden			Forbidden
E	Chlorine (*RQ-10/4.54*)	Nonflammable gas	UN1017	Nonflammable gas and Poison	None	173.304 173.314 173.315	Forbidden	Forbidden	1,2	5	Stow in a well-ventilated space. Stow away from organic materials
	Chlorine trifluoride	Oxidizer	UN1749	Oxidizer and Poison	None	173.246	Forbidden	100 pounds	1,3	5	Stow in well ventilated area away from organic material
	4-Chloro-o-toluidine hydrochloride	Poison B	UN1579	Poison	None	173.362	Forbidden	1 quart	1,2	1,2	
*	*Chloroacetic acid, liquid or solution. See* Monochloroacetic acid, liquid or solution		UN1750								
	Chloroacetic acid, solid	Corrosive material	UN1751	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
	Chloroacetophenone, gas, liquid, or solid (CN)	Irritating material	UN1697	Irritant	None	173.382	Forbidden	75 pounds	1	5	
	Chloroacetyl chloride	Corrosive material	UN1752	Corrosive	None	173.253	Forbidden	1 quart	1	5	Keep dry
	Chlorobenzene. *See* Chlorobenzol		UN1134								
E	Chlorobenzol (*RQ-100/45.4*)	Flammable liquid	UN1134	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	p-Chlorobenzoyl peroxide	Organic peroxide	NA2413	Organic peroxide	None	173.157 173.158	Forbidden	25 pounds	1	1	
	Chlorodinitrobenzene. See Dinitrochlorobenzene		UN1577								
	Chlorodinitrobenzol. See Dinitrochlorobenzol, solid										
EAW	Chloroform (*RQ-5000/2270*)	ORM-A	UN1888	None	173.506	173.630	10 gallons	55 gallons	1,2	1,2	Stow away from living quarters and foodstuffs
	Chlorophenyltrichlorosilane	Corrosive material	UN1753	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Chloropicrin, absorbed	Poison B	NA1583	Poison	None	173.357	Forbidden	Forbidden	1	5	Keep cool
	Chloropicrin and methyl chloride mixture	Poison A	UN1582	Flammable gas and Poison gas	None	173.329	Forbidden	Forbidden	1	5	Keep cool
	Chloropicrin and nonflammable, nonliquefied compressed gas mixture	Poison A	NA1955	Nonflammable gas and Poison gas	None	173.329	Forbidden	Forbidden	1	5	Keep cool
	Chloropicrin, liquid	Poison B	UN1580	Poison	None	173.357	Forbidden	Forbidden	1	5	Keep cool
	Chloropicrin mixture (*containing no compressed gas or Poison A liquid*)	Poison B	UN1583	Poison	None	173.357	Forbidden	Forbidden	1	5	Keep cool
A	Chloroplatinic acid, solid	ORM-B	UN2507	None	173.505	173.510 173.800	25 pounds	100 pounds			
	2-Chloropropene	Flammable liquid	UN2356	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
E	Chlorosulfonic acid (*RQ-1000/454*)	Corrosive material	UN1754	Corrosive	173.244	173.254	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Chlorosulfonic acid-sulfur trioxide mixture	Corrosive material	UN1754	Corrosive	173.144	173.254	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
EA	Chlorpyrifos (*RQ-1/0.454*)	ORM-A	NA2783	None	None	173.510	100 pounds	No limit	2	2	
E	Chromic acetate (*RQ-1000/454*)	ORM-E	NA9101	None	None	173.510	No limit	No limit	2	2	
E	Chromic acid mixture, dry (*RQ-1000/454*)	Oxidizer	NA1463	Oxidizer	173.153	173.164	25 pounds	100 pounds	1,2	1,2	Stow away from foodstuffs
E	Chromic acid, solid (*RQ-1000/454*)	Oxidizer	UN1463	Oxidizer	173.153	173.164	25 pounds	100 pounds	1,2	1,2	Stow away from foodstuffs. Stow separate from flammable liquids and solids
*E	Chromic acid solution (*RQ-1000/454*)	Corrosive material	UN1755	Corrosive	173.244	173.287	1 quart	1 gallon	1	1	
	Chromic anhydride. *See* Chromic acid, solid		NA1463								
	Chromic fluoride, solid	Corrosive material	UN1756	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
*	Chromic fluoride solution	Corrosive material	UN1757	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	
E	Chromic sulfate (*RQ-1000/454*)	ORM-E	NA9100	None	None	173.510	No limit	No limit	2	2	
	Chromic trioxide. *See* Chromic acid, solid		UN1463								

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§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Chromium oxychloride *or* Chromyl chloride	Corrosive material	UN1758	Corrosive	None	173.247	Forbidden	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
E	Chromous chloride (*RQ-1000/454*)	ORM-E	NA9102	None	None	173.510	No limit	No limit	2	2	
	Cigar and cigarette lighter fluid. See Lighter fluid		UN1226								
*	Cigarette lighter (*or other similar ignition device*)	Flammable gas	UN1057	Flammable gas	173.21 175.10	173.308	21 ounces	25 pounds	1	1	
*	Cigarette lighter (*or other similar ignition device*)	Flammable liquid	NA1993	Flammable liquid	173.21 175.10	173.118	Forbidden	Forbidden	1	1	
	Cigarette load	Class C explosive	NA0337	Explosive C	None	173.111	50 pounds	150 pounds	1,2	1,2	
	Cloud gas cylinder. See Chemical ammunition										
	Coal briquettes, hot	Forbidden									
	Coal facings. *See* Coal ground bituminous, *etc.*										
	Coal gas. See Hydrocarbon gas, nonliquefied										
	Coal, ground bituminous, sea coal, coal facings, *etc.*	Flammable solid	NA1361	Flammable solid	173.165		Forbidden	Forbidden	1	1	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Coal oil (*export shipment only*). *See* Kerosene		NA1223								
*	Coal tar distillate	Combustible liquid	NA1137	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Coal tar distillate	Flammable liquid	NA1136	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Coal tar dye, liquid (*not otherwise specifically named in Sec. 172.101*)	Corrosive material	NA1760	Corrosive	173.244	173.245 173.249a	1 quart	10 gallons	1,2	1,2	
*	Coal tar light oil	Combustible liquid	NA1137	None	173.118a				1,2	1,2	
*	Coal tar light oil	Flammable liquid	NA1136	Flammable liquid	173/.118	173.119	1 quart	10 gallons	1,2	1	
*	Coal tar naptha	Combustible liquid	NA2553	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Coal tar naptha	Flammable liquid	NA2553	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Coal tar oil	Combustible liquid	NA1137	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Coal tar oil	Flammable liquid	NA1136	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
*	Coating solution	Flammable liquid	UN1139	Flammable liquid	173.118	173.132	1 quart	15 gallons	1,2	1	
	Cobalt resinate, precipitated	Flammable solid	UN1318	Flammable solid	None	173.166	Forbidden	125 pounds	1,2	1,2	
E	Cobaltous bromide (*RQ-1000/454*)	ORM-E	NA9103	None	None	173.510	No limit	No limit	2	2	
E	Cobaltous formate (*RQ-1000/454*)	ORM-E	NA9104	None	None	173.510	No limit	No limit	2	2	
E	Cobaltous sulfamate (*RQ-1000/454*)	ORM-E	NA9105	None	None	173.510	No limit	No limit	2	2	
	Cocculus, solid (*fishberry*)	Poison B	UN1584	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*W	Coconut meal pellets *containing at least 6% and not more than 13% moisture and not more than 10% residual fat content*	ORM-C		None	173.505	173.955			1,2	4	Keep dry
	Coir. *See* Fibers		NA1372								
	Coke, hot	Forbidden									
	Collodion	Flammable liquid	NA2060	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Collodion cotton, wet. See Nitrocellulose, wet		UN2555								
	Cologne spirits (*alcohol*)	Flammable liquid	UN1987	Flammable liquid	173.118	173.125	1 quart	10 gallons	1,2	1	
	Columbian spirits (*wood alcohol*)	Flammable liquid	UN1230	Flammable liquid	173.118	173.125	1 quart	10 gallons	1,2	1	
	Combination fuze	Class C explosive	NA0367	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Combination primer	Class C explosive	NA0378	Explosive C	None	173.107	50 pounds	150 pounds	1,3	5	
	Combustible liquid, n.o.s.	Combustible liquid	UN1993	None	173.118a	None	No limit	No limit	1,2	1,2	
	Commercial shaped charge. See High explosive										
	Common fireworks. *See* Fireworks, common										
*	Compound, cleaning, liquid	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Compound, cleaning, liquid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Compound, cleaning, liquid	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Compound, cleaning, liquid (containing hydrochloric (muriatic) acid)	Corrosive material	NA1789	Corrosive	173.244	173.263	1 quart	1 gallon	1	1	
*	Compound, cleaning, liquid (containing hydrofluoric acid)	Corrosive material	NA1790	Corrosive	172.244	173.256	1 quart	1 gallon	1	4	
*	Compound, cleaning liquid (*containing phosphoric acid, acetic acid, sodium potassium hydroxide*)	Corrosive material	NA1760	Corrosive	173.244	173.245 173.249a	1 quart	1 quart	1,2	1,2	
*	Compound, enamel	Flammable liquid	NA1263	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2	1	
*	Compound, lacquer, paint, *or* varnish, removing, reducing, or thinning, liquid	Combustible liquid	NA1142	None	173.118a				1,2	1,2	
*	Compound, lacquer, paint, *or* varnish removing, liquid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	
*	Compound, lacquer, paint, *or* varnish, removing, reducing, *or* thinning, liquid	Flammable liquid	NA1142	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2	1	
*	Compound, polishing, liquid	Flammable liquid	NA1142	Flammable liquid	173.118	173.129	1	55 gallons	1,2	1	

§172.101 Hazardous Materials Table (cont'd)

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(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Compound, rust preventing *or* Compound, rust removing	Corrosive material	NA1760	Corrosive	173.144	173.245	1 quart	1 gallon	1,2	1,2	
*	Compound, tree *or* weed killing, liquid	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Compound, tree *or* weed killing, liquid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Compound, tree *or* weed killing, liquid	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Compound, tree *or* weed killing, liquid	Poison B	NA2810	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
*	Compound, tree *or* weed killing, solid	Oxidizer	NA1479	Oxidizer	173.153	173.154 173.229	25 pounds	100 pounds			
*	Compound, vulcanizing, liquid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Compound, vulcanizing, liquid	Flammable liquid	NA1142 NA1760	Flammable liquid	173.118	172.119	1 quart	10 gallons	1,2	1	
*	Compound, water treatment, liquid. *See* Water treatment, liquid										
	Compressed gas, n.o.s.	Flammable gas	UN1954	Flammable gas	173.306	173.302 173.304 173.305	Forbidden	300 pounds	1	4	
	Compressed gas, n.o.s.	Nonflammable gas	UN1956	Nonflammable gas	173.306	173.302 173.304 173.305	150 pounds	300 pounds	1,2	1,2	
	Consumer commodity	ORM-D		None	None	173.510 173.1200	65 pounds gross	65 pounds gross			Not subject to requirements of Part 176
	Container, reused or empty, must be classed for the hazardous material previously contained. See 173.28, 173.29										
E	Copper acetoarsenite, solid (*RQ-100/45.4*)	Poison B	UN1585	Poison	173.364	173.367	50 pounds	200 pounds	1,2	1,2	
	Copper arsenite, solid	Poison B	UN1586	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
EA	Copper chloride (*RQ-10/4.54*)	ORM-B	UN2802	None	173.505	173.510 173.800	25 pounds	100 pounds			
	Copper cyanide	Poison B	UN1587	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
W	Copra	ORM-C	UN1363	None	173.505	173.960			1,2	1,2	Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Copra pellets. See Coconut meal pellets										
	Cordeau detonant fuse	Class C explosive	NA0289	Explosive C	None	173.104	50 pounds	300 pounds	1,2	1,2	
	Corrosive battery fluid. *See* Electrolyte (acid), *or* Alkaline Corrosive battery fluid										
	Corrosive liquid, n.o.s.	Corrosive material	UN1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	For material that meets only the corrosion to skin criteria of 49 CFR 173.240(a)(1), 'under deck' stowage is also authorized if the description includes the additional entry specified by Sec. 172.172(63).
	Corrosive solid, n.o.s.	Corrosive material	UN1759	Corrosive	173.244	173.245b	25 pounds	100 pounds	1	4	For material that meets only the corrosion to skin criteria of 49 CFR 173.240(a)(1), 'under deck' stowage is also authorized if the description includes the additional entry specified by Sec. 172.203(63).
*	Cosmetics, n.o.s.	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Cosmetics, n.o.s.	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Cosmetics, n.o.s.	Flammable solid	NA1325	Flammable solid	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
*	Cosmetics, n.o.s.	Oxidizer	NA1479	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
*	Cosmetics, n.o.s., liquid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Cosmetics, n.o.s., solid	Corrosive material	NA1759	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
W	Cotton	ORM-C		None	173.505	173.965			1,2	1,2	Segregation same as for flammable solids. *See* 176.900 to 176.904
W	Cotton batting	ORM-C		None	173.505	173.970			1,2	1,2	Keep dry. Stow away from vegetable or animal oils. *See* 176.900 to 176.904
W	Cotton batting dross. *See* Cotton batting										
	Cotton, burnt. See Burnt cotton										
W	Cotton seed hull fiber *or* shavings, pulp, *or* cut linters. See Cotton batting										
	Cotton sweepings. *See* Cotton waste										
W	Cotton wadding. *See* Cotton batting										
W	Cotton waste	ORM-C		None	173.505	173.975			1,2	1,2	Keep dry. Stow away from vegetable or animal oils. *See* 176.900 to 176.904
	Cotton waste, oily (*with more than 5% of animal or vegetable oil*)	Flammable solid	UN1364	Flammable solid			Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
E	Coumaphos (*RQ-10/4.54*)	Poison B	NA2783	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
	Creosote, coal tar	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
	Creosote oil. See Creosote coal tar										
E	Cresol (*RQ-1000/454*)	Corrosive material	NA2076	Corrosive	173.244	173.245	1 gallon	55 gallons	2	2	
E	Crotonaldehyde (*RQ-100/45.4*)	Flammable liquid	UN1143	Flammable liquid and Poison	173.118	173.119	1 quart	1 gallon	1,2	1	
	Crotonic acid	Corrosive material	UN2823	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Crotonylene	Flammable liquid	UN1144	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Crude nitrogen fertilizer solution (more than 25.3 p.s.i.g.)	Nonflammable gas	NA1043	Nonflammable gas	173.306	173.304 173.314	Forbidden	300 pounds	1,3	1,3	
*	Crude oil, petroleum	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	

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§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Crude oil, petroleum	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Cumene hydroperoxide	Organic peroxide	NA2116	Organic peroxide	173.153	173.224	1 quart	1 quart	1,2	4	
E	Cupric acetate (*RQ-100/45.4*)	ORM-E	NA9106	None	None	173.510	No limit	No limit	2	2	
	Cupric cyanide. See Copper cyanide		UN1587								
E	Cupric nitrate (*RQ-100/45.4*)	Oxidizer	NA1479	Oxidizer	173.153	173.182	25 pounds	100 pounds	2	2	
E	Cupric oxalate (*RQ-100/45.4*)	ORM-E	NA2449	None	None	173.510	No limit	No limit	2	2	
E	Cupric sulfate, ammoniated (*RQ-100/45.4*)	ORM-E	NA9110	None	None	173.510	No limit	No limit	2	2	
E	Cupric sulfate (*RQ-10/4.54*)	ORM-E	NA9109	None	None	173.510	No limit	No limit	2	2	
E	Cupric tartrate (*RQ-100/45.4*)	ORM-E	NA9111	None	None	173.510	No limit	No limit	2	2	
*	Cuprietylene-diamine solution	Corrosive material	UN1761	Corrosive	173.244	173.249	1 quart	1 gallon	1,2	1,2	
*	Cyanide or cyanide mixture, dry	Poison B	UN1588	Poison	173.364	173.370	25 pounds	200 pounds	1,2	1,2	Keep dry. Stow away from acids
	Cyanogen bromide	Poison B	UN1889	Poison	None	173.379	Forbidden	25 pounds	1	5	Shade from radiant heat. Segregation same as for corrosive materials
E	Cyanogen chloride *containing less than 0.9% water* (*RQ-10/4.54*)	Poison A	UN1589	Nonflammable gas and Poison Gas	None	173.328	Forbidden	Forbidden	1	5	Shade from radiant heat
	Cyanogen gas	Poison A	UN1026	Flammable gas and Poison Gas	None	173.328	Forbidden	Forbidden	1	5	
E	Cyclohexane (*RQ-1000/454*)	Flammable liquid	UN1145	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Cyclohexanone peroxide, *50 to 85% peroxide*	Organic peroxide	NA2119	Organic peroxide	173.157	173.158	Forbidden	25 pounds	1	1	
	Cyclohexanone peroxide and bis (1-hydroxy cyclohexyl) peroxide mixture. *See appropriate cyclohexanone peroxide entry immediately preceding*										
	Cyclohexanone peroxide, *not over 50% peroxide*	Organic peroxide	NA2896	Organic peroxide	173.153	173.154	2 pounds	25 pounds	1,2	1,2	
	Cyclohexenyl trichlorosilane	Corrosive material	UN1762	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Cyclohexyl trichlorosilane	Corrosive material	UN1763	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Cyclopentane	Flammable liquid	UN1146	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Cyclopentane, methyl	Flammable liquid	UN2298	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Cyclopropane	Flammable gas	UN1027	Flammable gas	173.306	173.304	Forbidden	300 pounds	1,2	1	
	Cyclotetramethylenetetranitramine, wet with not less that 10 percent water. See high explosive.										
	Cyclotrimethylenetrinitramine, desensitized. See High explosive										
	Cyclotrimethylenetrinitramine, wet with not less than 10% water. See High explosive										
	Cylinder, empty, including ton tanks, must be classed for the hazardous material previously contained in cylinder. See 173.29										
EA	2,4-D esters. *See* 2,4-Dichlorophenoxyacetic acid esters		NA2765								
	2,4-D. *See* 2,4-Dichlorophenoxyacetic acid		NA2765								
EA	DDT *or* Dichlorodiphenyltrichloroethane (*RQ-1/.454*)	ORM-A	NA2761	None	173.505	173.510	No limit	No limit			
	Dead oil. See Creosote, coal tar										
	Decaborane	Flammable solid	UN1868	Flammable solid and Poison	173.118a	None	No limit	No limit	1,2	1,2	
	Decahydronaphthalene	Combustible liquid	UN1147	None	173.118a	None	No limit	No limit	1,2	1,2	
	Decalin. See Decahydronaphthalene		UN1147								
	Delay electric igniter	Class C explosive	NA0206	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Denatured alcohol. *See* Alcohol, n.o.s.		UN1095								
	Depth bomb. See Explosive bomb										
	Detonating fuze, Class A, *with or without radioactive components*	Class A explosive		Explosive A	None	173.69	Forbidden	Forbidden	6	5	
	Detonating fuze, Class C explosive	Class C explosive	UN0257	Explosive C	None	173.113	50 pounds	150 pounds	1,3	1,3	
	Detonating primer	Class A explosive		Explosive A	None	173..68	Forbidden	Forbidden	6	5	
*	Di-(2-ethylhexyl) phosphoric acid	Corrosive material	NA1902	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
*	Diacetone alcohol	Flammable liquid	UN1148	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Diacetyl	Flammable liquid	UN2346	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
EA	Diazinon (*RQ-1/.454*)	ORM-A	NA2783	None	173.505	173.510	No limit	No limit			
	Diazodinitrophenol. *See* initiating explosive										
A	Dibromodifluoromethane	ORM-A	UN1941	None	173.505	173.510 173.605	10 gallons	55 gallons			
W	1,2-Dibromoethane. *See* Ethylene dibromide		UN1605								
E	Dicamba (*RQ-1000/454*)	ORM-E	NA2769	None	None	173.510	No limit	No limit	2	2	
E	Dichlobenil (*RQ-1000/454*)	ORM-E	NA2769	None	None	173.510	No limit	No limit	2	2	
E	Dichlone (*RQ-1/0.454*)	ORM-E	NA2761	None	None	173.510	No limit	No limit	2	2	
E	*1,1-Dichloro-2,2-bis (parachlorophenyl) ethane. See* TDE										
	Dichloroacetic acid	Corrosive material	UN1764	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permitted under deck

§172.101 Hazardous Materials Table (cont'd)

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(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Dichloroacetyl chloride	Corrosive material	UN1765	Corrosive	173.244	173.247	1 quart	1 gallon	1	4	Keep dry
EA	Dichlorobenzene, ortho, liquid (*RQ-100/45.4*)	ORM-A	UN1591	None	173.505	173.510	No limit	No limit			
EA	Dichlorobenzene, para, solid (*RQ-100/45.4*)	ORM-A	UN1592	None	173.505	173.510	No limit	No limit			
	Dichlorobutene	Flammable liquid	NA2936	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
A	Dichlorodifluoroethylene	ORM-A	NA9018	None	173.505	173.510 173.605	10 gallons	55 gallons			
	Dichlorodifluoromethane	Nonflammable gas	UN1028	ANonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane and difluoroethane mixture (*constant boiling mixture*)	Nonflammable gas	UN2602	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane-dichlorotetrafluoroethane mixture	Nonflammable gas	NA1956	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane monochlorodifluoromethane mixture	Nonflammable gas	NA1956	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
*	Dichlorodifluoromethane-trichloromonofluoromethane mixture	Nonflammable gas	NA1956	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane-trichloromonofluoromethane-monochloro difluoromethane mixture	Nonflammable gas	NA1956	Nonflammable gas	173.306 173.505	173.304 173.314 173.315 173.510	150 pounds-None				
	Dichlorodifluoromethane-trichlorotrifluoroethane mixture	Nonflammable gas	NA1956	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodiphenyltrichloroethane. *See* DDT		NA2761								
	Dichloroethylene	Flammable liquid	UN1150	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Dichloroisopropyl ether	Corrosive material	UN2490	Corrosive	173.244	173.254	1 quart	10 gallons	1,2	1,2	
A	Dichloromethane *or* methylene chloride	ORM-A	UN1593	None	173.505	173.510 173.605	10 gallons	55 gallons			
*	Dichloropentane	Flammable liquid	UN1152	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
EA	2,4-Dichlorophenoxyacetic acid esters (*RQ-100/45.4*)	ORM-A	NA2765	None	None	173.510	50 pounds	No limit	2	2	
EA	2,4-Dichlorophenoxyacetic acid (*RQ-100/45.4*)	ORM-A	NA2765	None	173.505	173.510					
	Dichlorophenyltrichlorosilane	Corrosive material	UN1766	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
E	Dichloropropane. *See* Propylene dichloride		UN1279								
E	Dichloropropene and propylene dichloride mixture (*RQ-5000/2270*)	Flammable liquid	NA2047	Flammable liquid	173.244	173.245	1 quart	10 gallons	1,2	1,2	
E	Dichloropropene (*RQ-5000/2270*)	Flammable liquid	UN2047	Flammable liquid	173.118	173.119	1 quart	10 gallons	2	2	
E	2,2-Dichloropropionic acid (*RQ-5000/2270*)	Corrosive material	NA1760	Corrosive	173.244	173.245	2 gallons	10 gallons	2	2	
E	Dichlorvos (*RQ-10/4.54*)	Poison B	NA2783	Poison	173.364	173.365	Forbidden	1 quart	2	2	
	Dicumyl peroxide *50% solution*	Organic peroxide	NA2121	Organic peroxide	173.153	173.224	1 quart	1 quart	1,2	4	
	Dicumyl peroxide, dry	Organic peroxide	UN2121	Organic peroxide	173.153	173.154	2 pounds	25 pounds	1,2	1,2	
EA	Dieldrin (*RQ-1/.454*)	ORM-A	NA2761	None	173.505	173.510	No limit	No limit			
	Diesel Fuel. *See* Fuel oil										
	Diethyl cellosolve. *See* Ethylene glycol diethyl ether		UN1153								
	Diethyl dichlorosilane	Flammable liquid	UN1767	Flammable liquid	None	173.135	Forbidden	10 gallons	1	1	Keep dry. Segregation same as for corrosives
	Diethyl ketone	Flammable liquid	UN1156	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
E	Diethylamine (*RQ-1000/454*)	Flammable liquid	UN1154	Flammable liquid	173.118	173.119	Forbidden	5 pints	1,3	4	
	Diethylene glycol dinitrate. *See* 173.51	Forbidden									
	1,1-Difluoro 1-chloroethane. *See* Difluoromonochloroethane		UN2517								
	Difluoroethane	Flammable gas	UN1030	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Difluoromonochloroethane	Flammable gas	UN2537	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Difluorophosphoric acid, anhydrous	Corrosive material	UN1768	Corrosive	None	173.275	Forbidden	1 gallon	1,2	1,2	
	Dihydropyran	Flammable liquid	UN2376	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Diisobutyl ketone	Combustible liquid	UN1157	None	173.118a	None	No limit	No limit	1,2	1,2	
	Diisooctyl acid phosphate	Corrosive material	UN1902	Corrosive	173.144	173.296	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permitted under deck
	Diisopropylamine	Flammable liquid	UN1158	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Diisopropylbenzene hydroperoxide solution, *not over 60% peroxide*	Organic peroxide	NA2171	Organic peroxide	173.153	173.224	1 quart	1 quart	1,2	4	
	Diisopropylethanolamine	Corrosive material	UN2825	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Diisopropylether	Flammable liquid	UN1159	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	

