Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements of Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

* * * * *

38. Section 646.6 is amended by revising the section heading, by removing the citation following the definition of "Institution of higher education" in paragraph (b), by adding definitions of "Family taxable income," "Individual with disabilities," and "Low-income individual" to paragraph (b) in alphabetical order, and by revising the authority citation following the section to read as follows.

§ 646.6 Definitions that apply to the Student Support Services program.

* * * * *

(b) * * *

Family taxable income means—

(1) With regard to an individual who is 18 or younger, or who is a dependent student, the taxable income of the individual's parents; or

(2) With regard to a student who is over 18 and is not a dependent student, the taxable income of the student and his or her spouse.

* * * * *

Individual with disabilities means an individual who has a diagnosed physical or mental impairment that substantially limits the individual's ability to participate fully in the educational experiences and opportunities offered.

* * * * *

Low-income individual means an individual whose family taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual initially participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

(Authority: 20 U.S.C. 1001 *et seq.*, 1070a-11, 1070–14, 1088, 1141, 1144a, 3283(a), and 42 U.S.C. 12102(2))

39. Section 646.10 is amended by revising the heading, removing the word "and" after the semicolon at the end of paragraph (a)(8), revising paragraph (a)(9), and adding a new paragraph (a)(10) to read as follows:

§ 646.10 Kinds of projects the Secretary assists under the Student Support Services program.

(a) * * *

(9) Mentoring programs involving faculty or upper class students, or a combination thereof; and

(10) Programs and activities as described in paragraphs (a)(1) through (9) of this section that are specially designed for students of limited proficiency in English.

* * * * *

§ 646.20 [Amended]

40. Section 646.20 is amended by removing the word "receive" and adding, in its place, the words "be offered".

41. Section 646.30 is amended by removing the word "three" in paragraph (b), and adding, in its place, the words "four to five".

§ 646.31 [Amended]

42. Section 646.31 is amended by removing the words "physically handicapped students" in paragraph (h)(2)(ii), and adding, in their place, the words "individuals with disabilities".

§ 646.32 [Amended]

43. Section 646.32 is amended by removing the word "three" in paragraph (a)(1), and adding, in its place, the words "four to five", and removing the word "awarded" in paragraph (c)(2), adding, in its place, the word "offered".

44. Section 646.42 is amended by revising paragraph (a) to read as follows:

§ 646.42 Other requirements of a grantee.

* * * * *

(a)(1) Engage a full-time project director.

(2) However, the Secretary may waive the full-time requirement—

(i) As specified in EDGAR, 34 CFR 75.511; or

(ii) If the requirement hinders coordination among Federal TRIO Programs and similar programs funded through other sources; and

* * * * *

[FR Doc. 93–23908 Filed 9–30–93; 8:45 am]

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federal register

Friday
October 1, 1993

Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107, et al.

Hazardous Materials Regulations; Editorial Corrections and Clarifications; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 174, 175, 176, 177, 178, 179, and 180

[Docket No. HM-189J, Amdt Nos. 107-29, 171-121, 172-130, 173-234, 174-74, 175-48, 176-34, 177-80, 178-99, 179-46, and 180-4]

RIN 2137-AC44

Hazardous Materials Regulations; Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors and makes minor regulatory changes to the Hazardous Materials Regulations (HMR). This action is necessary to reduce misunderstandings of the HMR. The intended effect is to promote accuracy of the HMR. These amendments are minor editorial changes which will not impose any new requirements on persons subject to the HMR.

EFFECTIVE DATES: October 1, 1993.

The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Office of the Federal Register as of October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Beth Romo, telephone (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 1992, under Dockets HM-181 and HM-189, RSPA issued editorial and technical corrections to the 1991 edition of Title 49, Code of Federal Regulations (49 CFR), parts 107 and 171-180. RSPA performs an annual review of the Hazardous Materials Regulations (HMR) to detect errors which may be causing confusion to users. Inaccuracies include typographical errors, incorrect references to other rules and regulations in the CFR, and misstatements of certain regulatory requirements. Additionally, in response to inquiries RSPA has received concerning the clarity of particular requirements specified in the HMR, changes are made which should reduce uncertainties.

Since these amendments do not impose new requirements, notice and public procedure are unnecessary. For the same reason, there is good cause to make these amendments effective without the customary 30-day delay following publication. This will allow the changes to appear in the next revision of 49 CFR.

The following is a section-by-section summary of the amendments:

Section-by-Section Review

Part 107

Section 107.117, paragraph (a), is revised to reflect the correct title of the Associate Administrator for Hazardous Materials Safety. Appendix B to subpart B and §§ 107.202(d), 107.327(a)(1)(iii), and 107.606(d) are revised to correct spelling and punctuation errors.

Section 107.315. Paragraphs (c) and (d) are revised to reflect an updated address for RSPA's accounting operations.

Part 171

The § 171.6(b)(2) Table, and the 171.7(a)(3) Table are revised to correct section references and spelling errors. The Matter Incorporated by Reference table in § 171.7 is updated to add "§ 172.102" (Special Provision B13) to the section reference for the entry "Aluminum Standards and Data", and to clarify that the edition of the International Maritime Dangerous Goods Code incorporated by reference is the English edition. In § 171.8, a section reference is updated for the definition of "Hazardous substance", the term "rail car" replaces "rail freight car", and a spelling error in the definition of "Research" is corrected.

Part 172

Section 172.101: The Hazardous Materials Table (The Table). The Table is amended as follows:

In Column (1), the "I" is removed for the entry "Substances which in contact with water emit flammable gases, solid n.o.s.", and an "I" is added for the entry "White asbestos".

Spelling, punctuation, and other minor editorial corrections to proper shipping names in Column (2) are made to the following entries: "Anhydrous, ammonia"; "Cyclonite and cyclotetramethylenetetranitramine mixtures, wetted or desensitized"; "Cyclotrimethylenetrinitramine, desensitized or Cyclonite, desensitized, or Hexogen, desensitized or RDX, desensitizede; Hexogen; RDX), desensitized."; "2,2-Dichlorodiethyl ether"; "Ethylene, acetylene and propylene in mixtures, refrigerated liquid containing at least 71.5 per cent ethylene with not more than 22.5 per cent acetylene and not more than 6 per cent propylene."; "HMX, see Cyclotetramethylene-tetranitramine, *etc.*"; "Lighters or Lighter refills", "5-Mercaptotetrazol-1-acetic acid"; "Mercury based pesticides, liquid, flammable, toxic, n.o.s. *flash point less than 23deg C.*"; "1-Methoxy-2-proponal"; "Methyl tert butyl ether"; "Methylacetylene and propadiene mixtures, stabilized"; "Organotin pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23deg C.*"; "Pentan-2,4-Dione"; "Permanganates, inorganic, n.o.s."; "Poisonous liquids, oxidizing, n.o.s. *Inhalation hazard, packing group I, Zone A*"; "Poisonous, solids, self heating, n.o.s."; "Poisonous, solids, which in contact with water emit flammable gases, n.o.s."; "Radioactive materials, low specific activity, n.o.s."; the first entry for "Rockets, line throwing"; "*Signals, ship distress, wateractivated, see* Contrivances, water-activated"; "Substances, explosive, very insensitive, n.o.s., or Substances, EVI, n.o.s."; "Tetraethyl dithiopyrophosphate and gases in solution or tetraethyl dithiopyrophosphate and gas mixtures"; "Tetraethyl pyrophosphate and compressed gas mixtures) *LC50 over 200 ppm but not greater than 5000 ppm*"; "Triazine pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23deg C.*"; "Trinitrotoluene and Trinitrobenzene mixtures or Trinitrotoluene or TNT and trinitrobenzene mixtures or TNT and hexanitrostilbene mixtures and Hexanitrostilbene mixtures"; and "Vehicles, self-propelled". The entry for "Cabazide" is removed because available data does not justify this material to be forbidden.

For the entry "Cotton, wet", a packing group "III" entry is added in Column (5). The spelling of the word "LIQUID" is corrected in Column (6) for the entry "Hydrogen cyanide, anhydrous, stabilized". Corrections to Special Provisions references are made for the entries "Bromine", "Dimethyl hydrazine, unsymmetrical", "Isobutylene", "Polychlorinated biphenyls", and "Propylene".

Corrections in packaging references are made for the following entries: "Carbon dioxide and oxygen mixtures"; "Hydroquinone, liquid"; and "Polyester resin kit". Both non-bulk and bulk packaging authorizations for "Carbon dioxide and oxygen mixtures" are corrected to reference packagings for compressed gases. In the December 20, 1991 revised final rule, the entry "Hydroquinone" was split into two entries based on liquid or solid state. However, the non-bulk packaging authorization for "Hydroquinone, liquid" was not revised to reflect the split. The current bulk packaging authorization for "Polyester resin kit" is removed as this kit cannot be shipped in a bulk quantity. Section 173.420 is added to the non-bulk and bulk packaging authorizations in Columns (8B) and (8C), respectively, for the entry "Uranium hexafluoride, fissile (containing more than 1% U–235)". This section was inadvertently omitted when changes adopted in the Docket HM–181 final rule were incorporated into the HMR. In addition, for the entry "Uranium hexafluoride, *fissile excepted or non-fissile*" the Column (8C) packaging exception section is revised to correctly reference § 173.421–2, which contains provisions for multiple hazard limited quantities of radioactive materials.

Vessel stowage requirement "M4" is removed for the entries "Elevated temperature material, liquid, n.o.s." and "Flammable liquids, elevated temperature material, n.o.s.", in Column (10b).

Section 172.101, Appendices A and B. In Appendix A to § 172.101, in Column 1, a spelling error is corrected for the entry "K064", and in Column 2, corrections are made to the entries "Dibenz[a,i]pyrene", "O,O-Diethyl S-methyl dithiophosphate", "Methyl isocyanate", and "p-Toluidine". In Appendix B to § 172.101, duplicate entries for "PP * * * Mercury compounds, solid, n.o.s.", "PP * * * Pentachlorophenol", and "Thallium compounds (pesticides)" are removed.

Section 172.102. Special Provision 14 is intended to define motor fuel antiknock mixtures, but the current definition, adopted under the Docket HM–181 final rule, is confusing. Therefore, Special Provision 14 is amended to reflect the pre-HM–181 definition of motor fuel antiknock mixtures.

The October 1, 1992 revised final rule under Docket HM–181 added a new Special Provision B13 to provide certain packaging exceptions for liquid tars, asphalts, and bitumen. Paragraph c. of this Special Provision referenced design stress limits by citing § 178.65–5(b), which contains a reference to "Aluminum Standards and Data." However, because § 178.65–5 is a section within a cylinder specification, RSPA has received numerous inquiries as to why Special Provision B13, which addresses bulk packagings, would reference a cylinder specification section. RSPA, therefore, is revising Special Provision B13 to directly reference "Aluminum Standards and Data."

Special Provision N81 is redesignated as Special Provision 81 to show that both bulk and non-bulk non-specification packagings are allowed for polychlorinated biphenyls. Minor editorial corrections are made to Special Provisions 12, 28 and N37. Special Provision B35 is revised to clarify a provision for tank cars previously marked "HYDROCYANIC ACID".

Special Provision B31 is removed, because it duplicates a provision in § 173.249 for Bromine. In addition, Special Provisions B17, B19, B20, B21, B22, B24, B29, B36, B39, B58, B62, and B86 are removed because they are not assigned to any hazardous material in the § 172.101 Table.

