Securities Exchange Act of 1934, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it enables the PSE to effectively provide for liability on errors made by Order Book Officials thereby protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before October 28, 1981, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before October 14, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated auhority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-27656 Filed 9-22-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Performance Review Board; Amendment of Composition of Membership

By notice published in the **Federal Register** on August 20, 1981, Volume 46 FR 42401, the Office of the Secretary, Department of the Treasury, announced the appointment of members of the Performance Review Board in accordance with 5 U.S.C. 4314(c)(4). This notice amends the composition of the Board by adding the following members:

E. George Cross, III, Special Assistant to the Secretary.

Doyle L. Arnold, Executive Assistant to the Deputy Secretary.

Cora P. Beebe,

Assistant Secretary (Administration).

[FR Doc. 81-27717 Filed 9-22-81; 8:45 am]

BILLING CODE 4810-25-M

[Supplement to Department Circular Public Debt Series—No. 28-81]

Series V-1983 Treasury Notes; Interest Rates

September 17, 1981.

The Secretary announced on September 16, 1981, that the interest rate on the notes designated Series V-1983, described in Department Circular—Public Debt Series—No. 28-81, dated September 11, 1981, will be 16 percent. Interest on the notes will be payable at the rate of 16 percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the departmental procedures applicable to such regulations.

[FR Doc. 81-27578 Filed 9-22-81; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register

Vol. 46, No. 184

Wednesday, September 23, 1981

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

CONTENTS

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 am., Friday, October 2, 1981.

PLACE: 2033 K Street, N.W., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1434-81 Filed 9-21-81; 3:24 pm]

BILLING CODE 6351-01-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10:a.m., Wednesday, September 23, 1981, following oral argument.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to matters previously announced, the Commission will consider the following:

3. Medicine Bow Coal Company, WEST 81-163, 81-164. (Petition for Interlocutory Review; issues include application of Rule 27, to late-filed penalty proposed settlement).

4. Amax Lead Company of Missouri, CENT 81-63-M. (Petition for Interlocutory Review: issues include whether the administrative law judge erred in denying proposed settlement).

5. Maben Energy Corporation, WEVA 79-123-R. (Issues Include whether operator violated 30 CFR § 77.216-3 by failing to inspect impoundment structure).

6. Missouri Gravel Company, LAKE 80-83-M. (Issues include whether the administrative law judge properly interpreted and applied 30 CFR § 56.14-1).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5632.

[S-1432-81 Filed 9-21-81; 3:17 pm]

BILLING CODE 6820-12-M

3

LEGAL SERVICES CORPORATION: Board of Directors Meeting.

TIME AND DATE: 9:00 a.m.-5:00 p.m., Friday, October 2, 1981.

PLACE: Legal Services Corporation, 733 15th Street, N.W., Washington, D.C., 8th Floor Conference Rooms 2 and 3.

STATUS OF MEETING: Open (Portion of the meeting will be closed so the Board can discuss a litigation matter under 45 C.F.R. Section 1622.5(h)).

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda.
2. Approval of Minutes of June 5, 1981 Meeting.
3. Election of Chairman.
4. Report on Congressional Appropriation and Reauthorization of Legal Services Corporation Act.
5. Report from Committee on Appropriations and Audit:

Modifications to fiscal year 1981 Consolidated Operating Budget;
Fiscal year 1982 Budget;
Mark for fiscal year 1983 Budget Request.

6. Future Meeting Dates.
7. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Dellanor Khasakhala, Office of the President, (202) 272-4040.

Issued: September 18, 1981.

[S-1131-81 Filed 9-21-81; 8:47 am]

BILLING CODE 6820-35-M

4

NUCLEAR REGULATORY COMMISSION.

DATE: Week of September 21, 1981 (revised), and week of September 28, 1981.

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

STATUS: Open/Closed.

MATTERS TO BE CONSIDERED:

Monday, September 21

2:00 p.m.

1. Vote on Low-Power Operating License for Diablo Canyon (public meeting) (as announced).

Tuesday, September 22

2:00 p.m.

1. Briefing on Systematic Assessment of Licensee Performance Report (public meeting).

Wednesday, September 23

9:00 a.m.

1. Discussion of Petition for Extension of Deadline for Environmental Qualification of Class IE Electrical Equipment (public meeting) (as announced; time changed).

2:00 p.m.

1. Discussion of Revised Licensing Procedures—Proposed Rule Change to Part 2 (closed meeting) (as announced).

4:00 p.m.

1. Briefing by Executive Branch (closed meeting).

Thursday, September 24

9:00 a.m.

1. Discussion of Management-Organization and Internal Personnel Matters (closed meeting) (postponed from 9/22).

2:30 p.m.

1. Affirmation/Discussion Session (approximately 30 minutes) (public meeting) (items revised) (as announced; time changed).

Items to be affirmed and/or discussed:

a. Interim Rule on Hydrogen Control;

b. Financial Protection for TMI Unites 1 and 2;

c. Petition for Extension of Deadline for Environmental Qualification of Class IE Electrical Equipment;

d. Protection of Unclassified Safeguards Materials (postponed from 9/17).

e. EDO Delegations of Authority (postponed from 9/17).

2. Briefing by American Nuclear Society on Current Activities (public meeting) (as announced).

Wednesday, September 30

10:00 a.m.

1. Briefing on Status and Prioritization of NUREG-0737/-0660 Developmental Items (public meeting).

2:00 p.m.

1. Discussion of Congressional Testimony (closed meeting).

Thursday, October 1

10:00 a.m.

1. Discussion and Possible Vote on Revised Licensing Procedures—Proposed Rule Change

to Part 2 (open/closed status to be determined).

3:00 p.m.

1. Affirmation/Discussion Session (public meeting).

Items to be affirmed and/or discussed:

a. Use of Administrative Law Judges as Presiding Officers in Antitrust Proceedings;

b. Selection of Hearing Panel for Part 30 Proceeding;

c. Review of ALAB-646, In the Matter of Alabama Power Co. (Antitrust) and Alabama Power Company's Application for a Stay *Pendente Lite;*

d. Central Electric Power Cooperative's Petition for Reconsideration (Virgil summer OL—Antitrust).

ADDITIONAL INFORMATION:

By a vote of 4-0, Commissioner Bradford not present, on September 17, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's Rules, that commission business required that affirmation/discussion of Diablo Canyon Physical Security—Governor Brown's Motion to Clarify Appellate Procedures and Request for Extension of Time (closed session) and Interim Order on Diablo Canyon Effectiveness Review (closed session), held that day, be held on less than one week's notice to the public.

By a vote of 5-0, on September 18, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's Rules, that Commission business required that Discussion of Pending Adjudicatory Proceedings (closed meeting) and Discussion of Indian Point Order, held that day, be held on less than one week's notice to the public.

Automatic telephone answering service for schedule update: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTRACT PERSON FOR MORE INFORMATION: Gary Gilbert (202) 634-1410.

