

unearned income in paragraph (d) of this section.

(d) *Retroactive monthly social security benefits.* When you file an application for social security benefits and retroactive monthly social security benefits are payable on that application for a period for which you also received SSI payments (including federally administered State supplementary payments), we count your retroactive monthly social security benefits as unearned income received in that period. Rather than reducing your SSI payments in quarters prior to your receipt of a retroactive monthly social security benefit, we will reduce the retroactive social security benefits by an amount equal to the amount of SSI payments (including federally administered State supplementary payments) that we would not have paid to you if your social security benefits had been paid when regularly due rather than retroactively (see § 404.408b(b)). If a balance is due you from your retroactive social security benefits after this reduction, for SSI purposes we will not count the balance as unearned income in a subsequent quarter in which you receive it. This is because your social security benefits were used to determine the amount of the reduction. This exception to the unearned income counting rule does not apply to any monthly social security benefits for a period for which you did not receive SSI.

[FR Doc. 82-2625 Filed 2-2-82; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 968-82]

Enforcement of Criminal Drug Laws

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: In order to insure maximum effectiveness and efficiency in the enforcement of the criminal drug laws of the United States, the Attorney General has decided to make the resources of the Federal Bureau of Investigation available to complement and supplement those of the Drug Enforcement Administration in this effort. To this end, this order authorizes the Director of the Federal Bureau of Investigation, concurrently with the Administrator of the Drug Enforcement Administration, to investigate violations of the criminal drug laws of the United

States. To insure complete coordination of the drug enforcement effort of the Department of Justice, the order places the Administrator under the general supervision of the Director.

EFFECTIVE DATE: January 28, 1982.

FOR FURTHER INFORMATION CONTACT:

Kenneth A. Caruso, Special Assistant to the Associate Attorney General, Room 4114, U.S. Department of Justice, 10th and Pennsylvania Ave., NW., Washington, D.C. 20530. Tel. (202) 633-4078.

SUPPLEMENTARY INFORMATION: This order is not a rule within the meaning of either Executive Order 12291 section 1(a) or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301, 21 U.S.C. 871, 28 U.S.C. 509, 510, Reorganization Plan No. 1 of 1968, section 5, and Reorganization Plan No. 2 of 1973, section 6, it is hereby ordered as follows:

1. Section 0.85(a) of Title 28, Code of Federal Regulations is revised to read as follows:

§ 0.85 General functions.

(a) Investigate violations of the laws, including the criminal drug laws, of the United States and collect evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency. The Director's authority to investigate violations of and collect evidence in cases involving the criminal drug laws of the United States is concurrent with such authority of the Administrator of the Drug Enforcement Administration under § 0.100 of this part. In investigating violations of such laws and in collecting evidence in such cases, the Director may exercise so much of the authority vested in the Attorney General by sections 1 and 2 of Reorganization Plan No. 1 of 1968, section 1 of Reorganization Plan No. 2 of 1973 and the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, as he determines is necessary. He may also release FBI information on the same terms and for the same purposes that the Administrator of the Drug Enforcement Administration may disclose DEA information under § 0.103 of this part.

* * * * *

2. A new § 0.102, to read as follows, is added to Title 28, Code of Federal Regulations:

§ 0.102 Drug enforcement policy coordination.

The Administrator of the Drug Enforcement Administration shall perform his functions under the general supervision of the Director of the Federal Bureau of Investigation and shall report through him to the Attorney General, the Deputy Attorney General and the Associate Attorney General, as appropriate.

Dated: January 28, 1982.

William French Smith,
Attorney General.

[FR Doc. 82-2781 Filed 2-2-82; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS Dolphin

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) to reflect that the Secretary of the Navy: (1) has determined that USS DOLPHIN (AGSS 555) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 12, 1982.

FOR FURTHER INFORMATION CONTACT:

Captain Richard J. McCarthy, JAGC, USN, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: This amendment to Part 706 provides notice that the Secretary of the Navy has certified that USS DOLPHIN (AGSS 555) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 22(a) which requires that vessels of 50 meters or more in length must have

the masthead lights and sidelights visible at a range of 6 and 3 nautical miles, respectively. USS DOLPHIN (AGSS 555) is 50.4 meters (165.5 feet) in length and is required to comply fully with the requirements of Rule 22(a). Full compliance with the above-mentioned Rule 22(a) of the 72 COLREGS would preclude the utilization of USS DOLPHIN with respect to the special construction and purpose of that vessel in view of the fact that there are no known navigation lights that can withstand USS DOLPHIN's operating depth and also meet the requirements of Rule 22(a). At the present time the only known navigational lights that can provide closest possible compliance with Rule 22(a) would provide a masthead light visible at a distance of 4.3 nautical miles, and sidelights visible at a distance of 2 nautical miles. Accordingly, the Secretary of the Navy certifies that the range of visibility of the aforementioned navigational lights are in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest, since it is based on technical findings that the range of visibility of the aforementioned navigational lights on this vessel in a manner different from that prescribed herein will adversely affect the ship's ability to perform its military function.

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table Four of § 706.2 is amended by adding the following note numbered 19 which reflects the certifications issued by the Secretary of the Navy:

19. On USS DOLPHIN (AGSS 555) the masthead light will be visible at a distance of 4.3 nautical miles and the sidelights will be visible at a distance of 2 nautical miles.

(Executive Order 11964; 33 U.S.C. 1605)

Dated: January 12, 1982.

Approved:

George A. Sawyer,

Acting Secretary of the Navy.

[FR Doc. 82-2830 Filed 2-2-82; 8:45 am]

BILLING CODE 3810-AE-M

Corps of Engineers, Department of the Army

33 CFR Part 204

Pacific Ocean at San Miguel Island, California Danger Zone

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending the regulations which establish a danger zone in the Pacific Ocean at San Miguel Island, California. This amendment allows the danger zone to continue with another review in five years and makes minor administrative type changes.

EFFECTIVE DATE: March 5, 1982.

ADDRESS: HQDA, DAEN-CWO-N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Roman Zawadzki at (213) 688-5606 or Mr. Ralph T. Eppard at (202) 272-0200.

SUPPLEMENTAL INFORMATION: Regulations were promulgated by the Secretary of the Army under 33 CFR 204.203 on January 21, 1966, to govern the use, administration and navigation of a danger zone located in the Pacific Ocean at San Miguel Island, Santa Barbara County, California. The danger zone was established to meet security requirements of the U.S. Navy Pacific Missile Range and the exceptional hazards to persons and property due to missile firings and related activities.

On September 2, 1981, the Corps of Engineers published the proposed amendment in the Notice of Proposed Rulemaking Section of the Federal Register (46 FR 44006) with the comment period expiring on October 2, 1981. No comments were received and accordingly, the Department of the Army is amending 33 CFR 204.203(c) as set forth below.

Note.—This regulation is issued with respect to a military function of the Defense Department and accordingly, the provisions of Executive Order 12291 do not apply. The Department of the Army has determined that this regulation will not have a significant economic impact on a substantial number of entities and thus does not require preparation of a regulatory flexibility analysis.

PART 204—DANGER ZONE REGULATIONS

Paragraph (c) of § 204.203 is revised to read as follows:

§ 204.203 Pacific Ocean at San Miguel Island, California; Naval Danger Zone.

(c) *The regulations.* (1) Except as prescribed in this section or in other regulations, the danger zone will be

open to fishing and general navigation. Bomb drops between designated hours are expected to be intermittent, and when safe to do so, commercial fishing boats and other small craft will be granted permission to proceed through the danger zone. All vessels permitted to enter the zone during a scheduled bomb drop period, other than those owned or operated by the U.S. Government, shall proceed across the zone by the most direct route and clear the area as soon as possible. When bomb drops are not scheduled, the zone may be occupied without restriction.

(2) The anchoring, stopping, or loitering of any vessel, fishing boat, or recreational craft within the danger zone during scheduled firing/drop hours is expressly prohibited.