Section 172.202. Paragraph (a)(2) is revised to clarify that a subsidiary hazard division number may be used as an alternative to indicating subsidiary hazard class number in a shipping description.

Section 172.203. In the third sentence of paragraph (k) introductory text, quotation marks are added before and after "contains" for clarity. In paragraph (k)(3), in the list of proper shipping names for which the inclusion of technical names is required, the entry for flammable tree or weed killing compounds is revised to clarify that "Compounds, weed killing liquid" is a proper shipping name. Also in the paragraph (k)(3) list, the entry for "Rodenticides, n.o.s." is removed because this proper shipping name no longer appears in the § 172.101 Table. In paragraphs (k)(4) (iii) and (iv), the last sentence of each paragraph is removed because the examples used in these sentences are not appropriate.

Sections 172.400a and 172.406. Minor grammatical corrections are made in §§ 172.400a(a)(6) and 172.406(a)(2). In § 172.406(e)(1), the phrase "Each non-bulk package" is corrected to read "Each package".

Section 172.525. A spelling error is corrected in paragraph (b).

Section 172.526. Paragraph (b) is revised to remove an obsolete reference.

Section 172.556. A typographical error is corrected in paragraph (b).

Part 173

Section 173.2. A section reference for forbidden explosives is corrected in the table.

Section 173.3. Punctuation is corrected in paragraph (c) introductory text.

Section 173.4. In paragraph (a), the introductory text is revised for clarity, in (a)(2) a punctuation error is corrected, and in paragraph (a)(11), in the list of identification numbers not permitted to be shipped under the small quantity exceptions, "9193" is removed because this identification number no longer is associated with any hazardous materials description.

Section 173.7. The paragraph (a) introductory text is revised to provide an updated reference to the procedures required for packagings offered by, for, or to the Department of Defense.

Section 173.10. In paragraphs (d) and (e), minor typographical errors are corrected.

Sections 173.21, 173.22, and 173.24a. In paragraphs (b) and (j) of § 173.21, in § 173.22(a)(3)(i), and in § 173.24a(b)(4)(i), section and paragraph references are corrected.

Section 173.31. In paragraph (c)(9), a spelling error is corrected.

Section 173.34. In paragraph (e)(16), the introductory text and paragraph (v) are revised to reflect new UN terminology for corrosive materials.

Section 173.25. In paragraph (a), the introductory phrase referencing paragraph (b) of the section is removed, because paragraph (b) is reserved.

Section 173.56. Paragraph (b)(2) introductory text and paragraph (b)(2)(i) are revised to clarify procedures for DOD classification and approval of new explosives. In addition, paragraph (b)(2)(i) is updated with the current name and symbol of the responsible activity within each service branch.

Section 173.57. An amendment to paragraph (a) introductory text corrects a reference to the material incorporated by reference section for the Explosive Test Manual.

Section 173.62. Paragraph (b) is revised to correctly reference Column 4.

Section 173.115. A parenthetical mark is added in paragraph (a) introductory text, and a reference in paragraph (a)(2) for testing the flammability of aerosols is revised for clarity.

Section 173.124. A typographical error is corrected in paragraph (b)(2).

Sections 173.127 and 173.128. In § 173.127, in paragraph (a), the word "oxidizer" is italicized, and in § 173.128(a), "organic peroxide" is corrected and italicized.

Section 173.132. The phrase in paragraph (b)(1) "administered which to" is corrected.

Section 173.133. In paragraph (b)(1)(ii), the formula is corrected.

Section 173.136. The wording "corrosive material" is italicized in paragraph (a).

Sections 173.151 and 173.159. In § 173.151(b)(2) and § 173.159(g)(1), errors in punctuation are corrected.

Section 173.225. In the paragraph (b)(8) Organic Peroxides Table, in Column (8), note 23 is moved from "Methyl ethyl ketone peroxide(s)" to "Methyl isobutyl ketone peroxide(s)".

Section 173.247. Measurements are corrected in paragraph (g) for elevated temperature material bulk packaging.

Section 173.301. Paragraph (g)(5) is revised to clarify that cylinders must be protected against damage, not injury.

Section 173.304. Punctuation is added in paragraph (d)(3)(i).

Section 173.306. Based on several petitions for rule change, paragraph (i) introductory text is revised to clarify that only one of the test methods must be applied, not all four test methods.

Section 173.315. In the paragraph (a) table, the "do" (or "ditto") in Column (4) for the entry "Nitrous oxide, refrigerated liquid", is no longer valid because Note 23 does not apply to this entry. The "do" is replaced with "DOT–51, MC–330, MC–331".

Section 173.318. A minor typographical correction "or frangible discs" is made in the first sentence of paragraph (b)(3)(ii).

Section 173.323. In paragraph (f), the wording "vapor pressure" is revised to read "vapor space" and the indicated temperatures in Fahrenheit and Celsius are reversed for consistency with HMR terminology.

Sections 173.417 and 173.433. The spelling of "percent" in Table 5, Footnote 2 of § 173.417(b)(2)(ii), and "known" in § 173.433(b)(4) are corrected.

Appendix B to Part 173. In paragraph 6., a section reference is corrected.

Appendix D to Part 173. The first heading is corrected.

Appendix E to Part 173. A typographical error is corrected in 2.c.(2)(A) and the 4. section heading is revised for consistency with other section headings.

Part 174

Section 174.1. A duplicate "to" is removed.

Section 174.25. In paragraph (a)(2)(ii), the U.S. customary unit equivalent to .25 cm is corrected.

Section 174.55. The terminology "car" is amended to read "transport vehicle or freight container".

Sections 174.82, 174.290, 174.430 and 174.700. Minor typographical and spelling errors are corrected.

Part 175

Section 175.320. Changes in hazard class terminology are made in the paragraph (a) table and paragraph (c) introductory text for clarity and consistency.

Part 176

Section 176.5. An obsolete introductory phrase is removed in paragraph (b) introductory text.

Section 176.83. A typographical error in paragraph (f)(4) is corrected to indicate the paragraph defines "a container space".

Section 176.100. A reference in the first sentence is revised.

Section 176.118. In paragraph (b), the word "grouping" is corrected to read "grounding".

Section 176.410. In paragraph (c)(2), the word "for" is corrected to read "from".

Part 177

Section 177.825. The responsibility for highway routing of hazardous materials, including Class 7 (radioactive) materials, has been delegated by the Secretary of Transportation to the Federal Highway Administration (FHWA). An interim final rule was issued by the FHWA (September 24, 1992; 57 FR 44129) to incorporate the routing requirements for Class 7 materials contained in the RSPA regulations at § 177.825. Therefore, in this document, § 177.825 is revised to reference routing and training requirements in the FHWA regulations at 49 CFR part 397 subpart D.

Section 177.834. Paragraph (j) is revised to correct a cite to the Segregation Table in § 177.848.

Sections 177.838 and 177.857. In paragraph (g) of § 177.838 and paragraph (d) of § 177.857, minor typographical errors are corrected.

Section 177.858. In paragraph (b)(1), the words "Further to" preceding "transport the cargo tank" are removed to provide clarity.

Part 178

Sections 178.39–9 and 178.39–14. Punctuation errors are corrected in paragraphs (a) and (b), respectively.

Section 178.46–12. Paragraph "(e)" is corrected to read "(c)".

Section 178.53–9. The word "sphere" is italicized.

Section 178.55–20. In paragraph (a) introductory text, the correct wording is "not less than".

Section 178.56–3. In the first sentence, "manufacturer" is corrected.

Section 178.56–11. In paragraph (a), the comma is removed after "1100 °F."

Section 178.60–24. In paragraph (a), in the sample report for acetylene shells, the entry pertaining to neckrings and footrings is restructured for clarity.

Sections 178.61–8. In paragraph (c)(2), the spelling of "spot" is corrected.

Section 178.61–20. Paragraph (b) is revised to indicate the past tense "necessitated".

Section 178.270–5. In paragraph (d), in the formula for metric units, "3_i" is corrected to read "e_i".

Section 178.270–11. In paragraph (d)(1), the minimum total pressure relief valve vent capacity is corrected to 12,000 standard cubic feet per hour (SCFH).

Section 178.337–1. In paragraph (f), the hyphen in "post-weld" is removed.

Section 178.337–16. Paragraph (b)(2) is revised to indicate the past tense "described".

Section 178.338–10. In paragraph (c), the phrase "a least one rear bumper" is corrected to read "at least one rear bumper".

Section 178.338–19. In paragraph (c), the spelling for "certificates" is corrected.

Section 178.345–14. In paragraph (b)(11), the verb "is" is corrected to read "are" to agree with the plural "thicknesses".

Section 178.352–2. An incorrect section reference is corrected in paragraph (a).

Section 178.352–6. The spacing of the word "RADIOACTIVE" in paragraph (a)(2) is corrected for consistency with the rest of the phrase.

Section 178.362–2. In paragraph (e)(5), the spelling for "chimes" is corrected.

Section 178.516. The word "Joints" is corrected to read "joints" in paragraph (b)(3)(i).

Section 178.518. A hyphen is added to the wording "sift-proof" in paragraph (a)(2).

Section 178.600. A period is added at the end of the sentence.

Section 178.603. In the current paragraph (a) table, three drops per bag are required for single-ply bags without a side seam or multi-ply bags; however, only two drop orientations are given. The requirement for three drops per bag is incorrect; therefore, Column 2 is revised to require two drops per bag.

Section 178.605. In paragraph (d)(1), a second parenthetical mark is added after "(15 psi)" to close the parenthetical phrase and a superfluous "and" is removed.

Part 179

Section 179.101–1. The wording in footnote 6 is corrected to read "See".

Section 179.105–4. Paragraph (a) introductory text is revised to add the 112J tank car to the list of specification tank cars requiring thermal protection. As adopted in the December 21, 1990 final rule under Docket HM–181, Specification 112J tank cars were included in this list; however, in the 1991 edition of 49 CFR, the 112J inadvertently was omitted.

Section 179.203–1. In paragraph (a), the reference to § 179.202 is removed.

Part 180

Section 180.405. The word "is" in the phrase "an outlet is equipped" is removed in the introductory text of paragraph (f)(2) because it is superfluous.

Section 180.407. In paragraph (f)(1)(i)(C), the spelling of the word "gauge" is corrected.

Rulemaking Analyses and Notices

Executive Order 12291

This final rule does not meet the criteria specified in § 1(b) of Executive Order 12291 and, therefore, is not a major rule. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation. This final rule does not require a Regulatory Impact Analysis, or a regulatory evaluation, or an environmental assessment or impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism") and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c), 1653(d), 1655, 1802, 1804, 1805, 1806, 1808–1811, 1815; 49 CFR 1.45 and 1.53 and App. A of 49 CFR part 1.

§ 107.117 [Amended]

2. In § 107.117, in paragraph (a), the wording "the Director, Associate Administrator for Hazardous Materials Safety," is revised to read "the Associate Administrator for Hazardous Materials Safety".

Appendix B to Part 107, Subpart B—[Amended]

3. In appendix B to subpart B of part 107, in the section entitled "Packages, Containers, Shipments", in paragraph (1), the wording "contracting background" is revised to read "contrasting background".