Gary M. Gilbert,

Office of the Secretary.

September 18, 1981.

[S-1438-81 Filed 9-21-81; 4:07 pm]

BILLING CODE 7590-01-M

5

NUCLEAR REGULATORY COMMISSION.

DATE: Friday, September 18, 1981.

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

STATUS: Open/Closed.

MATTERS TO BE CONSIDERED:

Friday, September 18

10:00 a.m.

1. Discussion of Indian Point Order (public meeting).

3:30 p.m.

1. Discussion of Low-Power Operating License for Diablo Canyon (closed meeting) (as announced).

Automatic telephone answering service for schedule update: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Gary Gilbert (202) 634-1410.

Gary M. Gilbert,

Office of the Secretary.

September 17, 1981.

[S-1439-81 Filed 9-21-81; 4:07 pm]

BILLING CODE 7590-01-M

6

PAROLE COMMISSION.

National Commissioners (the Commissioners presently maintaining offices at Bethesda, Md., Headquarters).

TIME AND DATE: Friday, September 25, 1981, 9:30 a.m.

PLACE: Room 420-F; One North Park Building; 5550 Friendship Blvd., Bethesda, Maryland 20015.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

CHANGES IN THE MEETING: On September 17, 1981, the Commission determined that the above meeting date be continued to 9:30 a.m. on Monday, September 28, 1981, for consideration of case referrals from Regional Commissioners. The above change is being announced at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, U.S. Parole Commission, (301) 492-5926.

[S-1433-81 Filed 9-21-81; 3:21 am]

BILLING CODE 4410-01-M

federal register

Wednesday
September 23, 1981

Part II

Department of Agriculture

Federal Grain Inspection Service

Fees for Original Inspection, Official Weighing, Supervision of Weighing, and Supervision of Official Services

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Fees for Original Inspection, Official Weighing, Supervision of Weighing, and Supervision of Official Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Interim Final Rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is revising fees for original inspection services, supervision of official inspection services, and supervision of official weighing services under the United States Grain Standards Act (Act) (7 U.S.C. 71 et seq.), as published in an interim final rule in the **Federal Register** (46 FR 43032–43034) on August 25, 1981, as corrected in the **Federal Register** (46 FR 43824) on September 1, 1981. After publishing the interim final rule on August 25, 1981, the FGIS: (1) held two public meetings to explain the revision of fees; (2) considered further changes in the restructuring of the organization; and (3) further reviewed the inspection supervision program. As a result, the administrator has determined that additional cost reductions can be anticipated and that certain fees should be revised to more closely reflect modifications to the supervision program, currently being considered. In addition, certain fees are being changed to facilitate the determination of charges in quarter-hour intervals by the grain industry and FGIS. Also, the fee table (Schedule C, Table 2) for FGIS supervision of official weighing services performed by delegated States and designated official agencies is being changed so that the fee is charged per carrier.

DATES: Effective Date: October 1, 1981. Comment Date: Comments are due on or before October 26, 1981.

ADDRESS: Comments must be in writing and submitted in duplicate. Comments must be forwarded to Lewis Lebakken, Jr., Director, Issuance and Coordination Staff, USDA, FGIS, Room 1127 Auditors Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 447–3910. All written comments received will be made available for public inspection at the above office during regular business hours (7 CFR 1.27(b)). If comments were submitted on the interim final rule on fees published in the **Federal Register** (46 FR 43032–43034) on August 25, 1981, as corrected in the **Federal Register** (46 FR 43824) on September 1, 1981, they need not be resubmitted unless additional comments regarding the further changes made by this document are deemed necessary.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 447–3910.

SUPPLEMENTARY INFORMATION: This interim final rule has been reviewed under USDA procedures pursuant to the Secretary's Memorandum 1512–1 and Executive Order 12291 and has been determined to be "nonmajor" because it does not meet the criteria for major regulatory actions.

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this interim final rule does not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164–1170) because: (1) it applies to a limited number of delegated States and designated official agencies under the Act which are not considered to be small entities because they are dominant in their area of operation based on the delegation/designation process; and (2) most other users of the FGIS services are not considered to be small entities. Further, FGIS is required by statute to make the services available and to recover the costs of the service from the users of the service.

The administrator has also determined that a situation exists which warrants the publication of this action without the opportunity for a prior public comment period because it is necessary to provide the grain industry, delegated States, and designated official agencies with the information on the further revisions in the fee schedules in time to make any necessary adjustments prior to October 1, 1981, the effective date of recent amendments to the Act. Although the grain industry was informed by a document published in the **Federal Register** (46 FR 43032–43034) on August 25, 1981, of the FGIS revised schedule of fees to take effect October 1, 1981; and public meetings on the fees published on August 25, 1981, were held on September 3–4, 1981, in Washington, D.C., and St. Louis, Missouri, respectively; certain further modifications and changes to those fees schedules are being made and the grain industry, delegated States, and designated official agencies should be informed as early as possible.

Accordingly, it is found upon good cause that notice and other public procedures with respect to this action are impracticable, unnecessary, and contrary to the public interest, and good cause is found for publishing this interim final rule at this time with opportunity for public comments after publication.

The administrator has also determined that the comment period on this interim final rule will end on October 26, 1981, and such comment period is adequate and should coincide with the comment period for the interim final rule on fees published on August 25, 1981.

A final rule discussing comments received on this interim final rule, as well as comments received on the interim final rule published in the **Federal Register** (46 FR 43032–43034) on August 25, 1981, and any amendments required will be published in the **Federal Register**, as soon as possible, after the close of the comment period.

Background

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, August 13, 1981) which becomes effective October 1, 1981, amends sections 7(j) and 7A(1) of the U.S. Grain Standards Act to require that fees for inspection and weighing services cover, as nearly as practicable, the estimated costs to the FGIS incident to providing such services, including related administrative and supervisory costs. It further amended these sections to require that delegated States and designated official agencies shall pay fair and reasonable fees to cover the estimated costs to the FGIS of supervision of these agencies. It also amended these sections to provide that failure to pay such fees by delegated States or designated official agencies within 30 days after due shall result in automatic termination of the delegation or designation, which may be reinstated upon payment of the fee, with interest, as prescribed by the Secretary. FGIS intends to work with the delegated States and designated official agencies to overcome problems they may encounter in complying with this requirement of the United States Grain Standards Act, as amended.

The Omnibus Budget Reconciliation Act of 1981 also added a new section (7C) to the U.S. Grain Standards Act which provides that the total administrative and supervisory costs that may be incurred for inspection and weighing activities shall not exceed 35 percent of the total costs for such activities carried out by the Service.

FGIS is presently planning a restructuring of the organization in which there will be a reduction of staff with attendant cost savings. In addition, all FGIS programs and activities are being reviewed to determine which activities are necessary. Those programs and activities that are determined to be necessary will be further analyzed for cost effectiveness.