(3) The bomb drops will take place in the danger zone at frequent and irregular intervals throughout the year. Danger zone usage demands are identified in the Eleventh Coast Guard District, "Local Notice of Mariners." Announcements will also be made on marine radio channel 16, at 0800 local time, 1200 local time and/or 1 hour prior to bomb drop operations. Status of the zone and/or permission to enter, may be requested by calling "Plead Control" on marine channel 16 or by calling the Pacific Missile Test Center (PMTTC) on telephone number (805) 982-8280 or 982-8841.

(4) The Commander, PMTTC will extend full cooperation relating to the public use of the danger zone area and will fully consider every reasonable request for its use in light of requirements for national security and safety of persons and property.

(5) No seaplanes, other than those approved for entry by the Commander, PMTTC, may enter the danger zone during firing periods.

(6) Landing or going ashore on San Miguel Island is specifically prohibited without prior permission of the Superintendent, Channel Islands National Park. Applications for such permission should be made to: Superintendent, Channel Islands National Park, 1699 Anchors Way Drive, Ventura, California 93003.

(7) The regulations in this section shall be enforced by personnel attached to the Pacific Missile Test Center, Point Mugu, California, and by such other agencies as the Commandant, 11th Naval District, San Diego, California, may designate.

(8) The regulations in this section shall be in effect until further notice. They shall be reviewed in 1986.

Dated: January 5, 1982.

Approved:

William R. Gianelli,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 82-2821 Filed 2-2-82; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

(A-5-FRL-2022-4)

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On April 10, 1981 Indiana submitted, as a revision to its State Implementation Plan (SIP), alternate total suspended particulate (TSP) emission limits for a portion of the Indiana Farm Bureau Cooperative Association plant in Marion County. EPA, today, is approving these alternate emission limits. This action will be effective on April 5, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

EFFECTIVE DATE: This final rulemaking is effective as of April 5, 1982.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington D.C.

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses:

Environmental Protection Agency,
Region V, Air Programs Branch, 230
South Dearborn Street, Chicago,
Illinois 60604

Environmental Protection Agency,
Public Information Reference Unit, 401
M Street, S.W., Washington D.C.
20460

Indiana Air Pollution Control Division,
Indiana State Board of Health, 1330
West Michigan Street, Indianapolis,
Indiana 46206.

Indianapolis Division of Air Pollution
Control, 2700 South Belmont Avenue,
Indianapolis, Indiana 46221

FOR FURTHER INFORMATION CONTACT:
Robert B. Miller, Air Programs Branch,
Environmental Protection Agency,
Region V, Chicago, Illinois 60604, (312)
886-6031.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 1972 (37 FR 10863) EPA approved Indiana's process weight particulate regulation, APC-5, as one portion of Indiana's TSP SIP. Subsequently, in response to Section 107 of the Clean Air Act (Act), EPA designated most of Marion County as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for TSP (March 3, 1978 (43 FR 8962) and October 5, 1978 (43 FR 45993)). Part D of the Act requires each state to revise its SIP for areas designated as nonattainment. In response to the requirements of Part D, Indiana submitted revised particulate strategies and emission limits for Marion County on February 11, 1980 and October 28, 1981. EPA will propose rulemaking action on the overall Marion County TSP strategy and emission limits in the near future.

One of the requirements of a Part D SIP is that reasonably available control technology (RACT) emission limits are required for sources in nonattainment areas. In general, Indiana considers an emission limit of 0.030 grains per dry standard cubic foot (gr/dscf) to be a RACT emission limit for TSP process sources. Indiana's original nonattainment area regulation required the Indiana Farm Bureau Cooperative Association's Beech Grove Grain Terminal (Farm Bureau) to meet this emission limit. Upon petition of the Farm Bureau, Indiana reconsidered and approved revised RACT emissions limits for a portion of the facility. These emission limits were submitted as a revision to Indiana's SIP on April 10, 1981.

Farm Bureau Revision

The SIP, original nonattainment, and revised emission limits are as follows:

Source description	APC-5 limits ¹ (pounds/hr)	Original RACT limits		Revised RACT limits	
		gr/dscf	tons/yr ²	gr/dscf	tons/yr
Elevator E-1	64.3	0.030	2.1	0.016	2.0
Elevator E-2	64.3	0.030	2.1	0.060	1.7
Elevator E-3	64.3	0.030	2.0	0.060	3.1
Elevator E-4	64.3	0.030	2.1	0.060	3.1
Elevator E-5	64.3	0.030	2.0	0.120	6.5
Elevator E-6	64.3	0.030	1.9	0.120	11.9
Elevator E-7	64.3	0.030	5.1	0.0025	0.1
Elevator E-8	64.3	0.030	2.4	(³)	(³)
Elevator E-9	64.3	0.030	1.1	(⁴)	0.0
Elevator E-10	64.3	0.030	3.1	(⁴)	0.0
Elevator E-12	64.3	0.030	7.4	0.0019	0.05
North train loadout	68.7	0.030	0.6	0.029	0.03
Single truck dump	54.7		(⁵)	0.0012	0.04
Twin truck dump	64.8		(⁵)	0.0014	0.26
Dust conveying system			(⁵)	0.0017	0.19
Total			31.9		28.97

¹ The pounds/hour emission limits may be exceeded for all sources larger than 200 Tons/Yr whenever their emissions are less than 0.10 pounds per 1000 pounds of gases.

² Indiana derived these ton/year figures by multiplying the emission limits by the actual throughput. These tons/year limits are lower than those Indiana submitted with its Part D SIP.

³ Emissions from E-8 are vented through the controls on E-3 and E-4. The tons/year of emissions for E-8 are included in the totals for E-3 and E-4 and the Gr/dscf emission limit for E-8 is the same as for E-3 and E-4.

⁴ Elevators E-9 and E-10 have been removed.

⁵ Not included in the original Part D SIP submittal.

It should be noted that the APC-5 and the RACT emission limits are not directly comparable. APC-5 is an hourly emission limit while the RACT limits are based on the volume processed. However, for comparison purposes, the total tons of emissions allowed by the SIP regulation, APC-5, for all sources except the dust conveying system are approximately 240 tons/year. Additionally, the emission points in today's rulemaking do not include all of the emissions from Farm Bureau. For instance, emissions from the grain dryers and the South Train Loadout are not included. The EPA approved SIP emission limits will continue to apply to those Farm Bureau emission points not specifically listed in the above revised limits.

EPA has reviewed Indiana's submission of the revised Farm Bureau emission limits and finds them acceptable, because the tons/year of emissions from the facility will be less than they would be under Indiana's present SIP and less than under Indiana's TSP RACT regulations. EPA concurs with the State that, because the total tonnage emitted is less than that which would be emitted under Indiana's RACT regulations, the revised emission limits constitute RACT for Farm Bureau. EPA has determined that differential computer dispersion modeling of ambient air quality is not required for approval of these revised emission limits because: (1) The total mass of emissions will be less, (2) the emissions are of similar composition and come from the same plant, (3) the operations

are similar, and, therefore, (4) ambient pollutant levels should decrease from those levels which would occur under the Indiana SIP or Indiana's previously submitted "RACT" regulations. EPA, today, is approving both the emission limits and the mass per year limits contained in the revised Farm Bureau submission.

EPA's approval of these revised particulate emission limits does not affect any other SIP regulation which is applicable to the facility, including opacity limits. Indiana's particulate SIP does not contain methods to determine compliance for non-stack sources such as Farm Bureau. This deficiency is being addressed in EPA's analysis of Indiana's Part D particulate SIP, which should be proposed in the Federal Register shortly, and, therefore, will not be addressed in today's action. EPA's action on compliance methods in its Part D rulemaking will apply to Farm Bureau as well.

Because EPA considers today's action as noncontroversial and routine, it is approving it today without prior proposal. The public is advised that this action will be effective April 5, 1982. However, if notice is received by EPA within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The notice will withdraw the final action and begin a new rulemaking by announcing a proposal of the action and a comment period.

Pursuant to the provisions of 5 U.S.C. Section 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities, because it only approves emission limits for a single source. Furthermore, this action only approves a State action. It will impose no new requirements.