§ 107.202 [Amended]

4. In § 107.202, in paragraph (d), the comma following "*minimis*" is removed.

§ 107.315 [Amended]

5. In § 107.315, the following changes are made:

a. In the second sentence of paragraph (c) the wording "Salary and Expenses Branch (M–86.2), Accounting Services Division, Office of the Secretary, room 9112, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–5760)." is revised to read "Financial Operations Division (AMZ–320), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25880, Oklahoma City, OK 73125.".

b. In the first sentence of paragraph (d) the wording "Salary and Expenses Branch (M–86.2), Accounting Services Division, Office of the Secretary, room 9112, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001." is revised to read "Financial Operations Division (AMZ–320), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25880, Oklahoma City, OK 73125.".

c. In the last sentence of paragraphs (c) and (d), the wording "at the same address." is revised to read "U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001." both places in appears.

§ 107.327 [Amended]

6. In § 107.327, in paragraph (a)(1)(iii), the word "writting" is revised to read "writing".

§ 107.606 [Amended]

7. In § 107.606, in paragraph (d), the word "is" is revised to read "his".

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

8. The authority citation for part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, and 1818; 49 CFR part 1.

§ 171.6 [Amended]

9. In § 171.6, in the paragraph (b)(2) Table, for the entry "2137–0034", in

Column 3, the reference "172.7(a)(1)" is revised to read "173.7(a)(1)".

§ 171.7 [Amended]

10. In § 171.7, in the paragraph (a)(3) Table, the following changes are made:

a. For the entry "Aluminum Standards and Data", the wording "172.102;" is added in Column 2 to precede "178.65–5".

b. The entry, "International Maritime Dangerous Goods (IMDG) Code, 1990 Consolidated Edition, as amended by Amendment 26 thereto" is amended by adding the wording "(English edition)" immediately following the word "thereto".

c. For the entry "UN Recommendations on the Transport of Dangerous Goods, Sixth Revised Ediction (1989)." the wording "Ediction" is revised to read "Edition".

d. For the entry "UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Second Edition, 1990." in Column 2, the wording "172.57" is revised to read "173.57".

§ 171.8 [Amended]

11. In § 171.8, the following changes are made:

a. For the definition "*Hazardous substance*", in the concluding text of the definition, the wording "(see 40 CFR 300.6)" is revised to read "(see 40 CFR 300.5)".

b. The definition for "*rail freight car*" is removed.

c. For the definition "*Research*", the wording "investigation of experimentation" is revised to read "investigation or experimentation".

12. In addition, in § 171.8, a new definition is added in appropriate alphabetical sequence to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Rail car means a car designed to carry freight or non-passenger personnel by rail, and includes a box car, flat car, gondola car, hopper car, tank car, and occupied caboose.

* * * * *

§ 171.9 [Amended]

13. In § 171.9, in paragraph (b)(4), the wording "or permitted to the act" is revised to read "or permitted to do the act".

§ 171.15 [Amended]

14. In § 171.15, the authority citation at the end of the section is removed.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

15. The authority citation for part 172 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

16. In § 172.101, in the Hazardous Materials Table, the following changes are made:

a. For the entry "Anhydrous, ammonia *see Ammonia, anhydrous, liquefied*", in Column (2), the comma between "Anhydrous" and "ammonia" is removed.

b. For the entry "Bromine *or* Bromine solutions", in Column (7), Special Provisions "B31," and "B73," are removed.

c. For the entry "Carbon dioxide and oxygen mixtures", in Column (8B) the wording "None" is revised to read "304"; and in Column (8C), the wording "244" is revised to read "314, 315".

d. For the entry "Cotton, wet", the wording "III" is added in Column (5).

e. For the entry "Cyclonite and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*ed.", in Column (2), "ed." is removed at the end of the description.

f. For the entry "Cyclotrimethylenetrinitramine, desensitized *or* Cyclonite, desensitized, *or* Hexogen, desensitized *or* RDX, desensitizede; Hexogen; RDX), desensitized.", the wording "RDX, desensitizede; Hexogen; RDX), desensitized." is revised to read "RDX desensitized."

g. For the entry "2,2–Dichlorodiethyl ether", in Column (2), the wording "2,2-" is revised to read "2,2′-".

h. For the entry "Dimethylhydrazine, unsymmetrical", in Column (7), Special Provision "A7," is removed.

i. For the entry "Elevated temperature material, liquid, n.o.s." , in Column (10b), the wording "M4" is removed.

j. For the entry "Ethylene, acetylene and propylene in mixtures, refrigerated liquid containing at least 71.5 per cent ethylene with not more than 22.5 per cent acetylene and not more than 6 per cent propylene.", in Column (2), the wording "per cent" is revised to read "percent" each place it appears.

k. For the entry "Flammable liquids, elevated temperature material, n.o.s.", in Column (10b), the wording "M4" is removed and the entry is moved to its proper alphabetical sequence.

l. For the entry "HMX, see Cyclotetramethylene-tetranitramine, etc." in Column (2), the hyphen in the wording "Cyclotetramethylene-tetranitramine" is removed to read "Cyclotetramethylenetetranitramine".

m. For the entry "Hydrogen cyanide, anhydrous, stabilized", in Column (6), the word "LIQID" is revised to read "LIQUID".

n. For the entry "Hydroquinone, liquid", in Column (8B), the reference "213" is revised to read "203".

o. For the entry "Isobutylene see also Petroleum gases, liquefied", in Column (7), Special Provision "19" is added.

p. For the entry "5–Mercaptotetrazol-1-acetic acidd", in Column (2), the word "acidd" is revised to read "acid".

q. For the entry "Mercury based pesticides, liquid, flammable, toxic, n.o.s. *flash point less than 23deg C.*", in Column (2), the wording "*23deg C.*" is revised to read "*23 degrees C.*".

r. For the entry "1–Methoxy-2-proponal", in Column (2), the wording "proponal" is revised to read "propanol".

s. For the entry "Methyl tert butyl ether", in Column (2), a hyphen is added between "tert" and "butyl" to read "tert-butyl".

t. For the entry "Methylacetylene and propadiene mixtures, stabilized", in Column (2), the word "Methylacetylene" is revised to read "Methyl acetylene" and the entry is moved to its correct alphabetical sequence following "Methyl acetate".

u. For the entry "Organotin pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23deg C.*", the wording "*23deg C.*" is revised to read "*23 degrees C.*".

v. For the entry "Pentan-2,4–Dione", in Column (2), the wording "Dione" is revised to read "dione".

w. For the entry "Permanganates, inorganic, n.o.s.", in the Column (2) description, the wording "*Safety.y*" is revised to read "*Safety*".

x. For the entry "Poisonous liquids, oxidizing, n.o.s. *Inhalation hazard, packing group I, Zone A*", the wording "*packing group I*" is revised to read "*Packing Group I*".

y. For the entry "Poisonous, solids, self heating, n.o.s.", the comma between "Poisonous" and "solids" is removed.

z. For the entry "Poisonous, solids, which in contact with water emit flammable gases, n.o.s.", the comma between "Poisonous" and "solids" is removed.

aa. For the entry "Polychlorinated biphenyls", in Column (7), Special Provision "N81" is revised to read "81".

bb. For the entry "Polyester resin kits", in Column (8C), the section reference "246" is revised to read "None".

cc. For the entry "Propylene see also Petroleum gases, liquefied", in Column (7), Special Provision "19" is added.

dd. For the first entry for "Rockets, line throwing", a hyphen is added between "line" and "throwing" to read "line-throwing".

ee. For the entry "*Signals, ship distress, wateractivated, see* Contrivances, water-activated, etc." the wording "*wateractivated*" is revised to read "*water-activated*".

ff. For the entry "Substances, explosive, very insensitive, n.o.s., *or*Substances, EVI, n.o.s.", the wording "*or*Substances" is amended by adding a space between "or" and "Substances".

gg. For the entry "Substances which in contact with water emit flammable gases, solid, n.o.s.", the "I" in Column (1) is removed.

hh. For the entry "Tetraethyl dithiopyrophosphate and gases in solution *or* tetraethyl dithiopyrophosphate and gas mixtures", in Column (2), the wording "gases in solution" is revised to read "gases, in solution" and the wording "gas mixtures" is revised to read "gas, in mixtures".

ii. For the entry "Tetraethyl pyrophosphate and compressed gas mixtures) *LC50 over 200 ppm but not greater than 5000 ppm*", in Column (2), the parenthetical mark in the wording "mixtures)" is removed.

jj. For the entry "Triazine pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23deg C.*" in Column (2), the wording "23deg C." is revised to read "*23 degrees C.*".

kk. For the entry "Trinitrotoluene and Trinitrobenzene mixtures *or* Trinitrotoluene or TNT and trinitrobenzene mixtures or TNT and hexanitrostilbene mixturesand Hexanitrostilbene mixtures", in Column (2), the wording "mixturesand Hexanitrostilbene" is removed.

ll. For the entry "Uranium hexafluoride, fissile (*containing more than 1% U-235*)" in Columns (8B) and (8C), the reference ", 420" is added in each column to follow "417".

mm. For the entry "Uranium hexafluoride, *fissile excepted or non-fissile*" in Column (8A), the reference "421" is revised to read "421–2" and in Columns (8B) and (8C), the reference "420," is added in each column to precede "425".

nn. For the entry "Vehicles, self-propelled", in Column (2), the wording in the description "*battery(see*" is revised to read "*battery (see*".

oo. For the entry "White asbestos", in Column (1), an "I" is added.

17. In addition, the Hazardous Materials Table is amended by removing or adding, in appropriate alphabetical sequence, the following entries to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	Packing group	Label(s) required if not excepted	Special provisions	(8) Packaging authorizations (173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or rail car (kg)	Cargo aircraft only (kg)	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
	Cabazide	Forbidden.											
	Lighters or Lighter refills (cigarettes) containing flammable gas	2.1	UN1057		Flammable gas	N10	None	21,308	None	1	15	B	40
	Radioactive material, low specific activity LSA, n.o.s.	7	UN2912		Radioactive		421, 422, 424.	425	425			A	
	[ADD]												
	Lighters or Lighter refills (cigarettes) containing flammable gas	2.1	UN1057		Flammable gas	N10	None	21,308	None	1	15	B	40
	*	*	*	*	*	*	*						
	Radioactive material, low specific activity, n.o.s. or Radioactive material, LSA, n.o.s.	7	UN2912		Radioactive		421, 422, 424.	425	425			A	

§172.101, Appendix A [Amended]

18. In Appendix A to § 172.101, the following changes are made:

a. For the entry "Dibenz[a,i]pyrene", in Column 2, the wording "Bezo" is revised to read "Benzo".

b. For the entry "O,O-Diethyl S-methyl dithiophosphate", in Column 2, the wording "O'O≥-diethylS-methyl ester" is revised to read "O,O-diethyl S-methyl ester".

c. For the entry "Methyl isocyanate", in Column 2, the wording "isocynato-" is revised to read "isocyanato-".

d. For the entry "p-Toluidine", in Column 2, the wording "Benzenaminew" is revised to read "Benzenamine".

e. For the entry "K064", in Column 1, the word "blowdoen" is revised to read "blowdown".

§172.101, Appendix B [Amended]

19. In Appendix B to § 172.101, in the table, the following changes are made:

a. The second entry for "PP * * * Mercury compounds, solid, n.o.s." is removed.

b. The second entry for "PP * * * Pentachlorophenol" is removed.

c. The second entry for "Thallium compounds (pesticides)" is removed.