It is FGIS policy to provide official services to the industry by the most cost effective means possible. While FGIS has in the past and will continue to monitor and adjust its fees to maintain them at the minimum level needed to carry out an effective program, the situation, at this time, including the amendment to the Act, the restructuring of FGIS, and the level of use of official services where the service is optional, is such that it has made the task of establishing fees more difficult.

On August 25, 1981, FGIS published an interim final rule revising fees for original inspection, supervision of official inspection services, official weighing, and supervision of official weighing services to comply with the mandate of the new amendment to the Act. These fees were based upon information available to FGIS at the time of publication. Since that time, public meetings were held on September 3–4, 1981, in Washington, D.C., and St. Louis, Missouri, respectively. These meetings were held to discuss the fee changes mandated by the Omnibus Budget Reconciliation Act of 1981. FGIS benefitted from comments made during these meetings and otherwise by representatives of the grain industry and members of the delegated States and designated official agencies. All those making oral comments were requested to also submit them in writing in order to receive full consideration.

In addition, FGIS has considered further changes in the structure of the organization and further reviewed the supervision program. As a result, FGIS has determined that the published fees which become effective October 1, 1981, should be revised at this time to reflect the information presently before FGIS, and to permit the industry to make any necessary adjustments in light of the revisions prior to the effective date of October 1, 1981.

Accordingly, FGIS is revising the fee schedules for services provided under the U.S. Grain Standards Act and implementing these fee schedules on October 1, 1981.

Official Grain Inspection and Weighing Fees

FGIS is revising the fees for original inspection, supervision of official inspection services, and supervision of official weighing services as published in the **Federal Register** on August 25, 1981 (46 FR 43032–43034).

Based on a continuing review of costs and fees, written comments received to date, and other data within the knowledge of FGIS the administrator has determined that a further refinement of the fees should be made to reflect anticipated cost reductions and a modification of the inspection supervision policy, currently being considered, which revises the amount of supervision per carrier. Accordingly, certain fees contained in Schedule C, Table 1, have been decreased or increased as appropriate.

FGIS is also changing some fees to facilitate the determination of charges in quarter-hour intervals by the grain industry and FGIS. As a result, there is a slight decrease in the hourly fees in Schedule A, Table 1, and a slight increase in the hourly fees in Schedule B, Table 1. The fee table (Schedule C, Table 2) for FGIS supervision of official weighing services performed by the delegated States and designated official agencies is being changed to charge the fee per carrier instead of per certificate.

Fees for supervision of weighing services (class Y) as published in Schedule A, Table 3, have not been changed from those published as an interim final rule in the **Federal Register** (46 FR 30322) on June 5, 1981. These fees were included in the schedule of fees contained in the **Federal Register** (46 FR 43032–43034) on August 25, 1981, in order to provide a complete schedule of fees for comment. These fees are included herein for the same purpose.

In keeping with administration goals, FGIS will monitor and adjust its fees within 6 months to maintain them at the minimum level needed to carry out an effective program.

Therefore, in keeping with its need to provide services and maintain fees at a cost effective level, the FGIS fee schedules for official inspection and weighing services as contained in § 800.71 of the regulations are being revised to reflect the requirements of the U.S. Grain Standards Act, as amended.

Accordingly, 7 CFR 800.71(a) is hereby amended to read as follows:

§ 800.71 Fees assessed by the Service.

(a) Official inspection and weighing services. The fees shown in Schedules A and B apply to official grain inspection and weighing services performed by the Service in the United States and Canada. The fees shown in Schedule C are supervision fees which apply to official grain inspection and weighing services performed by delegated States and designated official agencies in the United States. Failure of a delegated State or designated official agency to pay to FGIS the fees prescribed in Schedule C within 30 days after due shall result in automatic termination of such delegation or designation, but may be reinstated upon payment of such fees, with interest, as prescribed by the Secretary.

Schedule A.—*Fees for Official Inspection and Weighing Services (Including Supervision and Administration Services) Performed by the Service in the United States* [1]

Table I

Inspection services (bulk or sacked grain)	Original inspection service	Reinspection and appeal inspection service [2, 3]
(1) Official sample-lot inspection service (white certificate):		
(i) For official grade and official factor determinations:		
(A) Online inspection services (per man-hour per Service representative): [4]		
(1) Contract service:		
(a) Regular workday	$18.60	(5)
(b) Nonregular workday	22.00	(5)
(2) Noncontract service:		
(a) Regular workday	21.00	(6)
(b) Nonregular workday	24.60	(6)
(B) Other than online inspection services:		
(1) Truck or trailer (per truck or trailer or part truck or part trailer)	10.80	16.00
(2) Boxcar (per car or part car)	15.50	19.60
(3) Hopper car (per car or part car)	19.75	23.80
(4) Barge (per 1,000 bushels or fraction thereof)	3.05	3.50
(5) Ship, bin, and all other lots of grain (per 1,000 bushels or fraction thereof) (but see 2 below)	(7)	3.50
(C) Based on official file sample (any lot or part lot)	(8)	(10) 13.50
(ii) For official factor or official criteria determinations:		
(A) Based on a sample used for official grade and official factor determinations not obtained during loading or unloading:		
(1) Factor determination (per factor)	5.00	5.45

Schedule A.—*Fees for Official Inspection and Weighing Services (Including Supervision and Administration Services) Performed by the Service in the United States* [1]—Continued

Table I

Inspection services (bulk or sacked grain)	Original inspection service	Reinspection and appeal inspection service [2,3]
(2) Protein test (per sample)	4.05	4.35
(B) Based on new sample (any lot or part lot)	(7)	(7)
(2) Special inspection services (sampling, stowage examination, testing of inspection equipment, demonstrating official inspection functions furnishing standard illustrations, and related services) (per man-hour per Service representative):[8]		
(i) Regular workday	21.00	21.80
(ii) Nonregular workday	24.60	25.40
(3) Warehouseman's sample-lot inspection service (yellow certificate) or submitted sample inspection service (pink certificate):		
(i) For official grade and official factor determination (per sample)	8.85	13.50
(ii) For official factor or official criteria determinations:		
(A) Factor determination (per factor)	5.00	5.45
(B) Protein test (per sample)	4.05	4.35
(4) Minimum fee per service request (applicable when the request for service is cancelled after the Service representative(s) arrives at the point of service or when the service is performed in 2 hours of less when hourly rates apply—fee does not include standby):		
(i) Grain in trucks, trailers, boxcars, or hopper cars	(6)	(6)
(ii) All other lots of grain and special services (per man-hour per Service representative) (2 hour minimum):		
(A) Regular workday	21.00	21.80
(B) Nonregular workday	24.60	25.40
(5) Standby (per man-hour per Service representative):[9]		
(i) Regular workday	21.00	21.80
(ii) Nonregular workday	24.60	25.40
(6) Extra copies of certificates (per copy):[11]	2.50	2.50

Note.—The footnotes for table 1 are shown at the end of table 3.