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

If no comments are received on today's action and it, therefore, becomes final, judicial review of this action under Section 307(b)(1) of the Clean Air Act is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. If comments are received on today's action, as discussed earlier, EPA will withdraw its final approval and propose today's action for public comment. Under these circumstances, a petition for review must be filed within 60 days from the date of EPA's ultimate rulemaking. Under section 307(b)(2) of the Clean Air

Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 110 and 172, Clean Air Act, as amended (42 U.S.C. 7410 and 7502))

Dated: January 29, 1982.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Section 52.770 is amended by adding paragraph (c)(30) as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(30) On April 10, 1981, Indiana submitted revised emission limits for Indiana Farm Bureau Cooperative Association's Beech Grove plant.

* * * * *

[FR Doc. 82-2770 Filed 2-2-82; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Parts 122 and 146

[WH-FRL 2016-2]

Underground Injection Control Program Criteria and Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule

SUMMARY: The Environmental Protection Agency is promulgating amendments to its Consolidated Permit Regulations (40 CFR Part 122) and Technical Criteria and Standards for State Underground Injection Control Programs (40 CFR Part 146). The amendments are in response to petitions for review of the regulations in these areas as promulgated on May 19, 1980 and June 24, 1980. The regulations are promulgated under Part C of the Safe Drinking Water Act.

DATES: The regulations in this promulgation shall become effective March 5, 1982; except § 146.23 and § 146.33 which contains information collection requirements which are under review at OMB.

Comments of a technical and non-substantive nature may be submitted until March 5, 1982.

ADDRESSES: Comments of a technical and non-substantive nature should be addressed to, Judy Long, Comment Clerk, Ground Water Protection Branch, EPA, Office of Drinking Water (WH-550), Washington, DC 20460 (202) 755-0405.

FOR FURTHER INFORMATION CONTACT: Thomas E. Belk, Chief, Ground Water Protection Branch, Environmental Protection Agency, (202) 426-3934.

SUPPLEMENTARY INFORMATION: These amendments, with very few exceptions, are the same as were proposed on October 1, 1981 (45 FR 48249 et seq.). The discussion below explains these few changes and responds to the major comments. The preamble of the October 1 proposal (45 FR 48243 et seq.) contains a detailed discussion of the background and reasons for these amendments and, in conjunction with the additional explanation included here, serves as the Statement of Basis and Purpose for this rulemaking.

I. Response to Comments

Testimony on the proposed regulations was given at public hearings in Washington, D.C. and Denver, Colorado and was overwhelmingly favorable. In addition, written comments were received which were generally favorable to the proposal. However, the Agency received some adverse comments and some comments of a technical nature which are addressed below.

A. Comments on the Major Program Concepts

Several commenters expressed concern regarding what they see as excessive relaxation of requirements and cite in particular:

- (1) The revised definition of Underground Source of Drinking Water (USDW);
- (2) The additional aquifer exemption criterion;
- (3) The changes in the "no-migration" standard;
- (4) The shifting of certain practices from Class III to Class V; and
- (5) Continuing operation of certain existing Class IV wells.

These changes were proposed by the Agency only after it was satisfied that they were consistent with the mandate of the Safe Drinking Water Act. In deciding whether or not the proposed changes were appropriate, the Agency considered three key points in the Safe Drinking Water Act (SDWA):

- The Agency's mandate is to promulgate *minimum requirements* for effective State programs to prevent

underground injection which endangers drinking water sources (SDWA section 1421(b)(1)).

- The test of endangerment is whether or not injection "may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant and if the presence of that contaminant may result in such systems not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons" (SDWA section 1421(d)(e) (emphasis added)).

- The Agency is admonished not to "prescribe requirements which interfere with or impede: (A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or (B) any underground injection for the secondary or tertiary recovery of oil or natural gas" and to " * * * provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State" (SDWA section 1421(b)(2) and (3)).

The statutory mandate of the Safe Drinking Water Act affords a range of discretion to EPA in developing specific program requirements. These amendments adjust the requirements as originally promulgated within that range, are consistent with the statutory directives cited above, and relieve well operators of unnecessarily burdensome requirements without any significant reduction in environmental protection.

Revision of the Definition of Underground Sources of Drinking Water

Several commenters interpreted the revised definition to mean that only aquifers which currently supply a public water system will be protected. In fact, the Agency, aware of the mandate to protect not only those aquifers but also "underground waters which can reasonably be expected to supply any public water system," has kept a broad interpretation of these potential sources of drinking water by defining as USDWs any aquifer which currently supplies drinking water for human consumption or contains fewer than 10,000 mg/l of total dissolved solids as long as it contains a sufficient quantity of water to supply a public water system as defined by the Safe Drinking Water Act (SDWA section 1401(4)). An aquifer qualifies under this criterion if it is capable of yielding enough water for 25 individuals. This quantity is actually very small and in most cases is less than the amount normally produced by a single low yield domestic well. Therefore, EPA believes that the current definition effectively

protects all currently used aquifers regardless of whether they are currently used as public water systems. The definition is tied to "public water system" because the SDWA uses precisely this term to describe what the UIC program is intended to protect (SDWA section 1421(d)(2)).

Revision of the Aquifer Exemption Criteria

In addition to existing criteria, the amendments will permit the Director to exempt an aquifer not currently a source of drinking water if it contains between 3,000 and 10,000 mg/l total dissolved solids (TDS) and "is not reasonably expected to supply a public water system" (SDWA section 1464(c)). Several commenters expressed the opinion that water containing between 3,000 and 10,000 mg/l of total dissolved solids (TDS) is very valuable in some parts of the country, particularly the western States, and that the new exemption criterion is not appropriate. Part of this concern seems to be based on the assumption that all waters containing between 3,000 and 10,000 mg/l TDS will be exempted. The Agency agrees that aquifers containing between 3,000 and 10,000 mg/l TDS can be extremely valuable,¹ and it is for this reason that the current definition of USDWs retains the 10,000 mg/l TDS limit. Although the Agency established a national definition for an USDW, the Agency believes it appropriate to account for varying geological and hydrological conditions by providing flexibility for the State Directors to request exemptions for some aquifers (or portions thereof) containing between 3,000 and 10,000 mg/l TDS. The value of such aquifers is certainly dependent upon "geologic and hydrological conditions" in the specific States, and EPA is required to consider such variability under SDWA section 1421(b)(3)(A)(B). The new criterion is consistent with the SDWA, which uses the same language to define the range of its protection as "underground water which supplies or can reasonably be expected to supply any public water system" (SDWA section 1421(d)(2) (emphasis added)). This possibility for exemption certainly should not be interpreted as a mandate to exempt all such aquifers. Therefore, the Agency as a safeguard to ensure that this exemption not be abused, requires public notice of and opportunity to comment on any proposed exemption. Further, it has retained the right to

disapprove such exemptions (§ 122.35(c)).

Revision of the No-Migration Standard

Several commenters saw the revision of § 122.34, "Prohibition of movement of fluid into underground sources of drinking water," as a major weakening of the regulations. As stated in the preamble to the proposal (46 FR 48247), the change in § 122.34 is necessitated by the fact that the statement was too broad and did not take into consideration the fact that Part 146 as originally promulgated allows some migration in certain cases (particularly cementing of existing or newly converted Class II wells (§ 146.22(c) and (d))). The Agency believes that the technical requirements of Part 146, which retain the non-migration standard where appropriate, are adequate to ensure protection of underground sources of drinking water. Several commenters also noted that in § 122.34(b) the duty of the Director to prescribe additional requirements as remedial action is based on an indication of the movement of any contaminant into an USDW. The commenters expressed concern that contamination would have to occur before any remedy could be undertaken. However, in addition to the authority of the Director to prescribe additional requirements in § 122.34(b), the Part 146 technical requirements impose many mandatory standards designed to protect USDWs. A violation of any of these requirements would trigger remedial action, including an enforcement action if necessary, *whether or not an underground source of drinking water was already affected*. For example, if a mechanical integrity test shows a leak in the casing of a well, remedial action must be undertaken whether or not the leak has caused migration into an USDW. Similarly, injection pressure must be limited so as not to fracture the confining zone, whether or not fracturing of the zone would cause migration into an USDW. The Agency believes that the change in § 122.34 has in no way weakened the requirements of Part 146 and will promulgate the change as proposed.