20. In § 172.102, the following special provisions are added, revised, or removed as indicated:

a. In paragraph (c)(1), Special Provision 14 is revised and a new Special Provision 81 is added.

b. In paragraph (c)(3), Special Provision B13 is amended by revising the last sentence of paragraph c. and Special Provisions B17, B19, B20, B21, B22, B24, B29, B31, B36, B39, B58, B62, and B86 are removed.

c. In paragraph (c)(5), Special Provision N81 is removed. The additions and revisions read as follows:

§172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

14 Motor fuel antiknock mixtures are:

a. Mixtures of one or more organic lead mixtures (such as tetraethyl lead, triethylmethyl lead, diethyldimethyl lead, ethyltrimethyl lead, and tetramethyl lead) with one or more halogen compounds (such as ethylene dibromide and ethylene dichloride, hydrocarbon solvents or other equally efficient stabilizers); or

b. tetraethyl lead.

* * * * *

81 Polychlorinated biphenyl items, as defined in 40 CFR 761.3, for which specification packagings are impractical, may be packaged in non-specification packagings meeting the general packaging requirements of subparts A and B of part 173 of this subchapter. Alternatively, the item itself may be used as a packaging if it meets the general packaging requirements of subparts A and B of part 173 of this subchapter.

* * * * *

(3) * * *

Code/Special Provisions

* * * * *

B13 * * *

c. * * * However, the design stress limits may not exceed 25 percent of the stress, as specified in the Aluminum Association's "Aluminum Standards and Data" (7th Edition June 1982), for 0 temper at the maximum design temperature of the cargo tank.

* * * * *

§172.102 [Amended]

21. In addition, in § 172.102, the following changes are made:

a. In paragraph (c)(1), in Special Provision 12, in the second sentence, the wording "conform with" is revised to read "conform to".

b. In paragraph (c)(1), in Special Provision 28, the wording "dehydrated" is revised to read "dihydrated".

c. In paragraph (c)(3), in Special Provision B35, a second sentence is added to read "Tank cars marked "HYDROCYANIC ACID" prior to October 1, 1991 do not need to be remarked.".

d. In paragraph (c)(5), in Special Provision N37, the wording, "in a integrally-lined fiber drum" is revised to read "in an integrally-lined fiber drum".

§172.202 [Amended]

22. In § 172.202, in paragraph (a)(2), in the first sentence, the wording "or division" is added immediately following "subsidiary hazard class" and before "number".

§172.203 [Amended]

23. In § 172.203, the following changes are made:

a. In paragraph (k) introductory text, in the third sentence, quotation marks are added to immediately precede and follow the word "contains".

b. In paragraph (k)(3), for the entry "Compounds, tree or *weed killing, liquid, flammable*" the wording "*weed killing, liquid*" is revised to read "weed killing, liquid,"; and the entry "Rodenticides, n.o.s." is removed.

c. In paragraphs (k)(4)(iii) and (iv), the last sentence of each paragraph is removed.

§172.400a [Amended]

24. In § 172.400a, in paragraph (a)(6), the wording "is visible" is revised to read "are visible".

§172.406 [Amended]

25. In § 172.406, the following changes are made:

a. In paragraph (a)(2), the wording "duplicate labeling not required" is revised to read "duplicate labeling is not required".

b. In paragraph (e)(1), the wording "Each non-bulk package" is revised to read "Each package".

§172.525 [Amended]

26. In § 172.525, in paragraph (b), in the last sentence, the wording "bordest be black" is revised to read "border must be black".

27. In § 172.526, paragraph (b) is amended by revising the text preceding the placard to read as follows:

§172.526 Standard requirements for the RESIDUE placard.

* * * * *

(b) Except for size and color, the RESIDUE placard shall be as illustrated by the FLAMMABLE-RESIDUE placard:

* * * * *

§172.556 [Amended]

28. In § 172.556, in paragraph (b), in the second sentence, the wording "±z0.2 inches)" is revised to read "±0.2 inches)".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

29. The authority citation for part 173 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§173.2 [Amended]

30. In the § 173.2 table, in the second entry "None", in Column 4, the wording "173.53" is revised to read "173.54".

§173.3 [Amended]

31. In § 173.3, in paragraph (c) introductory text, the period following the word "defective" is removed and replaced with a comma.

§173.4 [Amended]

32. In § 173.4, the following changes are made:

a. In paragraph (a) introductory text, the wording "and Class 7 materials, and Class 9 materials that also meet the definition" is revised to read "Class 9 materials, and Class 7 materials that also meet the definition".

b. In paragraph (a)(2) introductory text, the period following the word "devices" is removed and replaced with a comma.

c. In paragraph (a)(11), in the list of identification numbers, the last number "9193" is removed.

§ 173.7 [Amended]

33. In § 173.7, in paragraph (a) introductory text, the wording "pursuant to the 'Policies and Procedures for Hazardous Materials Packaging Certification, AFLCR 800–29/AFSCR 800–29/DARCOM–R 700–103/NAVMATINST 4030.11/DLAR 4145.37.' " is revised to read "in accordance with the procedures prescribed by 'Performance Oriented Packaging of Hazardous Material, DLAR 4145.41/AR 700–143/AFR 71–5/NAVSUPINST 4030.55/MCO 4030.40.' ".

§ 173.10 [Amended]

34. In § 173.10, in paragraph (d), the wording "the shippe" is revised to read "the shipper."; and in paragraph (e), the wording "materials. (including" is revised to read "materials (including".

§ 173.21 [Amended]

35. In § 173.21, the following changes are made:

a. In paragraph (b), the reference "§ 173.51" is revised to read "§ 173.54".

b. In paragraph (j), the reference "§ 173.128(b)(4)(iii)" is revised to read "§ 173.128(a)(4)(ii)".

§ 173.22 [Amended]

36. In § 173.22, in paragraph (a)(3)(i), the wording "(see §§ 178.0–2 and 179.1" is revised to read "(see §§ 178.2 and 179.1".

§ 173.24a [Amended]

37. In § 173.24a, in paragraph (b)(4)(i), the wording "paragraph (b)(1) of this section" is revised to read "paragraph (d) of this section".

§ 173.25 [Amended]

38. In § 173.25, in paragraph (a) introductory text, the wording "Except as provided in paragraph (b) of this section," is removed and "authorized" is revised to read "Authorized".

§ 173.31 [Amended]

39. In § 173.31, in paragraph (c)(9), in the first sentence, the wording "the presure" is revised to read "the pressure".

§ 173.34 [Amended]

40. In § 173.34, the following changes are made:

a. In paragraph (e)(16) introductory text, the wording " 'corrosive material' " is revised to read "Class 8 material".

b. In paragraph (e)(16)(v), the wording "corrosive liquid" is revised to read "Class 8 liquid".

§ 173.56 [Amended]

41. In § 173.56, the following changes are made:

a. In paragraph (b)(2) introductory text, the wording "approved by:" is revised to read "concurred in by:".

b. In paragraph (b)(2)(i), the wording "U.S. Army Materiel Command Field Safety Activity (AMXOS–SE)" is revised to read "U.S. Army Technical Center for Explosives Safety (SMCAC–EST)"; the wording "(SEA–665)" is revised to read "(SEA–9934)"; and the wording "Headquarters U.S. Air Force (HQUSAF; ISC/SEWV), in accordance with" is revised to read "Air Force Safety Agency (SEW), when approved by the Chairman, DOD Explosives Board, in accordance with".

§ 173.57 [Amended]

42. In § 173.57, in the first sentence of paragraph (a) introductory text, the wording "(see § 171.8 of this subchapter)" is revised to read "(see § 171.7 of this subchapter)".

§ 173.62 [Amended]

43. In § 173.62, in paragraph (b), in the second sentence, the wording "are listed in Column 6" is revised to read "is listed in Column 4".

§ 173.115 [Amended]

44. In § 173.115, the following changes are made:

a. In paragraph (a) introductory text, the wording "(14.7 psi) which—" is amended by adding a second parenthetical mark to read "(14.7 psi)) which—".

b. In paragraph (a)(2), in the last sentence, the wording "§ 173.306(i)(2), (3), and (4) of this part." is revised to read "§ 173.306(i) of this part.".

§ 173.124 [Amended]

45. In § 173.124, in paragraph (b)(2), in the last sentence, the wording "24=hour test" is revised to read "24-hour test".

§ 173.127 [Amended]

46. In § 173.127, in paragraph (a), in the first sentence, the wording "'oxidizer'" is revised to read "*oxidizer*".

§ 173.128 [Amended]

47. In § 173.128, in paragraph (a) introductory text, the wording "T3organic peroxide" is revised to read "*organic peroxide*".

§ 173.132 [Amended]

48. In § 173.132, in paragraph (b)(1), the wording "administered which to" is revised to read "administered to".

§ 173.133 [Amended]

49. In § 173.133, in the formula in paragraph (b)(1)(ii), the wording "P^{2i}" is revised to read "P_i".

§ 173.136 [Amended]

50. In § 173.136, in the paragraph (a) introductory text, the wording "'corrosive material'" is revised to read "*corrosive material*".

§ 173.151 [Amended]

51. In § 173.151, in paragraph (b)(2), a period is added at the end of the sentence.

§ 173.159 [Amended]

52. In § 173.159, in paragraph (g)(1), in the first sentence, the period following the wording "of glass" is removed and replaced with a comma.

§ 173.225 [Amended]

53. In § 173.225, in paragraph (b) Organic Peroxides Table, for the third entry for "Methyl ethyl ketone peroxide(s)", in Column (8), ",23" is removed; and, for the entry "Methyl isobutyl ketone peroxide(s)", in Column (8), ",23" is added.

§ 173.247 [Amended]

54. In § 173.247, the following changes are made:

a. In paragraph (g)(1)(ii), in the first sentence, the wording "100 Kpa" is revised to read "100 kPa".

b. In paragraph (g)(1)(iii)(B), the wording "46 cm^2 (7.1 $in.^2$)" is revised to read "48 cm^2 (7.4 in^2)".

§ 173.301 [Amended]

55. In § 173.301, in paragraph (g)(5), the wording "avoid injury" is revised to read "avoid damage".

§ 173.304 [Amended]

56. In § 173.304, in paragraph (d)(3)(i), a period is added at the end of the last sentence preceding Note 1.

§ 173.306 [Amended]

57. In § 173.306, in paragraph (i) introductory text, the wording "the following test method must be applied:" is revised to read "one of the following test methods must be applied:".

§ 173.315 [Amended]

58. In § 173.315, in the paragraph (a) table, for the entry "Nitrous oxide, refrigerated liquid", in Column (4), the wording "do" is removed and replaced with "DOT–51, MC–330, MC–331.".

§ 173.318 [Amended]

59. In § 173.318, in paragraph (b)(3)(ii), in the first sentence, the wording "of frangible discs." is revised to read "or frangible discs.".

§ 173.323 [Amended]

60. In § 173.323, in paragraph (f), in the first sentence, the wording "to render the vapor pressure of the tank nonflammable up to 105 °F (41 °C)." is

revised to read "to render the vapor space of the tank nonflammable up to 41 °C (105 °F).".