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§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Dimethyl carbonate	Flammable liquid	UN1161	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Dimethyl ether	Flammable gas	UN1033	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Dimethyl sulfate	Corrosive material	UN1595	Corrosive	None	173.255	Forbidden	1 quart	1	5	Keep cool
	Dimethyl sulfide	Flammable liquid	UN1164	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
E	Dimethylamine, anhydrous (*RQ-1000/454*)	Flammable gas	UN1032	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	
E	Dimethylamine, aqueous solution (*RQ-1000/454*)	Flammable liquid	UN1160	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	2,3-Dimethylbutane	Flammable liquid	UN2457	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	1,4-Dimethylcyclohexane	Flammable liquid	UN2263	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Dimethyldichlorosilane	Flammable liquid	UN1162	Flammable liquid	None	173.135	Forbidden	5 pints	1,2	1	
	Dimethylhexane dihydroperoxide, dry	Forbidden									
	Dimethylhexane dihydroperoxide, (with 30% or more water)	Organic peroxide	NA2174	Organic peroxide	None	173.157	Forbidden	25 pounds	1	1	
	Dimethylhydrazine, unsymmetrical (*UDMH*)	Flammable liquid	UN1163	Flammable liquid and Poison	None	173.145	Forbidden	5 pints	1,2	1	Keep dry. Separate from corrosive and oxidizing materials, and organic peroxides.
E	Dinitrobenzene, solid, *or* dinitrobenzol, solid (*RQ-1000/454*)	Poison B	NA1597	Poison	173.364	173.371	50 pounds	200 pounds	1,2	1,2	
*E	Dinitrobenzene solution (*RQ-1000/454*)	Poison B	NA1597	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Dinitrochlorobenzol, solid *or* Dinitrochlorobenzene	Poison B	UN1577	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
A	Dinitrocyclohexylphenol	ORM-A	NA9026	None	173.505	173,510	No limit	No limit			
*E	Dinitrophenol solution (*RQ-1000/454*)	Poison B	UN1599	Poison	173.345	173.362a	1 quart	65 pounds	1,2	1,2	Stow away from heavy metals and their compounds. If flash point is 141 deg F or less segregation same as for flammable liquids
E	Dinitrotoluene (*RQ-1000/454*)	ORM-E	UN1600	None	None	173.510	No limit	No limit	2	2	
	Dioxane	Flammable liquid	UN1165	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,.2	1	
	Dioxolane	Flammable liquid	UN1166	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Diphenyl dichlorosilane	Corrosive material	UN1769	Corrosive	None	173.280	Forbidden	10 gallons	1	1	
	Diphenyl methyl bromide, solid	Corrosive material	UN1770	Corrosive	173.244	173.245b	25 pounds	100 pounds	1	4	
*	Diphenyl methyl bromide solution	Corrosive material	UN1770	Corrosive	173.244	173.247	1 quart	1 gallon	1,2	1,2	
	Diphenylaminechloroarsine (*DM*)	Irritating material	UN1698	Irritant	None	173.382	Forbidden	75 pounds	1	5	
	Diphosgene. See Phosgene										
E	Diquat (*RQ-1000/454*)	ORM-E	NA2781	None	None	173.510	No limit	No limit	2	2	
*	Disinfectant, liquid	Corrosive material	UN1903	Corrosive	173.244	173.245	1 quart	10 gallons	1	4	
*	Disinfectant, liquid	Poison B	UN1601	Poison	173.345	173.346	1 quart	55 gallons	1,2	1	
*	Disinfectant, liquid, n.o.s.	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Disinfectant, solid	Poison B	UN1601	Poison	173.364	173.365	50 pounds	200 pounds			
	Dispersant Gas *or* Refrigerant Gas. *See* 173.314 NOTE 13 and 173.15 NOTE 9										
*	Distillate (petroleum or coal tar)	Flammable liquid	UN1268	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
E	Disulfoton (*RQ-1/0.454*)	Poison B	NA2783	Poison	173.364	173.365	Forbidden	1 quart	2	2	
E	Diuron (*RQ-100/45.4*)	ORM-E	NA2767	None	None	173.510	No limit	No limit	2	2	
	Divinyl ether	Flammable liquid	UN1167	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Dodecyl trichlorosilane	Corrosive material	UN1771	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
E	Dodecylbenzenesulfonic acid (*RQ-1000/454*)	ORM-E	NA2584	None	None	173.510	No limit	No limit	2	2	
*	Dressing, leather	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Dressing, leather	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Drier. See Paint drier, liquid										
	Drill cartridge				173.55						
*	Drugs, n.o.s.	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Drugs, n.o.s.	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Drugs, n.o.s.	Flammable solid	NA1325	Flammable solid	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
*	Drugs, n.o.s.	Oxidizer	UN1479	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
*	Drugs, n.o.s. liquid	Corrosive material	UN1760	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Drugs, n.o.s. liquid	Poison B	UN2810	Poison	173.345	173.346	1 quart	55 gallons	1,3	1	
*	Drugs, n.o.s. solid	Corrosive material	UN1759	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
*	Drugs, n.o.s. solid	Poison B	UN2811	Poison	173.364	173.365	50 pounds	200 pounds	1,3	1,3	
	Drums, empty, must be classed for the hazardous material previously contained in drum. See 173.29										
	Dry ice. *See* Carbon dioxide, solid		UN1845								
	Dusts, by-product, poisonous. *See* arsenical dust										

§172.101 Hazardous Materials Table (cont'd)

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(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Dye intermediate, liquid	Corrosive material	UN2801	Corrosive	173.244	173.245 173.249a	1 quart	10 gallons	1,2	1,2	Stow away from foodstuffs and living quarters
	Dynamite. See High explosive										
E	EDTA. *See* Ethylenediaminetetraacetic acid										
	Electric blasting caps. *See* Blasting caps, electric										
	Electric squib	Class C explosive	UN0206	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Electric storage battery, wet. *See* Battery, electric storage, wet		NA2794								
	Electrolyte (*acid*), battery fluid (*not over 47% acid*)	Corrosive material	UN2796	Corrosive	173.244	173.257	1 quart	5 gallons	1,2	1,2	Glass carboys in hampers not permitted under deck
	Electrolyte (*acid*), *or* alkaline (*corrosive*) battery fluid packed with dry-storage battery	Corrosive material	NA2797	Corrosive	None	173.258	Forbidden	5 pints	1,2	1,2	
	Electrolyte (*acid*), or alkaline (*corrosive*) battery fluid packed with battery charger, radio current supply device, or electronic equipment and actuating device.	Corrosive material	NA2797	Corrosive	None	173.259	Forbidden	5 pints	1,2	1,2	
	Empty cartridge bag with black powder igniter	Class C explosive	NA0325	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Empty cartridge case, primed	Class C explosive	UN0055	Explosive C	None	173.107	50 pounds	150 pounds	1,3	1,3	
*	Enamel. *See* Paint, enamel, lacquer, etc.		UN1263								
E	Endosulfan (*RQ-1/0.454*)	Poison B	NA2761	Poison	173.364	173.365	1 pound	10 pounds	1,2	1,2	If stowed under deck, must be stowed in a recoverable location.
E	Endrin (*RQ-1/0.454*)	Poison B	NA2761	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	If stowed under deck, must be stowed in a recoverable location.
	Engine, internal combustion				173.120				1,2	1,2	Not permitted in unventilated containers
	Engine starting fluid	Flammable gas	UN1960	Flammable gas	None	173.304	Forbidden	60 pounds	1,2	5	
E	Epichlorohydrin (*RQ-1000/454*)	Flammable liquid	UN2023	Flammable liquid	173.118	173.119	1 quart	10 gallons	2	2	
*	Eradicator, paint *or* grease, liquid	Flammable liquid	UN1850	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Etching acid, liquid, n.o.s.	Corrosive material	NA1790	Corrosive	None	173.299	Forbidden	10 pounds	1	5	
	Ethane	Flammable gas	UN1035	Flammable gas	173.306	173.304	Forbidden	300 pounds	1,2	4	
	Ether (*ethyl*)	Flammable liquid	UN1155	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Ether, Ethyl. *See* Ether										
E	Ethion (*RQ-10/4.54*)	Poison B	NA2783	Poison	173.364	173.365	Forbidden	1 quart	2	2	
	Ethyl acetate	Flammable liquid	UN1173	Flammable liquid	173.118	173.419	1 quart	10 gallons	1,2	1	
	Ethyl acrylate, inhibited	Flammable liquid	UN1917	Flammable liquid	173,118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl alcohol. *See* Alcohol, n.o.s.		UN1170								
	Ethyl aldehyde. *See* Acetaldehyde		UN1089								
E	Ethyl benzene (*RQ-1000/454*)	Flammable liquid	UN1175	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl borate	Flammable liquid	UN1176	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	Keep dry
	Ethyl butyl acetate	Combustible liquid	UN1177	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethyl butyl ether	Flammable liquid	UN1179	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl butyraldehyde	Flammable liquid	UN1178	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl butyrate	Flammable liquid	UN1180	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Ethyl chloride	Flammable liquid	UN1037	Flammable liquid	None	173.123	Forbidden	173.123	1,2	1	Segregation same as for flammable gases
	Ethyl chloroacetate	Combustible liquid	UN1181	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethyl chloroformate (*chlorocarbonate*)	Flammable liquid	UN1182	Flammable liquid and Poison	None	173.288	Forbidden	5 pints	1,2	1	
	Ethyl chlorothioformate	Corrosive material	UN2826	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1,2	1	
	Ethyl crotonate	Flammable liquid	UN1862	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl dichlorosilane	Flammable liquid	UN1892	Flammable liquid	None	173.135	Forbidden	5 pints	1,2	1	
	Ethyl ether. See Ether		UN1155								
	Ethyl formate	Flammable liquid	UN1190	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Ethyl lactate	Combustible liquid	UN1192	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethyl mercaptan	Flammable liquid	UN2363	Flammable liquid	None	173.141	Forbidden	10 gallons	1,2	1	
	Ethyl methyl ether	Flammable liquid	UN1039	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	1	Segregation same as for flammable gases
	Ethyl methyl ketone	Flammable liquid	UN1193	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl nitrate (*nitric ether*)	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	Forbidden	Forbidden	1,2	1	
	Ethyl nitrite (nitrous ether)	Flammable liquid	UN1194	Flammable liquid	None	173.119	Forbidden	Forbidden	1,3	5	
	Ethyl phenyl dichlorosilane	Corrosive material	UN2435	Corrosive	None	173.280	Forbidden	10 gallons	1	5	

16 **§172.101 Hazardous Materials Table (cont'd)**

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Ethyl phosphonothioic dichloride, anhydrous	Corrosive material	NA1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Ethyl phosphonous dichloride, anhydrous	Corrosive material	NA1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Ethyl phosphorodichloridate	Corrosive material	NA1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Ethyl propionate	Flammable liquid	UN1195	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl silicate (*tetra ethyl ortho silicate*)	Combustible liquid	UN1292	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethyl trichlorosilane	Flammable liquid	UN1196	Flammable liquid	None	173.135	Forbidden	5 pints	1,2	1	
	Ethylene	Flammable gas	UN1962	Flammable gas	173.306	173.304	Forbidden	300 pounds	1,2	4	
	Ethylene chlorohydrin	Poison B	UN1135	Poison	173.345	173.346	1 quart	55 gallons	1,2	1	Segregation same as for flammable liquids
EAW	Ethylene dibromide (1,2-dibromethane) (*RQ-1000/454*)	ORM-A	UN1605	None	173.505	173.620	1 quart	55 gallons	1,2	1,2	Stow away from living quarters
E	Ethylene dichloride (*RQ-5000/2270*)	Flammable liquid	UN1184	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethylene glycol diethyl ether (*diethyl 'Cellosolve'*)	Combustible liquid	UN1153	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene glycol monoethyl ether (*'Cellosolve'*)	Combustible liquid	UN1171	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene glycol monoethyl ether acetate (*'Cellosolve acetate'*)	Combustible liquid	UN1172	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene glycol monomethyl ether (*methyl 'Cellosolve'*)	Combustible liquid	UN1188	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene glycol monomethyl ether acetate (*methyl 'Cellosolve acetate'*)	Combustible liquid	UN1189	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene imine, inhibited	Flammable liquid	UN1185	Flammable liquid and Poison	None	173.139	Forbidden	5 pints	1,2	1	
	Ethylene oxide	Flammable liquid	UN1040	Flammable liquid	None	173.124	Forbidden	173.124	1,2	1	Segregation same as for flammable gases
E	Ethylenediamine (*RQ-1000/454*)	Flammable liquid	UN1604	Flammable liquid	173.118	173.119	Forbidden	1 quart	2	2	
E	Ethylenediaminetetraacetic acid (*RQ-5000/2270*)	ORM-E	NA9117	None	None	173.510	No limit	No limit	2	2	
	Ethylhexaldehyde	Combustible liquid	UN1191	None	173.118a	None	No limit	No limit	1,2	1,2	
	Etiologic agent, n.o.s.	Etiologic agent	UN2814	Etiologic agent	173.386	173.387	173.386	4 liters			Not permitted except under specific conditions approved by the Department
W	Excelsior (shredded wood) *when dry, clear, and free from oil*	ORM-C		None	173.505	173.980			1,3	1,3	Stow away from organic, corrosive, or oxidizing materials
W	Exothermic ferrochrome	ORM-C		None	173.505	173.985			1	1	
W	Exothermic ferromanganese. *See* Exothermic ferrochrome										
W	Exothermic silicon chrome. *See* Exothermic ferrochrome										
	Explosive auto alarm	Class C explosive	UN0001	Explosive C	None	173.111	50 pounds	150 pounds	1,2	1,2	
	Explosive bomb	Class A explosive		Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	Magazine stowage authorized. No other cargo may be stowed in the same hold with these items
	Explosive cable cutter	Class C explosive	UN0070	Explosive C	None	173.102	50 pounds	150 pounds	1,3	1,3	
	Explosive mine	Class A explosive		Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	Magazine stowage authorized. No other cargo may be stowed in the same hold with these items
	Explosive, new approval, and evaluation See 173.86										
	Explosive power device, Class B	Class B explosive		Explosive B	None	173.94	Forbidden	150 pounds	1,2	5	
	Explosive power device, Class C	Class C explosive	NA0323	Explosive C	None	173.102	50 pounds	150 pounds	1,3	1,3	
	Explosive projectile	Class A explosive		Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	Magazine stowage authorized. No other cargo may be stowed in the same hold with this material
	Explosive release device	Class C explosive	UN0173	Explosive C	None	173.102	50 pounds	150 pounds	1,3	1,3	
	Explosive rivet	Class C explosive	UN0174	Explosive C	None	173.100	50 pounds	150 pounds	1,2	1,2	
	Explosive, sample for laboratory examination				173.86		Forbidden	173.86			
	Explosive torpedo	Class A explosive		Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	Magazine stowage authorized. No other cargo may be stowed in the same hold with this material
*	Extract, liquid, flavoring	Flammable liquid	UN1197	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Fabric with animal or vegetable oil. See Fibers or fabric containing not more than 5% animal or vegetable fat										
AW	Feed, wet, mixed	ORM-C		None	173.505	173.990	Forbidden	Forbidden	3	3	Stow in cool, dry, well ventilated compartment. Do not stow bags over ten tiers high without flooring off. Do not overstow
W	Felt, waste. *See* Cotton waste										
	Felt, waste, wet. *See* Waste wool, wet										
E	Ferric ammonium citrate (*RQ-1000/454*)	ORM-E	NA9118	None	None	173.510	No limit	No limit	2	2	
E	Ferric ammonium oxalate (*RQ-1000/454*)	ORM-E	NA9119	None	None	173.510	No limit	No limit	2	2	
	Ferric arsenate, solid	Poison B	UN1606	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Ferric arsenite, solid	Poison B	UN1607	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
EA	Ferric chloride, solid, *anhydrous* (*RQ-1000/454*)	ORM-B	UN1773	None	173.505	173.510	25 pounds	100 pounds			
*E	Ferric chloride solution (*RQ-1000/454*)	Corrosive material	UN2582	Corrosive	173.244	173.245 173.245a	1 quart	10 quarts	1,2	1,2	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
E	Ferric fluoride (*RQ-100/45.4*)	ORM-E	NA9120	None	None	173.510	No limit	No limit	2	2	
E	Ferric nitrate (*RQ-1000/454*)	Oxidizer	UN1466	Oxidizer	173.153	173.182	25 pounds	100 pounds	2	2	
E	Ferric sulfate (*RQ-1000/454*)	ORM-E	NA9121	None	None	173.510	No limit	No limit	2	2	
W	Ferrophosphorus	ORM-A		None	173.505	173.635			1,2	1,2	Keep dry. Stow away from living quarters
AW	Ferrosilicon, *containing 30% or more but not more than 70% silicon*	ORM-A	UN1408	None	173.505	173.510 173.645	Forbidden	25 pounds	1,2	1,2	Keep dry. Stow away from living quarters. Segregation same as for flammable solids labeled Dangerous When Wet
E	Ferrous ammonium sulfate (*RQ-1000/454*)	ORM-E	NA9122	None	None	173.510	No limit	No limit	2	2	
	Ferrous arsenate (*iron arsenate*), solid	Poison B	UN1608	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
EA	Ferrous chloride, solid (*RQ-100/45.4*)	ORM-B	NA1759	None	None	173.510	No limit	No limit	2	2	
E	Ferrous chloride, solution (*RQ-100/45.4*)	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	5 gallons	2	2	
E	Ferrous sulfate (*RQ-1000/454*)	ORM-E	NA9125	None	None	173.510	No limit	No limit	2	2	
	Fertilizer ammoniating solution containing free ammonia (*more than 25.3 p.s.i.g.*)	Nonflammable gas	UN1043	Nonflammable gas	173.306	173.304 173.314	Forbidden	300 pounds	1,2	4	
	Fertilizer, tankage. *See* Garbage, tankage										
	Fibers, burnt	Flammable solid	NA1372	Flammable solid	None	173.169	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
W	Fibers (*jute, hemp, flax, sisal, coir, kapok, and similar vegetable fibers*)	ORM-C	NA1372	None	173.505	173.965			1,2	1,2	Stow away from animal or vegetable oils. Segregation same as for flammable solids
	Fibers *or* fabric, containing not more than 5% animal *or* vegetable oil	Flammable solid	NA1373	Flammable solid	None	173.170	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Film (nitrocellulose)	Flammable solid	NA1324	Flammable solid	None	173.177	50 pounds	200 pounds	1,3	1,3	Stow away from other flammable cargo or substances
	Film, photographic, (including scrap film), safety, nonflammable, or slow burning. Not subject to requirements of this subchapter		NA2002								
*	Fire extinguisher	Nonflammable gas	UN1044	Nonflammable gas	173.306		150 pounds	300 pounds	1,2	1,2	
	Fire extinguisher charge containing not more than 50 grains of propellant explosive per unit. Not subject to requirements of this subchapter.										
	Fire extinguisher charge containing sulfuric acid	Corrosive material	UN1774	Corrosive	173.261		1 quart	1 gallon	1,2	1,2	
	Firecracker salute. *See* Fireworks, common *or* special										
	Firecracker. *See* Fireworks, common *or* special										
	Fireworks, common	Class C explosive	NA0335	Explosive C	None	173.100 173.108	50 pounds	200 pounds	1,3	1,3	Passenger vessels in metal lockers only
	Fireworks, exhibition display piece. *See* Fireworks, special										
	Fireworks, special	Class B explosive		Explosive B	None	173.88 173.91	Forbidden	200 pounds	3	3	Passenger vessels in metal lockers only. Toy torpedoes must not be packed with other special fireworks
W	Fish meal *or* fish scrap containing 6% to 12% water	ORM-C	NA1374	None	173.505	173.995			1,2	1,2	Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides. *Use double strip stowage* for cargo 6-12 percent moisture containing not more than 12 percent fat. *Use single strip stowage* for cargo 6-12 percent moisture containing 12-15 percent fat.
	Fish meal *or* fish scrap containing less than 6% or more than 12% water	Flammable solid	NA1374	Flammable solid	None	173.171	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Fissile radioactive material. *See* Radioactive material, fissile		UN2918								
*	Flame retardant compound liquid	Corrosive material	NA1760	Corrosive	173.244	173.291	1 quart	10 gallons	1,2	1,2	
	Flammable Gas n.o.s. *See* Compressed gas, n.o.s.		UN1954								
	Flammable liquid, n.o.s.	Flammable liquid	UN1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Flammable solid, n.o.s.	Flammable solid	UN1325	Flammable solid	173.153	173.154	25 pounds	25 pounds	1,2	1,2	
	Flare, airplane. *See* Fireworks, special										
	Flare. *See* Fireworks, common										
	Flash cartridge. *See* Fireworks, special *or* Low explosives										
	Flash cracker. *See* Fireworks, common *or* special										
	Flash powder. *See* Fireworks, special *or* Low explosives										
	Flax. *See* Fibers										
	Flexible linear shaped charge, metal clad	Class C explosive	UN0237	Explosive C	None	173.104	50 pounds	300 pounds	1,3	1,3	
	Flowers of sulfur. *See* Sulfur		NA1350								
	Flue dust, poisonous	Poison B	UN1562	Poison	173.364	173.368	50 pounds	200 pounds	1,2	1,2	
	Fluoboric acid	Corrosive material	UN1775	Corrosive	173.244	173.283	1 quart	1 gallon	1,2	1,2	
	Fluoric acid. *See* Hydrofluoric acid		UN1790								
	Fluorine	Nonflammable gas	UN1045	Poison and Oxidizer	None	173.302	Forbidden	Forbidden	1	5	Stow in well ventilated space away from organic materials
	Fluorophosphoric acid, anhydrous. *See* Monofluorophosphoric acid, anhydrous		UN1776								
	Fluorosilicic acid. *See* Hydrofluosilicic acid		UN1778								
	Fluorosulfonic acid *or* Fluosulfonic acid	Corrosive material	UN1777	Corrosive	None	173.274	Forbidden	1 gallon	1	5	Keep dry
EAW	Formaldehyde, *or* formalin solution (*in containers of 110 gallons or less*) (*RQ-1000/454*)	ORM-A	NA2209	None	173.505	173.510	10 gallons	55 gallons	1,2	4	

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§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
E	Formaldehyde, *or* formalin solution (*in containers over 110 gallons*) (*RQ-1000/454*)	Combustible liquid	NA2209	None	173.118a	None	10 gallons	55 gallons	1,2	1,2	
	Formalin. *See* Formaldehyde solution		UN2209								
E	Formic acid (*RQ-5000/2270*)	Corrosive material	UN1779	Corrosive	173.244	173.245 173.289	1 quart	5 gallons	1,2	1,2	Glass carboys in hampers not permitted under deck
*E	Formic acid solution (*RQ-5000/2270*)	Corrosive material	NA1779	Corrosive	173.244	173.245 173.289	1 quart	5 gallons	1,2	1,2	
*	Fuel, aviation, turbine engine	Flammable liquid	UN1863	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Fuel oil	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
	Fuel oil, Diesel. *See* Fuel oil		NA1993								
	Fuel oil, No. 1, 2, 4, 5 *or* 6	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
	Fulminate of mercury, dry	Forbidden									
	Fulminate of mercury, wet. *See* Initiating explosive										
E	Fumaric acid (*RQ-5000/2270*)	ORM-E	NA9126	None	None	173.510	No limit	No limit	2	2	
	Fumaryl chloride	Corrosive material	UN1780	Corrosive	173.244	173.245	1 quart	1 quart	1	1	Glass carboys not permitted
*	*Fumigant*					173.152					
*E	Furfural (*RQ-1000/454*)	Combustible liquid	UN1199	None	173.118a	None	No limit	No limit	1,2	1	
	Fuse igniter	Class C explosive	NA0325	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Fuse, instantaneous	Class C explosive	UN0101	Explosive C	173.100		50 pounds	150 pounds	1,2	1,2	
	Fuse lighter	Class C explosive	UN0131	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Fuse, mild detonating, metal clad	Class C explosive	NA0104	Explosive C	None	173.104	50 pounds	300 pounds	1,2	1,2	
	Fuse, safety	Class C explosive	UN0105	Explosive C	173.100		50 pounds	300 pounds	1,2	1,2	
	Fusee (*railway or highway*)	Flammable solid	NA2254	Flammable solid	None	173.154a	50 pounds	200 pounds	1,3	1,3	
	Fusel oil	Combustible liquid	UN1201	None	173.118a	None	No limit	No limit	1,2	1,2	
	Fuze, combination	Class C explosive	NA0257	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Fuze, detonating	Class A explosive		Explosive A	None	173.69	Forbidden	Forbidden	6	5	
	Fuze, detonating, Class C explosive	Class C explosive	NA0257	Explosive C	None	173.113	50 pounds	150 pounds	1,3	1,3	
	Fuze, detonating, radioactive	Class A explosive		Explosive A	None	173.69	Forbidden	Forbidden	6	5	
	Fuze, percussion	Class C explosive	NA0320	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Fuze, time	Class C explosive	NA0257	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Fuze, tracer	Class C explosive	NA0306	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Gallium metal, liquid	ORM-B	NA2803	None	None	173.861	Forbidden	Forbidden	1	5	None
	Gallium metal, solid	ORM-B	NA2803	None	None	173.862	40 pounds	40 pounds	1,3	1	Shade from radiant heat
W	Garbage tankage *containing 8% or more water*	ORM-C		None	173.505	173.1000			1,2	1,2	
	Garbage tankage, *containing less than 8% water*	Flammable solid	NA1325	Flammable solid	None	173.209	Forbidden	Forbidden	1	1	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Gas cylinder, empty. *See* Cylinder, empty										
*	Gas drips, hydrocarbon	Combustible liquid	UN1864	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Gas drips, hydrocarbon	Flammable liquid	UN1864	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Gas identification set	Poison A	NA9035	Poison gas	None	173.331	Forbidden	Forbidden	1	5	
*	Gas identification set	Irritating material	NA9035	Irritant	None	173.331	Forbidden	Forbidden	1	5	
	Gas mine. *See* Explosive mine										
	Gas oil. *See* Fuel oil		UN1202								
	Gasoline (*including casing-head and natural*)	Flammable liquid	NA1257	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Gelatine Dynamite. *See* High explosive										
	Germane	Poison A	UN2192	Poison gas and Flammable gas	None	173.328	Forbidden	Forbidden	1	5	
	Grenade, empty, primed	Class C explosive	NA0110	Explosive C	None	173.107	50 pounds	150 pounds	1,3	1,3	
	Grenade, hand *or* rifle, explosive (*with or without gas, smoke, or incendiary material*)	Class A explosive		Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	No other cargo may be stowed in the same hold with these items
	Grenade, tear gas	Irritating material	NA1700	Irritant	None	173.385	Forbidden	75 pounds	1,2	1	
	Grenade without bursting charge: With incendiary material (Special fireworks)	Class B explosive		Explosive B	173.91		Forbidden	Forbidden	3	3	Passenger vessels in metal lockers only
	Grenade without bursting charge: With smoke charge (Smoke grenade)	Class C explosive	NA0303	Explosive C	173.108		50 pounds	150 pounds	1,3	1,3	
	Grenade without bursting charge: With Poison A gas charge	Poison A		Poison gas	173.330		Forbidden	Forbidden			*See* correct shipping name of applicable Poison A material for stowage, special handling, and special segregation requirements
	Grenade without bursting charge: With Poison B charge	Poison B		Poison	173.350		Forbidden	Forbidden			*See* Correct shipping name of applicable Poison B material for stowage, special handling, and special segregation requirements