Shift of Certain Practices From Class III to Class V

Several commenters were of the opinion that wells used in the recovery of energy from lignite, tar sands and oil shale should remain in Class III, rather than be placed in Class V, because they view Class V as unregulated. In fact, despite the flexibility that the shift affords, Class V still maintains

¹ Desalination of Brackish Groundwater, Claire M. Gesalman, U.S. EPA, October 1981.

significant regulatory safeguards. The Director of a State program must have enforcement powers against Class V wells, and must be able to: request that the owner/operator of a Class V well obtain a permit; and take enforcement action against Class V wells, or order closure of Class V wells, if he finds that these wells may cause a violation of a primary drinking water standard or may otherwise adversely affect the health of persons (§ 122.34 (c) and (d)).

Within three years of approval of a State program, the State must submit recommendations for the appropriate regulatory approaches for Class V wells (§ 146.52). The Agency believes that waiting those three years provides an opportunity to set regulatory requirements, where necessary, which can then be based on extensive knowledge of the practices.

In taking this approach, the Agency recognizes that these are emerging technologies, which may pose unique problems that may not be adequately addressed by the existing technical requirements and that may warrant different regulatory treatment. Furthermore, many of these experimental operations involve Federal participation under other programs and, as such, are already subject to extensive environmental scrutiny.

Continuing Operation of Certain Existing Class IV Wells

A number of commenters were concerned with the Agency's approach to the regulation of hazardous waste disposal wells. Specifically, commenters objected to: (1) the absence of final standards for Class IV wells other than those injecting directly into USDWs; (2) the clarification that hazardous waste injection into exempted aquifers is not banned by the regulations at this time; and (3) the amendment to § 122.37 to provide authority for those Class IV wells for which standards were reserved to continue to operate. Each of these comments is addressed below.

Absence of Final Standards. During the promulgation of the Consolidated Permits Regulations in the spring of 1980, the Agency decided to reserve the standards and requirements for certain types of Class IV wells. This decision is not a part of the present rulemaking, and was discussed in the preamble to the final Consolidated Permits Regulations. At that time, the Agency requested further public comment on several options under consideration (45 FR 33331-3). In that discussion, the Agency also expressed its belief that technical requirements for certain Class IV wells and certain hazardous waste management facilities governed by the

Resource Conservation and Recovery Act (RCRA) should be developed in coordination in order to assure, to the extent allowable under the governing statutes, consistent technical requirements for facilities capable of causing a similar degree of environmental risk. The Agency is still proceeding in that context. Final requirements for the reserved Class IV wells will be the subject of a separate rulemaking in the future.

Injection into Exempted Aquifers. In explaining the aquifer exemption portions of these regulations, § 122.31(d) clearly stated that exempted aquifers " * * * are those which would otherwise qualify as 'underground sources of drinking water' to be protected, but which have no real potential to be used as drinking water sources. Therefore they are not USDWs." (45 FR 33437; (emphasis added).)

Therefore, the injection of hazardous waste into an exempted aquifer is not included in the ban prescribed by § 122.36. The Agency's willingness to clarify this point by adding § 122.31(d)(3), does not constitute a departure from the regulatory framework of the promulgated regulations.

Authorization for Class IV. At the time of promulgation, the decision on how to treat Class IV wells used to inject above USDWs had not been made, and requirements for these wells were reserved. The regulations as originally promulgated did not specifically authorize these wells to continue operation pending development of these requirements. The Agency anticipated completing the requirements for Class IV in a relatively short time, certainly prior to the effective date of any State UIC Program.

The Agency has not yet developed these requirements, and now that several State programs are about to be established these Class IV wells could be considered banned because not specifically authorized. To avoid the unintended result and to preserve full discretion in determining how these wells should be treated, § 122.37 has been amended to provide explicitly for their continued operation until such a time as the Agency develops its final regulatory requirements for them. The amendments would not authorize the construction of new wells of this type.

B. Other Comments

Several commenters were concerned with the proposed changes in requirements for analysis of injected fluids for Class III wells. The proposal requires that a qualitative analysis and ranges in concentrations of all

constituents of injected fluids be furnished instead of qualitative and quantitative analyses. The Agency believes that this change is in fact appropriate for Class III operations. In most cases, the purpose of fluid injection in a Class III well is to cause chemical reactions in the injection zone which will change the nature of the injection formation, and result in the presence in the injection zone of a fluid, the chemical composition of which can be quite different from that of the injected fluid. For example, in the case of salt mining operations, it is not the injected fluid, fresh water, which may endanger USDWs, but the brine solution that results from the injection of the fresh water into a salt deposit. It is this solution which needs to be closely monitored in order to protect USDWs.

Moreover, as explained in the preamble to the proposed amendments (46 FR 48248), the exact chemical composition of the injected fluids is sometimes of a highly confidential nature, and asking the applicant for a permit to reveal that composition could have imposed a burden on the applicant without a corresponding environmental benefit. The Agency also stated that the applicant could request Federal confidentiality if he considered that the required information was of a proprietary nature. One commenter expressed the opinion that by the terms of the SDWA and various Federal regulations, information on the nature of injected fluids cannot be afforded confidential treatment. Those provisions, however, deny confidentiality only to "information which deals with the existence, absence, or level of contaminants in drinking water" § 122.19(b)(2). By allowing applicants to demonstrate that certain information should be treated confidentially, the Agency has not changed the standards of confidentiality nor established any presumption that applicants will meet these standards. The determination as to whether the composition of injection fluids could be construed to deal with the absence, existence, or level of contaminants in drinking water, thereby precluding confidential treatment, would have to be made at the time an application for confidential treatment was filed. Apart from such a determination, the cited provisions cannot force the Agency to gather specific information. The determination of what information is necessary for EPA to administer its standards and protect drinking water is a matter squarely within the Agency's discretion. EPA has determined that, for the reasons outlined above, precise

analyses of injected fluids are not necessary for protection of drinking water. It is in an enforcement action that knowledge of the precise concentrations becomes necessary, because the Agency may need to know exactly how much a given operator contributed to whatever damage may have occurred. The regulations specifically preserve EPA's right to collect precise analyses in the course of any enforcement investigation.

Commenters were also concerned with the proposed changes in monitoring requirements for Class III wells. The Agency believes that they are consistent with the mandate of the Safe Drinking Water Act that the Agency promulgate minimum requirements. The range of operations covered in Class III encompasses a variety of technical practices which cannot be adequately addressed by a single standard. Monitoring requirements must be carefully tailored to each situation, and this can only be accomplished by giving discretion to the Director to set specific requirements, within the framework of the regulations, for each type of operation under his jurisdiction.

One commenter requested that the Agency clearly state that the decision to apply for an area permit and the size of the project to be covered by the area permit rests with the applicant. While the applicant has the option of applying for an area permit, the final decision on whether or not to grant area permits, and on whether or not the project qualifies as a candidate for an area permit under the criteria listed at § 122.39, rests with the Director. On the same subject, two commenters expressed the opinion that area permits should be available for wells used to inject hazardous waste. Because of the liberalization of requirements for area permits, particularly the discretion given to the operator regarding construction of new wells under an area permit without prior notice to the Director, the Agency believes that the restriction of area permits to wells that do not inject hazardous waste is reasonable. However, this does not mean that an operator who is going to construct two or three wells at one facility to handle hazardous waste cannot request that the permits be processed in a single permitting action.

One commenter expressed the opinion that all reference to wells used for storage of natural gas should be removed from the regulations, and that these wells should clearly be excluded from the regulations since they have been excluded from coverage of the Act by the 1980 amendments (SDWA section 1421(d)(1)). The Agency agrees and is

revising §§ 122.31(d) and 146.51(b) accordingly.