§ 173.417 [Amended]

61. In § 173.417, in paragraph (b)(2)(ii), in Table 5, Footnote 2, the word "perent" is revised to read "percent".

§ 173.433 [Amended]

62. In § 173.433, in paragraph (b)(4), in the first sentence, the wording "subparagraph (3) of this paragraph" is revised to read "paragraph (b)(3) of this section"; and in the second sentence, the word "kmown" is revised to read "known".

Appendix B [Amended]

63. In appendix B to part 173, in paragraph 6., the wording "§ 178.603(d)" is revised to read "§ 178.603(e)".

Appendix D [Amended]

64. In appendix D to part 173, in the heading "I. Test method D–1—Leakage Test", the wording "I." is revised to read "1.".

Appendix E [Amended]

65. In appendix E to part 173, the following changes are made:

a. In 2.c.(2)(A), in the fifth sentence, the wording "about I cm²" is revised to read "about 1 cm²".

b. In the 4. section heading, the wording "DANGEROUS WHEN WET MATERIALS." is revised to read *"Dangerous When Wet Materials".*

PART 174—CARRIAGE BY RAIL

66. The authority citation for part 174 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53, App. A to part 1.

§ 174.1 [Amended]

67. In § 174.1, the wording "to to be" is revised to read "to be".

§ 174.25 [Amended]

68. In § 174.25, in paragraph (a)(2)(ii), the wording "(0.98 inch)" is revised to read "(0.098 inch)".

§ 174.55 [Amended]

69. In § 174.55, in paragraph (c), the wording "in the car" is revised to read "in the transport vehicle or freight container".

§ 174.82 [Amended]

70. In § 174.82, in paragraph (a), the wording "Division 1.6 combustible liquids" is revised to read "Division 1.6, combustible liquids".

§ 174.290 [Amended]

71. In § 174.290, in the section heading, the wording "poisonous bv inhalation" is revised to read "poisonous by inhalation".

§ 174.430 [Amended]

72. In § 174.430, in the section heading and first sentence, the wording "(pyroforic liquid)" is revised to read "(pyrophoric liquid)" each place it appears.

§ 174.700 [Amended]

73. In § 174.700, in the paragraph (c) table, in footnote 1, the wording "undeveloped filmed" is revised to read "undeveloped film".

PART 175—CARRIAGE BY AIRCRAFT

74. The authority citation for part 175 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808; 49 CFR part 1.

§ 175.320 [Amended]

75. In § 175.320, the following changes are made:

a. In the paragraph (a) table, for the entries "Fuel, aviation, turbine engine; methyl alcohol; or toluene"; "Gasoline"; and "Oil n.o.s.; petroleum oil or petroleum oil, n.o.s.", in Column (3), the wording "(oxidizing)" is revised to read "(oxidizer)" each place it appears.

b. In paragraph (c) introductory text, the wording "(flammable) and combustible liquid)" is revised to read "(flammable) and combustible liquid".

PART 176—CARRIAGE BY VESSEL

76. The authority citation for part 176 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1.53, App. A to part 1.

§ 176.5 [Amended]

77. In § 176.5, in paragraph (b) introductory text, the wording "With the exception of paragraph (c) of this section," is removed and the word "this" is revised to read "This".

§ 176.83 [Amended]

78. In § 176.83, in paragraph (f)(4), the wording "a 'container spaeans a distance" is revised to read "a 'container space' means a distance".

§ 176.100 [Amended]

79. In § 176.100, in the first sentence, the wording "33 CFR 126.9" is revised to read "33 CFR 126.19".

§ 176.118 [Amended]

80. In § 176.118, in paragraph (b), in the last sentence, the wording "satisfactory grouping" is revised to read "satisfactory grounding".

§ 176.410 [Amended]

81. In § 176.410, in paragraph (c)(2), the wording "away for the material" is revised to read "away from the material".

PART 177—CARRIAGE BY PUBLIC HIGHWAY

82. The authority citation for part 177 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805; 49 CFR part 1.

83. Section 177.825 is revised to read as follows:

§ 177.825 Routing and training requirements for Class 7 (radioactive) materials.

A carrier or any person operating a motor vehicle that contains a Class 7 (radioactive) material for which placarding is required must comply with routing and training requirements in 49 CFR part 397, subpart D.

§ 177.834 [Amended]

84. In § 177.834, in paragraph (j), the wording "by loading and storage chart, § 177.848" is revised to read "by the Segregation Table in § 177.848".

§ 177.838 [Amended]

85. In § 177.838, in paragraph (g), the following changes are made:

a. In the penultimate sentence, the wording "insider containers" is revised to read "inside containers" and the wording "(16 pounds." is revised to read "(16 pounds).".

b. In the last sentence, the word "MATERIAL" is removed.

§ 177.857 [Amended]

86. In § 177.857, in paragraph (d), in the last sentence, the comma in the wording "left, either" is removed.

§ 177.858 [Amended]

87. In § 177.858, in paragraph (b)(1), the wording "Further to transport the cargo tank" is revised to read "Transport the cargo tank".

PART 178—SPECIFICATIONS FOR PACKAGINGS

88. The authority citation for part 178 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

§ 178.39–9 [Amended]

89. In § 178.39–9, in paragraph (a), a period is added at the end of the second sentence after the word "percent".

§ 178.39–14 [Amended]

90. In § 178.39–14, in paragraph (b), at the end of the second sentence, after the word "pressure", the comma is removed and replaced with a period.

§ 178.46–12 [Amended]

91. In § 178.46–12, paragraph (e) is redesignated as paragraph (c).

§ 178.53–9 [Amended]

92. In § 178.53–9, in paragraph (b), the word "sphere" is revised to read "*sphere*".

§ 178.55–20 [Amended]

93. In § 178.55–20, in paragraph (a) introductory text, the wording "not less and" is revised to read "not less than".

§ 178.56–3 [Amended]

94. In § 178.56–3, in the first sentence, the word "manufcturer" is revised to read "manufacturer".

§ 178.56–11 [Amended]

95. In § 178.56–11, in paragraph (a), in the second sentence, the comma following the wording "1100 °F." is removed.

§ 178.60–24 [Amended]

96. In § 178.60–24, in paragraph (a), in the form, the wording "The ________ permitted in (neckrings, footrings, etc.)" is revised to read "The ________ (neckrings, footrings, etc.) permitted in".

§ 178.61–8 [Amended]

97. In § 178.61–8, in paragraph (c)(2), in the second sentence, the word "sport" is revised to read "spot".

§ 178.61–20 [Amended]

98. In § 178.61–20, in paragraph (b), in the last sentence, the wording "necessitate by" is revised to read "necessitated by".

§ 178.270–5 [Amended]

99. In § 178.270–5, in paragraph (d), in the formula for metric units, the wording "3_i" is revised to read "e_i".

§ 178.270–11 [Amended]

100. In § 178.270–11, in paragraph (d)(1), in the second sentence, the wording "value" is revised to read "valve", and the wording "(120,000 SCFH)" is revised to read "(12,000 SCFH)".

§ 178.337–1 [Amended]

101. In § 178.337–1, in paragraph (f), in the penultimate and last sentences, the wording "post-weld" is revised to read "postweld" both places it appears.

§ 178.337–16 [Amended]

102. In § 178.337–16, in paragraph (b)(2), in the first sentence, the word "describe" is revised to read "described".

§ 178.338–10 [Amended]

103. In § 178.338–10, in paragraph (c), in the first sentence, the wording "with a least one rear bumper" is revised to read "with at least one rear bumper".

§ 178.338–19 [Amended]

104. In § 178.338–19, in paragraph (c), in the last sentence, the wording "certificate or cetificates" is revised to read "certificate or certificates".

§ 178.345–14 [Amended]

105. In § 178.345–14, in paragraph (b)(11), the wording "minimum shell thicknesses is not" is revised to read "minimum shell thicknesses are not".

§ 178.352–2 [Amended]

106. In § 178.352–2, in paragraph (a), the reference "(see § 178.103–6)." is revised to read "(see § 178.352–6).".

§ 178.352–6 [Amended]

107. In § 178.352–6, in paragraph (a)(2), the wording "R A D I O A C T I V E" is revised to read "RADIOACTIVE".

§ 178.362–2 [Amended]

108. In § 178.362–2, in paragraph (e)(5), in the last sentence, the word "chines" is revised to read "chimes".

§ 178.516 [Amended]

109. In § 178.516, in the paragraph (b)(3)(i) introductory text, the word "Joints" is revised to read "joints".

§ 178.518 [Amended]

110. In § 178.518, in paragraph (a)(2), the wording "sift proof" is revised to read "sift-proof".

§ 178.600 [Amended]

111. In § 178.600, a period is added at the end of the sentence.

§ 178.603 [Amended]

112. In § 178.603, in the paragraph (a) table, for the last entry "Bags—single-ply without a side seam, or multi-ply", in Column 2, the wording "Three—(three drops per bag)." is revised to read "Three—(two drops per bag).".

§ 178.605 [Amended]

113. In § 178.605, in paragraph (d)(1), the wording "minus 100 kPa (15 psi) at 55 °C (131 °F) and multiplied by" is revised to read "minus 100 kPa (15 psi)) at 55 °C (131 °F), multiplied by".

PART 179—SPECIFICATIONS FOR TANK CARS

114. The authority citation for part 179 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

115. In part 179, in the table of contents for subpart F, the last two entries "179.500–9" and "179–500–10" which immediately follow the entry " § 179.500–18" are removed.

§ 179.101–1 [Amended]

116. In § 179.101–1, at the end of the paragraph (a) table, in footnote 6, the wording "Sec." is revised to read "See".

§ 179.105–4 [Amended]

117. In § 179.105–4, in paragraph (a) introductory text, the wording "112J," is added immediately following "111J," and immediately before "112T,".

§ 179.203–1 [Amended]

118. In § 179.203–1, in paragraph (a), the wording "179.200, 179.201, and 179.202." is revised to read "179.200 and 179.201.".

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

119. The authority citation for part 180 is revised to read as follows:

Authority: 49 App. U.S.C. 1803; 49 CFR part 1.

§ 180.405 [Amended]

120. In § 180.405, in paragraph (f)(2) introductory text, the word "is" following "outlet" is removed.

§ 180.407 [Amended]

121. In § 180.407, in paragraph (f)(1)(i)(C), in the second sentence, the word "guage" is revised to read "gauge".

Issued in Washington, DC on September 9, 1993 under authority delegated in 49 CFR part 1.

Rose A. McMurray,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93–22597 Filed 9–30–93; 8:45 am]

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Friday
October 1, 1993

Part VII

Environmental Protection Agency

40 CFR Part 258

Solid Waste Disposal Facility Criteria; Delay of Compliance and Effective Dates; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL-4782-4/EPA530-Z-93-012]

Solid Waste Disposal Facility Criteria; Delay of Compliance and Effective Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On October 9, 1991, EPA promulgated revised Federal criteria for Municipal Solid Waste Landfills (MSWLFs) under subtitle D of the Resource Conservation and Recovery Act (RCRA). Today's final rule amends these criteria by delaying the general date for compliance with the criteria until April 9, 1994 for certain small landfills and by delaying the effective date of subpart G, Financial Assurance, until April 9, 1995 for all MSWLFs. In addition, the MSWLF criteria are amended by removing the exemption from the ground-water monitoring requirements and delaying the date for compliance with all requirements of the MSWLF criteria for two years for owners and operators of MSWLF units in arid and remote areas that meet the qualifications of the small landfill exemption in the MSWLF criteria. Additionally, the date of final cover installation is extended for owners/operators of MSWLFs units that cease receipt of waste by their compliance date. Finally, the compliance date is delayed for certain MSWLFs in the mid-west receiving flood-related waste from a federally designated disaster area. Because states/Tribes may have earlier effective dates or other requirements in their own state/Tribal regulations, owners and operators of MSWLFs are encouraged to consult with their state/Tribe.