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Guanidine nitrate	Oxidizer	UN1467	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	Separate from nitro-compounds, chlorates, and acids
	Guanyl nitrosamino guanyl tetrazene. See Initiating explosive										
	Guanyl nitrosamino guanylidene hydrazine. See Initiating explosive										
	Guided missile with warhead. See Rocket ammunition with explosive, illuminating, gas, incendiary, *or* smoke projectile										
	Guided missile, without warhead. See Rocket motor, Class A explosive *or* Rocket motor, Class B explosive										
	Guncotton. See High explosive										
E	Guthion (*RQ-1/0.454*)	Poison B	NA2783	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
	Hafnium metal, dry (*See Note 3, Sec. 173.214*)	Flammable solid	UN2545	Flammable solid	None	173.214	Forbidden	75 pounds	1	5	
	Hafnium metal, wet	Flammable solid	UN1326	Flammable solid	None	173.214	Forbidden	150 pounds	1,2	5	
	Hair, wet	Flammable solid	NA1325	Flammable solid	None	173.172	Forbidden	Forbidden	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Hand signal device	Class C explosive	NA0191	Explosive C	None	173.108	50 pounds	200 pounds	1,2	1,2	
W	Hay	ORM-C	UN1327	None	173.505	173.1005			1,2	1,2	Segregation same as for flammable solids. Stow away from animal or vegetable oils
W	Hay or straw (*loose, wet, or damp*)		UN1327								Forbidden for water shipment
	Heater for refrigerator car, liquid fuel type (*containing fuel*)	Flammable liquid		Flammable liquid	173.146		Forbidden	Forbidden	1,2	1	
*	Helium	Nonflammable gas	UN1046	Nonflammable gas	173.306	173.302 173.314	150 pounds	300 pounds	1,2	1,2	
*	Helium-oxygen mixture	Nonflammable gas	NA1980	Nonflammable gas	173.306	173.302	150 pounds	300 pounds	1,2	1,2	
E	Heptachlor (*RQ-1/0.454*)	Poison B	NA2761	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	If stowed under deck, must be stowed in a recoverable location.
	Heptane	Flammable liquid	UN1206	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
W	*Hessian. See* Burlap cloth										
E	Hexachlorocyclopentadiene (*RQ-1/0.454*)	Corrosive material	NA2646	Corrosive	173.244	173.245	1 quart	10 gallons	2	2	
W	Hexachloroethane	ORM-A	NA9037	None	173.505	173.650			1,2	1,2	
	Hexadecyltrichlorosilane	Corrosive material	UN1781	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Hexadiene	Flammable liquid	UN2458	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Hexaethyl tetraphosphate and compressed gas mixture	Poison A	UN1612	Poison gas	None	173.334	Forbidden	Forbidden	1	5	Shade from radiant heat
	Hexaethyl tetraphosphate, liquid	Poison B	UN1611	Poison	None	173.358	Forbidden	1 quart	1	4	
	Hexaethyl tetraphosphate mixture, dry (*containing more than 2% hexaethyl tetraphosphate*)	Poison B	NA2783	Poison	None	173.377	Forbidden	200 pounds	1,2	5	
*	Hexaethyl tetraphosphate mixture, dry (*containing not more than 2% hexaethyl tetraphosphate*)	Poison B	NA2783	Poison	173.377	173.377	50 pounds	200 pounds	1,2	4	
	Hexaethyl tetraphosphate mixture, liquid (*containing more than 25% hexaethyl tetraphosphate*)	Poison B	NA2783	Poison	None	173.359	Forbidden	1 quart	1,2	5	
*	Hexaethyl tetraphosphate mixture, liquid (*containing not more than 25% hexaethyl tetraphophate*)	Poison B	UN2783	Poison	173.359	173.359	1 quart	1 quart	1,2	4	
	Hexafluorophosphoric acid	Corrosive material	UN1782	Corrosive	None	173.275	Forbidden	1 gallon	1,2	1,2	
	Hexafluoropropylene	Nonflammable gas	UN1858	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1	4	
	Hexafluoropropylene oxide	Nonflammable gas	NA1956	Nonflammable gas	173.306	173.304 173.314	150 pounds	300 pounds	1,2	1,2	
*	Hexaldehyde	Flammable liquid	UN1207	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Hexamethylenediamine, solid	Corrosive material	UN2280	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
*	Hexamethylenediamine, solution	Corrosive material	UN1783	Corrosive	173.244	173.292	1 quart	10 gallons	1,2	1,2	
	Hexamethyleneimine	Corrosive material	UN2493	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Hexane	Flammable liquid	UN1208	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Hexanoic acid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Hexyltrichlorosilane	Corrosive material	UN1784	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	High explosive	Class A explosive		Explosive A	173.655	173.61 to 173.87	Forbidden	Forbidden	6	5	
	High explosive, liquid	Class A explosive		Explosive A	None	173.62	Forbidden	Forbidden	6	5	
*	Hydraulic accumulator. *See* Accumulator, pressurized		NA1956								
	Hydrazine, anhydrous	Flammable liquid	UN2029	Flammable liquid and Poison	None	173.276	Forbidden	5 pints	1	5	Segregation same as for corrosives
*	Hydrazine, aqueous solution	Corrosive material	UN2030	Corrosive	None	173.276	Forbidden	5 pints	1	5	
*	Hydriodic acid	Corrosive material	UN1787	Corrosive	173.244	173.245	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
	Hydrobromic acid, anhydrous. *See* Hydrogen bromide		UN1048								

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§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Hydrobromic acid, *more than 49% strength*	Corrosive material	UN1788	Corrosive	None	173.262	Forbidden	Forbidden	1	1	Glass carboys not permitted on passenger vessel
*	Hydrobromic acid not more than 49% strength	Corrosive material	UN1788	Corrosive	173.244	173.262	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
	Hydrocarbon gas, liquefied	Flammable gas	UN1965	Flammable gas	173.306	173.304 173.314	Forbidden	300 pounds	1,2	1	
*	Hydrocarbon gas, nonliquefied	Flammable gas	UN1964	Flammable gas	173.306	173.302	Forbidden	300 pounds	1,2	1	
E	Hydrochloric acid, anhydrous. *See* Hydrogen chloride		UN1050								
*E	Hydrochloric acid mixture (*RQ-5000/2270*)	Corrosive material	NA1789	Corrosive	173.244	173.263	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
*E	Hydrochloric acid solution, inhibited (*RQ-5000/2270*)	Corrosive material	NA1789	Corrosive	173.244	173.263	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
*E	Hydrochloric (*muriatic*) acid (*RQ-5000/2270*)	Corrosive material	UN1789	Corrosive	173.244	173.263	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
E	Hydrocyanic acid, liquefied (*RQ-10/4.54*)	Poison A	UN1051	Flammable gas and Poison gas	None	173.332	Forbidden	Forbidden	1	5	
E	Hydrocyanic acid (*prussic*), solution (*5% or more hydrocyanic acid*) (*RQ-10/4.54*)	Poison A	NA1613	Flammable gas and Poison gas	None	173.332	Forbidden	Forbidden	1	5	Shade from radiant heat. Aqueous solutions containing more than 20 percent hydrogen cyanide are not permitted in transportation by water
	Hydrocyanic acid (*prussic*), unstabilized	Forbidden									
E	Hydrocyanic acid solution, less than 5% hydrocyanic acid (*RQ-10/4.54*)	Poison B	NA1613	Poison	None	173.351	Forbidden	25 pounds	01	5	Shade from radiant heat
	Hydrofluoric acid, anhydrous. *See* Hydrogen fluoride		UN1052								
*E	Hydrofluoric acid solution (*RQ-5000/2270*)	Corrosive material	UN1790	Corrosive	173.244	173.264	1 quart	1 gallon	1	4	
*E	Hydrofluoric and sulfuric acids, mixture (*RQ-5000/2270*)	Corrosive material	UN1786	Corrosive	None	173.290	Forbidden	1 gallon	1	5	
	Hydrofluoroboric acid. *See* Fluoboric acid		UN1775								
	Hydrofluorosilicic acid	Corrosive material	UN1778	Corrosive	None	173.265	1 quart	1 gallon	1,2	1,2	
	Hydrogen	Flammable gas	UN1049	Flammable gas	173.306	173.302 173.314	Forbidden	300 pounds	1,2	54	
	Hydrogen bromide	Nonflammable gas	UN1048	Nonflammable gas	173.306	173.304	Forbidden	300 pounds	1	4	
	Hydrogen chloride	Nonflammable gas	UN1050	Nonflammable gas	173.306	173.304	Forbidden	300 pounds	1	4	
	Hydrogen fluoride	Corrosive material	NA1790	Corrosive	None	173.264	Forbidden	110 pounds	1	5	Segregation same as for nonflammable gases
	Hydrogen iodide solution. *See* Hydriodic acid		UN1787								
	Hydrogen, liquefied	Flammable gas	UN1966	Flammable gas	None	173.316	Forbidden	Forbidden			Forbidden
	Hydrogen peroxide solution (*8% to 40% peroxide*)	Oxidizer	NA2014	Oxidizer	173.244	173.266	1 quart	1 gallon	1,2	1	Shade from radiant heat. Separate from permanganates. Keep away from powdered metals
	Hydrogen peroxide solution (40% to 52% peroxide)	Oxidizer	NA2014	Oxidizer	173.244	173.266	Forbidden	Forbidden	1	4	Shade from radiant heat. Separate from permanganates. Keep away from powdered metals
	Hydrogen peroxide solution (over 52% peroxide)	Oxidizer	NA2015	Oxidizer	None	173.266	Forbidden	Forbidden	1	5	Shade from radiant heat. Separate from permanganates. Keep away from powdered metals. Concentrations greater than 60% hydrogen peroxide not permitted on any vessel except under conditions approved by the Department
	Hydrogen selenide	Flammable gas	UN2202	Flammable gas and Poison	None	173.328	Forbidden	Forbidden	1	5	
	Hydrogen sulfate. *See* Sulfuric acid		UN1830								
E	Hydrogen sulfide (*RQ-100/45.4*)	Flammable gas	UN1053	Flammable gas and Poison	None	173.304 173.314	Forbidden	300 pounds	1	5	
	Hydrosilicofluoric acid. *See* Hydrofluorosilicic acid		UN1778								
	Hypochlorite solution *containing more than 7% available chlorine by weight*	Corrosive material	NA1791	Corrosive	173.244	173.277	1 quart	4 gallons	1,2	1	Glass carboys in hampers not permitted under deck
*A	Hypochlorite solution containing not more than 7% available chlorine *by weight*	ORM-B	NA1791	None	173.505	173.510	No limit	No limit			
	Igniter	Class C explosive	UN0325	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Igniter cord	Class C explosive	UN0066	Explosive C	None	173.100	50 pounds	150 pounds	1,3	1,3	
	Igniter fuse, metal clad	Class C explosive	NA0103	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
*	Igniter, jet thrust (jato)	Class A explosive		Explosive A	None	173.79	Forbidden	Forbidden	6	5	
*	Igniter, jet thrust (jato)	Class B explosive		Explosive B	None	173.92	Forbidden	550 pounds	1,3	5	
*	Igniter, rocket motor	Class A explosive		Explosive A	None	173.79	Forbidden	Forbidden	6	5	
*	Igniter, rocket motor	Class B explosive		Explosive B	None	173.92	Forbidden	550 pounds	1,3	5	
	Illuminating projectile. *See* Fireworks, special										
	Iminobispropylamine	Corrosive material	UN2269	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Initiating explosive *Diazodinitrophenol*	Class A explosive		Explosive A	None	173.70	Forbidden	Forbidden	6	5	
	Initiating explosive *Fulminate of mercury*	Class A explosive		Explosive A	None	173.71	Forbidden	Forbidden	6	5	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Initiating explosive *Guanyl nitrosamino guanylidene hydrazine*	Class A explosive		Explosive A	None	173.72	Forbidden	Forbidden	6	5	
	Initiating explosive *Lead azide, dextrinated type only*	Class A explosive		Explosive A	None	173.73	Forbidden	Forbidden	6	5	
	Initiating explosive *Lead mononitroresorcinate*	Class A explosive		Explosive A	None	173.70	Forbidden	Forbidden	6	5	
	Initiating explosive Lead styphnate (*lead trinitroresorcinate*)	Class A explosive		Explosive A	None	173.74	Forbidden	Forbidden	6	5	
	Initiating explosive *Nitro mannite*	Class A explosive		Explosive A	None	173.75	Forbidden	Forbidden	6	5	
	Initiating explosive *Nitrosoguanidine*	Class A explosive		Explosive A	None	173.76	Forbidden	Forbidden	6	5	
	Initiating explosive *Pentaerythrite tetranitrate*	Class A explosive		Explosive A	None	173.77	Forbidden	Forbidden	6	5	
	Initiating explosive Tetrazene (*guanyl nitrosamine guanyl tetrazene*)	Class A explosive		Explosive A	None	173.78	Forbidden	Forbidden	6	5	
*	Ink	Combustible liquid	NA2867	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Ink	Flammable liquid	NA1210	Flammable liquid	173.118	173.144	1 quart	10 gallons	1,2	1	
*	Insecticide, dry, n.o.s.	Poison B	NA2588	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Insecticide, liquefied gas (*containing no Poison A or B material*)	Nonflammable gas	NA1968	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,3	1,3	
	Insecticide, liquefied gas, containing Poison A material *or* Poison B material	Poison A	NA1967	Poison gas	None	173.329 173.334	Forbidden	Forbidden	1	5	Shade from radiant heat
*	Insecticide, liquid, n.o.s.	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Insecticide, liquid, n.o.s.	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Insecticide, liquid, n.o.s.	Poison B	NA2902	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
W	Insulation tape (*varnished cloth type*). *See* Oiled material		NA1953								
	Iodine monochloride	Corrosive material	UN1792	Corrosive	None	173.293	Forbidden	1 quart	1	5	Keep dry
	Iodine pentafluoride	Oxidizer	UN2495	Oxidizer and Poison	None	173.246	Forbidden	100 pounds	1	1	Keep dry
	Iron chloride, solid. *See* Ferric chloride, solid		UN1773								
	Iron mass *or* sponge, *not properly oxidized*	Flammable solid	NA1383	Flammable solid	None	173.174	Forbidden	Forbidden	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Iron mass *or* sponge spent	Flammable solid	NA1376	Flammable solid	None	173.174	Forbidden	Forbidden	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
A	*Iron, oxide, spent*		UN1376				Forbidden	Forbidden			
	Iron sesquichloride, solid. *See* Ferric chloride		UN1773								
	Irritating agent, n.o.s.	Irritating material	NA1693	Irritant	173.382		Forbidden	75 pounds	1	1	Stow away from living quarters
	Isobutane *or* Liquefied petroleum gas. *See* Liquefied petroleum gas		UN1969								
	Isobutyl acetate	Flammable liquid	UN1213	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isobutylamine	Flammable liquid	UN1214	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isobutylene or Liquefied petroleum gas. *See* Liquefied petroleum gas		UN1055								
	Isobutyric acid	Corrosive material	UN2529	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Isobutyric anhydride	Corrosive material	UN2530	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Isooctane	Flammable liquid	UN1262	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isooctene	Flammable liquid	UN1216	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Isopentane	Flammable liquid	NA2371	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,3	4	
	Isopentanoic acid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
E	Isoprene (*RQ-1000/454*)	Flammable liquid	UN1218	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,3	4	
	Isopropanol. *See* Alcohol, n.o.s.		UN1219								
E	Isopropanolamine dodecylbenzenesulfonate (*RQ-1000/454*)	ORM-E	NA9127	None	None	173.510	No limit	No limit	2	2	
	Isopropyl acetate	Flammable liquid	UN1220	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isopropyl acid phosphate solid	Corrosive material	UN1793	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
	Isopropyl mercaptan	Flammable liquid	UN2703	Flammable liquid	None	173.141	Forbidden	10 gallons	1,3	5	
	Isopropyl nitrate	Flammable liquid	UN1222	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isopropyl percarbonate, stabilized	Organic peroxide	NA2133	Organic peroxide	None	173.282	Forbidden	Forbidden	5	5	
	Isopropyl percarbonate, unstabilized	Organic peroxide	NA2134	Organic peroxide	None	173.218	Forbidden	Forbidden	5	5	
	Isopropyl phosphoric acid, solid. *See* Isopropyl acid phosphate, solid		UN1793								
	Isopropylamine	Flammable liquid	UN1221	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Jet thrust igniter. *See* Igniter, jet thrust										
*	Jet thrust unit (*jato*)	Class A explosive		Explosive A	None	173.79	Forbidden	Forbidden	6	5	
*	Jet thrust unit (*jato*)	Class B explosive		Explosive B	None	173.92	Forbidden	550 pounds	1,3	5	
W	*Jute.* *See* Fibers										

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§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
W	*Kapok. See* Fibers										
E	Kelthane (*RQ-5000/2270*)	ORM-E	NA2761	None	None	173.510	No limit	No limit	2	2	
E	Kepone (*RQ-1/0.454*)	ORM-E	NA2761	None	None	173.510	No limit	No limit	2	2	
	Kerosene	Combustible liquid	UN1223	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Lacquer base, liquid. *See* Paint, enamel, lacquer, stain, etc.		UN1263								
*	Lacquer base, *or* Lacquer chips, dry	Flammable solid	NA2557	Flammable solid	173.153	173.175	25 pounds	100 pounds	1	1	
*	Lacquer base *or* lacquer chips, plastic (*Wet with alcohol or solvent*)	Flammable liquid	NA1263	Flammable liquid	173.118	173.127	1 quart	25 pounds	1,2	1	
*	Lacquer removing, reducing, *or* thinning compound. *See* Compound, laquer, paint, *or* varnish, etc., removing, reducing *or* thinning liquid		NA1142								
*	Lacquer. *See* Paint, enamel, lacquer, stain, etc.		UN1263								
	Lauroyl peroxide	Organic peroxide	UN2124	Organic peroxide	173.153	173.157 173.158	2 pounds	25 pounds	1,2	1	
E	Lead acetate (*RQ-5000/2270*)	ORM-E	UN1616	None	None	173.510	No limit	No limit	2	2	
E	Lead arsenate, solid (*RQ-5000/2270*)	Poison B	UN1617	Poison	173.364	173.367	50 pounds	200 pounds	1,2	1,2	
	Lead arsenite, solid	Poison B	UN1618	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Lead azide. See Initiating explosive										
EA	Lead chloride (*RQ-5000/2270*)	ORM-B	NA2291	None	173.505	173.510 173.800	25 pounds	100 pounds			
	Lead cyanide	Poison B	UN1620	Poison	173.370		25 pounds	No limit	1,2	1,2	Stow away from acids
W	Lead dross	ORM-C	NA1794	None	173.505	173.1010			1,2	1,2	Segregation same as for corrosive materials
EA	Lead fluoborate (*RQ-5000/2270*)	ORM-B	NA2291	None	None	173.510	25 pounds	100 pounds	2	2	
EA	Lead fluoride (*RQ-1000/454*)	ORM-B	NA2811	None	None	173.510	25 pounds	100 pounds	2	2	
E	Lead iodide (*RQ-5000/2270*)	ORM-E	NA2811	None	None	173.510	No limit	No limit	2	2	
	Lead mononitroresorcinate. See Initiating explosive										
E	Lead nitrate (*RQ-5000/2270*)	Oxidizer	UN1469	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	Stow away from foodstuffs
	Lead peroxide	Oxidizer	UN1872	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Stow away from foodstuffs
W	Lead scrap. *See* Lead dross										
E	Lead stearate (*RQ-5000/2270*)	ORM-E	NA2811	None	None	173.510	No limit	No limit	2	2	
	Lead styphnate (lead trinitroresorcinate). See Initiating explosive										
E	Lead sulfate, solid (*containing more than 3% free acid*) (*RQ-5000/2270*)	Corrosive material	UN1794	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
E	Lead sulfide (*RQ-5000/2270*)	ORM-E	NA2291	None	None	173.510	No limit	No limit	2	2	
E	Lead thiocyanate (*RQ-5000/2270*)	ORM-E	NA2291	None	None	173.510	No limit	No limit	2	2	
*	Leather bleach *or* dressing	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Leather bleach *or* dressing	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
	Life-rafts, inflatable	ORM-C		None	None	173.906	1 per inaccessible cargo compartment	No limit	1,2	1,2	
	Lighter fluid	Flammable liquid	UN1226	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Lime-nitrogen. See Calcium cyanamide, not hydrated, etc.		NA1403								
E	Lime, slaked. *See* Calcium hydroxide										
	Lime, unslaked. *See* Calcium oxide		NA1910								
EA	Lindane (*RQ-1/.454*)	ORM-A	NA2761	None	173.505	173.510	No limit	No limit			
	Liquefied hydrocarbon gas. *See* Hydrocarbon gas, liquefied		NA1965								
*	Liquefied nonflammable gas (*charged with nitrogen, carbon dioxide, or air*)	Nonflammable gas	NA1956	Nonflammable gas	173.306	173.304	300 pounds	300 pounds	1,2	1,2	
	Liquefied petroleum gas	Flammable gas	UN1075	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Liquid other than one classed as flammable, corrosive, poison or irritant, charged with nitrogen, carbon dioxide, or air. See Compressed gas n.o.s.										
	Lithium acetylide-ethylene diamine complex	Flammable solid	NA2813	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solid labeled Dangerous When Wet
	Lithium aluminum hydride	Flammable solid	UN1410	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solid labeled Dangerous When Wet
	Lithium aluminum hydride, ethereal	Flammable liquid	UN1411	Flammable liquid	None	173.137	Forbidden	1 quart	1	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium amide, powdered	Flammable solid	UN1412	Flammable solid	173.153	173.168	25 pounds	100 pounds	1,2	4	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium borohydride	Flammable solid	UN1413	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
E	Lithium chromate (*RQ-1000/454*)	ORM-E	NA9134	None	None	173.510	No limit	No limit	2	2	
	Lithium ferrosilicon	Flammable solid	UN2830	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Lithium hydride	Flammable solid	UN1414	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium hydride in fused solid form	Flammable solid	UN2805	Flammable solid and Dangerous when wet	None	173.206	Forbidden	100 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium hypochlorite compound, dry (*containing more than 39% available chlorine*)	Oxidizer	UN1471	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	
	Lithium metal	Flammable solid	UN1415	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium metal, in cartridges	Flammable solid	NA1415	Flammable solid and Dangerous when wet	173.206		1 pound	25 pounds	1,2	4	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium nitride	Flammable solid	UN2806	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium peroxide	Oxidizer	UN1472	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Keep dry
	Lithium silicon	Flammable solid	UN1417	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet
	London purple, solid	Poison B	UN1621	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Low blasting explosive. See Low explosive										
	Low explosive	Class A explosive		Explosive A	None	173.60	Forbidden	Forbidden	6	5	
	Lye. See Sodium hydroxide, solid		UN1823								
	Magnesium aluminum phosphide	Flammable solid	UN1419	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet
	Magnesium arsenate, solid	Poison B	UN1622	Poison	173.364	173.367	50 pounds	200 pounds	1,2	1,2	
	Magnesium dross, wet or hot	Forbidden			173.173						
*	Magnesium, metal (*powdered, pellets, turnings, or ribbons*)	Flammable solid	NA1418	Flammable solid and Dangerous when wet	173.153	173.220	25 pounds	100 pounds	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet
	Magnesium nitrate	Oxidizer	UN1474	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Magnesium perchlorate	Oxidizer	UN1475	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,3	1,3	Stow away from powdered metals
	Magnesium peroxide, solid	Oxidizer	UN1476	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Keep dry
*	Magnesium scrap (*borings, clippings, shavings, sheet, turnings, or scalpings*)	Flammable solid	NA1869	Flammable solid and Dangerous when wet	173.153	173.220	Forbidden	Forbidden	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet
A	Magnetized material	ORM-C	UN2807	Magnetized material	None	173.1020	No limit	No limit			
EA	Malathion (*RQ-10/4.54*)	ORM-A	NA2783	None	173.505	173.510	No limit	No limit			
EA	Maleic acid (*RQ-5000/2270*)	ORM-A	NA2215	None	None	173.510	25 pounds	100 pounds	2	2	Keep tightly closed.
EA	Maleic anhydride (*RQ-5000/2270*)	ORM-A	UN2215	None	None	173.510	25 pounds	100 pounds	1	1	
A	Manganese dioxide	ORM-B	NA1479	None	173.505	173.510	No limit	No limit			
	Matches, block. See Matches, strike anywhere		UN1331								
	Matches, safety, *book, card, or strike-on-box*	Flammable solid	UN1944	Flammable solid	173.176		50 pounds	50 pounds	1,2	1	
	Matches, strike anywhere	Flammable solid	UN1331	Flammable solid	None	173.176	Forbidden	Forbidden	1,2	1	
	Matting acid. *See* Sulfuric acid		UN1830								
*	Medicines, n.o.s.	Combustible liquid	NA1851	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Medicines, n.o.s.	Flammable liquid	NA1851	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Medicines, n.o.s.	Flammable solid	NA1851	Flammable solid	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
*	Medicines, n.o.s.	Oxidizer	NA1851	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
*	Medicines, n.o.s., liquid	Corrosive material	NA1851	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Medicines, n.o.s., liquid	Poison B	NA1851	Poison	173.345	173.346	1 quart	55 gallons	1,3	1	
*	Medicines, n.o.s., solid	Corrosive material	NA1851	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
*	Medicines, n.o.s., solid	Poison B	NA1851	Poison	173.364	173.365	50 pounds	200 pounds	1,3	1,3	
	Memtetrahydro phthalic anhydride	Corrosive material	NA1760	Corrosive	None	173.298	Forbidden	1 quart	1,2	1	
*	Mercaptan mixture, aliphatic	Flammable liquid	NA1228	Flammable liquid	None	173.141	Forbidden	10 gallons	1,3	5	
*	Mercaptan mixture, aliphatic (*in containers over 110 gallons*)	Combustible liquid	NA1228	None	173.118a	None	Forbidden	10 gallons	1,2	1,2	
AW	Mercaptan mixture, aliphatic (*in containers of 110 gallons or less). See 173.141(b)*	ORM-A	NA1228	None	173.505	173.510	Forbidden	10 gallons	1,3	5	Stow in well ventilated space away from living quarters
E	Mercaptodimethur (*RQ-100/45.4*)	ORM-E	NA2757	None	None	173.510	No limit	No limit	2	2	
	Mercuric acetate	Poison B	UN1629	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric-ammonium chloride, solid	Poison B	UN1630	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric benzoate, solid	Poison B	UN1631	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric bromide, solid	Poison B	UN1634	Poison	173.364	173.365	Forbidden	25 pounds	1,2	1,2	
	Mercuric chloride, solid	Poison B	UN1624	Poison	173.364	173.372	Forbidden	25 pounds	1,2	1,2	
E	Mercuric cyanide, solid (*RQ-1/.454*)	Poison B	UN1636	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
	Mercuric iodide, solid	Poison B	UN1638	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Mercuric iodide solution	Poison B	NA1638	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	