One commenter stated that the words "energy extraction" should be removed from the definition of Class III wells, since these wells have been transferred to Class V for the time being, and that the definition should be similar in § 122.32(c)(2) and § 146.05(c)(2). The Agency agrees and is revising these sections accordingly. If pursuant to the assessment of Class V wells the Agency finds it appropriate to place additional practices in Class III, the definition will be revised.

One commenter stated that § 146.08(c)(1), which describes the tests appropriate to detect the absence of fluid movement behind the casing of a well, is inconsistent with the flexibility given the Director to exempt certain Class III wells from the cementing requirements, since these tests are primarily designed to detect the presence of cement behind the casing. The Agency disagrees that a temperature log can only be used if a well has been cemented. It is designed to show movement of fluid between strata and is based on the variation in temperature of formation fluid with depth. It is not dependent on the heat of hydration of cement as described in the comment. In any case, the Director has discretion regarding which test of mechanical integrity is applicable in particular situations and the Agency believes that the Director will use this discretion to require only appropriate tests.

One commenter stated that wells used at liquid natural gas pipeline terminals to inject water extracted during the final gas drying process along with blow-down water should be clearly identified as Class II wells. The Agency believes that national minimum standards are not the appropriate place to classify all individual practices, some of which may be unique to geological and hydrologic conditions or the regulatory program peculiar to one or a few States. The classification scheme is intended as a framework for State Directors and the decision to place these and other borderline wells in one class or another shall be made on a case-by-case basis.

Several comments were received pointing out technical problems with the proposal.

- A paragraph added to § 122.31(d) in the August 27 technical amendments was accidentally deleted in the October 1 proposed amendments. It has been reinstituted as § 122.31(d)(3).

- The instructions on the changes to § 122.39, and § 146.24 were not consistent with the amendatory

language and have been revised accordingly.

- The amendatory language in § 122.42(g) is changed to refer to injection wells rather than injection operations to conform with the language of the stipulation agreement.

- One commenter pointed out that packers are not necessarily placed inside the casing, but can also be used between casing and borehole. The Agency agrees and is dropping the words "within the casing" from the definition in § 146.03.

- There is an incorrect cross reference in § 146.05(d)(3) which refers to § 146.05(1) instead of § 146.05(a)(1). The correct cross reference is now inserted.

- In § 146.08(b)(2) the final period is replaced with "or" to allow for the addition of new paragraph (b)(3).

- The first line in the amendatory language for § 146.22(b)(1) is changed to show the new paragraph numbering.

- In the August 27 technical amendments the equation for the radius of endangering influence in § 146.06 was misprinted in the *Federal Register*. The brackets encompassed only the numerator instead of the whole fraction. It is corrected in this promulgation.

In order to assist EPA to correct typographical errors, incorrect cross-references and similar technical errors, comments of a technical and non-substantive nature on the final regulations may be submitted until March 5, 1982. The effective date will not be delayed by consideration of such comments.

Finally, two commenters requested that slurry borehole mining be clearly excluded from Class III and placed in Class V, and several commenters stated that salt solution mining wells should be in Class II. These comments pertain to the regulatory scheme as originally promulgated. Since the amendments that are the subject of this rulemaking do not involve these issues, the Agency does not feel that it is appropriate to deal with these comments at this time.

II. Economic and Regulatory Impacts.

A. Expected Economic Impact

The regulations promulgated today will result in savings to owners and operators of approximately \$70 million over five years compared to the cost they would have incurred under the existing regulations. These savings result from reductions in the requirements for mechanical integrity testing, monitoring and reporting, and permit application for Class II wells, as well as the removal of certain wells

from coverage under Class III. The proposed regulations are not expected to have any adverse impact on oil and gas production, or on production from Class III operations. In addition to savings to owners and operators EPA expects the States to save \$1.4 million over five years due to a reduced number of permits to review as well as less detailed information to evaluate in the application.

A detailed economic analysis of this proposal is available upon request.²

B. Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C 3501 *et seq.*, the reporting or recordkeeping provisions that are included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained. A notice of that approval will be published in the *Federal Register*.

The promulgated regulations will result in less paperwork burden on owners and operators, as well as State enforcement bodies, by reducing the amount of monitoring information which must be collected and the number of times per year the information is to be submitted. In addition, less detailed information will be required on permit applications, and applications for area permits can cover wells of various classes, not just wells of similar construction. These changes are expected to result in a reduction of 213,000 hours of monitoring and reporting time expended by owners and operators, and a reduction of 102,000 hours of permit processing time by the States, over a five-year period.

C. Impact on Small Business

These regulations are expected to reduce the costs to small Class II businesses, and the Agency knows of no small businesses affected by the changes in the Class III regulations. As noted in the separate document discussing the economic effects of these regulations,³ the Agency examined two potential definitions of a small entity for Class II operations. One involved a definition developed by the Department of Energy, defining a small entity as a firm producing less than 400,000 barrels of oil or less than 2 billion cubic feet of gas annually. Approximately 97 percent of the firms producing oil and gas fall into this category. An alternative definition was based upon well production with stripper wells defined

as those producing less than 10 barrels per day of oil. Stripper wells account for approximately 70 percent of all producing wells. Under both definitions it seems probable that the majority of resource savings from these changes would accrue to small entities. Since the limited savings to Class II businesses will be spread among so many small entities the impact on each of them is likely to be small. Therefore, the Administrator certifies that this regulation will not have a significant impact on a substantial number of small entities.

D. Executive Order 12291

Under Executive Order 12291, EPA must judge whether the amendments to the regulations are major and therefore subject to the requirement of a Regulatory Impact Analysis. These Amendments modify certain monitoring and reporting requirements, provide greater flexibility to operators and to State enforcement agencies and generally make the regulations more flexible and less burdensome for a savings of approximately \$70 million over five years. As such they do not constitute major rulemaking according to the criteria in E.O. 12291 Section 1(b). This regulation was submitted to OMB for review as required by E.O. 12291 Section 3(c)(3). Any comments from OMB to EPA and any response by the Agency are available for public inspection at the Office of Drinking Water, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC.

(Secs. 1421, 1422, 1423, 1431, 1445, 1447, 1450, Safe Drinking Water Act, as amended 42 U.S.C. 300(f) *et seq.*)

Dated: January 28, 1982.

Anne M. Gorsuch,
Administrator.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; THE HAZARDOUS WASTE PERMIT PROGRAM; AND THE UNDERGROUND INJECTION CONTROL PROGRAM

40 CFR Part 122 is amended as follows:

1. In § 122.3 the definition for "Underground source of drinking water" is revised and a definition of "Project" added to read as follows:

§ 122.3 Definitions.

Project means a group of wells in a single operation.

Underground source of drinking water (USDW) (RCRA and UIC) means an aquifer or its portion:

(1)(i) Which supplies any public water system; or

(ii) Which contains a sufficient quantity of ground water to supply a public water system; and

(A) Currently supplies drinking water for human consumption; or

(B) Contains fewer than 10,000 mg/l total dissolved solids; and

(2) Which is not an exempted aquifer.

* * *

2. In § 122.10 paragraph (a)(4) is revised to read as follows:

§ 122.10 Schedules of compliance.

(a) * * *

(4) Reporting—A RCRA or NPDES permit shall be written to require that no later than 14 days following such interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements. A UIC permit shall be written to require that if paragraph (a)(1)(ii) of this section is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

* * *

3. In § 122.31 the introduction to paragraph (d) is revised; paragraph (d)(2)(iii) is redesignated (d)(2)(v) and new paragraphs (d)(2)(iii), (d)(2)(vi) and (d)(3) are added to read as follows:

§ 122.31 Purpose and scope of Subpart C.