Table 2

Weighing services (bulk or sacked grain)	Official weighing services					
	Specified inspection point				Noninspection point	
	Contract service		Noncontract service		Contract service	
	Regular workday	Nonregular workday	Regular workday	Nonregular workday	Regular workday	Nonregular workday
(1) Official weighing services (Class X) (per man-hour per Service representative)	$20.60	$24.00	$23.00	$26.60	$20.60	$24.00
(2) Special weighing services, (stowage examination, testing of weighing equipment, checkweighing sacked grain, check loading sacked grain, demonstrating official weighing functions, and related services) (per man-hour per Service representative)[8]	20.60	24.00	23.00	26.60	20.60	24.00
(3) Minimum fee per service request is 2 hours per Service representative (applicable when the request for service is cancelled after the Service representative(s) arrives at the point of service or when the service is performed in 2 hours or less when hourly rates apply—fee does not include standby) (per man-hour per Service representative)	(5)	(5)	23.00	26.60	(5)	(5)
(4) Standby (per man-hour per Service representative) [9]	(5)	(5)	23.00	26.60	(5)	(5)
(5) Extra copies of certificates and reports (per copy) [11]	2.50	2.50	2.50	2.50	2.50	2.50

Note.—The footnotes for table 2 are shown at the end of table 3.

Table 3

Official services (bulk or sacked grain)	Supervision of weighing services (class Y)
Export elevators at export port locations:	
(1) Barge (per barge or part barge)	$5.00
(2) Boxcar (per car or part car)	1.00
(3) Hopper car (per car or part car)	1.00
(4) Truck or trailer (per truck or trailer or part truck or part trailer)	0.50
(5) Unit trains (per each car or part car of unit train)	1.00
(6) Extra copies of certificates and reports (per copy)	2.50
All other locations:	
(1) Barge (per barge or part barge)	10.00
(2) Boxcar (per car or part car)	3.50
(3) Hopper car (per car or part car)	3.50
(4) Truck or trailer (per truck or trailer or part truck or part trailer)	2.50
(5) Unit trains (per each car or part car of unit train)	3.50
(6) Extra copies of certificates and reports (per copy)	2.50

[1] The fees include the cost of performing official inspection and official class X weighing by Service representatives and related supervision and administration costs and the cost of class Y weighing functions. For incidental costs included in the fees, and fees in addition to the unit and the hourly fees, see § 800.72, paragraphs (a) and (b).

[2] If it is found that there was a material error in the inspection from which a reinspection, an appeal inspection, or a Board appeal inspection is taken, the specified reinspection, appeal inspection, or Board appeal inspection fee shall not be assessed, but see § 800.72(b) for fees that are assessed in all instances. For definition of a material error, see § 800.0(b)(45) and § 800.73(h).

[3] Board appeal inspections are based on file samples. The fee for Board appeal inspection service shall be $34.00 per sample during a regular workday and $40.00 per sample during a nonregular workday except for protein which shall be $15.00 per sample.

[4] Outline inpsection services include all inspection services which are based on official samples obtained from a flowing stream of grain during the loading or unloading of grain.

[5] Not applicable.

[6] The unit fee.

[7] Same fees as in (1)(ii)(A), plus applicable sampling charge—see (2).

[8] Only one inspection or weighing fee, as applicable, will be charged for these services whether performed singly or concurrently.

[9] For application of fee for standby, see § 800.72(b).

[10] If at the request of the Service a file sample is located and forwarded by an agency for official appeal, the agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service for the cost of locating and forwarding the sample(s).

[11] For application of fee for extra copies of certificates, see § 800.160(c)(3).

Schedule B.—*Fees for Official Inspection and Weighing Services* [1] *(Including Supervision and Administration Services) Performed by the Service in Canada* [2]

Table I

Services (bulk or sacked grain)	Regular workday	Nonregular workday
(1) Original inspection, or official weighing, or special services: [3]		
(i) Contract service (per man-hour per Service representative)	$24.40	$28.40
(ii) Noncontract service (per man-hour per Service representative)	34.40	40.40
(2) Resinspection and appeal inspection (per man-hour per Service representative) [4,5]	36.40	42.40
(3) Board appeal inspection (per sample) [4,5]	38.40	44.40
(4) Minimum fee per Service request:		
(i) Noncontract, original inspection, or original weighing, or special services (per Service representative) [6]	94.40	112.40
(ii) Reinspection, or appeal inspection (per Service representative) [6,7]	100.40	118.40
(5) Standby (per man-hour per Service representative) [8]	34.40	40.40
(6) Extra copies of certificates (per copy) [9]	2.50	2.50

[1] Supervision of weighing (class Y) fees in Canada will be assessed at the rates shown in Schedule A, table 3.

[2] The fees include the cost of performing official inspection and official class X weighing by Service representatives and related supervision and administration costs and the cost of class Y weighing functions. For incidental costs included in the fees, the fees in addition to the unit and hourly fees, see § 800.72, paragraphs (a) and (b).

[3] Special services include, but are not limited to the following: sampling, stowage examination, testing of inspection or weighing equipment, demonstrating official inspection or weighing functions, furnishing standard illustrations, checkweighing of sacked grain, checkloading of sacked grain, and related services.

[4] If it is found that there was a material error in the inspection from which a reinspection, an appeal inspection, or a Board appeal inspection is taken, the specified reinspection, appeal inspection, or Board appeal inspection fee shall not be assessed, but see § 800.72(b) for fees that are assessed in all instances. For definition of a material error, see § 800.0(b)(45) and § 800.73(h).

[5] Appeal inspections are based on file samples. Board appeal inspections for protein shall be $15.00 per sample.

[6] Applicable when the requested service is performed in 3 hours or less, or the request for service is cancelled after the Service representative(s) arrives at the point of service.

[7] Not applicable if the reinspection or appeal inspection is performed concurrently with an original inspection.

[8] For application of fee for standby, see § 800.72(b).

[9] For application of fee for extra copies of certificates, see § 800.160(c)(3).

Schedule C.—*Fees for FGIS Supervision Services for the Official Inspection and Weighing Services Performed by the Delegated States and/or Designated Official Agencies in the United States* [1]

Table I

Inspection services (bulk or sacked grain)	Official inspection and reinspection services
(1) Official sample-lot inspection service (white certificate):	
(i) For official grade and official factor determinations:	
(A) Truck or trailer (per inspection) [2]	$1.00
(B) Boxcar (per inspection) [2]	2.40
(C) Hopper car (per inspection) [2]	2.60
(D) Barge (per inspection) [2]	15.75
(E) Ship (per ship) [3]	125.00
(F) All other lots (per inspection) [2,4]	0.75
(ii) For official factor or official criteria determinations:	
(A) Factor determination (per inspection)	0.45
(B) Protein test (per inspection) [2,5]	0.25
(2) Stowage examination services:	
(A) Ship (per stowage certificate)	7.60
(B) Other carriers (per stowage certificate)	0.45
(3) Warehouseman's sample-lot inspection service (yellow certificate) or submitted sample inspection service (pink certificate):	
(i) For official grade and official factor determinations (per inspection)	0.75
(ii) For official factor or official criteria determinations:	
(A) Factor determination (per inspection)	0.45
(B) Protein test (per inspection) [2,5]	0.25
(4) Reinspections (per inspection) [2]	0.75

Note.—The footnotes for table 1 are shown at the end of table 2.