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§172.101 Hazardous Materials Table (cont'd)

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(c) Other requirements
*	Mercuric nitrate (*RQ-10/4.54*)	Oxidizer	UN1625	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	If stowed under deck, must be stowed in a recoverable location.
	Mercuric oleate, solid	Poison B	UN1640	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric oxide, solid	Poison B	UN1641	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric oxycyanide, solid	Poison B	UN1642	Poison	173.364	173.365	25 pounds	200 pounds	1,2	1,2	Stow away from acids
	Mercuric-potassium cyanide, solid	Poison B	UN1626	Poison	173.364	173.365 173.370	25 pounds	200 pounds	1,2	1,2	Stow away from acids
	Mercuric-potassium iodide, solid	Poison B	UN1643	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric salicylate solid	Poison B	UN1644	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric subsulfate, solid	Poison B	NA2025	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Mercuric sulfate, solid (*RQ-10/4.54*)	Poison B	UN1645	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Mercuric sulfocyanate, solid or mercuric thiocyanate, solid (*RQ-10/4.54*)	Poison B	UN1646	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurol *or* mercury nucleate, solid	Poison B	UN1639	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous acetate, solid	Poison B	NA1629	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous bromide, solid	Poison B	NA1634	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous gluconate, solid	Poison B	NA1637	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous iodide, solid	Poison B	NA1637	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Mercurous nitrate, solid (*RQ-10/4.54*)	Oxidizer	UN1627	Oxidizer	173.153	173.154	50 pounds	100 pounds	1,2	1,2	
	Mercurous oxide, black, solid	Poison B	NA1641	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous sulfate, solid	Poison B	UN1628	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Mercury compound, n.o.s., solid	Poison B	UN2025	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercury fulminate. *See* Initiating explosive										
A	Mercury, metallic	ORM-B	NA2809	None	None	173.860	173.860	173.860			
	Mesityl oxide	Flammable liquid	UN1229	Flammable liquid	None	173.119	1 quart	10 gallons	1,2	1,2	
W	Metal borings, shavings, turnings, *or* cuttings	ORM-C	NA2793	None	173.505	173.1025			1,2	1,2	Keep dry. Not permitted if temperature of material is at or above 130 deg F
	Methane	Flammable gas	UN1971	Flammable gas	173.306	173.302	Forbidden	300 pounds	1,2	4	
	Methanol. *See* Methyl alcohol		UN1230								
E	Methoxychlor (*RQ-1/0.454*)	ORM-E	NA2761	None	None	173.510	No limit	No limit	2	2	
	Methyl acetate	Flammable liquid	UN1231	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl acetone	Flammable liquid	UN1232	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl acrylate, inhibited	Flammable liquid	UN1919	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl alcohol	Flammable liquid	UN1230	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methylamyl acetate	Flammable liquid	UN1233	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Methyl amyl ketone	Combustible liquid	UN1110	None	173.118a	None	No limit	No limit	1,2	1,2	
	Methyl bromide and ethylene dibromide mixture, liquid	Poison B	UN1647	Poison	None	173.353	Forbidden	55 gallons	1	1	
	Methyl bromide and more than 2% chloropicrin mixture, liquid	Poison B	NA1581	Poison	None	173.353	Forbidden	Forbidden	1	5	Shade from radiant heat
	Methyl bromide and nonflammable, nonliquefied compressed gas mixture, liquid (*including up to 2% chloropicrin*)	Poison B	NA1955	Poison	None	173.353a	Forbidden	300 pounds	1	5	Stow away from living quarters
	Methyl bromide, liquid (*bromomethane*) (*including up to 2% chloropicrin*)	Poison B	NA1581	Poison	None	173.353	Forbidden	55 gallons	1	5	Stow away from living quarters. Segregation same as for nonflammable gas.
	Methyl butene	Flammable liquid	NA2460	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Methyl butyrate	Flammable liquid	UN1237	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl cellosolve acetate. *See* Ethylene glycol monomethyl ether acetate		UN1189								
	Methyl cellosolve. *See* Ethylene glycol monomethyl ether		UN1188								
	Methyl chloride	Flammable gas	UN1063	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	
*	Methyl chloride-methylene chloride mixture	Flammable gas	UN1912	Flammable gas	173.306	173.304 173.314	Forbidden	300 pounds	1,2	4	
	Methyl chlorocarbonate. *See* Methyl chloroformate		UN1238								
A	Methyl chloroform	ORM-A	UN1231	None	173.505	173.510 173.605	10 gallons	55 gallons			
	Methyl chloroformate	Flammable liquid	UN1238	Flammable liquid and Poison	None	173.288	Forbidden	5 pints	1,2	1	
	Methyl dichloroacetate	Corrosive material	UN2299	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
	Methyl dichlorosilane	Flammable liquid	UN1242	Flammable liquid	None	173.136	Forbidden	5 pints	1,2	1	
	Methyl ethyl ether. *See* Ethyl methyl ether		UN1039								
	Methyl ethyl ketone	Flammable liquid	UN1193	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl ethyl pyridine	Corrosive material	UN2300	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Methyl formate	Flammable liquid	UN1243	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,3	4	
	Methyl isopropenyl ketone, inhibited	Flammable liquid	UN1246	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl magnesium bromide in ethyl ether *not over 40% concentration*	Flammable liquid	UN1928	Flammable liquid	None	173.149	Forbidden	Forbidden	1	1	Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials or organic peroxides
E	Methyl mercaptan (*RQ-100/45.4*)	Flammable gas	UN1064	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
E	Methyl methacrylate monomer, inhibited (*RQ-5000/2270*)	Flammable liquid	UN1247	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	

§172.101 Hazardous Materials Table (cont'd)

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(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
E	Methyl methacrylate monomer, uninhibited (*high-purity, if acceptable under See 173.21 of this subchapter*) (*RQ-5000/2270*)	Flammable liquid	NA1247	Flammable liquid	173.118	173.119	Forbidden	Forbidden	1,2	1	
	Methyl norbornene dicarboxylic anhydride. *See* Memtetrahydro phthalic anhydride		NA1760								
E	Methyl parathion, liquid (*RQ-100/45.4*)	Poison B	NA2783	Poison	None	173.358	Forbidden	1 quart	1,3	1,3	
*E	Methyl parathion mixture, dry (*RQ-100/45.4*)	Poison B	NA2783	Poison	173.377	173.377	50 pounds	200 pounds	1,2	1,2	
*E	Methyl parathion mixture, liquid, (containing 25% or less methyl parathion) (*RQ-100/45.4*)	Poison B	NA2783	Poison	None	173.359	1/2 pint	1 quart	1,2	1,2	
E	Methyl parathion mixture, liquid, (*containing over 25% methyl parathion*) (*RQ-100/45.4*)	Poison B	NA2783	Poison	None	173.359	Forbidden	1 quart	1,2	1,2	
	Methyl pentane	Flammable liquid	UN2462	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl phosphonothioic dichloride, anhydrous	Corrosive material	NA1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Methyl phosphonous dichloride	Corrosive material	NA1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Methyl propionate	Flammable liquid	UN1248	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl propyl ketone	Flammable liquid	UN1249	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl sulfate. *See* Dimethyl sulfate		UN1595								
	Methyl sulfide. *See* Dimethyl sulfide		UN1164								
	Methyl vinyl ketone, inhibited	Flammable liquid	UN1251	Flammable liquid	173.147	173.147	4 ounces	10 gallons	1,2	1	
	Methylacetylene-propadiene, stabilized	Flammable gas	NA1060	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Methylal	Flammable liquid	UN1234	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Methylamine, anhydrous *or* Monomethylamine	Flammable gas	UN1061	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1	4	
	Methylchloromethyl ether, anhydrous	Flammable liquid	UN1239	Flammable liquid and Poison	None	173.143	Forbidden	Forbidden	1	5	Shade from radiant heat
	Methylcyclohexane	Flammable liquid	UN2296	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methylcyclopentane	Flammable liquid	UN2298	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Methyldichloroarsine	Poison A	NA1955	Poison gas	None	173.328	Forbidden	Forbidden	1	5	Shade from radiant heat
	Methylene chloride. *See* Dichloromethane		UN1593								
	Methylfuran	Flammable liquid	UN2301	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Methylhydrazine	Flammable liquid	UN1244	Flammable liquid and Poison	None	173.145	Forbidden	5 pints	1,2	1	Stow separate from oxidizing materials and corrosives
	Methylpentadiene	Flammable liquid	UN2461	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyltrichlorosilane	Flammable liquid	UN1250	Flammable liquid	None	173.135	Forbidden	10 gallons	1,2	1	
E	Mevinphos (*RQ-1/0.454*)	Poison B	NA2783	Poison	173.364	173.365	Forbidden	1 quart	2	2	
E	Mexacarbate (*RQ-1000/454*)	Poison B	NA2757	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
	Mild detonating fuse, metal clad. *See* Fuse, mild detonating, metal clad										
	Mine, empty *See* 173.55										
	Mine, explosive, with gas material. *See* Explosive mine										
	Mine rescue equipment containing carbon dioxide	Nonflammable gas		Nonflammable gas	173.306		150 pounds	300 pounds	1,2	1,2	
*	Mining reagent, liquid (*containing 20% or more cresylic acid*)	Corrosive material	NA2022	Corrosive	173.244	173.245 173.249a	1 quart	10 gallons	1,2	1,2	
A	Mipafox	ORM-A	UN2783	None	173.505	173.510	No limit	No limit			
	Mixed acid. *See* Nitrating (*mixed*) acid		NA1796								
A	Molybdenum pentachloride	ORM-B	UN2508	None	173.505	173.510 173.800	25 pounds	100 pounds			
	Monobromotrifluoromethane	Nonflammable gas	UN1009	Nonflammable gas	173.306	173.304 173.314	150 pounds	300 pounds	1,2	1,2	
*	Monochloroacetic acid, liquid *or* solution	Corrosive material	UN1750	Corrosive	173.244	173.294	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permitted under deck
	Monochloroacetone	Forbidden									
	Monochloroacetone, stabilized *or* inhibited	Irritating material	NA1695	Irritant	None	173.384	Forbidden	5 gallons	1	1	Stow away from living quarters
	Monochlorodifluoromethane	Nonflammable gas	UN1018	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Monochloroethylene. *See* Vinyl chloride		UN1086								
	Monochloropentafluoroethane	Nonflammable gas	UN1020	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
	Monochlorotetrafluoroethane	Nonflammable gas	UN1021	Nonflammable gas	173.306	173.304 173.314	150 pounds	300 pounds	1,2	1,2	
	Monochlorotrifluoromethane	Nonflammable gas	UN1022	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
	Monoethanolamine	Corrosive material	UN2491	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
*	Monoethanolamine, solution	Corrosive material	UN2491	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
E	Monoethylamine (*RQ-1000/454*)	Flammable liquid	UN1036	Flammable liquid	None	173.148	Forbidden	5 pints	1,2	5	Segregation same as for flammable gas
	Monofluorophosphoric acid, anhydrous	Corrosive material	UN1776	Corrosive	None	173.275	Forbidden	1 gallon	1,2	1,2	Keep dry

26 **§172.101 Hazardous Materials Table (cont'd)**

(1)	(2)	(3)	(3A)	(4)	(5)		(6)		(7)		
					Packaging		Maximum net quantity in one package		Water shipments		
*/ E/ A/ W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
E	Monomethylamine, anhydrous (*RQ-1000/454*)	Flammable gas	UN1061	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	
*E	Monomethylamine, aqueous solution (*RQ-1000/454*)	Flammable liquid	UN1235	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	Stow away from mercury and its compounds
	Mortar stain, liquid	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Mortar stain, liquid	Flammable liquid	NA1993	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2	1	
	Moth balls. See Naphthalene		UN1334								
	Motion picture film. See Film										
	Motor fuel antiknock compound *or* antiknock compound	Poison B	UN1649	Poison	None	173.354	Forbidden	55 gallons	1	5	If flashpoint less than 141 deg F, segregation same as for flammable liquids
*	Motor fuel, n.o.s.	Combustible liquid	NA1203	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Motor fuel, n.o.s.	Flammable liquid	NA1203	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Motor, internal combustion				173.120						
	Motor vehicle, *etc., including automobile, motorcycle, truck, tractor, and other self-propelled vehicle or equipment powered by internal combustion engine, when offered new or used for transportation and which contain fuel in the engine or fuel tank or the electric storage battery is connected to either terminal of the electrical system*	ORM-C		None	173.120 173.250 173.257 173.306 175.305 176.905				1,2	1,2	
	Muriatic acid. *See* Hydrochloric (*muriatic*) acid		UN1789								
E	Naled (*RQ-10/4.54*)	ORM-E	NA2783	None	None	173.510	No limit	No limit	2	2	
*	Naphtha	Combustible liquid	NA2553	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Naphtha	Flammable liquid	NA2553	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Naphtha distillate	Combustible liquid	NA2553	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Naphtha distillate	Flammable liquid	NA2553	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	*Naphtha petroleum. See* Petroleum naphtha		UN1255								
*	Naphtha, solvent	Combustible liquid	UN1256	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Naphtha, solvent	Flammable liquid	UN1256	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
EAW	Naphthalene *or* Naphthalin (*RQ-5000/2270*)	ORM-A	UN1334	None	173.505	173.655	25 pounds	300 pounds	1,2	1,2	Segregation same as for flammable solids
E	Napthenic acid (*RQ-100/45.4*)	ORM-E	NA9137	None	None	173.510	No limit	No limit	2	2	
	Natural gasoline. See Gasoline										
	Neohexane	Flammable liquid	UN1208	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
*	Neon	Nonflammable gas	UN1065	Nonflammable gas	173.306	173.302	150 pounds	300 pounds	1,2	1,2	
	New explosive or explosive device				173.51	173.86					
E	Nickel ammonium sulfate (*RQ-5000/2270*)	ORM-E	NA9138	None	None	173.510	No limit	No limit	2	2	
	Nickel carbonyl	Flammable liquid	UN1259	Flammable liquid and Poison	None	173.126	Forbidden	Forbidden	1	5	Not permitted on a vessel carrying explosives. Shade from radiant heat. Segregation same as for flammable liquids 1a*
	Nickel catalyst, wet, *finely divided, activated, or spent. With not less than 40% water or other suitable liquid*	Flammable solid	UN1378	Flammable solid	None	173.233	Forbidden	100 pounds	1,2	1	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
E	Nickel chloride (*RQ-5000/2270*)	ORM-E	NA9139	None	None	173.510	No limit	No limit	2	2	
	Nickel cyanide, solid	Poison B	UN1653	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
E	Nickel hydroxide (*RQ-1000/454*)	ORM-E	NA9140	None	None	173.510	No limit	No limit	2	2	
E	Nickel nitrate (*RQ-5000/2270*)	Oxidizer	UN2725	Oxidizer	173.153	173.182	25 pounds	100 pounds	2	2	
E	Nickel sulfate (*RQ-5000/2270*)	ORM-E	NA9141	None	None	173.510	No limit	No limit	2	2	
	Nicotine hydrochloride	Poison B	UN1656	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Nicotine, liquid	Poison B	UN1654	Poison	None	173.358	Forbidden	55 gallons	1,2	1,2	
	Nicotine salicylate	Poison B	UN1657	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Nicotine sulfate, liquid	Poison B	UN1658	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Nicotine sulfate, solid	Poison B	UN1658	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Nicotine tartrate	Poison B	UN1659	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Nitrate, n.o.s.	Oxidizer	NA1477	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Nitrate of ammonia explosives. See High explosive										
	Nitrating (*mixed*) acid	Oxidizer	NA1796	Oxidizer	None	173.267	Forbidden	1 quart	1	5	Segregation same as for corrosive materials
	Nitrating (*mixed*) acid, spent	Corrosive material	UN1826	Corrosive	None	173.248	Forbidden	1 quart	1	5	
E	Nitric acid, 40% or less (*RQ-1000/454*)	Corrosive material	NA1760	Corrosive	None	173.268	Forbidden	5 pints	1	5	Stow away from hydrazine, separate from diethylenetriamine
E	Nitric acid, fuming (*RQ-1000/454*)	Oxidizer	NA2032	Oxidizer and Poison	None	173.268	Forbidden	Forbidden	1	5	Segregation same as for corrosive materials. Stow away from hydrazine, separate from diethylenetriamine
E	Nitric acid (*over 40%*) (*RQ-1000/454*)	Oxidizer	NA2031	Oxidizer and Corrosive	None	173.268	Forbidden	5 pints	1	5	Segregation same as for corrosive materials. Stow away from hydrazine, separate from diethylenetriamine
	Nitric ether. See Ethyl nitrate										
	Nitric oxide	Poison A	UN1660	Poison gas	None	173.337	Forbidden	Forbidden	1	5	
	Nitro carbonitrate. See Blasting agent										
	Nitro carbonitrate. See High explosive										
	Nitroaniline	Poison B	UN1661	Poison	173.364	173.378	50 pounds	200 pounds	1,2	1,2	
	p-Nitroaniline. *See* Nitroaniline		UN1661								
E	Nitrobenzol, liquid (*oil of mirbane, nitrobenzene*) (*RQ-1000/454*)	Poison B	UN1662	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Nitrocellulose, colloided, granular *or* flake, wet with not less than 20% alcohol *or* solvent, *or* block, wet with not less than 25% alcohol	Flammable liquid	NA2556	Flammable liquid	173.118	173.127	1 quart	25 pounds	1,3	1	

§172.101 Hazardous Materials Table (cont'd)

(1) */ E/ A/ W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(c) Other requirements
	Nitrocellulose, colloided, granular *or* flake, wet with not less than 20% water	Flammable solid	NA2555	Flammable solid	173.153	173.184	25 pounds	100 pounds	1,3	1	
	Nitrocellulose, dry. See High explosive										
	Nitrocellulose flakes, wet with not less than 20% alcohol *or* solvent	Flammable liquid	NA2556	Flammable liquid	173.118	173.127	1 quart	25 pounds	1,3	1	
	Nitrocellulose, wet with not less than 30% alcohol *or* solvent	Flammable liquid	NA2556	Flammable liquid	173.118	173.127	1 quart	25 pounds	1,3	1	
	Nitrocellulose, wet with not less than 20% water	Flammable solid	NA2555	Flammable solid	173.153	173.184	25 pounds	100 pounds	1,3	1	
	Nitrochlorobenzene, meta *or* para, solid	Poison B	NA1578	Poison	173.364	173.374	50 pounds	200 pounds	1,2	1,2	
	Nitrochlorobenzene, ortho, liquid	Poison B	NA1578	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
*	Nitrogen	Nonflammable gas	NA1066	Nonflammable gas	173.306	173.302 173.314	150 pounds	300 pounds	1,2	1,2	
E	Nitrogen dioxide, liquid (*RQ-1000/454*)	Poison A	UN1067	Oxidizer and Poison gas	None	173.336	Forbidden	Forbidden	1	5	Segregation same as for nonflammable gases. Stow away from organic materials
*	Nitrogen fertilizer solution	Nonflammable gas	NA1043	Nonflammable gas	173.306	173.304 173.314	150 pounds	300 pounds	1,3	1,3	
*	Nitrogen peroxide, liquid	Poison A	NA1067	Oxidizer and Poison gas	None	173.336	Forbidden	Forbidden	1	5	Segregation same as for nonflammable gas. Stow away from organic materials
*	Nitrogen, pressurized Liquid	Nonflammable gas	NA1977	Nonflammable gas	None	173.304	Forbidden	300 pounds	1,3	1,3	
	Nitrogen tetroxide, liquid	Poison A	UN1067	Oxidizer and Poison gas	None	173.336	Forbidden	Forbidden	1	5	Segregation same as for nonflammable gases. Stow away from organic materials
	Nitroglycerin, liquid, desensitized. See High explosive, liquid										
	Nitroglycerin, liquid, undesensitized. See 173.51	Forbidden									
	Nitroglycerin, spirits of. See Spirits of nitroglycerin		NA1204								
	Nitroguanidine, dry. See High explosive										
	Nitroguanidine, wet with not less than 20% water	Flammable solid	UN1336	Flammable solid	173.153	173.184	25 pounds	100 pounds	1,2	4	
	Nitrohydrochloric acid	Corrosive material	UN1798	Corrosive	None	173.278	Forbidden	5 pints	1	5	
*	Nitrohydrochloric acid, diluted	Corrosive material	NA1798	Corrosive	None	173.278	Forbidden	5 pints	1	5	
	Nitromannite. See High explosive										
	Nitromethane	Flammable liquid	UN1261	Flammable liquid	173.118	173.149a	1 quart	10 gallons	1,2	1,2	
	Nitromuriatic acid. *See* Nitrohydrochloric acid		UN1798								
E	Nitrophenol (*RQ-1000/454*)	ORM-E	UN1663	None	None	173.510	No limit	No limit	2	2	
	Nitrosoguanidine. *See* Initiating explosive										
	Nitrostarch, dry. *See* High explosive										
	Nitrostarch, wet with not less than 30% alcohol *or* solvent	Flammable liquid	NA1993	Flammable liquid	173.118	173.127	1 quart	25 pounds	1,2	1	
	Nitrostarch, wet with not less than 20% water	Flammable solid	UN1337	Flammable solid	173.153	173.184	25 pounds	100 pounds	1	4	
	Nitrosyl chloride	Nonflammable gas	UN1069	Nonflammable gas	173.306	173.304 173.314	Forbidden	300 pounds	1	4	
E	Nitrotoluene (*RQ-1000/454*)	ORM-E	UN1664	None	None	173.510	No limit	No limit	2	2	
	Nitrourea. See High explosive										
	Nitrous oxide	Nonflammable gas	UN1070	Nonflammable gas	173.306	173.304 173.315	150 pounds	300 pounds	1,2	1,2	Under deck stowage must be in well-ventilated space
	Nitroxylol	Poison B	NA1665	Poison	173.345	173.346	1 quart	55 gallons	1,2	1	
	Nonflammable gas, n.o.s. *See* Compressed gas, n.o.s.		UN1956								
*	Nonliquefied hydrocarbon gas	Flammable gas	NA1964	Flammable gas	173.306	173.302	Forbidden	300 pounds	1,2	1	
	Nonyltrichlorosilane	Corrosive material	UN1799	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Nordhausen acid. *See* Sulfuric acid		NA1830								
W	Oakum	ORM-C		None	173.505	173.1050			1,2	1,2	
	Octadecyltrichlorosilane	Corrosive material	UN1800	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Octane	Flammable liquid	UN1262	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Octyltrichlorosilane	Corrosive material	UN1801	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
*	Oil, *described as oil*, n.o.s., petroleum oil, *or* petroleum oil, n.o.s.	Combustible liquid	NA1270	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Oil, *described as oil*, oil, n.o.s., petroleum oil, *or* petroleum oil, n.o.s.	Flammable liquid	NA1270	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Oil of mirbane. See Nitrobenzol, liquid		UN1662								
	Oil of vitriol. *See* Sulfuric acid		NA1830								
	Oil well cartridge	Class C explosive	UN0278	Class C explosive	None	173.112	50 pounds	150 pounds	1,3	1,3	
	Oiled clothing (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material		NA1856								
AW	Oiled material (*manufactured article properly dried to prevent spontaneous heating*)	ORM-C	NA9053	None	173.505	173.1035	No limit	No limit	1,3	1,3	
	Oiled paper (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material		NA1379								
E	Oleum (*sulfuric acid fuming*) (*RQ-1000/454*)	Corrosive material	NA1831	Corrosive	None	173.272	Forbidden	5 pints	1,2	1	Under deck stowage must be in metal drums only. Keep dry.
*	Organic peroxide, liquid, *or* solution, n.o.s.	Organic peroxide	NA9183	Organic peroxide	173.153	173.221	Forbidden	1 quart	1,2	1,2	Stow separate from combustible materials, explosives, or acids.
*	Organic peroxide liquid *or* solution, n.o.s.	Flammable liquid	NA1993	Organic peroxide and Flammable liquid	None	173.119	Forbidden	1 quart	1,2	5	Stow separate from combustible materials, explosives, or acids