* * *

(d) Scope of the permit or rule requirement. The UIC permit program regulates underground injections by five classes of wells (see definition of "well injection," § 122.3). The five classes of wells are set forth in § 122.32. All owners or operators of these injection wells must be authorized either by permit or rule by the Director. In carrying out the mandate of the SDWA, this Subpart provides that no injection shall be authorized by permit or rule if it results in the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may adversely affect the health of persons (§ 122.34). Existing Class IV wells which inject hazardous waste directly into an underground source of drinking water are to be eliminated over a period of six months and new such Class IV wells are to be prohibited (§ 122.36). Class V wells will be inventoried and assessed and regulatory action will be established at

² Analysis of the Expected Economic Impacts of the Proposed UIC Regulations, U.S. EPA Office of Drinking Water, September 1981.

³ Ibid.

a later date. In the meantime, if remedial action appears necessary, an individual permit may be required (§ 122.37) or the Director must require remedial action or closure by order (§ 122.34(c)). During UIC program development, the Director may identify aquifers and portions of aquifers which are actual or potential sources of drinking water (see § 123.4(g) for State programs). This will provide an aid to the Director in carrying out his or her duty to protect all USDWs. An aquifer is a USDW if it fits the definition, even if it has not been "identified." The Director may also designate "exempted aquifers" using criteria in § 146.04. Such aquifers are those which would otherwise qualify as "underground sources of drinking water" to be protected, but which have no real potential to be used as drinking water sources. Therefore, they are not USDWs. No aquifer is an "exempted aquifer" until it has been affirmatively designated under the procedures in § 122.35. Aquifers which do not fit the definition of "underground sources of drinking water" are not "exempted aquifers." They are simply not subject to the special protection afforded USDWs.

(2) * * *

(iii) Nonresidential cesspools, septic systems or similar waste disposal systems if such systems (A) are used solely for the disposal of sanitary waste, and (B) have the capacity to serve fewer than 20 persons a day.

(iv) Injection wells used for injection of hydrocarbons which are of pipeline quality and are gases at standard temperature and pressure for the purpose of storage.

(v) Any dug hole which is not used for emplacement of fluids underground.

(3) The prohibition applicable to Class IV wells under § 122.36 does not apply to injections of hazardous wastes into aquifers or portions thereof which have been exempted pursuant to § 146.04.

4. In § 122.32 paragraphs (a)(1), (b)(1) the introduction to paragraph (c), paragraphs (c)(2) and (d) are revised and paragraph (c) (4) and (5) removed to read as follows:

§ 122.32 Classification of injection wells.

(a) * * *

(1) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter mile of the well bore, an underground source of drinking water.

(b) * * *

(1) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

(c) Class III. Wells which inject for extraction of minerals including:

(2) In situ production of uranium or other metals; this category includes only in-situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.

(d) Class IV

(1) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one-quarter (1/4) mile of the well contains an underground source of drinking water.

(2) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one-quarter (1/4) mile of the well contains an underground source of drinking water.

(3) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under §§ 122.32(a)(1) or 122.32(d) (1) and (2) (e.g., wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to § 146.04).

5. In § 122.34 paragraphs (a) and (b) are revised to read as follows:

§ 122.34 Prohibition of movement of fluid into underground sources of drinking water.

(a) No authorization by permit or rule shall allow the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons. The

applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

(b) For Class I, II, and III wells, if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, except as authorized under Part 146, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with § 122.15, or the permit may be terminated under § 122.16 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of wells authorized by rule, see § 122.37(a).

6. In § 122.35 paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 122.35 Identification of underground sources of drinking water.

(b)(1) The Director may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite, all aquifers or parts thereof which the Director proposes to designate as exempted aquifers using the criteria in 40 CFR 146.04.

(2) No designation of an exempted aquifer submitted as part of a UIC Program shall be final until approved by the Administrator as part of the State program.

(3) Subsequent to program approval, the Director may, after notice and opportunity for a public hearing, identify additional exempted aquifers.

Exemption of aquifers identified (i) under § 146.04(b) shall be treated as a program revision under § 123.13; (ii) under § 146.04(c) shall become final if the State Director submits the exemption in writing to the Administrator and the Administrator has not disapproved the designation within 45 days. Any disapproval by the Administrator shall state the reasons and shall constitute final Agency action for purposes of judicial review.

(c)(1) For Class III wells, the Director shall require an applicant for a permit which necessitates an aquifer exemption under § 146.04(b)(1) to furnish the data

necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Information contained in the mining plan for the proposed project, such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the amenability of the mining zone to the proposed mining method, and a timetable of planned development of the mining zone shall be considered by the Director in addition to the information required by § 122.38(c). Approval of the aquifer exemption shall be treated as a program revision under § 123.13.

(2) For Class II wells, a demonstration of commercial producibility shall be made as follows:

(i) For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Director upon a demonstration by the applicant of historical production having occurred in the project area or field.

(ii) For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, information such as logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Director, to the extent such information is available.

7. In § 122.37 paragraphs (a)(1)(iii)(D), (a)(2)(i)(D), and (a)(3) are revised to read as follows:

§ 122.37 Authorization of underground injection by rule.

(a) * * *

(1) * * *

(iii) * * *

(D) Section 122.41(e)—(notice of abandonment);

(2) * * *

(i) * * *

(D) Section 122.41(e)—(notice of abandonment);

(3)(i) Injection into existing Class IV wells as defined in § 122.32(d)(1) may be authorized for a period not to exceed six months after approval or promulgation of the UIC program. Such rules shall apply the requirements of § 122.45(c).

(ii) Injection into existing Class IV wells as defined in §§ 122.32(d)(2) and (3) may be authorized until six months after approval or promulgation of an UIC program incorporating criteria and standards under Part 146, Subpart E applicable to Class IV injection wells.

Such rules shall apply the requirements of § 122.45(c).

8. In § 122.39 paragraphs (a)(1), (a)(3), (a)(4) and (c)(1) and the introduction to (c) are revised, and paragraph (a)(5) is removed to read as follows:

§ 122.39 Area permits.

(a) * * *

(1) Described and identified by location in permit application(s) if they are existing wells, except that the Director may accept a single description of wells with substantially the same characteristics;

(3) Operated by a single owner or operator; and

(4) Used to inject other than hazardous waste.

(c) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:

(1) The permittee notifies the Director at such time as the permit requires.

9. In § 122.41 paragraphs (b) and (e) are revised to read as follows:

§ 122.41 Additional conditions applicable to all UIC permits.

(b) In addition to § 122.7(j)(2) (monitoring and records): the permittee shall retain records concerning the nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under § 122.42(f). The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period.

(e) The permittee shall notify the Director at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.

10. In § 122.42 paragraph (g) is revised to read as follows:

§ 122.42 Establishing UIC permits conditions.

(g) *Financial responsibility.* The permit shall require the permittee to maintain financial responsibility and resources to close, plug, and abandon the underground injection wells in a manner prescribed by the Director. The permittee must show evidence of financial responsibility to the Director

by the submission of a surety bond, or other adequate assurance, such as financial statements or other materials acceptable to the Director.

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

40 CFR Part 146 is amended as follows:

1. In § 146.03 the definitions for "Conventional mine", "Experimental technology", and "Project" are added and the definitions for "Packer" and "Underground sources of drinking water" are revised to read as follows:

§ 146.03 Definitions.

Conventional mine means an open pit or underground excavation for the production of minerals.

Experimental technology means a technology which has not been proven feasible under the conditions in which it is being tested.

Packer means a device lowered into a well to produce a fluid-tight seal.

Project means a group of wells in a single operation.

Underground source of drinking water (USDW) means an aquifer or its portion:

(1)(i) Which supplies any public water system; or

(ii) Which contains a sufficient quantity of ground water to supply a public water system; and

(A) Currently supplies drinking water for human consumption; or

(B) Contains fewer than 10,000 mg/l total dissolved solids; and

(2) Which is not an exempted aquifer.

2. In § 146.04 paragraphs (b)(1) and (b)(4) are revised and (c) is added to read as follows:

§ 146.04 Criteria for exempted aquifers.

(b) * * *

(1) It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible.

(4) It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or

(c) The Total Dissolved Solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

3. In § 146.05 paragraphs (a)(1), (b)(1), (d), (e)(2), (e)(9), (e)(12) and the introduction to paragraph (c) and (e) are revised, (e)(16) is added and (c)(4) and (c)(5) are removed to read as follows:

§ 146.05 Classification of injection wells.