Table 2

Official services (bulk or sacked grain)	Official weighing services (class X)
(1) Official weighing services:	
(A) Truck or trailer (per carrier)	$0.50
(B) Boxcar and hopper car (per carrier)	1.25
(C) Barge (per carrier)	11.30
(D) Ship (per carrier) [3]	137.90

[1] The fees include the cost of supervision functions performed by the Service for the official inspection and weighing services performed by the delegated States and/or designated official agencies.

[2] A fee shall be assessed for each carrier or sample inspected if a combined lot certificate is issued or a uniform loading plan is used to determine grade.

[3] A fee shall be assessed per ship regardless of the amount of grain loaded at a specific service point. A fee shall not be assessed for divided original certificates.

[4] All other lots include, but are not limited to, sampling service, condition examination (sacked grain), examination for weevily, bins, and containers.

[5] Fees shall be assessed for each sample tested for protein.

(Secs. 8 and 9, Pub. L. 94–582, 90 Stat. 2873, 2877 (7 U.S.C. 79(j), 79A(1)), as amended by Pub. L. 97–35)

Done in Washington, D.C., on September 18, 1981.

Kenneth A. Gilles,

Administrator.

[FR Doc. 81–27845 Filed 9–22–81; 8:45 am]

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Part III

Environmental Protection Agency

Guidelines for Development and Implementation of State Solid Waste Management Plans and Criteria for Classification of Solid Waste Disposal Facilities and Practices; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 256 and 257

[SW-FRL 1876-2]

Guidelines for Development and Implementation of State Solid Waste Management Plans and Criteria for Classification of Solid Waste Disposal Facilities and Practices

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule modifies the Environmental Protection Agency's Guidelines for the Development and Implementation of State Solid Waste Management Plans (40 CFR Part 256) and the Criteria for the Classification of Solid Waste Disposal Facilities and Practices (40 CFR Part 257). The Guidelines are being amended to expand public participation opportunities in the planning process and provide for expedited approval of certain portions of the State plans. The Criteria are being amended to modify the groundwater, surface water and air protection criteria. EPA is taking this action as part of a settlement agreement reached with industrial groups which have challenged these regulations in Federal court.

EFFECTIVE DATE: October 23, 1981.

ADDRESS: The public docket for this rulemaking is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: For Part 256: Susan Absher, Office of Solid Waste [WH-563], U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202/382-2210. For Part 257: Kenneth A. Shuster, Office of Solid Waste [WH-564], U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202/755-9125.

SUPPLEMENTARY INFORMATION:

I. Authority

These amendments are issued under the authority of Sections 1008(a)(3), 4002 and 4004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6907(a)(3), 6942 and 6944. These amendments are also issued under Section 405(d) of the Clean Water Act (CWA), as amended, 33 U.S.C. 1345(d).

II. Subtitle D of RCRA

The amendments being promulgated today modify regulations issued under Subtitle D of RCRA. There are two central sets of provisions under Subtitle D. First, Section 4005(a) of the Act prohibits the act of "open dumping." Under Section 1008(a)(3), EPA is to establish minimum criteria to define open dumping. Once EPA has established these criteria, citizens may bring suit under Section 7002 of RCRA to enforce the prohibition. RCRA, however, does not provide for any direct Federal enforcement of this prohibition.

Second, Subtitle D establishes a State solid waste management planning program under Sections 4002-4008. In this program EPA establishes general guidelines and provides financial assistance to the States for the development and implementation of solid waste management plans. Participation in this program is optional for the States, and EPA does not have authority to establish such plans in States that decline Federal financial assistance.

Under Section 4002(b) EPA is to establish general guidelines for these plans that, at a minimum, encompass the requirements for State plans specified in Section 4003 of RCRA. As part of its plan a State must prohibit the establishment of new open dumps and provide for the closing or upgrading of existing open dumps. In addition, under Section 4005(a) the plan must provide entities that are potentially liable for open dumping an opportunity to upgrade their practices pursuant to compliance schedules. A party that adheres to such a compliance schedule satisfying the requirements of section 4005(a) is not liable for open dumping. (See Section 4005(a).) The statute provides that such compliance schedules can only be issued by States with approved plans.

To assist the States in identifying the solid waste disposal facilities that constitute open dumps, EPA must promulgate regulations under Section 4004(a) that provide criteria for classifying solid waste disposal facilities. Those that fail to satisfy such criteria, as determined by the States, are "open dumps." Under Section 4005(b) EPA is required to publish an inventory of open dumps, based on the State findings. In doing so, EPA does not pass on the adequacy of the State determinations. Likewise the decision to remove a facility from the inventory is a State determination.

EPA issued the Guidelines for Development and Implementation of State Solid Waste Management Plans (the Guidelines), satisfying Section 4002(b), on July 31, 1979 (44 FR 45066). EPA issued the Criteria for Classification of Solid Waste Disposal Facilities and Practices (the Criteria), satisfying Sections 1008(a)(3) and 4004(a), on September 13, 1979 (44 FR 53438). EPA has provided funding to the States for the development of State plans (including the inventory of open dumps) through FY 81. Under the President's budget for FY 82 no further Federal financial assistance will be available to the States for the development of solid waste management plans. EPA will remain ready, however, to perform its statutory duty under Section 4007 to take action to approve or disapprove plans submitted by the States.

III. Final Amendments

Shortly after the Guidelines and the Criteria were issued, several trade associations petitioned for judicial review of both regulations in Federal court. After careful negotiations, EPA and the petitioners entered into a settlement agreement. Pursuant to that agreement, EPA proposed amendments to the regulations. The amendments to the Criteria were proposed on November 3, 1980 (45 FR 72709); the amendments to the Guidelines were proposed on November 4, 1980 (45 FR 73440).

After reviewing the public comments, EPA is today finalizing those amendments in a form that is substantially identical to that of the proposed amendments.

A. The Guidelines

The final amendments make three basic changes to the guidelines:

1. Partial plan approval. First, EPA has modified the regulations to allow for partial approval of that portion of the State plan that would provide an opportunity for compliance schedules leading to compliance with the open dumping prohibition. The compliance schedule would still have to satisfy the statutory requirements of Section 4005(a), as specified in § 256.26 of the regulations, in order to provide a defense to open dumping actions. However, EPA will consider the compliance schedule portion of the plan for approval while the State continues to work on the rest of the plan. This should allow for the earliest possible approval of State authority to issue compliance schedules.