EFFECTIVE DATES: The amendments in this final rule are effective October 9, 1993, except for the amendments to §§ 258.70 and 258.74 in subpart G, which are effective April 9, 1995.

The effective date of subpart G of part 258 (§§ 258.70 through 258.74) which was added at 56 FR 51016 is delayed from April 9, 1994 until April 9, 1995. See "II. Background, A. Effective Dates" under **SUPPLEMENTARY INFORMATION** for further information about this effective date.

ADDRESSES: The public record for this rulemaking (docket Number F-93-XMLP-FFFFF) is located at the RCRA Docket Information Center, (OS-305), U.S. Environmental Protection Agency Headquarters, 401 M Street SW., Washington, DC 20460. The public docket is located at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260-9327. Copies cost $0.15/page. Charges under $25.00 are waived.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346, TDD (800) 553-7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920-9810, TDD (703) 486-3323.

For more detailed information on specific aspects of this final rule, contact David Hockey or Allen Geswein, Office of Solid Waste (OS-301), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-1099.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

EPA is promulgating these regulations under the authority of sections 2002 and 4010(c) of the Resource Conservation and Recovery Act of 1976, as amended. RCRA section 2002 provides the EPA Administrator with the authority to promulgate regulations as are necessary to carry out her functions under the Act. 42 U.S.C. 6912. Under section 4010(c) of RCRA, the EPA Administrator is required to promulgate revised criteria for facilities that may receive household hazardous waste (HHW) or small quantity generator (SQG) waste. The criteria shall be those necessary to protect human health and the environment. At the same time, in promulgating these revised criteria, the Administrator may take into account the practicable capabilities of facilities that may receive HHW or SQG waste. 42 U.S.C. 6949a(c). EPA has interpreted "practicable capability" to include both the costs which facilities will incur in complying with the revised criteria and the technical capability of facilities that must comply with the regulations. 56 FR 50978, 50983-84 (October 9, 1991); 53 FR 33314, 3325 (August 30, 1988). EPA has taken practicable capability of MSWLF owners and operators into account in modifying the effective date of the revised criteria as set forth in this **Federal Register** notice.

II. Background

A. Clarification of Effective Dates

By delaying the compliance dates of the MSWLF criteria in a number of ways, this rule relieves restrictions that part 258 would have imposed on those facilities that would have otherwise had to have complied with the criteria by the effective dates set forth in the rule published on October 9, 1991. 56 FR 50978. Because this rule relieves, rather than imposes, regulatory burdens, delaying the effective date of today's rule is not necessary in order to allow time for the regulatory community to comply. In addition, EPA believes that it has good cause to make today's rule effective in less than 30 days. If the rule's effective date were delayed until 30 days after today's publication, all owners and operators of MSWLFs that fall within the ambit of this rule would have to meet the deadline already established in part 258, which had a general effective date of October 9, 1993. 40 CFR 258.1 (e) and (j). Such a result would negate the entire effect of this rule, which is to provide some regulatory relief for certain owners/operators of MSWLFs that are finding it extremely difficult for a variety of reasons (including floods in the

Midwest) to comply with the original effective dates in part 258. Thus, the Agency believes that it has the authority to make today's rule effective in less than 30 days in accordance with section 553 of the Administrative Procedures Act. 5 U.S.C. 553(d) (1) and (3).

B. Overview of the Subtitle D Effective Dates as Promulgated on October 9, 1991

On October 9, 1991, EPA promulgated a rule under subtitle D of the Resource Conservation and Recovery Act and section 405 of the Clean Water Act pertaining to the disposal of solid waste and sewage sludge in MSWLFs (56 FR 50978 (October 9, 1991)). The regulations and effective dates of the criteria were originally promulgated as follows. The criteria applied to owners and operators of all MSWLF units that receive waste on or after October 9, 1993. Landfill owners and operators that stopped accepting waste before October 9, 1991 were not required to comply with the regulations. Those landfill owners and operators that stop accepting waste between October 9, 1991 and October 9, 1993 were exempt from all of the regulatory requirements except for the final cover (found in 40 CFR 258.60(a)), which had to be applied within six months of last receipt of waste. Owners and operators that continued to receive waste beyond the October 9, 1993 effective date were required to comply with the remainder of the landfill regulations (including location restrictions, operation, design, ground-water monitoring and corrective action, closure and post-closure, and financial assurance). Additionally, the regulations provided for a phase-in of two of the more costly requirements: the financial assurance requirements (effective April 9, 1994) and ground-water monitoring and corrective action requirements (effective October 9, 1994 through October 9, 1996). Finally, the regulations allowed for an exemption from the design, ground-water monitoring and corrective action provisions for very small arid and remote landfills that met the criteria of 258.1(f).

C. Implementation of the MSWLF Criteria

Section 4005(c)(1)(B) of RCRA, as amended, requires states to develop and implement permit programs or other systems of prior approval and conditions to ensure that the MSWLFs are complying with the MSWLF criteria. [The Agency intends to extend to Indian Tribes the same opportunity to apply for permit program approval as is available to states. Providing Tribes with the opportunity to apply for approval to adopt and implement MSWLF permit programs, while not a statutory requirement in RCRA section 4005(c)(1)(B), is consistent with EPA's Indian Policy. The Agency plans to propose the concept of Tribal permit program approval when a tentative notice of permit program adequacy is published for the first Indian Tribe seeking program approval.] EPA's implementation role is largely to review and determine whether these state/Tribal permit programs are adequate. EPA believes that for permit programs to be considered adequate, a state/Tribe must have the capability of issuing permits or some other form of prior approval for all MSWLFs in the state/Tribe, and must establish requirements adequate to ensure that owners and operators will comply with the federal landfill criteria. A state/Tribe also must be able to ensure compliance through monitoring and enforcement actions and must provide for public participation in their permitting and enforcement actions.

EPA-approved state/Tribal permit programs have the opportunity to exercise more flexibility and discretion in implementing the criteria according to local conditions and needs. Owners and operators of MSWLF units located within the jurisdiction of a state/Tribe with an approved program may benefit from this potential flexibility, which extends to many parts of the MSWLF regulations. For example, owners and operators of MSWLF units in unapproved states/Tribes must design their new units and lateral expansions of existing units with a composite liner in compliance with 40 CFR 258.40(b), whereas approved states/Tribes may allow an owner/operator to use an alternative design based on the performance standard described in 40 CFR 258.40(a). Because of the flexibility provided to an approved state permit program, and because state permit program approval is mandated by section 4005(c)(1)(B) of RCRA, EPA fully expects that most states will apply for and receive full approval of their MSWLF permit programs, thereby maintaining the lead role in implementing and enforcing the MSWLF Criteria promulgated under 40 CFR part 258.

States are currently in various stages of the program approval process. Some states have received full program approval, while several states have received "partial" program approval, whereby only some portions of the state permit program have been approved while the remainder of the program is awaiting approval pending completion of statutory and/or regulatory changes by the state. In situations where a state permit program is not approved, or where portions of a program are not approved (in the case of a partial approval), the MSWLF criteria (or unapproved portions of criteria) are implemented by the owner and operator, with no Federal permitting program or interaction. In such situations, where the MSWLF criteria are "self-implementing", each owner/operator must document compliance and maintain this documentation in the operating record.

D. Summary of Proposed Rule

When the municipal solid waste landfill criteria were developed, EPA included a number of features that serve to facilitate owners' and operators' ability to come into compliance by the promulgated effective dates. These features include phased-in effective dates, certain exemptions for very small arid and remote landfills, and numerous opportunities for flexibility in states/Tribes with EPA-approved permit programs. Despite these features, the Agency received a significant number of requests to extend the effective date of the MSWLF criteria. These requests came primarily from local governments that own/operate smaller landfills who related their problems with meeting the effective date, including: (1) inability to comply with unfunded federal requirements; (2) lack of flexibility in unapproved states; and (3) delays in gaining access to new waste management facilities. Therefore, on July 28, 1993, the Agency proposed to amend the municipal solid waste landfill criteria (58 FR 40568) to extend the effective date of the Criteria. The proposal was not intended to change the environmentally protective features of the MSWLF criteria, but would provide certain owners and operators with additional time to come into compliance with the MSWLF criteria requirements.

The July 28th notice proposed to amend the criteria in four areas. First, the Agency proposed to delay the effective date of the criteria until April 9, 1994 for certain small landfills that: dispose of 100 tons of waste per day or less; are located in a state that has submitted an application for permit program approval by October 9, 1993 or are located on Indian Lands; and are not currently on the National Priorities List. Second, EPA proposed to delay the effective date of Subpart G, Financial Assurance, until April 9, 1995 for all MSWLFs. Third, in response to a U.S. Court of Appeals decision, *Sierra Club v. United States Environmental Protection Agency*, 992 F.2d 337 (D.C.

Cir. 1993), the Agency proposed to remove the exemption from the ground-water monitoring requirements in 40 CFR 258.50–258.55, for owners and operators of MSWLF units in arid and remote areas that meet the qualifications of the small landfill exemption outlined in 40 CFR 258.1(f). Additionally, EPA proposed to extend the effective date for all requirements of the MSWLF criteria for a period of two years, until October 9, 1995, for all MSWLF units in arid and remote areas that qualify for the small landfill exemption under 258.1(f). Lastly, the Agency proposed to amend the final cover requirements by requiring owners/operators of MSWLF units that cease receipt of waste by their effective date to complete final cover installation by October 9, 1994 except for very small MSWLFs. Very small MSWLFs in arid and remote areas that qualify for the small landfill exemption (under 258.1(f)) and cease receipt of waste before their effective date of October 9, 1995 must complete final cover installation by October 9, 1996.

III. Response to Comments and Analysis of Issues

The 30-day comment period for the July 28th proposed rule ended on August 27, 1993. The Agency received over 300 comments on the proposal. This section summarizes and addresses the major comments as they relate to the four major amendments in the July 28, 1993 proposal. The Agency received a number of comments on the MSWLF criteria not directly related to the issue of delaying the effective date. The discussion that follows is limited to the major issues relevant to the July 28th proposal. A discussion of the remaining comments can be found in a background document available in the RCRA Docket Information Center.

A. Delaying the General Effective Date

In the July 28th proposal, EPA requested comment on a proposed six-month delay of the effective date (to April 9, 1994) for MSWLFs accepting 100 TPD or less of any combination of household, commercial, or industrial solid waste on an average annual basis that are located in either a state that has submitted an application for permit program approval by October 9, 1993 or on Indian lands and are not on the Superfund National Priorities List (NPL). The majority of commentors were generally in favor of the proposed delay. The major comments submitted on this portion of the proposal are summarized below.