(a) * * *

(1) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one quarter (1/4) mile of the well bore, an underground source of drinking water.

(b) * * *

(1) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

(c) Class III. Wells which inject for extraction of minerals including:

(d) Class IV

(1) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one quarter (1/4) mile of the well contains an underground source of drinking water.

(2) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one quarter (1/4) mile of the well contains an underground source of drinking water.

(3) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under §§ 146.05(a)(1) or 146.05(d)(1) and (2) (e.g., wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been exempted pursuant to § 146.04).

(e) Class V—Injection wells not included in Class I, II, III, or IV. Class V wells include:

(2) Cesspools including multiple dwelling, community or regional cesspools, or other devices that receive wastes which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons a day.

(9) Septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank. The UIC requirements do not apply to single family residential septic system wells, nor to non-residential septic system wells which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than 20 persons a day.

(12) Injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electric power.

(16) Injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.

4. In § 146.06 paragraph (a)(2) is revised to read as follows:

§ 146.06 Area of review.

(a) * * *

(2) Computation of the zone of endangering influence may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The following modified Theis equation illustrates one form which the mathematical model may take.

$$r = \left(\frac{2.25KHt}{S10^3} \right)^{1/2}$$

where

$$x = \frac{4\pi KH(h_w - h_{bo} S_p G_b)}{2.3Q}$$

r = Radius of endangering influence from injection well (length)

k = Hydraulic conductivity of the injection zone (length/time)

H = Thickness of the injection zone (length)

t = Time of injection (time)

S = Storage coefficient (dimensionless)

Q = Injection rate (volume/time)

h_{bo} = Observed original hydrostatic head of injection zone (length) measured from the base of the lowermost underground source of drinking water

h_w = Hydrostatic head of underground source of drinking water (length) measured from the base of the lowest underground source of drinking water

$S_p G_b$ = Specific gravity of fluid in the injection zone (dimensionless)

$\pi = 3.142$ (dimensionless)

The above equation is based on the following assumptions:

5. In § 146.08 the introduction to paragraph (b) and paragraph (b)(2) are revised and paragraphs (b)(3), (c)(3) and (c)(4) added to read as follows:

§ 146.08 Mechanical integrity.

(b) One of the following methods must be used to evaluate the absence of significant leaks under paragraph (a)(1) of this section:

(2) Pressure test with liquid or gas; or

(3) Records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate for the following Class II enhanced recovery wells:

(i) Existing wells completed without a packer provided that a pressure test has been performed and the data is available and provided further that one pressure test shall be performed at a time when the well is shut down and if the running of such a test will not cause further loss of significant amounts of oil or gas; or

(ii) Existing wells constructed without a long string casing, but with surface casing which terminates at the base of fresh water provided that local geological and hydrological features allow such construction and provided further that the annular space shall be visually inspected. For these wells, the Director shall prescribe a monitoring program which will verify the absence of significant fluid movement from the injection zone into an USDW.

(c) * * *

(3) For Class III wells where the nature of the casing precludes the use of the logging techniques prescribed at paragraph (c)(1) of this section, cementing records demonstrating the presence of adequate cement to prevent such migration;

(4) For Class III wells where the Director elects to rely on cementing records to demonstrate the absence of significant fluid movement, the monitoring program prescribed by § 146.33(b) shall be designed to verify

the absence of significant fluid movement.

6. In § 146.10 paragraphs (a), (b)(2), (b)(3) and (d) are revised and paragraph (b)(4) is added to read as follows:

§ 146.10 Plugging and abandoning Class I—III wells.

(a) Prior to abandoning Class I—III wells the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between underground sources of drinking water. The Director may allow Class III wells to use other plugging materials if he is satisfied that such materials will prevent movement of fluids into or between underground sources of drinking water.

(b) * * *

(2) The Dump Bailer Method;

(3) The Two-Plug Method; or

(4) An alternative method approved by the Director, which will reliably provide a comparable level of protection to underground sources of drinking water.

* * * * *

(d) The plugging and abandonment plan required in 40 CFR § 122.42(f) and § 122.41(e) shall, in the case of a Class III project which underlies or is in an aquifer which has been exempted under 40 CFR 146.04, also demonstrate adequate protection of USDWs. The Director shall prescribe aquifer cleanup and monitoring where he deems it necessary and feasible to insure adequate protection of USDWs.

7. In § 146.22 paragraphs (b) (4), (5), (6), and (7) are removed; the introduction to paragraph (b) is redesignated as paragraph (b)(1); the existing paragraph (b)(1) is redesignated as (b)(1)(i); paragraphs (b) (2) and (3) are redesignated as (b)(1) (ii) and (iii) and revised; a new paragraph (b)(2) is added; the introduction to (f)(2)(i), paragraphs (f)(2)(i)(A), (f)(2)(ii)(A), and (g) are revised to read as follows:

§ 146.22 Construction requirements.

* * * * *

(b)(1) * * *

(i) Depth to the injection zone;

(ii) Depth to the bottom of all USDWs; and

(iii) Estimated maximum and average injection pressures;

(b)(2) In addition the Director may consider information on:

(i) Nature of formation fluids;

(ii) Lithology of injection and confining zones;

(iii) External pressure, internal pressure, and axial loading;

(iv) Hole size;

(v) Size and grade of all casing strings; and

(vi) Class of cement.

* * * * *

(f) * * *

(2) * * *

(i) For surface casing intended to protect underground sources of drinking water in areas where the lithology has not been determined:

(A) Electric and caliper logs before casing is installed; and

* * * * *

(ii) * * *

(A) Electric, porosity and gamma ray logs before the casing is installed;

* * * * *

(g) At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class II wells or projects:

(1) Fluid pressure;

(2) Estimated fracture pressure;

(3) Physical and chemical characteristics of the injection zone.

8. In § 146.23 the introduction to paragraph (b)(2) is revised and a paragraph is added at the end of (b)(2) to read as follows:

§ 146.23 Operating, monitoring and reporting requirements.

* * * * *

(b) * * *

(2) Observation of injection pressure, flow rate, and cumulative volume at least with the following frequencies:

* * * * *

And recording of one observation of injection pressure, flow rate and cumulative volume at reasonable intervals no greater than 30 days.

* * * * *

9. In § 146.24 paragraphs (a)(4)(iii), (a)(5) and (a)(6) are revised, paragraphs (a)(8) through (a)(12) are removed, paragraphs (a)(13) and (a)(14) are redesignated (a)(8) and (a)(9) respectively, paragraphs (b) and (c) are redesignated (c) and (d) respectively and a new paragraph (b) is added.

§ 146.24 Information to be considered by the director.

* * * * *

(a) * * *

(4) * * *

(iii) Source and an appropriate analysis of the chemical and physical characteristics of the injection fluid.

(5) Appropriate geological data on the injection zone and confining zone including lithologic description, geological name, thickness and depth;

(6) Geologic name and depth to bottom of all underground sources of

drinking water which may be affected by the injection;

* * * * *

(8) In the case of new injection wells the corrective action proposed to be taken by the applicant under 40 CFR 122.44;

(9) A certificate that the applicant has assured through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by 40 CFR 122.42(g);

(b) In addition the Director may consider the following:

(1) Proposed formation testing program to obtain the information required by § 146.22(g);

(2) Proposed stimulation program;

(3) Proposed injection procedure;

(4) Proposed contingency plans, if any, to cope with well failures so as to prevent migration of contaminating fluids into an underground source of drinking water;

(5) Plans for meeting the monitoring requirements of § 146.23(b).

* * * * *

10. In § 146.32 the introduction to paragraph (a), and paragraphs (b), (c) and (d) are revised to read as follows:

§ 146.32 Construction requirements.

(a) All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between underground sources of drinking water. The Director may waive the cementing requirement for new wells in existing projects or portions of existing projects where he has substantial evidence that no contamination of underground sources of drinking water would result. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

* * * * *

(b) Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks shall be

conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

(c) Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:

- (1) Fluid pressure;
- (2) Fracture pressure; and
- (3) Physical and chemical characteristics of the formation fluids.