Under this amendment, States can be approved to issue compliance schedules for less than all of the Criteria. In such a situation, however, an entity which receives a State compliance schedule will have a defense to open dumping only with respect to those Criteria for which the compliance schedule is issued.

It should be noted that States may use a wide variety of mechanisms to require entities to comply with the open dumping prohibition. Most States will no doubt use administrative orders or permits. However, other mechanisms—such as agreements between the entity and the State as to a timetable for remedial action—may be used if the State has authority to use them, they are enforceable, and they otherwise comply with the requirements of § 256.26.

Specifically, § 256.03 has been amended to allow a State to submit the portion of the plan designed to satisfy § 256.26 prior to submission of the complete plan. In turn, under § 256.04, the Administrator shall approve the partial plan if he is able to make three findings. First, the State compliance schedule procedures must satisfy the requirements of § 256.26, the portion of the Guidelines that sets forth statutorily-required components of such schedules. Second, the State must have general authority (statutory or common law) to issue and enforce compliance schedules. Third, the State must be developing the other portions of the plan in conformity with the Guidelines, and on a reasonable timetable. The Administrator will specify in writing the timetable for completion of the plan.

While the plan must be completed within a reasonable period of time, EPA anticipates that the timetable negotiated between it and each State will reflect each State's particular circumstances. For example, the availability of State resources will be taken into consideration. The failure to complete the plan within the specified period of time, however, constitutes a ground for withdrawal of partial approval pursuant to the requirements of Section 4007(a) of RCRA. A withdrawal of approval eliminates the State's ability to issue compliance schedules that insulate entities from open dumping suits. If partial approval is withdrawn for this reason, however, EPA believes that entities that have received compliance schedules during the partial approval stage will still be insulated from open dumping liability as long as they remain in compliance with the schedule conditions.

One of the principal advantages of this change is that it tends to reduce the time period between the listing of a facility in the open dump inventory and the time when entities potentially liable for open dumping in conjunction with the facility (*e.g.* owner, operator, user of the facility) could receive a State-issued compliance schedule. (This problem, referred to as the "window problem" by the industry petitioners, is described in more detail at 45 FR 73440.)

While most commenters on EPA's November 4 proposal supported this change, one commenter argued that partial approval would fragment the logical development of a comprehensive State solid waste management plan. EPA does not believe that partial approval will undermine the development of sound solid waste management plans. Giving the State flexibility in the sequence of its planning and implementation efforts can speed up the process of getting a full plan in place, thus serving the national goal. Moreover, § 256.03(f) is discretionary; the State is not required to, but *may* apply for partial approval.

2. Public participation in development of the open dumping inventory. The second change is an expansion of the public participation requirements surrounding the open dump inventory. Section 256.60(a)(1) is being amended today to explicitly provide that owners or operators of facilities placed on the open dump inventory be included on the State's current list of parties affected by or interested in the plan. These are the parties that are to be kept informed about major steps in the planning process, including the identification of open dumps. In addition, EPA has redesignated § 254.64 as § 256.65 and included a new § 256.64 which sets minimum requirements for public participation in development of the open dump inventory. This requirement can be satisfied by providing a notice of the availability of the results of the inventory classifications to those on the State's current list of parties interested in the plan at least 30 days before initial submission of the list to the Federal Government. For owners and operators of facilities classified as open dumps, the notice must indicate that the facility has been so classified. With these changes, the recommendation, formerly designated as § 256.64(c), to notify affected parties when a facility is classified an open dump is unnecessary and therefore is deleted.

EPA's rationale for these changes is clearly set forth in the Preamble to the proposed amendments (see 45 FR 73441). It is important to recognize that in amending its Guidelines to expand the public participation requirements to include the owner or operator of an open dump, EPA is not suggesting that those parties will necessarily be legally liable in an open dumping suit. EPA is also not suggesting that such an owner or operator has a legal right to receive notice and to comment on the inventory. Rather, EPA is recognizing that the owner or operator of a facility will probably be able to provide valuable information about the facility (*e.g.*, the type of waste in the facility) and that cooperation of the owner or operator will be essential to any effort to close or upgrade a facility.

EPA received several comments suggesting that the notice requirement not apply to those facilities already included in the first open dump inventory. As a practical matter this will be the case, for the States have already submitted their lists to EPA for publication. Therefore, the notice requirement applies only to classifications made after the effective date of this amendment.

Some States were concerned that this public participation provision will invoke State administrative procedures that would require formal, quasi-judicial procedures. In particular some State agencies indicated that the notice requirements of § 256.65 would trigger contested case hearings under State administrative law procedures. The consequence would be to burden the State with protracted hearings, requiring increased expenditures of State resources. EPA does not intend this result. See 45 FR 73440. Moreover, EPA does not agree with the proposition that the notice itself triggers a more formal administrative procedure. Rather, the triggering event is the State's action with regard to the inventory and the use of the inventory's results. If under State law these actions are of a nature to warrant the protections of State administrative safeguards (*e.g.*, notice, right to hearing, etc.), such administrative procedures would be required *independent* of EPA's notice requirement under § 256.65.

One State objected to the § 256.65 notice requirement, arguing that the requirement implicitly mandates a hearing as well. As written, § 256.65 does not require a hearing nor should such a requirement be implied. A State is, of course, free to hold a hearing on each classification as a matter of policy. Some commenters asserted the general position that the use of the inventory triggers a right to notice and hearing opportunities. While EPA does not believe that RCRA, the Administrative Procedure Act or the Constitution require such procedures, the States are free to provide such an opportunity as a matter of State law or policy.

3. Recommendation for compliance schedules. A third significant change is an addition to § 256.24 (Recommendations for Closing or

Upgrading Open Dumps.) EPA recommends that at the time the State classifies a facility as an open dump it consider developing appropriate timetables or schedules to bring responsible entities into compliance with the open dumping prohibition.

One commenter asserted that this change would slow down the classification process. This concern need not materialize, however, because the provision is a recommendation rather than a requirement. In any event, EPA believes that a consideration of compliance schedules early in the planning process can enhance the efficiency of the State's overall solid waste management program.

One State expressed the concern that, taken as a whole, these relatively minor amendments to the Section 4002 Guidelines will disrupt the open dump inventory and State solid waste management planning processes. EPA does not expect these amendments to be disruptive because the amendments do not require any immediate or substantial changes to State plans. The changes promulgated today primarily affect plan execution rather than substantive plan content or bear upon the development of the open dump inventory. Many States are already providing notification to owners and operators that would be required by § 256.65. The change to § 256.60(a)(1) to include owners and operators on the Agency's list only requires entry of their names as interested or affected parties. Since this list was intended to accommodate new names, EPA does not view these particular additions as unexpected, unreasonable or disruptive.