1. A Six-Month Time Frame

The proposed rule provided for a one-time, six-month delay of the general effective date. Some commentors questioned the appropriateness of the Agency's choice of a six-month delay of the effective date. Proposals from commentors ranged from total opposition to any delay to enthusiastic support for a longer delay by as much as two years. Commentors who supported the extension cited many reasons, including the following: (1) inability to comply with unfunded federal requirements; (2) lack of flexibility in unapproved states; and (3) delays in gaining access to a new waste management facility. As for those who supported a longer delay by as much as two years, these commentors believed that six months was too short based on their specific situation. As stated in the proposal, the Agency chose a six-month delay to accommodate the parties most in need—owners and operators, such as small communities (including local governments that own/operate MSWLFs)—who have made good faith efforts to seek alternative disposal facilities and need some limited additional time to complete those efforts. 58 FR 40570–71. While six months may not be enough time for all owners and operators to complete all necessary actions, EPA does not want to further delay the implementation of the criteria promulgated almost two years ago. This additional time is not designed to solve the problems facing communities that recently started the siting process or who are many months or years away from operating a new facility. Lengthy delays could increase the potential for environmental problems (e.g., failure to close substandard landfills) and would penalize those who took the necessary steps to comply with the October 9, 1993 effective date. Therefore, the Agency did not find these arguments to delay the effective date beyond six months to be persuasive.

Other commentors suggested that EPA should delay the general effective date for more than six months to allow EPA more time to approve additional state permit programs. EPA has determined that, on the average, review and approval of a typical state permit program application can be completed within approximately six months. Based on current information from states, EPA believes that all or almost all states will submit an application for approval by October 9, 1993. This six-month extension will ensure in most cases that the federal criteria would not become effective before the state permit program was approved, thus allowing many owners and operators to avoid the situation of gearing up to meet federal standards and then, a few months later, changing to meet newly approved state standards. In addition, this additional time will allow a vast majority of MSWLF owners and operators to take advantage of the flexibility and the potential cost savings available when states are approved.

2. 100 Tons Per Day or Less Size Limitation

The proposed rule limited the six-month extension to smaller landfills that accept 100 tons per day or less of any combination of household, commercial, or industrial solid waste. The Agency received a number of comments on this restriction. Some commentors suggested an increased tonnage limit (up to 750 TPD), while others questioned the need to limit the extension based on the amount of waste accepted by the landfill and felt that the extension should be available to owners and operators regardless of the amount of waste accepted per day (i.e., a blanket extension). As stated in the proposal, the Agency believes that the 100 TPD or less cut-off is representative of the majority of smaller community landfills that have had the most difficulty coming into full compliance by the October 9, 1993 deadline, because financial conditions, legal challenges, and geography have created significant obstacles to compliance, often despite good-faith efforts to comply. For example, many of the smaller landfills intend to close, and their users will instead send their waste to a regional waste management facility where they can take advantage of economies of scale. The process of regionalization, including closure of their existing MSWLF and construction of a new transfer station, has taken more time than many small communities had originally anticipated. Additionally, the Agency is concerned that increasing the tonnage or allowing a "blanket" or unlimited extension, as suggested by some commentors, would not fulfill EPA's goal of granting relief to only those most in need—primarily small communities. By setting the limit at 100 TPD, the Agency targets relief to the greatest extent possible while ensuring that most waste, as of October 9, 1993, will be disposed in accordance with the requirements of 40 CFR part 258. As discussed in the proposal, setting the limit at 100 tons per day would provide potential relief to approximately 75 percent of the MSWLFs in the country which manage only about 15 percent of the total national waste stream.

One commentor argued that the Agency should have adhered to its own definition, in the October 9, 1991 rule, of a small landfill used for the small landfill exemption found at 258.1(f) (i.e., 20 tons per day). In developing the proposed size limitation, EPA found that landfills accepting no more than 100 tons per day of solid waste tend to be those experiencing the most severe budget and technical problems. The Agency did not set the waste acceptance limit for this extension at 20 tons per day, because the scope of the problem appeared to extend to somewhat larger landfills, primarily those serving communities with a population up to a range of 45,000 to 57,000 (i.e., landfills accepting approximately 100 tons per day). Additionally, a portion of the landfills accepting 20 TPD or less will qualify for the two year delay of all of the MSWLF criteria (see subsection D; Very Small Arid and Remote MSWLF Extension), if they meet the criteria of the small landfill exemption in 258.1(f). Therefore, the Agency is retaining the 100 TPD limit in the final rule. As in the proposal, it is important to note that the effective date for MSWLF units accepting greater than 100 TPD will continue to be October 9, 1993.

In the proposed rule, the Agency solicited comments on whether two calculations were necessary to determine whether an MSWLF unit qualified and continued to be eligible for the extension. First, to qualify for the extension, the MSWLF unit would have had to dispose of 100 tons per day or less of solid waste between October 9, 1991 and October 9, 1992. Second, the owner/operator of the MSWLF unit would not be allowed to dispose of more than an average of 100 TPD of solid waste each month between October 9, 1993 and April 9, 1994. The "historical" (e.g., October 9, 1991 through October 9, 1992) time frame was suggested mainly to assure that larger landfills would not alter the amount of waste they are presently accepting in order to take advantage of today's six-month extension, while the monthly average calculation was intended to ensure that the "small" landfills would remain so during the extension period. As discussed in this preamble, today's extension is intended for smaller landfills already in existence.

A few commentors generally supported the need for an historical time frame calculation to determine that the MSWLF qualifying for the extension was indeed a small landfill. However, numerous commentors, including many small landfill owners and operators, cited many reasons why they believed the proposed method of determining the historical time frame (i.e., based on the average collected during the year October 9, 1991 through October 9, 1992) was unnecessarily restrictive. For example, commentors felt the historical time frame did not consider that unusual circumstances (e.g., sudden additional incoming waste due to closure of a neighboring landfill during the target year) may have increased the quantity of waste to a landfill during the target period. Commentors also were concerned that a great deal of time and resources could be spent in determining whether or not a landfill, with no scales or past records, qualified for the extension. Commentors noted that recordkeeping at small landfills, usually staffed part-time, may be non-existent for the historical time period, may not be organized in a way that identifies the daily tonnage, nor allows such a time period to be readily identified. These commentors felt that such resources and time would be better spent upgrading the landfill or finding waste management alternatives. One commentor argued that their landfill did not begin receiving waste until after the historical time period and therefore has no records.

The Agency recognizes that some of these situations could prevent some otherwise deserving landfills from qualifying for the six-month extension. Today's rule is intended to grant needed relief to certain MSWLF owners and operators in a manner that does not disqualify truly deserving facilities and does not increase owner/operator record-keeping burden in order to qualify for the extension. In an effort to balance the need to limit the extension to only small landfills, while at the same time limiting the burden on those who qualify, today's final rule provides that the extension is for units that "disposed of 100 tons per day or less of solid waste during a representative period prior to October 9, 1993." The historical measurement of waste receipt should be based on the average acceptance of waste over a representative period prior to October 9, 1993, as determined by the owner/operator. In determining the historical measurement of waste, the Agency recommends that owners and operators determine the average receipt of waste during the period of October 9, 1991 through October 9, 1992. This period of time should provide the most current representative "snapshot" of waste receipt at a MSWLF unit. Waste receipt at MSWLF units after October 1992 may not be as representative due to changes in practices (either downsizing or upgrading) as a result of the impending October 9, 1993 effective date. However, in the instance that the owner/operator does not have records for this period, or believes that this period is not representative of their past receipt of waste, then the owner/operator may choose an alternative period (e.g., the most recent twelve consecutive month period not impacted by extraneous circumstances). The historical calculation method adopted for today's extension is implicitly the same as the historical measurement method MSWLF owners and operators use in determining if their MSWLF will meet the small landfill exemption (less than 20 TPD) of 258.1(f). Owners and operators therefore will have the flexibility to base their historical determination of average waste receipt on their available records while considering special circumstances.

It is the responsibility of the owner/operator to document an historical acceptance of waste of 100 TPD or less. The Agency will not require owners and operators to maintain records on the amount of waste the facility accepts, but if the owner/operator believes that the facility may be close to the 100 TPD limit, then it may be in the owner/operators' best interest to develop and maintain some indication on the amount of waste accepted given the possibility of citizen suits being filed under section 7002 of RCRA.

Commentors supported the proposed monthly calculation during the extension period to continue to qualify for the extension. Therefore, MSWLFs will continue to be required to accept 100 TPD or less based on a monthly average during the time period of October 9, 1993 until April 9, 1994 to qualify for an extension.

Finally, the proposed rule requested comment on methods of calculating the tons per day accepted by facilities. EPA suggested two methods: (1) divide the total annual amount of waste received by 365 days or (2) conduct a one-time measurement of a day's typical full trash-hauling vehicles, then estimate the weight from volume of trash-hauling vehicles by using a conversion factor (e.g., one ton equal to three cubic yards of waste) or using sales/acceptance receipts from trash haulers. Commentors generally agreed that both of these methods to calculate the acceptance of waste would suffice for the majority of their situations. Several commentors suggested the use of a conversion factor of one ton equal to five cubic yards of noncompacted waste. Rather than set strict calculation methods, the Agency believes that the approach should remain flexible whereby the owner/

operator use reasonable and defensible assumptions in calculating their tonnage.

3. Lateral Expansions

The proposed rule limited the extension to existing units and to lateral expansions of existing units to accommodate trench and area fills. A few commentors were concerned that landfills qualifying for the extension would laterally expand over a larger area than actually needed, thus greatly increasing the size of their existing unit by the new April 9, 1994 effective date. The commentors proposed that EPA limit the capacity of MSWLF unit lateral expansions to not exceed six-months of capacity for the entire MSWLF unit. The Agency feels that this type of limitation would create an unnecessary complication for owners and operators in implementation of this extension and that this issue already is addressed in the current definition of an existing unit. The definition of "existing MSWLF unit" in § 258.2, defines such a unit as one that is receiving solid waste as of the effective date of the landfill criteria with the caveat that waste placement in the unit be consistent with past operating practices or modified practices to ensure good management. The Agency has interpreted this to mean that an existing unit is defined by the areal extent of waste (sometimes referred to as the waste "footprint") placed as of the effective date of the criteria and that the spreading of waste over a large area to avoid the liner requirements is not acceptable (see 56 FR 51041, October 9, 1991).

A commentor suggested that EPA should only have granted an exemption to landfills that were undertaking vertical expansions, and not extend the exemption to lateral expansions. As noted earlier, the major difficulties in meeting the criteria deadline appear to fall mainly on smaller community landfills and the extension therefore is largely directed at such landfills. Many of these smaller landfills use trench and area fill practices. For example, in a trench fill operation, a small trench is excavated, filled, and covered in a relatively short period of time. As the old trench is filled, it is extended to accommodate additional waste. This extension is by definition a lateral expansion. Limiting the extension to vertical expansions would therefore disrupt these customary practices and limit the extension to considerably fewer landfills than EPA intended. Therefore, today's final rule continues to allow existing units and lateral expansions of existing units to receive the six-month extension.

4. State Submittal of a Permit Program Application

The proposed rule limited the six-month extension only to owners and operators of MSWLFs in states that have submitted an application for permit program approval by October 9, 1993 or are located on Indian Lands. Some commentors questioned the need for the state to have submitted an application in order for the owner/operator to qualify for the extension. The Agency continues to work toward its goal of approving all states and Tribes (to the extent they apply). Approval of State/Tribal permit programs is a high priority and the Agency does not want the extension to detract from this goal. EPA believes that the linkage of the extension to submission of an application will serve as impetus for states to submit their applications by October 9, 1993 and for advancing the Agency's goal of approving all states by April 9, 1994. In fact, the Agency now believes that every state except Iowa will submit an application by October 9, 1993.