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§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Organic peroxide, solid, n.o.s.	Organic peroxide	NA9187	Organic peroxide	173.153	173.154	Forbidden	25 pounds	1,2	1,2	Stow separate from combustible materials, explosives, or acids.
*	Organic phosphate mixture, organic phosphate compound mixture, *or* organic phosphorus compound mixture, liquid	Poison B	NA2783	Poison	173.359	173.359	1/2 pint	1 quart	1,2	5	
*	Organic phosphate mixture, organic phosphate compound mixture, *or* organic phosphorus compound mixture, solid *or* dry	Poison B	NA2783	Poison	173.377	173.377	50 pounds	200 pounds	1,2	4	
*	Organic phosphate, organic phosphate compound, *or* organic phosphorus compound, mixed with compressed gas	Poison A	NA1955	Poison gas	None	173.334	Forbidden	Forbidden	1	5	Shade from radiant heat
*	Organic phosphate, organic phosphate compound, *or* organic phosphorus compound; liquid	Poison B	NA2783	Poison	None	173.358	Forbidden	1 quart	1,2	5	
*	Organic phosphate, organic phosphate compound, *or* organic phosphorus compound; solid *or* dry	Poison B	NA2783	Poison	None	173.377	Forbidden	200 pounds	1,2	4	
A	ORM-A, n.o.s.	ORM-A	NA1693	None	173.505	173.510	No limit	No limit			
A	ORM-B, n.o.s.	ORM-B	NA1760	None	173.505	173.510	No limit	No limit			
	ORM-C See 173.500 and 176.900										
	Orthonitroaniline. *See* Nitroaniline										
	Oxidizer material packed with other articles. See 173.152		UN1661								
	Oxidizer, *or* Oxidizing material, n.o.s.	Oxidizer	UN1479	Oxidizer	173.153	173.154	25 pounds	25 pounds	1,2	1,2	
*	Oxygen	Nonflammable gas	NA1072	Oxidizer	173.306	173.302 173.314	150 pounds	300 pounds	1,2	1,2	Under deck stowage must be in well ventilated space
*	Oxygen, pressurized liquid	Nonflammable gas	NA1073	Oxidizer	None	173.304	Forbidden	Forbidden	1,3	1,3	Stow separate from acetylene. Do not overstow with other cargo
*	Paint drier, liquid	Combustible liquid	UN1168	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Paint drier, liquid	Flammable liquid	UN1168	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2	1	
*	Paint, enamel, lacquer, stain, shellac, *or* varnish, aluminum, bronze, gold, wood filler, liquid *or* lacquer base, liquid	Combustible liquid	NA1263	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Paint, enamel, lacquer, stain, shellac, *or* varnish, aluminum, bronze, gold, wood filler, liquid *or* lacquer base, liquid	Flammable liquid	NA1263	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2	1	
*	*Paint, reducing or thinning compound. See* Compound, lacquer, paint, *or* varnish, reducing *or* thinning liquid, etc.		NA1142								
	Paper caps. See Toy caps										
W	Paper scrap (*when dry, clean, and free from oil*)	ORM-C		None	173.505	173.1075			1,2	1,2	
	Paper stock, wet	Flammable solid	NA1325	Flammable solid	None	173.185	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Paper waste, wet. *See* Waste Paper, wet		NA1325								
	Paper waste (*when dry, clean, and free from oil*). *See* Paper scrap										
RA	Paraformaldehyde (*RQ-1000/454*)	ORM-A	UN2213	None	None	173.510	25 pounds	200 pounds	2	2	
	Paramenthane hydroperoxide	Organic peroxide	UN2125	Organic peroxide	173.153	173.224	1 quart	1 quart	1,2	4	
	Paranitroaniline, solid. *See* Nitroaniline		NA1661								
E	Parathion and compressed gas mixture (*RQ-1/.454*)	Poison A	NA1967	Poison gas	None	173.334	Forbidden	Forbidden	1,3	5	
E	Parathion, liquid (*RQ-1/.454*)	Poison B	NA2783	Poison	None	173.358	Forbidden	1 quart	1,3		
*E	Parathion mixture, dry (*RQ-1/.454*)	Poison B	NA2783	Poison	173.377	173.377	50 pounds	200 pounds	1,3	1,3	
E	Parathion mixture, liquid (*RQ-1/.454*)	Poison B	NA2783	Poison	None	173.359	Forbidden	1 quart	1,3	1,3	
	Paris green, solid. *See* Copper acetoarsenite, solid		UN1585								
E	PCBs. *See* Polychlorinated biphenyls										
	Pentaborane	Flammable liquid	UN1380	Poison and Flammable liquid	None	173.138	Forbidden	Forbidden	1	5	Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
E	Pentachlorophenol (*RQ-10/4.54*)	ORM-E	NA2020	None	None	173.510	No limit	No limit	2	2	
	Pentaerythrite tetranitrate. See Initiating explosive										
	Pentaerythrite tetranitrate, desensitized, wet. See High explosive										
	Pentane	Flammable liquid	UN1265	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,3	4	
	Pentolite, dry. See High explosive										
	Peracetic acid solution, *not over 40% peracetic acid and not over 6% hydrogen peroxide*	Organic peroxide	NA2131	Organic peroxide	173.223	173.223	1 pint	5 pints	1	4	Shade from radiant heat
*	Perchlorate, n.o.s.	Oxidizer	NA1481	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,3	1,3	Stow away from powdered metals
	Perchloric acid, *exceeding 50% but* not exceeding 72% strength	Oxidizer	UN1873	Oxidizer	None	173.269	Forbidden	5 pints	1	5	Segregation same as for corrosive materials. Stow away from hydrazine.
	Perchloric acid exceeding 72% strength	Forbidden									
*	Perchloric acid, not over 50% acid	Oxidizer	UN1802	Oxidizer	173.244	173.269	Forbidden	5 pints	1	1	Segregation same as for corrosive materials. Stow away from hydrazine
	Perchloromethylmercaptan	Poison B	UN1670	Poison	173.345	173.360	Forbidden	10 pounds	1	4	
	Percussion cap	Class C explosive	NA0044	Explosive C	None	173.107	50 pounds	150 pounds	1,3	1,3	
	Percussion fuze	Class C explosive	NA0257	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
A	Perfluoro-2-butene	ORM-A	NA2422	None	173.505	173.510 173.605	10 gallons	55 gallons			
*	Permanganate, n.o.s.	Oxidizer	NA1482	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds, hydrogen peroxide, and acids
	Permanganate of potash. See Potassium permanganate		UN1490								
	Peroxide, organic. See Organic Peroxide										

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
W	Pesticide, water reactive, *including but not limited to fungicides, and herbicides, etc., which contain manganese ethylenebisdithiocarbamate*	ORM-C	NA2210	None	173.505	173.1040			2	2	Keep dry
W	Petroleum coke (*uncalcined*)	ORM-C		None	173.505	173.1045			1,2	1,2	Not permitted if temperature of material is at or above 130 deg F
	Petroleum crude. See Crude oil		NA1267								
*	Petroleum distillate	Combustible liquid	UN1268	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Petroleum distillate	Flammable liquid	UN1268	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Petroleum ether	Flammable liquid	UN1271	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Petroleum gas, liquefied. See Liquefied petroleum gas		UN1075								
*	Petroleum naphtha	Combustible liquid	UN1255	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Petroleum naphtha	Flammable liquid	UN1255	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
A	Phencapton	ORM-A	NA2783	None	173.505	173.510	No limit	No limit			
	Phenol. *See* Carbolic acid		UN1671								
	Phenyldichloroarsine	Poison B	NA2810	Poison	None	173.355	Forbidden	30 gallons	1	5	
	Phenyltrichlorosilane	Corrosive material	UN1804	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
A	Phenylenediamine, meta or para, solid	ORM-A	UN1673	None	173.505	173.510	No limit	No limit			
E	Phosgene (diphosgene) (*RQ-5000/2270*)	Poison A	UN1076	Poison gas	None	173.333	Forbidden	Forbidden	1	5	
	Phosphine	Poison A	UN2199	Flammable gas and Poison gas	None	173.328	Forbidden	Forbidden	1	5	
E	Phosphoric acid *or* Phosphoric Acid Solution (*RQ-5000/2270*)	Corrosive material	UN1805	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	Glass carboys in hampers not permitted under deck
	Phosphoric acid triethyleneimine. *See* Tris-(1-aziridinyl phosphine oxide)		NA2501								
	Phosphoric anhydride (*phosphorus pentoxide*)	Corrosive material	NA1807	Corrosive	None	173.188	Forbidden	100 pounds	1,2	1,2	Keep dry. Glass bottles not permitted under deck
E	Phosphorus, amorphous, red (*RQ-1/.454*)	Flammable solid	UN1338	Flammable solid	None	173.189	Forbidden	11 pounds	1,2	1,2	
	Phosphorus bromide. *See* Phosphorus tribromide		UN1808								
	Phosphorus chloride. *See* Phosphorus trichloride		UN1809								
	Phosphorus heptasulfide	Flammable solid	UN1339	Flammable solid	None	173.225	Forbidden	10 pounds	1,2	1	Separate from oxidizing materials
	Phosphorus oxybromide	Corrosive material	UN1939	Corrosive	None	173.271	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
E	Phosphorus oxychloride (*RQ-5000/2270*)	Corrosive material	UN1810	Corrosive	None	173.271	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Phosphorus pentachloride, solid	Corrosive material	UN1806	Corrosive	None	173.191	Forbidden	5 pounds	1	1	Keep dry
E	Phosphorus pentasulfide (*RQ-1000/454*)	Flammable solid	UN1340	Flammable solid and Dangerous when wet	None	173.225	Forbidden	11 pounds	1,2	1,2	Separate from oxidizing material
	Phosphorus sesquisulfide	Flammable solid	UN1341	Flammable solid and Dangerous when wet	None	173.225	Forbidden	11 pounds	1,2	1	Separate from oxidizing materials
	Phosphorus tribromide	Corrosive material	UN1808	Corrosive	None	173.270	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
E	Phosphorus trichloride (*RQ-5000/2270*)	Corrosive material	UN1809	Corrosive	None	173.271	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Phosphorus trisulfide	Flammable solid	UN1343	Flammable solid	None	173.225	Forbidden	10 pounds	1,2	1	Separate from oxidizing materials
E	Phosphorus, white *or* yellow, dry (*RQ-1/.454*)	Flammable solid	UN1381	Flammable solid and Poison	None	173.190	Forbidden	Forbidden	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
E	Phosphorus, white *or* yellow, in water (*RQ-1/.454*)	Flammable solid	UN1381	Flammable solid and Poison	None	173.190	Forbidden	25 pounds	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Phosphoryl chloride. *See* Phosphorus oxychloride		UN1810								
	Photographic film. See Film										
	Photographic flash powder. See Fireworks, special *or* Low explosives										
	Picrate, dry. See High explosive										
	Picrate of ammonia. See High explosive										
	Picric acid, dry. See High explosive										
	Picric acid, wet, with not less than 10% water	Flammable solid	NA1344	Flammable solid	None	173.192 173.193	1 pound	25 pounds	1	5	Under deck stowage permitted on cargo vessels if wet with more than 30% water. Stow away from heavy metals and their compounds
	Picric acid, wet with not less than 10% water, over 25 pounds. See High explosive										
	Pinane hydroperoxide solution *not over 45% peroxide.*	Organic peroxide	NA2162	Organic peroxide	173.153	173.224	1 quart	1 quart	1,2	4	
	Pine oil	Combustible liquid	UN1272	None	173.118a	None	No limit	No limit	1,2	1,2	
	Pinwheels. *See* Fireworks, common										
	Pivaloyl chloride. *See* Trimethyl acetylchloride		UN2438								
*	Plastic solvent, n.o.s.	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Plastic solvent, n.o.s.	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	

30 **§172.101 Hazardous Materials Table (cont'd)**

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Plutonium nitrate solution	Radioactive material	NA9185	Radioactive (See Sec. 172.403)	173.393	173.396			1,2	1,2	
	Poisonous liquid, n.o.s. *or* Poison B, liquid, n.o.s.	Poison B	NA2810	Poison	173.345	173.346	1 quart	55 gallons	1,2	1	
	Poisonous liquid *or* gas, n.o.s.	Poison A	NA9035	Poison gas	None	173.328	Forbidden	Forbidden	1	5	
	Poisonous solid, n.o.s. *or* Poison B, solid, n.o.s.	Poison B	NA2811	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1	
*	Polish, metal, stove, furniture *or* wood, liquid	Combustible liquid	NA1142	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Polish, metal, stove, furniture *or* wood, liquid	Flammable liquid	NA1142	Flammable liquid	173.118	173.129	1 quart	55 gallons	1,2	1	
E	Polychlorinated biphenyls (*RQ-10/4.54*)	ORM-E	UN2315	None	None	173.510	No limit	No limit	1,2	1,2	If stowed under deck, must be stowed in a recoverable location.
*	*Polymerizable material*				173.21						
E	Potassium arsenate, solid (*RQ-1000/454*)	Poison B	UN1677	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Potassium arsenite, solid (*RQ-1000/454*)	Poison B	UN1678	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Potassium bifluoride solution. *See* Potassium hydrogen fluoride solution		UN1811								
	Potassium bromate	Oxidizer	UN1484	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals.
	Potassium chlorate (*potash chlorate*)	Oxidizer	UN1485	Oxidizer	173.153	173.168	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals.
E	Potassium chromate (*RQ-1000/454*)	ORM-E	NA9142	None	None	173.510	No limit	No limit	2	2	
E	Potassium cyanide, solid (*RQ-10/4.54*)	Poison B	UN1680	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
*E	Potassium cyanide solution (*RQ-10/4.54*)	Poison B	UN1680	Poison	173.345	173.352	1 quart	55 gallons	1,2	1,2	Stow away from acids
	Potassium dichloro isocyanurate. See Potassium dichloro-s-triazinetrione		NA2465								
	Potassium dichloro-s-triazinetrione, *dry (containing more than 39% available chlorine)*	Oxidizer	NA2465	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	
EA	Potassium dichromate (*RQ-1000/454*)	ORM-A	NA1464	None	173.505	173.510	No limit	No limit			
A	Potassium fluoride	ORM-B	UN1812	None	173.505	173.510	No limit	No limit			
*	Potassium fluoride solution	Corrosive material	UN1812	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
	Potassium hydrate. *See* Potassium hydroxide		NA1814								
*	Potassium hydrogen fluoride solution	Corrosive material	NA1811	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
A	Potassium hydrogen sulfate, solid	ORM-B	UN2509	None	173.505	173.510 173.800	25 pounds	100 pounds			
E	Potassium hydroxide, dry solid, flake, bead, *or* granular (*RQ-1000/454*)	Corrosive material	NA1813	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry. Do not stow with metals or alloys such as brass, copper, tin, zinc, aluminum, solder, or lead
*E	Potassium hydroxide, liquid *or* solution (*RQ-1000/454*)	Corrosive material	UN1814	Corrosive	173.244	173.249	1 quart	10 gallons	1,2	1,2	
*	Potassium hypochlorite solution. *See* Hypochlorite solutions containing more than 7% available chlorine by weight		NA1791								
A	Potassium metabisulfite	ORM-B		None	173.505	173.510	No limit	No limit			
	Potassium, metal	Flammable solid	UN2257	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Potassium, metal, liquid alloy	Flammable solid	UN1420	Flammable solid and Dangerous when wet	None	173.202	Forbidden	1 pound	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Potassium nitrate	Oxidizer	UN1486	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Potassium nitrate mixed (*fused*) with sodium nitrite	Oxidizer	UN1487	Oxidizer	173.153	173.183	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and cyanides. Stow away from foodstuffs
	Potassium nitrite	Oxidizer	UN1488	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and cyanides. Stow away from foodstuffs
	Potassium perchlorate	Oxidizer	UN1489	Oxidizer	173.153	173.219	25 pounds	100 pounds	1,3	1,3	Stow away from powdered metals
E	Potassium permanganate (*RQ-100/45.4*)	Oxidizer	UN1490	Oxidizer	173.153	173.154 173.194	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Potassium peroxide	Oxidizer	UN1491	Oxidizer	None	173.154	Forbidden	100 pounds	1,2	1,2	Keep dry
	Potassium sulfide	Flammable solid	NA1382	Flammable solid	173.153	173.207	25 pounds	300 pounds	1,2	1,2	Separate from liquid acids, flammable gases or liquids, oxidizing materials or organic peroxides
	Pressurized product. See Compressed gas, n.o.s.										
	Primer, detonating. See Detonating primer										
	Primer. See Cannon primer, combination primer, or small-arm primer										
	Projectile, explosive. See Explosive projectile										
	Projectile, gas, nonexplosive. See Chemical ammunition, containing Poison or Irritating Material										
	Projectile, gas, smoke, or incendiary, with burster or booster with or without detonating fuze. See Explosive projectile										
	Projectile, illuminating, incendiary or smoke, with expelling charge but without bursting charge. See Fireworks, special										
	Projectile, sand-loaded, empty or solid. See 173.55										
	Propane *or* Liquefied petroleum gas. *See* Liquefied petroleum gas		UN1978								
E	Propargite (*RQ-10/4.54*)	ORM-E	NA2765	None	None	173.510	No limit	No limit	2	2	
*	Propellant explosive	Class A explosive		Explosive A	None	173.64	Forbidden	Forbidden	6	5	
	Propellant explosive in water (*Smokeless powder*)	Class B explosive		Explosive B	None	173.93	Forbidden	Forbidden	1,3	5	Magazine stowage authorized

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Propellant explosive in water, unstable, condemned, *or* deteriorated (*smokeless powder*)	Class B explosive		Explosive B	None	173.93	Forbidden	Forbidden	1,3	5	Magazine stowage authorized
*	Propellant explosive, liquid	Class B explosive		Explosive B	None	173.93	Forbidden	10 pounds	1,2	5	Magazine stowage authorized
*	Propellant explosive, solid	Class B explosive		Explosive B	None	173.93	Forbidden	10 pounds	1,3	5	Magazine stowage authorized
	Propellant explosive (*solid, Class B, and small-arms primer*). *See* Propellant										
	Propionaldehyde	Flammable liquid	UN1275	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
E	Propionic acid (*RQ-5000/2270*)	Corrosive material	UN1848	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	Separated by a complete compartment or hold from organic peroxides
*E	Propionic acid solution (*RQ-5000/2270*)	Corrosive material	NA1848	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	Separated by a complete compartment or hold from organic peroxides
E	Propionic anhydride (*RQ-5000/2270*)	Corrosive material	UN2496	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1	Keep dry
	Propyl acetate	Flammable liquid	UN1276	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Propyl alcohol. *See* Alcohol, n.o.s.		UN1274								
	Propyl chloride	Flammable liquid	UN1278	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Propyl formate	Flammable liquid	UN1281	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Propyl mercaptan	Flammable liquid	UN2704	Flammable liquid	None	173.141	Forbidden	10 gallons	1,2	5	
	Propyl trichlorosilane	Corrosive material	UN1816	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Propylamine	Flammable liquid	UN1277	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Propylene diamine	Flammable liquid	UN2258	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
E	Propylene dichloride (*RQ-5000/2270*)	Flammable liquid	UN1279	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Propylene imine, inhibited	Flammable liquid	UN1921	Flammable liquid	None	173.139	Forbidden	5 pints	1,2	1	
	Propylene *or* Liquefied petroleum gas. *See* Liquefied petroleum gas		UN1077								
E	Propylene oxide (*RQ-5000/2270*)	Flammable liquid	UN1280	Flammable liquid	173.118	173.119	Forbidden	1 gallon	1,3	4	
	Prussic acid. *See* Hydrocyanic acid (*prussic*), liquid *or* unstabilized										
E	Pyrethrins (*RQ-1000/454*)	ORM-E	NA9184	None	None	173.510	No limit	No limit	2	2	
	Pyridine	Flammable liquid	UN1282	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Pyrophoric liquid, *or* Pyroforic liquids, n.o.s.	Flammable liquid	UN2845	Flammable liquid	None	173.134	Forbidden	Forbidden	1	5	Shade from radiant heat. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Pyrosulfuryl chloride	Corrosive material	UN1817	Corrosive	173.244	173.247	1 quart	1 quart	1	4	Keep dry. Glass carboys not permitted on passenger vessels
	Pyroxylin plastic scrap	Flammable solid	NA2006	Flammable solid	None	173.195	Forbidden	Forbidden	1	5	Shade from radiant heat
	Pyroxylin plastics, rods, sheets, rolls, or tubes	Flammable solid	NA2006	Flammable solid	173.197		50 pounds	350 pounds	1,3	1	
*	Pyroxylin solution	Combustible liquid	NA2060	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Pyroxylin solution	Flammable liquid	NA2060	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Pyroxylin solvent, n.o.s.	Combustible liquid	NA2060	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Pyroxylin solvent, n.o.s.	Flammable liquid	NA2060	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Pyrrolidine	Flammable liquid	UN1922	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,2	1	
	Quicklime. *See* Calcium oxide		NA1910								
E	Quinoline (*RQ-1000/454*)	ORM-E	UN2656	None	None	173.510	No limit	No limit	2	2	
	Radioactive device, n.o.s.	Radioactive material	UN2909	None	173.391				1,2	1 2	
*	Radioactive material, fissile, n.o.s.	Radioactive material	UN2918	Radioactive	173.393	173.396			1,2	1,2	
*	Radioactive material, limited quantity, n.o.s.	Radioactive material	UN2910	None	173.391				1,2	1,2	
*	Radioactive material, low specific activity *or* LSA, n.o.s.	Radioactive material	UN2912	Radioactive	173.392	173.393			1,2	1,2	
*	Radioactive material, n.o.s.	Radioactive material	NA9181	Radioactive	173.393	173.395			1,2	1,2	
*	Radioactive material, special form, n.o.s.	Radioactive material	NA9182	Radioactive	173.393	173.394			1,2	1,2	
	Rags, oily	Flammable solid	UN1856	Flammable solid	None	173.199	Forbidden	Forbidden	1,2	1,2	Keep dry. Separate from flammable gases, or liquids, oxidizing materials, or organic peroxides
	Rags, wet	Flammable solid	NA1325	Flammable solid	None	173.200	Forbidden	Forbidden	1	1	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Railway Fusee. *See* Fusee										
	Railway torpedo. *See* Torpedo, railway										
	Range oil. *See* Fuel oil		NA1993								
*	*Reducing compound, paint, varnish, lacquer, etc.* *See* Compound, lacquer, paint *or* varnish, etc., removing, reducing, *or* thinning, liquid										
	Refrigerant gas. *See* Dispersant Gas		UN1078								
*	Refrigerating machine	Nonflammable gas	UN2857	Nonflammable gas	173.306		No limit	No limit	1,3	1,3	