B. The Criteria

The regulations being promulgated today modify the ground water, surface water and air criteria. In addition, at the request of one commenter, EPA is modifying § 257.1 to clarify when and how the criteria implement either Section 4004(a) or Section 1008(a)(3) of RCRA.

EPA is making two changes to the ground-water criterion in § 257.3-4, both of which involve the establishment of alternative boundaries for measuring compliance with the ground-water standard. Under the existing regulation, a facility or practice may not cause contamination in the ground water exceeding specified maximum containment limits, measured at the solid waste boundary or an alternative boundary. An alternative boundary is only available if the State has an approved solid waste management plan and the State determines that such a change "would not result in contamination of ground water which may be needed or used for human consumption."

Today's amendment eliminates the provision limiting the alternative boundary opportunity to those States with approved solid waste management plans. Many States that are currently developing the inventory do not yet have approved plans, and EPA does not believe it necessary to constrain their option to establish alternative boundaries.

One commenter argued that this amendment would allow a State with no intention of developing an approvable plan to set alternative boundaries for solid waste facilities. While this is possible, EPA does not consider the consequences to be environmentally detrimental because the regulations still require the State to make the substantive finding that the change "would not result in contamination of ground water which may be needed or used for human consumption" before setting an alternative boundary. One State objected to the change, stating that the change would result in unwarranted and unnecessary ground-water contamination. No supporting data were provided. The commenter proposed that EPA should defer action on the entire proposal until it adopts an overall ground-water protection strategy. EPA intends to continue to develop a consistent approach to ground-water protection in its regulatory programs. However, EPA does not believe it wise to delay finalization of these relatively minor changes in the solid waste management planning program while broader issues of regulatory philosophy are being resolved.

Today's amendments also allow defendants in open dumping suits to argue, as a type of affirmative defense, that an alternative boundary is appropriate in determining its compliance with the Criteria. While the burden of proof is clearly on the defendant in this situation, the court may establish an alternative boundary based on evidence that the change "would not result in contamination of ground water which may be needed or used for human consumption" considering the appropriate factors listed in § 257.3-4(b)(1). (See the Preamble to the proposed amendments, at 45 FR 72710, for further discussion of this issue.)

The commenters that addressed this provision supported the change. One commenter recommended that the provision be modified to make clear that "the court" means either a Federal or State court. EPA believes that the terminology "the court" in § 257.3-4(b)(1) means any court, be it Federal or State, that has jurisdiction over the matter. Therefore, no change to the provision is necessary.

Today's amendments also modify the surface-water criterion of § 257.3-3. As originally promulgated, that standard would have made discharges violating requirements under Section 402 or Section 404 of the Clean Water Act open dumping practices as well. A party causing such a violation could simultaneously be subject to penalties under the CWA and a citizen suit to enjoin "open dumping" under RCRA. Today's amendment eliminates this double liability. However, since the open dump inventory classification for purposes of the State planning program does not impose legal sanctions under RCRA, the Criteria retain the provision that a violation of Section 402 or Section 404 makes a facility an open dump.

All but one commenter who addressed this issue supported the change. The commenter who opposed argued that the Government should not limit enforcement options. EPA believes that the CWA enforcement mechanisms are sufficient to handle violations under Sections 402 and 404.

The issue of dual liability was also raised with respect to § 257.3-7 which provided that a facility or practice shall not violate applicable requirements developed under an approved State Implementation Plan (SIP) under Section 110 of the Clean Air Act (CAA). Today's amendments have deleted such a violation as a practice constituting open dumping, but retained it as a factor for classifying open dumps. The rationale for this change is basically the same as that for the modification of the surface-water criterion.

In the proposed amendment, EPA clarified that the "open burning" prohibition set forth in § 257.3-7(a) does not extend to incinerators. Conventional incinerators are treatment, not disposal facilities. They do not typically involve burning of waste in direct contact with the land. Thus they are not covered by the definition of "disposal" under Section 1004(3). Trench or pit incinerators, which do involve burning of waste in direct contact with the land, are covered by the Criteria (See 45 FR 72712.) One commenter was concerned that the logic of "direct contact" with the land as applied to incineration might be misapplied. The commenter suggested that it could be used to justify the open burning of solid wastes in a pit, pond, lagoon, etc. where an artificial liner separates the waste from the soil. The fact that a liner is used does not change the essential character of pits, ponds or lagoons as disposal facilities. Liners in this context are protective measures for use in these disposal facilities.

IV. Deadline for State Plan Submission

As originally promulgated, § 256.03(a) required States to submit their adopted plans to EPA within 18 months after final promulgation of the Guidelines. This deadline, not required by statute, was included in the Guidelines to encourage the States to act promptly to develop their plans. While most States actively pursued the development of their plans, a few States submitted their adopted plans within 18 months after promulgation of the Guidelines.

EPA has decided to eliminate the absolute 18-month deadline and replace it with a requirement that the plan be submitted within a "reasonable time" after promulgation of the Guidelines. EPA does not intend to invoke the deadline provision against those States that have made good faith efforts to develop their plans.

V. Section 405 Guidelines

The litigation and subsequent rulemaking on the Criteria have focused on that regulation's effect under Sections 4004(a) and 1008(a)(3) of RCRA. The Criteria, however, also implement Section 405(d) of the CWA. The Section 405(d) guidelines have a role under the CWA that is analogous to that of the Section 1008(a)(3) criteria under RCRA. Section 405(e) makes it unlawful to dispose of sewage sludge except in accordance with the Section 405(d) guidelines. This is similar to the prohibition against open dumping under RCRA.

EPA believes that the amendments being made today should apply under Section 405(d) in the same manner as they do under Section 1008(a)(3). Thus under today's amendments a violation of Section 402 or Section 404 of the CWA or Section 110 of the CAA will not also be a violation of Section 405(d) and (e). Likewise the defendant in a suit under Section 405 concerning ground-water contamination will have the same opportunity to demonstrate the appropriateness of an alternative boundary that would be available to defendants in open dumping suits.

VI. Mining Overburden Exclusion

Several mining industry petitioners in the litigation on these regulations urged EPA to clarify the scope of the mining overburden exclusion in § 257.1(c)(2) of the Criteria. As a result, EPA proposed modifications to that exclusion that mirrored a similar exclusion, now under review, contained in EPA's hazardous waste regulations. (See 40 CFR 261.4(b)(3) and 260.10(a)(45).) Since the exclusion raises similar issues under both programs, EPA believes that any changes to both sets of regulations should be made at the same time. EPA is not yet prepared to make such changes. Therefore EPA is not today finalizing any amendments to the overburden exclusion in the Criteria.