(d) Where the injection formation is not a water-bearing formation, the information in paragraph (c)(2) of this section must be submitted.

11. In § 146.33 paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) are revised to read as follows:

§ 146.33 Operating, monitoring, and reporting requirements.

(b) * * *

(1) Monitoring of the nature of injected fluids with sufficient frequency to yield representative data on its characteristics. Whenever the injection fluid is modified to the extent that the analysis required by § 146.34(a)(7)(iii) is incorrect or incomplete, a new analysis as required by § 146.34(a)(7)(iii) shall be provided to the Director.

(2) Monitoring of injection pressure and either flow rate or volume semi-monthly, or metering and daily recording of injected and produced fluid volumes as appropriate.

(3) Demonstration of mechanical integrity pursuant to § 146.08 at least once every five years during the life of the well for salt solution mining.

(4) Monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by § 146.32(e), semi-monthly.

12. In § 146.34 paragraphs (a)(4), (a)(7)(iii), (a)(8) and (b)(2), are revised to read as follows:

§ 146.34 Information to be considered by the Director.

(a) * * *

(4) Maps and cross sections indicating the vertical limits of all underground sources of drinking water within the

area of review, their position relative to the injection formation, and the direction of water movement, where known, in every underground source of drinking water which may be affected by the proposed injection;

(7) * * *

(iii) Qualitative analysis and ranges in concentrations of all constituents of injected fluids. The applicant may request Federal confidentiality as specified in 40 CFR Part 2. If the information is proprietary an applicant may, in lieu of the ranges in concentrations, choose to submit maximum concentrations which shall not be exceeded. In such a case the applicant shall retain records of the undisclosed concentrations and provide them upon request to the Director as part of any enforcement investigation.

(8) Proposed formation testing program to obtain the information required by § 146.32(c).

(b) * * *

(2) A satisfactory demonstration of mechanical integrity for all new wells and for all existing salt solution wells pursuant to § 146.08;

13. In § 146.51, paragraph (b)(1) is revised to read as follows:

§ 146.51 Applicability.

(b) It also includes wells not covered in Class IV that inject radioactive material listed in 10 CFR Part 20, Appendix B, Table II, Column 2.

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BILLING CODE 6560-29-M

40 CFR Part 180

[PP 1F2536/R396; PH-FRL-2040-5]

Cyano(3-Phenoxyphenyl)methyl-4-Chloro-Alpha-(1-Methylethyl)Benzeneacetate; Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate in or on cabbage. This regulation to establish the maximum permissible level for the insecticide in or on cabbage was requested by Shell Oil Company.

EFFECTIVE DATE: Effective on February 3, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA

issued a notice that published in the *Federal Register* of September 23, 1981 (46 FR 47006) that Shell Oil Co., 1025 Connecticut Ave., NW., Suite 200, Washington, DC 20036, had filed a pesticide petition (PP 1F2536) with the EPA. The petition proposed that 40 CFR 180.379 be amended by establishing a tolerance for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodity cabbage at 10.0 parts per million (ppm). No comments were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included: An acute oral rat toxicity study with median lethal dose (LD₅₀) of 1-3 grams (g)/kilogram (kg) of body weight (bw) (water vehicle) and 450 milligrams (mg)/(kg) of bw (dimethyl-sulfoxide (DMSO) vehicle); a 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (highest dose tested); a 90-day rat feeding study with a NOEL of 125 ppm; an 18-month mouse feeding study with a NOEL of less than 100 ppm with no oncogenic effects at the highest level fed (3,000 ppm); a 24-month mouse feeding study with a NOEL of 10-50 ppm for males and 50-250 ppm for females (no oncogenic effects were noted at 1,250 ppm, the highest dose tested); a 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (only level tested—significantly decreased body weight was observed at this dose level); a 2-year rat feeding study with a NOEL of 250 ppm (highest level fed)—no oncogenic effects were observed; a 3-generation rat reproduction study with a NOEL of 250 ppm (highest level fed); teratology studies (in mice and rabbits, both negative at the highest dose of 50 mg/kg of bw/day); and the following mutagenicity studies: Mouse dominant lethal (negative at 100 mg/kg of bw,

which was the highest level fed); mouse host-mediated bioassay (negative at 50 mg/kg of bw, which was the highest level fed); AMES test in vitro (negative); and bone marrow cytogenic study in the Chinese hamster (negative at 25 mg/kg of bw). The following studies assessing neurological effects were performed: A hen study negative at 1.0 g/kg of bw for 5 days, repeated at 21 days; a rat (8-day) acute study with a NOEL of 200 mg/kg of bw; a 15-month rat feeding study which resulted in a systemic NOEL of 500 ppm and a NOEL of 1,500 ppm with respect to nerve damage.

The acceptable daily intake (ADI) is calculated to be 0.1250 mg/kg/day based on the 2-year rat feeding study and using a 100-fold safety factor. The maximum permissible intake (MPI) has been calculated to be 7.500 mg/kg/day (60 kg). Approval of the tolerance for cabbage would result in a theoretical maximum residue contribution (TMRC) of 1.5842 mg/day (1.5 kg) and utilize 21.12 percent of the ADI.

The metabolism of the insecticide is adequately understood for this use, and an adequate analytical method (gas chromatography) is available for enforcement purposes. There are currently no regulatory actions pending against the continued registration of this insecticide. The tolerance for residues in or on the meat, fat (including milk fat), and meat byproducts of cattle, goats, hogs, horses, and sheep are adequate to cover secondary residues resulting from the proposed use as delineated in 40 CFR 180.6(a)(2), and there is no reasonable expectation of residues in poultry and eggs as delineated in 40 CFR 180.6(a)(3).

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that establishment of the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, on or before March 5, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact

Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Effective on: February 3, 1982.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: January 20, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.379 is amended by adding and alphabetically inserting the raw agricultural commodity cabbage to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate; tolerances for residues.

Commodity	Parts per million
Cabbage	10.0

[FR Doc. 82-2635 Filed 2-2-82; 8:45 am]

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40 CFR Part 180

[PP 1F2505/R390; PH-FRL-2040-4]

Cyano (3-Phenoxyphenyl) Methyl 4-Chloro-Alpha-(1-Methylethyl) Benzeneacetate; Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide cyano (3-phenoxyphenyl) methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the raw

agricultural commodity pecans. This regulation to establish the maximum permissible level for residues of the insecticide in or on pecans was requested by Shell Oil Co.

EFFECTIVE DATE: Effective on February 3, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division TS-767C, Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of June 22, 1981 (46 FR 32313) which announced that the Shell Oil Co., 1025 Conn. Ave., NW., Washington, DC 20036, had submitted a pesticide petition (PP 1F2505) proposing that 40 CFR 180.379 be amended by the establishment of a tolerance for the residues of the insecticide cyano (3-phenoxyphenyl) methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodity pecans at 0.2 part per million (ppm).

There were no comments received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included: An acute oral rat toxicity study with median lethal dose (LD 50) of 1-3 grams (g)/kilogram (kg) of body weight (bw) (water vehicle) and 450 milligrams (mg)/kg of bw (dimethyl sulfoxide (DMSO) vehicle); a 90-day dog feeding study with a no-observable-effect level (NOEL) of 500 ppm (highest dose tested); a 90-day rat feeding study with a NOEL of 125 ppm; an 18-month mouse feeding study with a NOEL of less than 100 ppm with no oncogenic effects at the highest level fed (3,000 ppm); a 24-month mouse feeding study with a NOEL of 10-50 ppm for males and 50-250 ppm for females (no oncogenic effects were noted at 1,250 ppm, the highest dose tested); a 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (only level tested) (significantly decreased body weight was observed at this dose level); a 2-year rat feeding study with a NOEL of 250 ppm (highest level fed) no oncogenic effects were observed; a 3-generation rat reproduction study with a NOEL of 250 ppm (highest level fed);