32 **§172.101 Hazardous Materials Table (cont'd)**

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Refrigerating machine	Flammable gas	NA1954	Flammable gas	173.306		No limit	No limit	1,3	1,3	
*	Refrigerating machine	Flammable liquid	NA1993	Flammable liquid	173.130	173.306	No limit	No limit	1,2	1	
*	*Removing compound, paint, varnish, lacquer, etc. See* Compound, lacquer, paint, *or* varnish, etc., removing, reducing, *or* thinning, liquid										
*	Resin solution (*resin compound, liquid*)	Combustible liquid	NA2868	None	173.118a	None	No limit	No limit	1,2	1,2	
	Resin solution (*resin compound, liquid*)	Flammable liquid	NA1866	Flammable liquid	173.118	173.119	1 quart	55 gallons	1,2	1	
E	Resorcinol (*RQ-5000/2270*)	ORM-E	NA9186	None	None	173.510	No limit	No limit	2	2	
	Rifle grenade. See Grenade, hand or rifle, explosive										
	Rifle powder. See Propellant explosive, or Black powder										
	Road asphalt *or* tar, liquid *See* Asphalt, cut back		NA1993								
	Road asphalt *or* tar (*when heated to or above its flash point*). *See* Asphalt		NA1268								
*	Road oil	Combustible liquid	NA1268	None	173.118a	None	No limit	No limit	1,2	1,2	
	Rocket ammunition with empty projectile	Class B explosive		Explosive B	None	173.90	Forbidden	Forbidden	1,3	5	
	Rocket ammunition with explosive projectile	Class A explosive		Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with gas projectile	Class A explosive		Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with illuminating projectile	Class A explosive		Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with incendiary projectile	Class A explosive		Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with inert loaded projectile	Class B explosive		Explosive B	None	173.90	Forbidden	Forbidden	1,3	5	
	Rocket ammunition with smoke projectile	Class A explosive		Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with solid projectile	Class B explosive		Explosive B	None	173.90	Forbidden	Forbidden	1,3	5	
	Rocket body, with electric primer or electric squib, See 173.55										
	Rocket engine, liquid	Class B explosive		Explosive B	None	173.95	Forbidden	Forbidden	1,2	5	Magazine stowage authorized
	Rocket fireworks. See Fireworks, common										
	Rocket head. *See* Explosive projectile										
*	Rocket motor	Class A explosive		Explosive A	None	173.79	Forbidden	Forbidden	6	5	
*	Rocket motor	Class B explosive		Explosive B	None	173.92	Forbidden	550 pounds	1,3	5	
	Roman candle. See Fireworks, common										
W	Rosin (*colaphony*) *or* Resin	ORM-C		None	173.505	173.1060			1,2	1,2	
*	Rough ammoniate tankage (*7% or more moisture content*)	Flammable solid	NA1325	Flammable solid	None	173.210	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides. Temperature of tankage must not exceed 100 deg F
*	Rough ammoniate tankage (*less than 7% moisture content*)	Flammable solid	NA1325	Flammable solid	None	173.210	Forbidden	Forbidden	1	5	
W	Rubber curing compound (*solid*)	ORM-C		None	173.505	173.1065			1,2	1,2	
	Rubber scrap *or* rubber buffings	Flammable solid	NA1345	Flammable solid	173.153	173.201	10 pounds	10 pounds	1,2	1,2	
*	Rubber shoddy, regenerated rubber, *or* reclaimed	Flammable solid	NA1345	Flammable solid	173.153	173.201	10 pounds	10 pounds	1,2	1,2	
	Rubidium metal	Flammable solid	UN1423	Flammable solid and Dangerous when wet	None	173.206	Forbidden	225 pounds	1,2	5	Segregation same as for flammable solid labeled Dangerous When Wet
	Rubidium metal, in cartridges	Flammable solid	NA1423	Flammable solid and Dangerous when wet	173.206		1 pound	25 pounds	1,2	4	Segregation same as for flammable solid labeled Dangerous When Wet
	Rum, denatured	Flammable liquid	NA1992	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Rust preventive coating	Combustible liquid	NA1142	None	173.118a	None	No limit	No limit	1,2	1,2	
	Safety fuse. *See* Fuse, safety		UN0105								
	Safety squib	Class C explosive	NA0206	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Salute. See Fireworks common *or* special										
	Sand acid. *See* Hydrofluorosilicic acid		UN1778								
W	Sawdust (*when dry, clean, and free from oil*)	ORM-C		None	173.505	173.1070			1,2	1,2	Keep dry
	Selenic acid, liquid	Corrosive material	UN1905	Corrosive	None	173.245	Forbidden	5 pints	1,2	1,2	
E	Selenium oxide (*RQ-1000/454*)	Poison B	NA2811	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
	Self-lighting cigarette	Flammable solid	NA1325	Flammable solid	173.21		Fobidden	Forbidden	1,2	1,2	Keep dry
	Self propelled vehicle. *See* Motor vehicle										
	Shaped charge, commercial. See High explosive 173.65(h)										
	Shell, fireworks. *See* Fireworks, common *or* special										
*	Shellac. *See* Paint, enamel, lacquer, stain, shellac, varnish, etc.		UN1263								
	Ship, distress signal. See Fireworks, special										

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Signal flare	Class C explosive	NA0191	Explosive C	None	173.108	50 pounds	200 pounds	1,2	1,2	
	Silicofluoric acid. *See* Hydrofluorosilicic acid		UN1778								
	Silicon chloride *or* silicon tetrachloride	Corrosive material	UN1818	Corrosive	173.244	173.247	1 quart	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Silicon chrome, exothermic. *See* Exothermic ferrochrome										
	Silicon tetrafluoride	Nonflammable gas	UN1859	Nonflammable gas	173.306	173.302	Forbidden	300 pounds	1	4	Stow away from foodstuffs
	Silver cyanide	Poison B	UN1684	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
E	Silver nitrate (*RQ-1/.454*)	Oxidizer	UN1493	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	Stow away from foodstuffs
	Sisal. See Fibers										
*	*Sludge acid. See* Acid, sludge		UN1906								
	Small arms ammunition	Class C explosive	NA0012	None	173.101		50 pounds	150 pounds	1,3	1,3	
	Small arms ammunition, irritating (*tear gas*) cartridge	Class C explosive	NA0301	Irritant	None	173.101	Forbidden	150 pounds	1,3	1,3	
	Small arms primer	Class C explosive	NA0378	Explosive C	None	173.107	50 pounds	150 pounds	1,3	1,3	
	Smoke candle	Class C explosive	NA0197	Explosive C	None	173.108	50 pounds	200 pounds	1,3	1,3	
	Smoke generator. See Chemical ammunition, Poison A or B Material										
	Smoke grenade	Class C explosive	NA0197	Explosive C	None	173.108	50 pounds	150 pounds	1,3	1,3	
	Smoke pot	Class C explosive	NA0197	Explosive C	None	173.108	50 pounds	200 pounds	1,3	1,3	
	Smoke projectile with bursting charge. See Explosive projectile										
	Smoke projectile with expelling charge but without bursting charge. See Fireworks, special										
	Smoke signal	Class C explosive	NA0197	Explosive C	None	173.108	50 pounds	200 pounds	1,3	1,3	
	Smokeless powder for cannon or small arms. See Propellant explosive, Class A *or* B										
	Smokeless powder for small arms (*100 pounds or less*)	Flammable solid	NA1325	Flammable solid	173.88	173.197a	Forbidden	Forbidden	1,3	1,3	Segregation same as for explosives
	Soda amatol. See High explosive										
*	Soda lime, solid	Corrosive material	NA1907	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
A	Sodium aluminate, solid	ORM-B	UN2812	None	173.505	173.510 173.800	25 pounds	100 pounds			
*	Sodium aluminate solution	Corrosive material	UN1819	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
	Sodium aluminum hydride	Flammable solid	UN2835	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Sodium amide	Flammable solid	UN1425	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
E	Sodium arsenate (*RQ-1000/454*)	Poison B	UN1685	Poison	173.364	173.365 173.368	50 pounds	200 pounds	1,2	1,2	
*E	Sodium arsenite (*solution*) liquid (*RQ-1000/454*)	Poison B	UN1686	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Sodium azide	Poison B	UN1687	Poison	173.364	173.375	50 pounds	100 pounds	1,2	1,2	Stow away from heavy metals, especially lead and its compounds. Stow separate from acids
E	Sodium bifluoride, solid (*RQ-5000/2270*)	Corrosive material	UN2439	Corrosive	173.244	173.245b	25 pounds	100 pounds	2	2	
E	Sodium bifluoride, solution (*RQ-5000/2270*)	Corrosive material	UN2439	Corrosive	173.244	173.245	1 quart	5 gallons	2	2	
	Sodium bisulfate, solid *or* solution. *See appropriate* Sodium hydrogen sulfate *entry*		NA1821							&818	
	Sodium bisulfite, solid. *See* Sodium hydrogen sulfite, solid		NA2693								
	Sodium bromate	Oxidizer	UN1494	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
	Sodium chlorate (*soda chlorate*)	Oxidizer	UN1495	Oxidizer	173.153	173.163	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
	Sodium chlorite	Oxidizer	UN1496	Oxidizer	None	173.160	Forbidden	100 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
*	Sodium chlorite solution (*not exceeding 42% sodium chlorite*)	Corrosive material	NA1908	Corrosive	173.244	173.263	1 quart	4 gallons	1,2	1	Glass carboys in hampers not permitted under deck
E	Sodium chromate (*RQ-1000/454*)	ORM-E	NA9145	None	None	173.510	No limit	No limit	2	2	
E	Sodium cyanide, solid (*RQ-10/4.54*)	Poison B	UN1689	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
*E	Sodium cyanide solution (*RQ-10/4.54*)	Poison B	NA1689	Poison	173.345	173.352	1 quart	55 gallons	1,2	1,2	Stow away from acids
	Sodium dichloroisocyanurate. *See* Sodium dichloro-s-triazinetrione		UN2465								
	Sodium dichloro-s-triazinetrione (*dry, containing more than 39% available chlorine*)	Oxidizer	UN2465	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	
EA	Sodium dichromate (*RQ-1000/454*)	ORM-A	NA1464	None	173.505	173.510	No limit	No limit			
E	Sodium dodecylbenzenesulfonate (*RQ-1000/454*)	ORM-E	NA9146	None	None	173.510	No limit	No limit	2	2	
EA	Sodium fluoride, solid (*RQ-5000/2270*)	ORM-B	UN1690	None	173.505	173.510	No limit	No limit			
*E	Sodium fluoride solution (*RQ-5000/2270*)	Corrosive material	NA1690	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	Stow away from acids
	Sodium hydrate. *See* Sodium hydroxide		UN1824								

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§172.101 Hazardous Materials Table (cont'd)

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Sodium hydride	Flammable solid	UN1427	Flammable solid and Dangerous when wet	None	173.198	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
A	Sodium hydrogen sulfate, solid	ORM-B	UN1821	None	173.505	173.510	25 pounds	100 pounds			
*	Sodium hydrogen sulfate solution	Corrosive material	UN2837	Corrosive	173.244	173.800 173.245	1 quart	1 gallon	1,2	1,2	
EA	Sodium hydrogen sulfite, solid (*RQ-5000/2270*)	ORM-B	NA2693	None	173.505	173.800	25 pounds	100 pounds			
E	Sodium hydrosulfide, solid (*RQ-5000/2270*)	Flammable solid	UN2318	Flammable solid	173.153	173.154	25 pounds	100 pounds	2	2	
E	Sodium hydrosulfide, solution (*RQ-5000/2270*)	Corrosive material	UN1760	Corrosive	173.244	173.245	1 quart	5 gallons	2	2	
	Sodium hydrosulfite (*sodium dithionite*)	Flammable solid	UN1384	Flammable solid	173.153	173.204	25 pounds	100 pounds	1,2	1,2	Keep dry. Below deck stowage in metal drums only. Separate from flammable gases, liquids, oxidizing materials, or organic peroxides
E	Sodium hydroxide, dry solid, flake, bead, *or* granular (*RQ-1000/454*)	Corrosive material	UN1823	Corrosive	173.244	173.245b	25 pounds	200 pounds	1,2	1,2	Keep dry
*E	Sodium hydroxide, liquid *or* solution (*RQ-1000/454*)	Corrosive material	UN1824	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
E	*Sodium hypochlorite. See* Hypochlorite solution *or* Hypochlorite solution containing not more than 7% available chlorine										
A	Sodium metabisulfite	ORM-B		None	173.505	173.510	No limit	No limit			
E	Sodium, metal dispersion in organic solvent (*RQ-1000/454*)	Flammable solid	UN1429	Flammable solid and Dangerous when wet	None	173.230	Forbidden	10 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
E	Sodium, metal liquid alloy (*RQ-1000/454*)	Flammable solid	NA1421	Flammable solid and Dangerous when wet	None	173.202	Forbidden	1 pound	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
E	Sodium, metal *or* metallic (*RQ-1000/454*)	Flammable solid	UN1428	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
E	Sodium methylate, alcohol mixture (*RQ-1000/454*)	Combustible liquid	NA1289	None	173.118a	None	No limit	No limit	1,2	1,2	
E	Sodium methylate, alcohol mixture (*RQ-1000/454*)	Flammable liquid	NA1289	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
E	Sodium methylate, alcohol mixture (*RQ-1000/454*)	Corrosive material	NA1289	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
E	Sodium methylate, dry (*RQ-1000/454*)	Flammable solid	UN1431	Flammable solid	173.153	173.154	25 pounds	100 pounds	1,2	1	Segregation same as for flammable solids labeled Dangerous When Wet
	Sodium monoxide, solid	Corrosive material	UN1825	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
	Sodium nitrate	Oxidizer	UN1498	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Sodium nitrate bags. See Bags, sodium nitrate, empty and unwashed										
	Sodium nitrite mixed (*fused*) with potassium nitrate	Oxidizer	UN1487	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds and cyanides
	Sodium nitrite mixture (*sodium nitrate, sodium nitrite, and potassium nitrate*)	Oxidizer	NA1487	Oxidizer	173.153	173.234	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds and cyanides
E	Sodium nitrite (*RQ-100/45.4*)	Oxidizer	UN1500	Oxidizer	173.153	173.234	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds and cyanides. Bagged material not permitted on passenger vessels
A	Sodium pentachlorophenate	ORM-A	UN2567	None	173.505	173.510	No limit	No limit			
	Sodium perchlorate	Oxidizer	UN1502	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,3	1,3	Stow away from powdered metals
	Sodium permanganate	Oxidizer	UN1503	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Sodium peroxide	Oxidizer	UN1504	Oxidizer	None	173.187	Forbidden	100 pounds	1,2	1	Keep dry. Stow away from powdered metals, permanganates, combustible packing of other cargo, and combustible foodstuffs
	Sodium phenolate, solid	Corrosive material	UN2497	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
E	Sodium phosphate, dibasic (*RQ-5000/2270*)	ORM-E	UN9147	None	None	173.510	No limit	No limit	2	2	
E	Sodium phosphate, tribasic (*RQ-5000/2270*)	ORM-E	UN9148	None	None	173.510	No limit	No limit	2	2	
	Sodium phosphide	Flammable solid	UN1432	Flammable solid and Dangerous when wet	None	173.154	Forbidden	25 pounds	1	5	
	Sodium picramate, wet (*with at least 20% water*)	Flammable solid	UN1349	Flammable solid	None	173.205	Forbidden	25 pounds	1,2	5	Stow away from heavy metals, especially lead, and its compounds
	Sodium potassium alloy	Flammable solid	UN1422	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Under deck stowage must be readily accessible. Segregation same as for flammable solids labeled Dangerous When Wet
E	Sodium selenite (*RQ-1000/454*)	Poison B	NA2630	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
	Sodium sulfate, acid. *See appropriate* Sodium hydrogen sulfate *entry*										
*	Sodium sulfide, anhydrous	Flammable solid	UN1385	Flammable solid	173.153	173.207	25 pounds	300 pounds	1,2	1,2	Stow separate from liquid acids. Separate from flammable gases or liquids, oxidizing materials or organic peroxides
*	Solvent, n.o.s.	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Solvent, n.o.s.	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	*Sparklers. See* Fireworks, common										
	Spent iron mass. See Iron mass, spent		NA1376								
	Spent iron sponge. See Iron sponge, spent		UN1376								
	Spent mixed acid. See Nitrating acid, spent		NA1826								
	Spent sulfuric acid. See sulfuric acid, spent		UN1832								

§172.101 Hazardous Materials Table (cont'd)

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(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Spirits of nitroglycerin, (*1 to 10%*)	Flammable liquid	NA1204	Flammable liquid	None	173.133	Forbidden	6 quarts	1,2	5	Segregation same as for explosives
	Spirits of nitroglycerin, not exceeding 1% nitroglycerin by weight	Flammable liquid	NA1204	Flammable liquid	173.118	173.133	1 quart	6 quarts	1,2	1	
	Spirits of salt. *See* Hydrochloric acid		UN1789								
	Sporting powder. See Black powder *or* Propellant explosive, solid, Class B explosive										
	Spray starting fluid. See Engine starting fluid										
	Spreader cartridge. See Fireworks, special										
	Squib, electric or safety. See Electric squib *or* Safety squib										
*	Stain. *See* Paint, enamel, lacquer, stain, shellac, varnish, etc.		UN1263								
	Stannic phosphide	Flammable solid	UN1433	Flammable solid and Dangerous when wet	None	173.154	Forbidden	25 pounds	1	5	Segregation same as for flammable solid labeled Dangerous When Wet
A	Stannous chloride, solid	ORM-B	NA1759	None	173.505	173.510	No limit	No limit			
*	Starter cartridge	Class B explosive		Explosive B	None	173.92	Forbidden	200 pounds	1,3	5	
*	Starter cartridge	Class C explosive	NA0276	Explosive C	None	173.102	50 pounds	150 pounds	1,3	1,3	
	Storage battery wet. See Battery, electric storage, wet										
	Straw. *See* Hay		UN1327								
	Strontium arsenite, solid	Poison B	UN1691	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Strontium chlorate	Oxidizer	UN1506	Oxidizer	173.153	173.163	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
*	Strontium chlorate, wet	Oxidizer	UN1506	Oxidizer	173.153	173.163	25 pounds	200 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
E	Strontium chromate (*RQ-1000/454*)	ORM-E	NA9149	None	None	173.510	No limit	No limit	2	2	
	Strontium nitrate	Oxidizer	UN1507	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Strontium peroxide	Oxidizer	UN1509	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Keep dry
*E	Strychnine salt, solid (*RQ-10/4.54*)	Poison B	UN1692	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Strychnine, solid (*RQ-10/4.54*)	Poison B	UN1692	Poison	None	173.377	Forbidden	200 pounds	1,2	1,2	
	Styphnate of lead. See Initiating explosive										
E	Styrene monomer, inhibited (*RQ-1000/454*)	Flammable liquid	UN2055	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Succinic acid peroxide	Organic peroxide	UN2135	Organic peroxide	173.153	173.157 173.158	Forbidden	25 pounds	1	1	
E	Sulfur chloride (*mono and di*) (*RQ-1000/454*)	Corrosive material	UN1828	Corrosive	None	173.247	Forbidden	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Sulfur dioxide	Nonflammable gas	UN1079	Nonflammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	Stow away from living quarters
	Sulfur flower. *See* Sulfur										
	Sulfur hexafluoride	Nonflammable gas	UN1080	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
W	Sulfur, solid	ORM-C	UN1350	None	173.505	173.1080			1,2	1,2	Protect from sparks and open flame. Stow separate from oxidizing materials. Segregation same as for flammable solids
	Sulfur trioxide, stabilized	Corrosive material	UN1829	Corrosive	173.244	173.273	Forbidden	1 gallon	1,2	1,2*	Keep dry. Glass bottles not permitted under deck
E	Sulfuric acid (*For fuming sulfuric acid, see Oleum*) (*RQ-1000/454*)	Corrosive material	UN1830	Corrosive	173.244	173.272	1 quart	1 gallon	1	1	Keep dry. Under deck stowage is permitted on cargo vessels only in metal drums
E	Sulfuric acid, spent (*RQ-1000/454*)	Corrosive material	UN1832	Corrosive	None	173.248	Forbidden	1 quart	1	1	Under deck stowage is permitted on cargo vessels only in metal drums
	Sulfuric anhydride. *See* Sulfur trioxide, stabilized		UN1829								
*	Sulfurous acid	Corrosive material	UN1833	Corrosive	173.244	173.245	2 gallons	2 gallons	1,2	1	Glass carboys in hampers not permitted under deck
	Sulfuryl chloride	Corrosive material	UN1834	Corrosive	173.244	173.247	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Sulfuryl fluoride	Nonflammable gas	UN2191	Nonflammable gas	173.306	173.304 173.314	150 pounds	300 pounds	1,3	1	
	Sulphur. *See* Sulfur		UN1350								
	Supplementary charge (explosive)	Class A explosive		Explosive A	None	173.69	Forbidden	Forbidden	6	5	
EA	2,4,5-T amines, esters, *or* salts. *See* 2,4,5-Trichlorophenoxyacetic acid, amines, esters, *or* salts		NA2765								
EA	2,4,5-T. *See* 2,4,5-Trichlorophenoxyacetic acid.		NA2765								
	Tank car, containing residual phosphorus and filled with water or inert gas. See 173.190										
	Tank car, empty (*previously used for a hazardous material*), *See* 173.29										
	Tank car, empty (*previously used for a Poison A material*), *See* 172.510 and 173.29										
	Tank, portable, empty (*previously used for a hazardous material*). *See* 172.510, 173.29 and 172.514										
	Tank truck, empty. *See* 172.510, 172.514 and 173.29										
*	Tankage fertilizer	Flammable solid	NA1325	Flammable solid	None	173.209	Forbidden	Forbidden	1	5	Keep dry. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
*	Tankage, rough ammoniate	Flammable solid	NA1325	Flammable solid	None	173.210	Forbidden	Forbidden	1	5	Keep dry. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Tankage. See Garbage tankage										
*	Tar, liquid	Combustible liquid	UN1999	None	173.118a	None	No limit	No limit	1,2	1,2	