VII. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The amendments to parts 256 and 257 being made today are not a major rule under the terms of the Executive Order. Since the amendments are intended to simplify and increase State flexibility in planning, and to eliminate duplication of liability, these amendments should result in both savings and greater efficiency. States are not required to use the partial plan approval option and face, at most, very minimal costs to provide owners and operators notification that their facilities are being considered for inclusion on the Open Dump Inventory. Many States already provide some form of notification, and thus the requirement does not add any costs in those States. The principal costs associated with the Guidelines and the Criteria were imposed by the substantive provisions in the original regulations promulgated in 1979. The amendments being made today will not have an effect remotely close to $100 million, cause a major increase in costs or prices, or have any effect on competition, employment, investment, productivity, or innovation. In fact, the amendments are more likely to affect savings by simplifying existing regulations.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Dated: September 15, 1981.

Anne M. Gorsuch,

Administrator.

Title 40 CFR, Parts 256 and 257 are amended as follows:

PART 256—GUIDELINES FOR DEVELOPMENT AND IMPLEMENTATION OF STATE SOLID WASTE MANAGEMENT PLANS

1. The authority citation for Part 256 reads as follows:

Authority: Sec. 4002(b), Pub. L. 94–580, 90 Stat. 2813(b) (42 U.S.C. 6942(b)).

2. In § 256.03, paragraph (a) is revised and paragraph (f) is added as follows:

§ 256.03 State plan submission, adoption, and revision.

* * * * *

(a) To be considered for approval, the State plan shall be submitted to EPA within a reasonable time after final promulgation of these guidelines.

* * * * *

(f) States which are developing a complete State plan may submit the portion of the plan designed to satisfy the requirements of § 256.26 prior to submission of the complete plan.

3. In § 256.04, paragraph (f) is added as follows:

§ 256.04 State plan approval, financial assistance.

* * * * *

(f) If a State submits to EPA the portion of the plan by which entities may, pursuant to § 256.26, obtain timetables or schedules of compliance for complying with the open dumping prohibition, the Administrator shall approve such portion of the plan if he determines that:

(1) The portion submitted satisfies the requirements of § 256.26;

(2) The State has the general legal authority to issue and enforce compliance schedules; and

(3) The remainder of the plan is being developed in conformity with these guidelines and will be completed within a reasonable period of time.

In giving partial plan approval, the Administrator shall specify in writing the timetable for completion of the final plan as required in paragraph (f)(3) of this section.

4. In § 256.60, paragraph (a)(1) is revised as follows:

§ 256.60 Requirements for public participation in State and substate plans.

(a) * * *

(1) Maintain a current list of agencies, organizations, and individuals affected by or interested in the plan, which shall include any parties that request to be on the list, the owner or operator of each facility classified as an open dump and any other parties which the State determines to be affected by or interested in the plan.

* * * * *

5. In § 256.24, paragraph (d) is added as follows:

§ 256.24 Recommendations for closing or upgrading open dumps.

* * * * *

(d) At the time of classification of existing solid waste disposal facilities pursuant to § 256.23, the State should consider developing appropriate timetables or schedules by which any responsible party can be brought into compliance with the open dumping prohibition pursuant to §§ 256.26 and 256.27.

§ 256.64 [Amended and redesignated]

6. In § 256.64, paragraph (c) is removed.

7. In Part 256, § 256.64 is redesignated as § 256.65.

8. In Part 256, a new § 256.64 is added as follows:

§ 256.64 Requirements for public participation in the open dump inventory.

(a) The State shall provide an opportunity for public participation prior to submission of any classification of a facility as an open dump to the Federal Government. The State shall accomplish this by providing notice as specified in § 256.64(b) or by using other State administrative procedures which provide equivalent public participation.

(b) The State may satisfy the requirement of § 256.64(a) by providing written notice of the availability of the results of its classifications to all parties on the list required under § 256.60(a)(1) at least 30 days before initial submission of these classifications to the Federal Government. For those parties on the list required under § 256.60(a)(1) who are owners or operators of facilities classified as open dumps, such notice shall indicate that the facility has been so classified.

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

9. The authority citation for Part 257 reads as follows:

Authority: Sec. 1008(a)(3) and sec. 4004(a), Pub. L. 94-580, 90 Stat. 2803 and 2815 (42 U.S.C. 6907(a)(3) and 6944(a)); sec. 405(d), Pub. L. 95-217, 91 Stat. 1606 (33 U.S.C. 1345(d)).

10. In § 257.1, paragraph (a) is revised as follows:

§ 257.1 Scope and purpose.

(a) These criteria are for use under the Resource Conservation and Recovery Act (the Act) in determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on health or the environment. Unless otherwise provided, these criteria are adopted for purposes of both Section 1008(a)(3) and Section 4004(a) of the Act.

(1) Facilities failing to satisfy criteria adopted for purposes of Section 4004(a) will be considered open dumps for purposes of State solid waste management planning under the Act.

(2) Practices failing to satisfy criteria adopted for purposes of Section 1008(a)(3) constitute open dumping, which is prohibited under Section 4005 of the Act.

* * * * *

11. In § 257.3-3, paragraphs (a) and (b) are revised as follows:

§ 257.3-3 Surface water.

(a) For purposes of Section 4004(a) of the Act, a facility shall not cause a discharge of pollutants into waters of the United States that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES) under Section 402 of the Clean Water Act, as amended.

(b) For purposes of Section 4004(a) of the Act, a facility shall not cause a discharge of dredged material or fill material to waters of the United States that is in violation of the requirements under Section 404 of the Clean Water Act, as amended.

* * * * *

12. In § 257.3-4, paragraph (b) is revised as follows:

§ 257.3-4 Ground water.

(b)(1) For purposes of Section 1008(a)(3) of the Act or Section 405(d) of the CWA, a party charged with open dumping or a violation of Section 405(e) may demonstrate that compliance should be determined at an alternative boundary in lieu of the solid waste boundary. The court shall establish such an alternative boundary only if it finds that such a change would not result in contamination of ground water which may be needed or used for human consumption. This finding shall be based on analysis and consideration of all of the following factors that are relevant:

(i) The hydrogeological characteristics of the facility and surrounding land, including any natural attenuation and dilution characteristics of the aquifer;

(ii) The volume and physical and chemical characteristics of the leachate;

(iii) The quantity, quality, and direction of flow of ground water underlying the facility;

(iv) The proximity and withdrawal rates of ground-water users;

(v) The availability of alternative drinking water supplies;

(vi) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water;

(vii) Public health, safety, and welfare effects.

(2) For purposes of Sections 4004(a) and 1008(a)(3), the State may establish an alternative boundary for a facility to be used in lieu of the solid waste boundary only if it finds that such a change would not result in the contamination of ground water which may be needed or used for human consumption. Such a finding shall be based on an analysis and consideration of all of the factors identified in paragraph (b)(1) of this section that are relevant.

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13. In § 257.3-7, paragraph (b) is revised as follows:

§ 257.3-7 Air.

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(b) For purposes of Section 4004(a) of the Act, the facility shall not violate applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the Administrator pursuant to Section 110 of the Clean Air Act, as amended.

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