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§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Tar, liquid	Flammable liquid	UN1999	Flammable liquid	173.118	173.131	1 quart	10 gallons	1,2	1	
E	TDE (*1,1-dichloro-2,2-bis(para-chlorophenyl) ethane*) (*RQ-1/0.454*)	ORM-A	NA2761	None	None	173.510	50 pounds	No limit	2	2	
	Tear gas ammunition. See Chemical ammunition (containing an irritant material)										
	Tear gas candle	Irritating material	UN1700	Irritant	None	173.385	Forbidden	75 pounds	1	5	Stow away from living quarters
	Tear gas cartridge. See Small arms ammunition irritating (*tear gas*) cartridge										
	Tear gas grenade. See Grenade, tear gas										
	Tertiary alcohol. See Alcohol, n.o.s.										
	Tertiary butyl isopropyl benzene hydroperoxide	Organic peroxide	UN2091	Organic peroxide	173.153	173.224	1 quart	1 quart	1,2	4	
AW	Tetrachloroethane	ORM-A	UN1702	None	173.505	173.620	1 quart	10 gallons	1,2	1,2	
A	Tetrachloroethylene *or* Perchloroethylene	ORM-A	UN1897	None	173.505	173.510 173.605	10 gallons	55 gallons			
	Tetraethyl dithiopyrophosphate and compressed gas mixture	Poison A	UN1703	Poison gas	None	173.334	Forbidden	Forbidden	1	5	Shade from radiant heat. Stow away from living quarters. Segregation same as for nonflammable gases
	Tetraethyl dithiopyrophosphate, liquid	Poison B	UN1704	Poison	None	173.358	Forbidden	1 quart	1	5	
	Tetraethyl dithiopyrophosphate mixture, dry	Poison B	UN1704	Poison	None	173.377	Forbidden	200 pounds	1	5	
	Tetraethyl dithiopyrophosphate mixture, liquid	Poison B	UN1704	Poison	None	173.359	Forbidden	1 quart	1	5	
E	Tetraethyl lead, liquid (*including flash point for export shipment by water*) (*RQ-100/45.4*)	Poison B	NA1649	Poison	None	173.354	Forbidden	55 gallons	1	5	If flash point is 141 deg F. or less, segregation must be the same as for flammable liquids
E	Tetraethyl pyrophosphate and compressed gas mixture (*RQ-100/45.4*)	Poison A	UN1705	Poison gas	None	173.334	Forbidden	Forbidden	1	5	Shade from radiant heat. Stow away from living quarters. Segregation same as for nonflammable gases
E	Tetraethyl pyrophosphate, liquid (*RQ-100/45.4*)	Poison B	NA2783	Poison	None	173.358	Forbidden	1 quart	1,2	5	
E	Tetraethyl pyrophosphate mixture, dry (*RQ-100/45.4*)	Poison B	NA2783	Poison	None	173.377	Forbidden	200 pounds	1,2	5	
E	Tetraethyl pyrophosphate mixture, liquid (*RQ-100/45.4*)	Poison B	NA2783	Poison	None	173.359	Forbidden	1 quart	1,2	5	
	Tetrafluoroethylene, inhibited	Flammable gas	UN1081	Flammable gas	173.306	173.304	Forbidden	300 pounds	1,2	1,2	Stow away from living quarters
	1,2,3,6-Tetrahydrobenzaldehyde	Corrosive material	UN2498	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Tetrahydrofuran	Flammable liquid	UN2056	Flammable liquid	None	173.119	Forbidden	10 gallons	1,3	5	
	Tetramethylammonium hydroxide, liquid	Corrosive material	UN1835	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
A	Tetramethylmethylenediamine	ORM-A	NA9069	None	173.505	173.510	No limit	No limit			
	Tetranitromethane	Oxidizer	UN1510	Oxidizer	None	173.203	Forbidden	Forbidden	1	5	Shade from radiant heat. Stow away from foodstuffs
	Tetrazene (guanyl nitrosamino guanyltetrazene). See Initiating explosive										
	Tetryl. See High explosive										
*	Textile treating compound mixture, liquid	Corrosive material	NA1760	Corrosive	173.244	173.245 173.249a	1 quart	10 gallons	1,2	1,2	
	Textile waste. *See* Cotton waste										
	Textile waste, wet	Flammable solid	UN1857	Flammable solid	None	173.211	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
*	Thallium salt, solid, n.o.s.	Poison B	NA1707	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Thallium sulfate, solid (*RQ-1000/454*)	Poison B	NA1707	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Thinner for rust preventive coating. *See* Rust preventive coating		NA1142								
	Thinning compound, paint, varnish, lacquer etc. See Paint, enamel, lacquer, stain, shellac, varnish, etc.		UN1263								
	Thiocarbonyl-chloride. See Thiophosgene										
	Thioglycolic acid	Corrosive material	UN1940	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	Glass carboys in hampers not permitted under deck
	Thionyl chloride	Corrosive material	UN1836	Corrosive	None	173.247	Forbidden	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Thiophosgene	Poison B	UN2474	Poison	None	173.356	Forbidden	1 gallon	1	5	Shade from radiant heat
	Thiophosphoryl chloride	Corrosive material	UN1837	Corrosive	None	173.271	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
A	Thiram	ORM-A	NA2771	None	173.505	173.510	No limit	No limit			
	Thorium metal, pyrophoric	Radioactive material	NA9170	Radioactive and Flammable solid	173.226	173.228			1,2	1,2	
	Thorium nitrate	Radioactive material	NA9171	Radioactive and Oxidizer	173.392	173.393			1,2	1,2	Separate longitudinally by a complete hold or compartment from explosives
	Time fuze. See Fuze, time, non-detonating										
	Tin chloride, fuming. *See* Tin tetrachloride, anhydrous		UN1827								
	Tin perchloride. *See* Tin tetrachloride, anhydrous		NA1827								
	Tin tetrachloride, anhydrous	Corrosive material	UN1827	Corrosive	173.244	173.247	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
*	Tinning flux. *See* Zinc chloride solution		NA1840								
	Titanium metal powder, dry or wet *with less than 20% water*	Flammable solid	NA2546	Flammable solid	None	173.208	Forbidden	75 pounds	1,2	5	
	Titanium metal powder, wet with 20% or more water	Flammable solid	NA1352	Flammable solid	None	173.208	Forbidden	150 pounds	1,2	5	
*	Titanium sulfate solution *containing not more than 45% sulfuric acid*	Corrosive material	UN1760	Corrosive	173.244	173.297	1 quart	1 gallon	1	4	Shade from radiant heat. Keep dry

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Titanium tetrachloride	Corrosive material	UN1838	Corrosive	173.244	173.247	1 quart	10 gallons	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Toluene diisocyanate	Poison B	UN2078	Poison	173.345	173.346	Forbidden	55 gallons	1,3	1,3	Shade from radiant heat
	Toluene sulfonic acid, liquid	Corrosive material	NA2584	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
E	Toluene (*toluol*) (*RQ-1000/454*)	Flammable liquid	UN1294	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
A	Toluenediamine	ORM-A	NA1709	None	173.505	173.510	No limit	No limit			
	Torch. See Fireworks, common										
	Torpedo, railway	Class B explosive		Explosive B	None	173.91	Forbidden	200 pounds	1,2	1,2	Passenger vessels in metal lockers only
E	Toxaphene (*RQ-1/0.454*)	ORM-A	NA2761	None	None	173.510	25 pounds	100 pounds	2	2	
	Toy caps	Class C explosive	NA0337	Explosive C	None	173.100 173.109	50 pounds	150 pounds	1,3	1,3	
	Toy propellant device	Class C explosive	NA0336	Explosive C	None	173.111	50 pounds	150 pounds	1,3	1,3	
	Toy smoke device	Class C explosive	NA0337	Explosive C	None	173.111	50 pounds	150 pounds	1,3	1,3	
	Toy torpedo. See Fireworks, special										
E	2,4,5-TP esters. *See* 2,4,5-Trichlorophenoxypropionic acid esters		NA2765								
E	2,4,5-TP. *See* 2,4,5-Trichlorophenoxypropionic acid		NA2765								
	Tracer	Class C explosive	NA0306	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Tracer fuze	Class C explosive	NA0306	Explosive C	None	173.105	50 pounds	150 pounds	1,3	1,3	
	Tractor. *See* Motor vehicle										
	Trailer or truck body with refrigeration or heating equipment. *See* Motor vehicle										
	Treated paper (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material										
	Treated textile (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material.										
E	Trichlorfon (*RQ-1000/454*)	ORM-A	NA2783	None	None	173.510	25 pounds	100 pounds	2	2	
	Trichloro-s-triazinetrione *dry, containing over 39% available chlorine*	Oxidizer	UN2468	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,3	1,3	Keep dry
	(mono-(Trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry (*containing over 39% available chlorine*)	Oxidizer	NA2468	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,3	1,3	Keep dry
	Trichloroacetic acid, solid	Corrosive material	UN1839	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1	
*	Trichloroacetic acid solution	Corrosive material	UN2564	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permitted under deck
EA	Trichloroethylene (*RQ-1000/454*)	ORM-A	UN1710	None	173.505	173.510 173.605	10 gallons	55 gallons			
E	Trichlorophenol (*RQ-10/4.54*)	ORM-A	NA2020	None	None	173.510	100 pounds	No limit	2	2	
EA	2,4,5-Trichlorophenoxyacetic acid (*RQ-100/45.4*)	ORM-A	NA2765	None	None	173.510	50 pounds	No limit	2	2	
EA	2,4,5-Trichlorophenoxyacetic acid amines, esters, *or* salts (*RQ-100/45.4*)	ORM-A	NA2765	None	None	173.510	50 pounds	No limit	2	2	
EA	2,4,5-Trichlorophenoxypropionic acid (*RQ-100/45.4*)	ORM-A	NA2765	None	None	173.510	50 pounds	No limit	2	2	
EA	2,4,5-Trichlorophenoxypropionic acid esters (*RQ-100/45.4*)	ORM-A	NA2765	None	None	173.510	50 pounds	No limit	2	2	
	Trichlorosilane	Flammable liquid	UN1295	Flammable liquid	None	173.136	Forbidden	10 gallons	1	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Trick matches	Class C explosive	NA0337	Explosive C	None	173.111	Forbidden	Forbiddfen	1,3	1,3	
	Trick noise maker, explosive	Class C explosive	NA0337	Explosive C	None	173.111	50 pounds	150 pounds	1,3	1,3	
E	Triethanolamine dodycylbenzenesulfonate (*RQ-1000/454*)	ORM-E	NA9151	None	None	173.510	No limit	No limit	2	2	
E	Triethylamine (*RQ-5000/2270*)	Flammable liquid	UN1296	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Trifluorochlorethylene	Flammable gas	UN1082	Flammable gas	173.306	173.304 173.314	Forbidden	10 gallons	1,2	1	
	Trimethyl acetyl chloride	Corrosive material	UN2438	Corrosive	173.244	173.247	1 quart	1 quart	1,2	1,2	
E	Trimethylamine, anhydrous (*RQ-1000/454*)	Flammable gas	UN1083	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1	4	
*E	Trimethylamine, aqueous solution (*RQ-1000/454*)	Flammable liquid	NA1297	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	Stow away from mercury and mercury compounds
	Trimethylchlorosilane	Flammable liquid	UN1298	Flammable liquid	None	173.135	Forbidden	10 gallons	1,2	1	
	Trinitrobenzene, dry. See High explosive										
*	Trinitrobenzene, wet *containing at least 10% water*	Flammable solid	NA1354	Flammable solid	173.212		1 pound	1 pound	1	4	Stow away from heavy metals and their compounds
	Trinitrobenzoic acid, dry. See High explosive										
*	Trinitrobenzoic acid, wet, *containing at least 10% water*	Flammable solid	NA1355	Flammable solid	None	173.192 173.193	1 pound	25 pounds	1	5	Stow away from heavy metals and their compounds
	Trinitrobenzoic acid, wet, containing at least 10% water, over 25 pounds in one outside packaging. See High explosives										
	Trinitroresorcinol. See High explosive										
	Trinitrotoluene, dry. See High explosive										
	Trinitrotoluene, wet *containing at least 10% water*	Flammable solid	NA1356	Flammable solid	173.212		1 pound	1 pound	1	4	Stow away from heavy metals and their compounds
	Tris-(1-aziridinyl) phosphine oxide	Corrosive material	UN2501	Corrosive	173.244	173.299a	1 quart	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels

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§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	Tungsten hexafluoride	Corrosive material	UN2196	Corrosive	None	173.284	Forbidden	110 pounds	1	5	Segregation same as for nonflammable gases.
*	Turpentine	Combustible liquid	UN1299	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Turpentine	Flammable liquid	UN1299	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
*	Turpentine substitute	Combustible liquid	UN1300	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Turpentine substitute	Flammable liquid	UN1300	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
W	Twisted jute packing (*rope*) (*treated or untreated*). *See* Oakum										
	Uranium hexafluoride, fissile (containing more than 0.7% U-235)	Radioactive material	NA9173	Radioactive and Corrosive	173.393	173.396			1,2	1,2	
	Uranium hexafluoride, low specific activity (*containing 0.7% or less U-235*)	Radioactive material	NA9174	Radioactive and Corrosive	173.392	173.393			1,2	1,2	
	Uranium metal, pyrophoric	Radioactive material	NA9175	Radioactive and Flammable solid	173.392	173.393 173.396			1,2	1,2	
E	Uranyl acetate (*RQ-5000/2270*)	Radioactive material	NA9180	Radioactive material	173.391	173.395	Not applicable	Not applicable	2	2	
	Uranyl nitrate hexahydrate solution	Radioactive material	NA9178	Radioactive and Corrosive	173.392	173.393 173.395 173.396			1,2	1,2	
E	Uranyl nitrate, solid (*RQ-5000/2270*)	Radioactive material	NA9177	Radioactive and Oxidizer	173.392	173.393 173.396			1,2	1,2	Separate longitudinally by an intervening hold or compartment from explosives
	Urea nitrate, dry. See High explosive										
*	Urea nitrate, wet *with 10% or more water*	Flammable solid	NA1357	Flammable solid	None	173.192 173.193	1 pound	25 pounds	1,2	1,2	
	Urea nitrate, wet with 10% or more water, over 25 pounds in one outside packaging. See High explosive										
	Urea peroxide	Organic peroxide	NA1511	Organic peroxide	173.153	173.227	2 pounds	25 pounds	1	4	Keep dry. Shade from radiant heat
	Valeric acid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Valeryl chloride	Corrosive material	UN2502	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	
	Vanadium oxytrichloride	Corrosive material	UN2443	Corrosive	173.244	173.247a	Forbidden	1 quart	1	4	Shade from radiant heat
	Vanadium oxytrichloride and titanium tetrachloride mixture	Corrosive material	NA2444	Corrosive	None	173.245 173.245a	Forbidden	1 quart	1	4	Shade from radiant heat
E	Vanadium pentoxide (*RQ-1000/454*)	Poison B	NA2862	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
	Vanadium tetrachloride	Corrosive material	UN2444	Corrosive	173.244	173.247a	Forbidden	1 quart	1	4	Shade from radiant heat
E	Vanadyl sulfate (*RQ-1000/454*)	ORM-E	NA9152 NA1168 NA1142	None	None	173.510	No limit	No limit	2	2	
	Varnish drier. See Paint drier, liquid										
	Varnish remover or reducer. See Compound, lacquer, paint or varnish removing, reducing, or thinning liquid										
*	Varnish. *See* Paint, enamel, lacquer, stain, shellac, varnish, etc.		NA1263								
	Varnish thinning compound. See Compound, lacquer, paint, or varnish removing, reducing, or thinning liquid		NA1263								
	Very signal cartridge	Class C explosive	NA0312	Explosive C	None	173.108	50 pounds	200 pounds	1,3	1,3	
E	Vinyl acetate (*RQ-1000/454*)	Flammable liquid	UN1301	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Vinyl chloride	Flammable gas	UN1086	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	Stow away from living quarters
	Vinyl ethyl ether, inhibited	Flammable liquid	UN1302	Flammable liquid	None	173.119	Forbidden	1 gallon	1,3	5	
	Vinyl fluoride, inhibited	Flammable gas	UN1860	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1	4	
	Vinyl isobutyl ether	Flammable liquid	UN1304	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Vinyl methyl ether	Flammable gas	UN1087	Flammable gas	173.306	173.304 173.314	Forbidden	20 pounds	1,2	1	Stow away from living quarters
	Vinyl trichlorosilane	Flammable liquid	UN1305	Flammable liquid	None	173.135	Forbidden	10 gallons	1,2	1	
E	Vinylidene chloride, inhibited (*RQ-5000/2270*)	Flammable liquid	UN1303	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	4	
	Vitriol, oil of. *See* Sulfuric acid		NA1830								
	War head. See Explosive projectile										
	Waste paper, wet	Flammable solid	NA1325	Flammable solid	None	173.186	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Waste textile, wet	Flammable solid	UN1857	Flammable solid	None	173.211	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Waste wool, wet	Flammable solid	UN1387	Flammable solid	None	173.213	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Water pump system tank charged with compressed air or nitrogen	Nonflammable gas	NA1956	None	173.306		Forbidden	Forbidden	1,2	1,2	
	Water reactive solid, n.o.s.	Flammable solid	UN2813	Flammable solid and Dangerous when wet	173.153	173.154	Forbidden	25 pounds	1,2	4	Segregation same as for flammable solids labeled Dangerous When Wet

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/ E/ A/ W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Water treatment compounds, liquid	Corrosive material	NA1760	Corrosive	173.244	173.149	1 quart	10 gallons	1	1	
*	Wax, liquid	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
	Wet hair. See Hair, wet		NA1325								
	Wet textile waste. See Waste textile, wet		UN1857								
	White acid (*ammonium bifluoride and hydrochloric acid mixture*)	Corrosive material	NA1760	Corrosive	173.244	173.264	1 quart	1 gallon	1	1	
*	Wood filler, liquid. See Paint, varnish, lacquer, stain, shellac, enamel, etc.		NA1263								
	Wood shavings (*when dry, clean and free from oil*). See Sawdust										
	Wool waste. See Cotton waste										
	Wool waste, wet. See Waste wool, wet		UN1387								
	X-ray film. See Film										
*	Xenon	Nonflammable gas	UN2036	Nonflammable gas	173.306	173.302	150 pounds	300 pounds	1,2	1,2	
E	Xylene (*xylol*) (*RQ-1000/454*)	Flammable liquid	UN1307	Flammable liquid	173.118	173.119	1 quart	1 quart	1,2	1,2	
E	Xylenol (*RQ-1000/454*)	ORM-E	UN2261	None	None	173.510	No limit	No limit	2	2	
	Xylyl bromide	Irritating material	UN1701	Irritant	None	173.382	Forbidden	75 pounds	1	5	Stow away from living quarters
A	Yeast, active, *in liquid or pressed form*	ORM-C		None	None	173.1085	No limit	No limit			
E	Zinc acetate (*RQ-1000/454*)	ORM-E	NA9153	None	None	173.510	No limit	No limit	2	2	
E	Zinc ammonium chloride (*RQ-5000/2270*)	ORM-E	NA9154	None	None	173.510	No limit	No limit	2	2	
	Zinc ammonium nitrite	Oxidizer	UN1512	Oxidizer	None	173.228	25 pounds	100 pounds	1,3	5	This material may be forbidden in water transportation by certain countries
	Zinc arsenate	Poison B	UN1712	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Zinc arsenite, solid	Poison B	UN1712	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Zinc borate (*RQ-1000/454*)	ORM-E	NA9155	None	None	173.510	No limit	No limit	2	2	
E	Zinc bromide (*RQ-5000/2270*)	ORM-E	NA9156	None	None	173.510	No limit	No limit	2	2	
E	Zinc carbonate (*RQ-1000/454*)	ORM-E	NA9157	None	None	173.510	No limit	No limit	2	2	
	Zinc chlorate	Oxidizer	UN1513	Oxidizer	173.153	173.163	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds and away from powdered metals
E	Zinc chloride, solid (*RQ-5000/2270*)	ORM-E	NA2331	None	None	173.510	No limit	No limit	1,2	1,2	
E	Zinc chloride solution (*RQ-5000/2270*)	Corrosive material	UN1840	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
E	Zinc cyanide (*RQ-10/4.54*)	Poison B	UN1713	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
	Zinc ethyl. See Pyrophoric liquids, n.o.s.		NA1366								
E	Zinc fluoride (*RQ-1000/454*)	ORM-E	NA9158	None	None	173.510	No limit	No limit	2	2	
E	Zinc formate (*RQ-1000/454*)	ORM-E	NA9159	None	None	173.510	No limit	No limit	2	2	
E	Zinc hydrosulfite (*RQ-1000/454*)	Flammable solid	NA1931	Flammable solid	173.153	173.154	25 pounds	100 pounds	2	2	
*	Zinc muriate solution. See Zinc chloride solution		NA1840								
E	Zinc nitrate (*RQ-5000/2270*)	Oxidizer	UN1514	Oxidizer	173.153	173.182	25 pounds	100 pounds	2	2	
	Zinc permanganate	Oxidizer	UN1515	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Zinc peroxide	Oxidizer	UN1516	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Keep dry
E	Zinc phenolsulfonate (*RQ-5000/2270*)	ORM-E	NA9160	None	None	173.510	No limit	No limit	2	2	
E	Zinc phosphide (*RQ-1000/454*)	Flammable solid	UN1714	Flammable solid and Poison	173.153	173.154	Forbidden	25 pounds	2	2	Keep away from oxidizing agents.
E	Zinc silicofluoride (*RQ-5000/2270*)	ORM-E	UN2855	None	None	173.510	No limit	No limit	2	2	
E	Zinc sulfate (*RQ-1000/454*)	ORM-E	NA9161	None	None	173.510	No limit	No limit	2	2	
	Zirconium hydride	Flammable solid	UN1437	Flammable solid and Dangerous when wet	None	173.206	Forbidden	150 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
*	Zirconium metal, dry, *chemically produced, finer than 20 mesh particle size*	Flammable solid	NA2008	Flammable solid	None	173.214	Forbidden	75 pounds	1	5	Separate from flammable gases or liquids, oxidizing materials or organic peroxides
*	Zirconium metal, dry, *mechanically produced, finer than 270 mesh particle size*	Flammable solid	NA2008	Flammable solid	None	173.214	Forbidden	75 pounds	1	5	Separate from flammable gases or liquids, oxidizing materials or organic peroxides
*	Zirconium, metal, liquid, suspensions	Flammable liquid	NA1308	Flammable liquid	None	173.140	Forbidden	5 gallons	1	5	
	Zirconium metal, wet, *chemically produced, finer than 20 mesh particle size*	Flammable solid	NA1358	Flammable solid	None	173.214	Forbidden	150 pounds	1,2	5	
	Zirconium metal, wet, *mechanically produced, finer than 270 mesh particle size*	Flammable solid	NA1358	Flammable solid	None	173.214	Forbidden	150 pounds	1,2	5	
E	Zirconium nitrate (*RQ-5000/2270*)	Oxidizer	UN2728	Oxidizer	173.153	173.154	25 pounds	100 pounds	2	2	
	Zirconium picramate, wet *with at least 20% of water*	Flammable solid	UN1517	Flammable solid	None	173.216	Forbidden	25 pounds	1	1	Stow away from heavy metals and their salts
E	Zirconium potassium fluoride (*RQ-5000/2270*)	ORM-E	NA9162	None	None	173.510	No limit	No limit	2	2	
*	Zirconium scrap (*borings, clippings, shavings, sheets, or turnings*)	Flammable solid	UN1932	Flammable solid	173.153	173.220	Forbidden	Forbidden	1	4	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
EA	Zirconium sulfate (*RQ-5000/2270*)	ORM-B	NA9163	None	None	173.510	100 pounds	No limit	2	2	
E	Zirconium tetrachloride, solid (*RQ-5000/2270*)	Corrosive material	UN2503	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	

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3. In § 172.202 paragraph (a)(3) would be added and paragraph (b) would be revised to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

(a) * * *

(3) The identification number assigned to the material in § 172.101.

* * * * *

(b) The basic description specified in paragraphs (a)(1), (2) and (3) of this section must be shown in sequence except that the technical name of the material may be entered between the proper shipping name and the class. For example: "Gasoline, Flammable liquid UN 1203;" "Flammable solid n.o.s. UN 1325;" or "Corrosive liquid n.o.s. (Caprylyl chloride) Corrosive material UN 1760."

* * * * *

4. Section 172.300 would be revised to read as follows:

§ 172.300 General marking requirements.

Except as provided by this subchapter, each person who offers a package containing a hazordous material for transportation shall mark the package with the proper shipping name and identification number assigned to the material in § 172.101. However, when it has been determined by the shipper that a package has been previously marked as required for the material it contains, it need not be remarked. This section does not apply to portable tanks, cargo tanks and tank cars.

5. In § 172.326 paragraphs (a) and (b) would be revised to read as follows:

§ 172.326 Portable tanks.

(a) No person may offer for transportation or transport a portable tank containing a hazardous material unless it is marked legibly—

(1) On each side and each end with the identification number specified for the material in § 172.101 on a panel as specified by § 172.332, and

(2) On each side with the proper shipping name of the material in lettering no less than two inches (50.8mm.) in height.

(b) A portable tank marked with the identification number or name of a specific hazardous material may not be used to transport any other material unless the marking is removed, or changed to identify the hazardous material in the portable tank, whichever is appropriate.

* * * * *

6. In § 172.328 paragraphs (a), and (b) and (e) would be revised to read as follows:

§ 172.328 Cargo tanks.

(a) No person may offer for transportation or transport a hazardous material in a cargo tank unless the cargo tank is marked on each side and each end with the identification number specified for the material in § 172.101 on a panel as specified in § 172.332.

(1) A person who offers a motor carrier a hazardous material for transportation in a cargo tank shall provide to the motor carrier the required identification numbers on panels prior to or at the time the material is offered for transportation unless the cargo tank is already marked with identification numbers as required by this subpart.

(2) A person who offers a cargo tank containing a hazardous material for transportation, shall affix the required identification numbers on panels prior to or at the time the material is offered for transportation unless the cargo tank is already marked with identification numbers as required by this subpart.

(3) As an alternative, the marking required by paragraph (a) of this section on the front of a cargo tank may be on the front of a truck-tractor instead of or in addition to the marking on the front of the cargo tank to which the truck-tractor is attached.

(4) Identification numbers are not required on nurse tanks meeting the provisions of § 173.315(m) of this subchapter.

(b) Except as specified in paragraph (a) of this section, when the name of a material or other marking is required by this subchapter to be marked on a cargo tank, it must be legibly displayed in lettering or numbers no less than two inches (50.8mm.) in height.

* * * * *

(e) A cargo tank marked with the identification number or name of a specific hazardous material may not be used to transport any other material unless the marking is removed, or changed to identify the hazardous material the cargo tank contains, whichever is appropriate.

7. Section 172.330 would be revised to read as follows:

§ 172.330 Tank cars.

(a) No person may offer for transportation or transport a hazardous material in a tank car unless the tank car is marked on each side and each end with the identification number specified for the material in § 172.101 on a panel as specified in § 172.322. Also, when required to be marked by Part 173 or 179 of this subchapter, each tank car and tank car tank (DOT 106 or 110) used to transport a hazardous material must be marked as specified in this subpart with the—

(1) Proper shipping name, or

(2) Common name authorized in this subchapter for the material such as "Refrigerant Gas."

(b) The letters in the marking of a proper shipping or common name must be 4 inches (101.6mm.) or more in height with at least a ⅝ inch (15.9mm.) stroke. The separation between each letter must be at least ¾ inch (19.0mm.).

(c) The marked proper shipping or common name must be—

(1) Affixed to both sides of the tank car tank, and

(2) Except for tank cars transporting DOT 106 and 110 multi-unit tank car tanks, readily visible when viewed from each side of the tank car.

(d) A tank car and a tank car marked with the identification number or name of a specific hazardous material may not be used to transport any other material unless the marking is removed, or changed to identify the hazardous material the tank car or tank car tank contains, whichever is appropriate.

(e) For a hazardous material in a DOT 106 or 110 tank car tank,

(1) The identification number specified for the material in § 172.101 must be marked on one panel as specified in § 172.332 that is affixed to the side of the tank,

(2) A motor vehicle or rail car used to transport the tank car tank must be marked on each side and each end with the identification number specified for the material in § 172.101 on a panel as specified in § 172.332, and

(3) If the tank car tank contains chlorine, marking of the name "Chlorine" is not required when the CHLORINE label is used as provided in § 172.405(b).

8. Section 172.332 would be added to read as follows:

§ 172.332 Identification number markings and orange panel specifications.

(a) The orange panel for portable tanks, cargo tanks and tank cars shall be 6¼ inches (16 cm.) high by 16¼ inches (41.5 cm.) wide with a 7/16 of an inch (12 mm.) black outer boarder. An identification number shall be displayed in 4–inch (100 mm.) black Helvetica Medium numerals. Measurements may vary from those specified plus or minus 0.1 of an inch (3 mm.).

(b) The orange display panel may be made of any durable material prescribed for placards in § 172.519, and shall be of the orange color specified for labels or placards in Appendix A to this Part.

(c) The name of a material respresented by an identification

number may be shown in the upper left border of the orange panel in letters not more than 18 points (¼-inch) high.

(d) Except for size and color, the orange panel and identification numbers are illustrated as follows:



(e) The identification number on an orange panel shall be displayed in proximity to any placard required by §172.504.

(49 U.S.C. 1803, 1804; 1808; 49 CFR 1.53, App. A to Part 1, and paragraph (a)(4) of App. A, Part 106.)

Note. The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring preparation of an economic statement under Executive Order 12044 and DOT implementing procedures (43 FR 9582) nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

A regulatory evaluation is available in the public docket.

Issued in Washington, D.C., on May 23, 1979.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation Materials Transportation Bureau.

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Part V

Department of Health, Education, and Welfare

Office of Education

Correction Education Demonstration Program

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 161j]

Proposed Rules for the Correction Education Demonstration Program

AGENCY: Office of Education, HEW.

ACTION: Proposed rules.

SUMMARY: The Comissioner of Education proposes to issue regulations to implement the Correction Education Demonstration Project Act of 1978. The program provides financial assistance for the purpose of developing demonstration projects relating to the academic and vocational education of juvenile delinquents, youth offenders, and adult criminal offenders.

DATES: Interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed regulations on or before August 6, 1979.

Public meetings will be held in each of the ten regions on July 11, 1979. The time for these meetings is—

9:00 a.m.–12:00 Noon.

1:00 p.m.–5:00 p.m.

7:00 p.m.–9:00 p.m.

ADDRESSES: Written comments should be addressed to Dr. James M. Spillane, U.S. Office of Education, Room 2047, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

The locations of the public meetings are—

Region I—Boston—Bunker Hill Community College, Room C 202, Rutherford Avenue, Charlestown, Massachusetts.

Region II—New York—Norman Thomas High School, 111 East 33rd Street, New York City, New York.

Region III—Philadelphia—University City, Holiday Inn, 36th & Chestnut Streets, Philadelphia, Pennsylvania.

Region IV—Atlanta—Suite 2221, 101 Mariette Tower Bldg., Atlanta, Georgia.

Region V—Chicago—Center for Urban Education, 160 West Wendell Street (1050 North Wells), Chicago, Illinois.

Region VI—Dallas—North Lake Junior College, 2000 Walnut Hill Lane, Irving, Texas.

Region VII—Kansas City—Penn Valley Community Junior College, 3201 Southwest Trafficway, Room CC 503, Kansas City, Missouri.

Region VIII—Denver—George Washington High School, Lunch Room, 655 South Monaco Street, Denver, Colorado.

Region IX—San Francisco—Room 209, Federal Office Bldg., 50 United Nations Plaza, San Francisco, California.

Region X—Seattle—Room RC 1132 North Seattle Community College, 9600 College Way North, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Dr. James M. Spillane (202) 245–7292.

FOR INFORMATION ON REGIONAL HEARINGS CONTACT: The appropriate Regional Commissioner for Educational Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223–7500.

Region II, New York, Dr. William D. Green, (212) 264–4370.

Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596–1001.

Region IV, Atlanta, Dr. William L. Lewis, (404) 221–2063.

Region V, Chicago, Ms. Juliette Noone Lester, (312) 353–5215.

Region VI, Dallas, Mr. Edward J. Baca, (214) 767–3626.

Region VII, Kansas City, Dr. Harold Blackburn, (816) 374–2276.

Region VIII, Denver, Dr. John Runkel, (303) 837–3544.

Region IX, San Francisco, Dr. Caroline Gillin, (415) 556–4920.

Region X, Seattle, Mr. Allen Apodaca, (206) 442–0460.

SUPPLEMENTARY INFORMATION: The Commissioner is required by law to publish regulations for programs authorized by Congress. Please note that the Congress has not appropriated funds to operate this program in Fiscal Year 1979, and the President's budget does not request funds for Fiscal Year 1980.

The statute and legislative history of the Correction Education Demonstration Project Act, (Section 371–374 of Title III of Pub. L. 95–561) are very brief. The Senate report notes that there are various sources of funds for correction education within the Federal government. It emphasizes, however, that none of these programs is devoted exclusively to the development and implementation of demonstration projects involving new and innovative techniques and methods in the area of correction education.

The statute authorizes demonstration projects relating to academic and vocational education for various categories of offenders. Before proceeding we need to answer a preliminary question: "What is correction education?"

Correction education is education to meet the special educational needs of offenders—needs for individualized instruction and for a high level of supportive services, including transitional services, that enable offenders who have been incarcerated to adjust to the community.

Correction education is also used to refer to any education provided within a correctional facility—a prison or a juvenile training school. Incarceration itself poses special problems for education such as direct coercion to participate, lack of motivation, lack of freedom, and need for increased supervision.

In reviewing the literature on correction education, the Office of Education has noted the following areas of need:

- The need to develop community-based corrections programs which make available a wide range of community services including those of education. This reflects a national trend toward community-based corrections facilities.
- The need to develop transition programs between correctional institutions and the community which offer access to community social and educational services.
- The need for education systems—State educational agencies (SEAs), local educational agencies (LEAs), and institutions of higher education, particularly community colleges, to provide the necessary range of services to clients in community-based correctional facilities.
- The need to develop effective correction education programs for incarcerated offenders that integrate academic and vocational education with necessary supportive services to enable the offender to take best advantage of the education and training.
- The need to coordinate the resources of a variety of public and private agencies to provide services to offenders and ex-offenders.

OE invites promising applications that focus on effective strategies to respond to these areas of need in the field of correction education. At the same time OE seeks comment on whether it should limit the focus of the Correction Education Demonstration Program to one or more specific priority areas.

The authorization for appropriations is $5 million. However, there is a variety of other resources at the Federal, State, and local levels for correction education. For that reason the proposed rules strongly encourage that funds available under this new program be used in conjunction with other resources to bring about improved programs for offenders. Further, applicants must demonstrate coordination with other agencies in their requests for support.

The Commissioner believes it would not be desirable to concentrate funds in large comprehensive projects. Funds, however, could be used to support innovative components of these projects. These components could be part of either new or established projects.

Funds could be used for small projects providing intensive services for a short period of time. They could also be used to bring about more effective coordination of resources at the local level by involving and integrating support and services from a number of different agencies that work with populations of offenders.

Multi-year support of up to three years may be sought for a project.

These are demonstration projects and they must be set up to continue after Federal funding stops. A key consideration in planning for a project must be the assumption of funding at the end of the grant. In proposals for multi-year projects, the applicants must demonstrate increasing levels of local support after the first project year.

The program strategy is to seek out promising demonstration projects. Projects that receive multi-year funding will receive funds in the second or third continuation years for validation of effectiveness.

In each year of the program the Commissioner will bring staff of projects together for a national conference and workshop. The purpose of the national meeting is to facilitate sharing among projects, to provide resources for problem solving, and to provide staff development in areas of need. Where feasible, OE will provide technical assistance to the projects in the form of training flexible enough to respond to a variety of problem areas generated by local projects.

Issues in Developing the Regulations Were: Should OE Only Fund Projects Leading to Comprehensive Education Programs?

A fundamental issue is whether OE should *only* fund projects which will result in comprehensive programs or are parts comprehensive correction education programs including academic and vocational education with necessary supportive services—or—should OE *also* fund projects where only academic or only vocational education would be available. These proposed regulations emphasize the former and permit the Commissioner annually to reserve funds for them, but they do not preclude funding other outstanding projects.

Who Is the Target Population?

One issue considered in developing these regulations was the population to be served. The statute authorized correction education demonstration programs for "antisocial, aggressive or delinquent persons, including juvenile delinquents, youth offenders, and adult criminal offenders." The legislative history refers only to the offender categories.

The Commissioner proposes to interpret the population to be served as limited to offenders—persons who have been found guilty of having committed criminal offenses. Ex-offenders would also be eligible to participate.

The Commissioner believes this is the best interpretation because persons who have not been found guilty of a crime should not need "correction education," and thereby be labeled as offenders. However, the Commissioner seeks comments on this issue, especially on whether to include in the target population—

(a) Persons charged with crimes but diverted from prosecution on the condition they participate in an educational program;

(b) Persons detained in jails or other facilities prior to trail;

(c) Youths charged with status offenses—such as truancy—that would not be crimes if committed by adults; and

(d) Other "aggressive" or "anti-social" persons as determined by school officials.

May Postsecondary Level Courses by Funded?

The statute does not limit academic or vocational education to the elementary and secondary levels. Therefore, the Commissioner considers applications proposing postsecondary academic or vocational education projects.

What Is the Role of Staff Training in a Correction Eduction Project?

The Commissioner considers staff training to a crucial consideration in a correction education project. Training could address the following:

(1) Offender populations are overwhemingly minority populations. However, the staff who work with offenders, whether in prisons, community settings, schools, or institutions of higher education are predominantly non-minority. Correction education staff need training to make them sensitive to the backgrounds and needs of offenders and to equip them with the skills to work with offender populations.

(2) Corrrection education programs have failed in the past from lack of proper management. This indicates a need for training in management skills for improved delivery of services to offenders.

(3) The integration of academic and vocational education with supportive services appropriate to the needs of offenders is the core of every correction education project. Staff need training in the development of strategies and approaches to bring about this integration.

(4) There is a variety of resources at all levels—Federal, State, and local—that could focus on correction education. Correction education personnel need training in skills to identify, mobilize, and coordinate resources.

How Will Projects be Evaluated?

Projects must include an evaluation that determines whether a project met the special educational needs of the offender group served: whether the offenders learned a vocational skill, or obtained a job. OE will also be interested in any information relating to the reduction of recidivism.

When Must Private School Children be Allowed to Participate?

If an SEA or LEA receives a grant for a project, the project must provide for the comparable participation of members of the target population enrolled in private elementary and secondary schools located in the area served by the SEA or LEA, in accordance with section 302(b) of the Special Projects Act.
(20 U.S.C. 2942(b))

What Other Regulations Apply to This Program?

The proposed regulations for part 161j do not contain certain types of requirements. Those requirements are covered in EDGAR–The Education Division General Administrative Regulations—which will replace the General Provision for Office of Education Programs Regulations and which was published as a notice of proposed rulemaking (NPRM) on May 4, 1979 (44 FR 26308)

Anyone wanting to comment on those requirements should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to this program will now be among those covered generally in EDGAR.

How to apply for a grant.

How grants are made.

Certain conditions that must be met by a grantee.

The administrative responsibilities of a grantee.

The procedures the Office of Education uses to get compliance.

Reviewers should be aware that the first "selection criteria" for this program will become part of EDGAR and that those same criteria will apply to all OE direct grant programs, unless they are

specifically excepted on the basis of individual programs.

Summary of Regulations

The proposed rules for the Correction Education Demonstration Program are divided into five subparts.

Subpart A describes the purpose of the program, tells who is eligible to receive grants, notes other regulations that apply to the program, and defines a number of significant terms used in the legislation.

Subpart B provides information on proposed beneficiaries and on the types of projects the Office of Education assists under the program.

Subpart C gives application requirements and information on possible multi-year projects.

Subpart D describes the criteria the Commissioner applies in the evaluation of applications.

Subpart E describes the conditions that grantees must meet.

Invitation To Comment

A public meeting on this Notice of Proposed Rulemaking will be held in each of the ten Federal regions. Since we expect to schedule public meetings for several regulations on the same day, at the same place, we need to get an idea of how many persons are interested in speaking about these regulations. If you are interested in commenting at a public meeting, we encourage you to call the appropriate Regional Commissioner of Education, who will schedule a time for your comments. Persons who do not notify the Regional Commissioner of their intention to comment will be given an opportunity to speak. Those persons making presentations will be called upon according to their prearranged schedule, or if not prearranged, in the order of registration.

We expect that comments on these proposed regulations will be second on the agenda of the public meeting, after the Safe Schools regulations.

In addition, interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 2047, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(These proposed regulations are isued under the authority of Sections 371–374 of ESEA, Pub. L. 95–561, 92 Stat. 2222 (20 U.S.C. 3031–3034))

(Catalog of Federal Domestic Assistance Number Not Yet Assigned)

Dated: March 8, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: May 25, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

Title 45 Code of Federal Regulations is amended to add Part 161j:

PART 161j—CORRECTION EDUCATION DEMONSTRATION PROGRAM

Subpart A—General

Sec.

161j.1 What is the Correction Education Demonstration Program?
161j.2 Who is eligible to apply for financial assistance?
161j.3 Regulations that apply to the Correction Education Demonstration Program.
161j.4 Definition in this part.

Subpart B—What Kind of Projects Does the Office of Education Assist Under This Program?

161j.10 What is a correction education demonstration project?
161j.11 What is the target population to be served by a project?
161j.12 Where may a project be located?
161j.13 Supportive services.
161j.14 Types of projects.

Subpart C—How To Apply for a Grant

161j.20 Application requirements.
161j.21 Duration of Federal support.

Subpart D—How is a Grant Made?

161j.30 What selection criteria does the Commissioner use?
161j.31 Selection criterion: plan of operation.
161j.32 Selection criterion: quality of staff.
161j.33 Selection criterion: budget and cost effectiveness.
161j.34 Selection criterion: evaluation plan.
161j.35 Selection criterion: adequacy of resources.
161j.36 Selection criterion: likelihood of achieving results.
161j.37 Selection criterion: quality of dissemination.
161j.38 Selection criterion: coordination of resources.
161j.39 Selection criterion: capability to continue project.
161j.40 Georgraphic and offender population distribution.

Subpart E—What Conditions Must Be Met by a Grantee?

161j.50 Participation of private school children.
161j.51 Use of funds.

Authority: Secs. 371–374 of ESEA, Pub. L. 95–561, 92 Stat. 2222 (20 U.S.C. 3031–3034), unless otherwise noted.

Subpart A—General

§ 161j.1 What is the correction education demonstration program?

The program provides Federal assistance for demonstration projects relating to the academic and vocational education of juvenile delinquents, youth offenders, and adult criminal offenders.

(20 U.S.C. 3032)

161j.2 Who is eligible to apply for financial assistance?

Eligible applicants include—

(a) A State educational agency (SEA);

(b) A local educational agency (LEA);

(c) An institution of higher education;

(d) Any public agency; or

(e) A nonprofit private agency, organization, or institution.

(20 U.S.C. 3032)

§ 161j.3 Regulations that apply to the correction education demonstration program.

(a) *Regulations. The following regulations apply to the Correction Education Demonstration Program:*

(1) The Education Division General Administrative Regulations (EDGAR) in part 100a (Direct Grant Program) and part 100c (Definitions).

(2) The regulations in this part 161j.

(b) *How to use regulations; how to apply for funds.*

The "Introduction to Education Division Program" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(c) *Index to EDGAR.* The EDGAR include an index of the subjects they cover (appendix A to part 100c).

(d) *Definitions in EDGAR.* The following terms used in this part are defined in part 100c:

Applicant
Application
Award
Budget
Commissioner
Institutions of higher education
Local educational agency
Non-profit
Private
Project
Public

State
State educational agency
(20 U.S.C. 3032)

§ 161j.4 Definitions in this part.

As used in this part—

"Adult" means a person who has reached the age of majority under State law;

"Adult criminal offender"; means an adult who has been found by a court to have violated a criminal law;

"Comprehensive correction education program" means a program that integrates academic and vocational education, and supportive services;

"Juvenile delinquent" means a youth has been treated by a court as a youth and found by a court to have violated a criminal law;

"Sentence" means a term of alternate service, confinement, probation, or parole;

"Supportive services" means those services that prepare an offender to function effectively in society by providing the offender with decision-making skills, job interview skills, group and family living skills, interpersonal skills, problem-solving skills, communication skills, and support in other areas appropriate to the needs of the individual offender;

"Transitional services" means special educational or educationally related services provided for those released from institutions and reentering a non-institutional environment in the placement community. These services include pre-release programs and the necessary activities and supportive services to assist the person to reintegrate into the community;

"Youth" means a person under the age of majority as determined by State law; and

"Youth offender" means a youth who has been treated by a court as an adult and found to have violated a criminal law.

(20 U.S.C. 3032)

Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

§ 161j.10 What is a correction education demonstration project?

(a) A correction education demonstration project demonstrates an effective way of delivering academic or vocational education within the framework of a comprehensive correction education program to meet the special educational needs of an offender population. The education may be at the elementary, secondary, or postsecondary level.

(b) A correction education demonstration project may also be a coordinating project that effectively coordinates a variety of resources and agencies to bring about a comprehensive correction education program.

(20 U.S.C. 3032)

§ 161j.11 What is the target population to be served by a project?

A project must serve an offender population: persons who have received sentences as juvenile delinquents, youth offenders, or adult criminal offenders. A project may also serve ex-offenders.

(20 U.S.C. 3032)

§ 161j.12 Where may a project be located?

A project may deliver correction education in any setting appropriate to the offender population to be served, including:

(a) A prison or other closed institution;

(b) A day or residential community-based facility; or

(c) A school, college, or other training facility.

(20 U.S.C. 3032)

§ 161j.13 Supportive services.

A project must provide appropriate supportive services for the population to be served.

(20 U.S.C. 3032)

§ 161j.14 Types of projects.

Types of projects include:

(a) Projects that facilitate the development of effective community-based educational opportunities for juvenile delinquents, youth or adult offenders.

(b) Projects that facilitate offenders' transition between correctional institutions and the community and that offer access to community-based social and educational services.

(c) Projects that are designed to result in the greater involvement of educational systems—SEAs, LEAs, and institutions of higher education—in correction education.

(d) Projects that are designed to result in the development of comprehensive correction education projects to benefit incarcerated offenders.

(e) Projects that are designed to result in the coordination of multiple resources at the local level for the delivery of comprehensive educational services to offenders and ex-offenders.

(20 U.S.C. 3032)

Subpart C—How To Apply for a Grant

§ 161j.20 Applicant requirements.

An applicant shall submit the information required by the Commissioner in the Notice of Closing Date published in the **Federal Register** and in the application information package.

(20 U.S.C. 3032)

§ 161j.21 Duration of Federal support.

(a)(1) Each grant is for a period of up to one year.

(2) Projects may be designed for a multi-year period not to exceed three years.

(b) An applicant that proposes a multi-year project shall demonstrate—

(1) The need for the multi-year project;

(2) A detailed budget for the first budget period of the project; and

(3) A budget estimate for each budget period of the project after the first budget period.

(c) The Commissioner will review multi-year projects in the second and third continuation years for evidence that the grantee will provide other sources of support to continue the project after Federal funding terminates.

(20 U.S.C. 3032)

Subpart D—How is a Grant Made?

§ 161j.30 What selection criteria does the Commissioner use?

(a) The Commissioner evaluates an application and selects an application for support on the basis of the selection criteria used in 45 CFR part 100a.201–100a.206 (EDGAR) and the criteria contained in these regulations.

(b) The selection criteria in EDGAR constitute 73 possible points. Specific program criteria constitute 27 possible points. The maximum possible point score for each criterion indicates the relative importance assigned to that criterion by the Commissioner as follows:

(20 U.S.C. 3032)

§ 161j.31 Selection criterion: Plan of operation.

(a) The Commissioner reviews an application for information that shows the quality of the plan of operation for the project.

(b) The Commissioner looks for information that shows—

(1) High quality in the overall design for the proposed project; (10 points)

(2) An effective plan of management for the project; (5 points)

(3) An effective plan for training of staff members in needed skill areas; (5 points)

(4) A clear description of how the objectives of the project relate to the purposes of the Correction Education Demonstration Program; (2½ points) and

(5) The way the applicant plans to use its resources and staff to achieve each objective. (2½ points) (Total: 25 points)

(20 U.S.C. 3032)

§ 161j.32 Selection criterion: Quality of staff.

(a) The Commissioner reviews an application for information that shows the quality of the staff the applicant plans to use on the project.

(b) The Commissioner looks for information that shows—

(1) The Qualifications of the project director; (10 points)

(2) The qualifications of each of the following: (7 points)

(i) The professional staff;

(ii) Consultants; and

(3) The time that each person referred to in paragraphs (b) (1) and (2) of this section plans to commit to the proposed project.

(c) To determine the qualifications of the proposed staff the Commissioner considers the individual's professional training, experience, and competency in the field of correction education.

(d) The Commissioner also looks at proposed staff members and consultants in terms of their understanding of a sensitivity to the needs of the target population. (Total: 17 points)

(20 U.S.C. 3032)

§ 161j.33 Selection criterion: Budget and cost effectiveness.

(a) The Commissioner reviews an application for information that shows that the project has an adequate budget and is cost effective.

(b) The Commissioner looks for information that shows—

(1) An effective plan of financial management;

(2) An itemized statement of cost that justifies each line in the proposed budget and indicates that costs are reasonable in relation to the objectives of the project. (Total: 8 points)

(20 U.S.C. 3032)

§ 161j.34 Selection criterion: Evaluation plan.

(a) The Commissioner reviews an application for information that shows the quality of the evaluation plan for the project.

(b) The Commissioner looks for information that shows a quantifiable method to determine if the project achieves each of its objectives. (Total: 5 points)

(20 U.S.C. 3032)

§ 161j.35 Selection criterion: Adequacy of resources.

(a) The Commissioner reviews an application for information that shows that the applicant plans to devote adequate resources to the project.

(b) The Commissioner looks for information that shows that—

(1) The facilities the applicant plans to use to conduct the project are adequate;

(2) The equipment the applicant plans to use is adequate; and

(3) The support staff the applicant plans to use is adequate. (Total: 5 points)

(20 U.S.C. 3032)

§ 161j.36 Selection criterion: Likelihood of achieving results.

(a) The Commissioner reviews an application for information that shows the applicant is likely to achieve results and that these results further the purposes of the program.

(b) The Commissioner looks for information that shows that—

(1) The applicant has both the capability and commitment to achieve the objectives of the project; and

(2) The project, if successfully completed, furthers the purposes of the program. (Total: 10 points)

(20 U.S.C. 3032)

§ 161j.37 Selection criterion: Quality of dissemination.

The Commissioner reviews an application for information that shows the quality of the plan to disseminate information related to the project.

(b) The Commissioner looks for information that shows that—

(1) The applicant has a high quality plan to make information about the project available to the general public; and

(2) The applicant has a high quality plan to make the results of the project available to interested agencies and institutions. (Total: 3 points)

(20 U.S.C. 3032)

§ 161j.38 Selection criterion: Coordination of resources.

The Commissioner reviews an application for information that shows that the applicant agency has the capability to coordinate with or to coordinate other resources to bring about a comprehensive correction education program. Evidence of capability are letters of commitment from other agencies; documentation that planning the proposed project has involved other agencies; and evidence of sharing staff and facilities. (Total: 12 points)

(20 U.S.C. 3032)

§ 161j.39 Selection criterion: Capability to continue project.

The Commissioner reviews an application for information that shows that the applicant has the ability to continue to the project with its own resources after termination of Federal funding. The Commissioner will review multi-year applications for information that shows the likelihood the applicant will introduce local support in the second and third continuation years. (Total: 15 points)

(20 U.S.C. 3032)

§ 161j.40 Geographic and offender population distribution.

In awarding grants, the Commissioner funds a variety of differenct projects and seeks equitable geographic distribution of the projects across the country in a variety of urban, suburban, and rural settings.

(20 U.S.C. 3032)

Subpart E—What Conditions Must be Met by a Grantee?

§ 161j.50 Participation of private school children.

If an SEA or LEA receives a grant for a project, the project must provide for the comparable participation of members of the target population enrolled in private elementary and secondary schools located in the area served by the SEA or LEA, in accordance with section 302(b) of the Special Projects Act.

(20 U.S.C. 2942(b))

§ 161j.51 Use of funds.

(a) Funds may be used for all reasonable costs associated with the conduct of a project.

(b) Funds may be used for training and staff development. The primary objectives of training are to provide staff with skills to work more effectively with offender populations. These skills include problem identification, resource identification, resource mobilization, action planning, and program implementation. Management skills for improved program delivery are also a goal of training.

(c) Funds may be used to support the efforts of a coordinator to identify and to coordinate multiple resources that will result in a comprehensive correction education project.

(d) Funds may be used for consultants, conferences, and workshops.

(20 U.S.C. 3032)

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