In the proposed rule, the Agency indicated that when it published the final rule, it would include a list of states who have submitted an application by the date on which the final rule was signed. 58 FR 40572. Because most states have now submitted an application, for purposes of simplicity, the following is a list of those states who have not submitted an application as of the date of signature: Alaska, American Samoa, Arizona, Guam, Hawaii, Iowa, Maine, New Jersey, Northern Marianas, Ohio, Puerto Rico, Rhode Island, and the Virgin Islands. Because most of these states are expected to apply between the date of signature and October 9, 1993, owners and operators of MSWLF units located in these states are encouraged to contact their state to find out whether the State has submitted an application by October 9, 1993.

Due to the time and resources required to deal with the effects of the Great Flood of 1993, the state of Iowa has indicated that it will not be able to apply for approval of its permit program by October 9, 1993, although the state had originally planned to do so. In an effort not to penalize those small landfills in need of relief located in the state of Iowa, the final rule does not include the requirement that Iowa submit a permit program application by October 9, 1993 for owners and operators in that state to take advantage of the six-month delay. Owners and operators in Iowa, however, will be required to meet all other requirements to qualify for the six-month extension in today's final rule.

In the proposal, the Agency provided that owners and operators of MSWLFs located on Indian lands would be eligible for the six month extension even if the Tribe had not submitted an application for permit program approval by October 9, 1993. As discussed in the proposal, RCRA does not require Indian Tribes to develop a permit program for MSWLFs. Because many of the landfills on Indian lands could qualify for today's six-month extension by virtue of the fact that they accept less than 100 TPD and are not on the National Priorities List, the Agency proposed to allow MSWLF units on Indian lands to take advantage of the six-month extension, even if the Indian Tribe has not submitted an application for permit program approval by October 9, 1993. Commentors agreed with this provision as long as all other requirements for the extension are fulfilled. Therefore, today's final rule allows owners/operators located on Indian Lands to be granted the six-month extension as long as all of the other requirements of this rule are met.

No comments were received that suggested changes to the proposed definitions of "Indian land or Indian country" and "Indian Tribe or Tribe." Therefore, these definitions are retained in today's final rule. While the definition of Tribes in today's final rule does not explicitly include Alaska Native Villages, EPA believes that, to the extent these entities exercise substantial governmental duties and powers, they would be eligible to apply for permit program approval. For purposes of today's rule, as with Indian lands in other States, EPA is allowing landfills on Native Village Lands to be eligible for the six-month extension whether or not the Village has submitted an application for permit program approval.

Some commentors suggested that EPA delegate to states who have submitted a permit program application by October 9, 1993 more flexibility in implementation of the delay. Commentors suggested, for example, that such states should have the flexibility to: Determine the need for a delay on a site-by-site basis, to grant longer than a six-month extension, or to waive the 100 TPD limit. As discussed throughout this preamble, the Agency set the length of the extension and size criteria so as to target limited relief for those MSWLF units in greatest need—small landfills. Therefore, in order to maintain this focus, the Agency will continue to require that these criteria be used as the minimum national criteria.

However, other commentors were concerned that a delay of the criteria would undermine states' efforts in implementing the MSWLF criteria (e.g., oppose state's existing closure schedules for substandard landfills). As stated in the proposal, a state/Tribe, regardless of its permit program approval status, may impose more stringent effective dates and/or more stringent criteria for qualifying for an extension (e.g., maintain current closure schedules) if they so choose. Therefore, the extension should not have the negative effect predicted by these commentors.

5. National Priorities List

The proposed rule did not extend the six-month extension to MSWLFs currently on the Superfund National Priorities List as published in appendix B to 40 CFR part 300. Commentors agreed with this exclusion; therefore, the final rule retains this provision. Some commentors suggested that the extension be further restricted by disallowing any MSWLF that is on a state Superfund list or in violation of another state environmental regulation. As discussed in the previous section, states may always be more stringent (e.g., prevent MSWLFs on their state Superfund lists from gaining an extension) in their approach to the extension.

6. Other Limitations Suggested by Commentors

A few commentors requested that EPA limit the extension to prohibit MSWLFs that qualify from accepting non-hazardous industrial waste. Under the criteria as promulgated on October 9, 1991, MSWLFs may accept non-hazardous industrial waste to be co-disposed with household waste. The Agency did not limit today's extension in the manner suggested for the following reasons: (1) The prohibition of non-hazardous industrial waste would be difficult to implement and enforce; (2) this waste stream typically represents a small fraction of the entire waste sent to a MSWLF; (3) for some generators, the local MSWLF represents the only economical method of disposal of their non-hazardous industrial waste; and (4) this is a one-time extension for a short period of time (i.e., six months). Therefore, the final rule will allow MSWLFs qualifying for the extension to accept non-hazardous industrial waste for co-disposal with household waste.

Finally, some commentors suggested that in order to qualify for the extension, the MSWLF must be in compliance with all of the location restrictions of subpart B of the criteria by the effective date. EPA did not limit the extension based on a facility meeting the location restrictions because many of the restrictions (e.g., wetlands, fault areas, seismic zones) do not apply to existing units, the major target of the extension. In addition, under the criteria as promulgated, existing units that cannot meet the requirements for airports, floodplains, or unstable areas already have until October 9, 1996 to close (unchanged by today's rule). Limiting the extension for these facilities would not have much of an effect. Therefore, today's final rule does not place location restrictions on MSWLFs eligible for the extension.

B. Delaying the Financial Assurance Effective Date

The proposed rule provided for a one-year extension of the financial assurance requirements (from April 9, 1994 to April 9, 1995) for all MSWLFs, regardless of size. The majority of commentors supported the need to extend the financial assurance requirements. Commentors noted that the one-year delay provides time for the owners and operators to budget and to acquire the appropriate financial assurance mechanism for their MSWLFs. The Agency, in setting the original April 9, 1994 effective date for the financial assurance requirements, believed that this date would allow adequate time to promulgate a financial test for local governments and another test for corporations (see 56 FR 50978). However, the Agency currently estimates that neither financial test will be promulgated within the time frame anticipated. The Agency believes that local governments should have these financial tests available to them before the financial responsibility provisions become effective. The delay of one year provided in this rule should enable EPA to finish promulgation of these tests and should ensure that owners and operators will have the opportunity to evaluate their needs based on these financial tests. As a result, many local governments will be able to realize a significant decrease in the cost of compliance with the financial responsibility requirements, while assuring that the costs associated with closure, post-closure, and known corrective action at the MSWLFs will be met.

A few commentors suggested that EPA extend the effective date of the financial assurance requirements beyond the proposed one-year delay. The Agency anticipates that the one year extension will be sufficient time to complete the proposal and promulgation of the financial tests. EPA also believes that one year should provide adequate notice to affected parties so they may determine whether they satisfy the applicable financial test criteria for all of the obligations associated with their facilities or whether they need to obtain an alternate instrument for some or all of their obligations. The Agency notes that approved states/Tribes have the flexibility to develop alternative financial mechanisms that meet the criteria specified in § 258.74(1) for use by their owners and operators. This may include development of a state financial test. Therefore, today's final rule retains the one year extension for financial assurance.

C. Very Small Arid and Remote MSWLF Extension

1. Commentor-Suggested Limitations to Qualify for the Two-Year Extension

The October 9, 1991 Final Rule for the MSWLF Criteria included an exemption for owners and operators of certain small MSWLF units from the design (subpart D) and ground-water monitoring and corrective action (subpart E) requirements of the Criteria. See 40 CFR 258.1(f). To qualify for the exemption, the small landfill had to accept less than 20 tons per day, on an average annual basis, exhibit no evidence of ground-water contamination, and serve either:

(i) A community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or

(ii) A community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

In adopting this limited exemption, the Agency maintained that it had complied with the statutory standard to protect human health and the environment, taking into account the practicable capabilities of small landfill owners and operators. See discussion in 56 FR 50991.

In January 1992, the Sierra Club and the Natural Resources Defense Council (NRDC) filed a petition with the U.S. Court of Appeals, District of Columbia Circuit, for review of the subtitle D criteria. The Sierra Club and NRDC suit alleged, among other things, that EPA acted illegally when it exempted these small landfills from the ground-water monitoring requirements. On May 7, 1993, the United States Court of Appeals for the District of Columbia Circuit issued an opinion pertaining to the Sierra Club and NRDC challenge to the small landfill exemption. *Sierra Club* v. *United States Environmental Protection Agency*, 992 F.2d 337 (DC Cir. 1993).

The Court held that under section 4010(c), the only factor EPA could consider in determining whether facilities must monitor their ground water was whether such monitoring was "necessary to detect contamination," not whether such monitoring is "practicable." The Court noted that while EPA could consider the practicable capabilities of facilities in determining the extent or kind of ground-water monitoring that a landfill owner/operator must conduct, EPA could not justify the complete exemption from ground-water monitoring requirements. Thus, the Court vacated the small landfill exemption as it pertains to ground-water monitoring, directing the Agency to "* * * revise its rule to require ground-water monitoring at all landfills." (The Court decision did not affect the small landfill exemption as it pertains to the design requirements.)

Therefore, today's final rule, as required by the Court, modifies the small landfill exemption whereby, owners and operators of MSWLF units that meet the qualifications outlined in § 258.1(f) are no longer exempt from ground-water monitoring requirements in 40 CFR 258.50–258.55.

The proposed rule, while removing the exemption from ground-water monitoring for these very small landfills, provided a two-year extension of the effective date for those landfills in order for them to rethink and act on their waste management options in light of the Court ruling. Some commentors proposed limiting the two-year extension to only the ground-water monitoring requirements of part 258. The Agency believes that many of those facilities that qualified for the small landfill exemption made a decision to remain open based on the costs of operation without ground-water monitoring. These landfills acted in good faith, and should therefore be allowed to reconsider their overall decision now that the costs have fundamentally changed. These facilities should be given a similar amount of time that other facilities have had to make such decisions. (All MSWLFs were originally given two years notice following promulgation of the criteria during which time they could decide whether to remain in operation when the criteria take effect.) Therefore, the final rule provides for an extension for all of the MSWLF criteria requirements, for a period of two years, for all MSWLF units that qualify for the small landfill exemption (§ 258.1(f)). (It is important to note that this extension is independent of, and not in addition to, the six-month extension for MSWLF units accepting less than 100 TPD.)

2. Alternatives for Ground-Water Monitoring

The U.S. Court of Appeals, in its decision, did not preclude the possibility that the Agency could establish separate ground-water monitoring standards for the small dry/remote landfills that take such factors as size, location, and climate into account. Therefore, in the proposal, EPA requested comments on alternative ground-water monitoring requirements for these facilities.

While the Agency received a number of comments supporting alternative ground-water monitoring requirements for these very small landfills, several commentors requested additional time to provide suggested alternatives. Therefore, the Agency will continue to maintain an open dialogue with all interested parties to discuss whether alternative ground-water monitoring requirements should be established and will continue to accept information on alternatives. Information and suggestions on alternative ground-water monitoring requirements can be sent to "Alternative Ground-Water Monitoring", Office of Solid Waste (OS–301), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460.

Commentors also suggested that the Agency set an effective date for the ground-water monitoring requirements for these very small landfills two years after the promulgation of regulations regarding alternative ground-water monitoring for these facilities. The point of today's action is to respond to the Court's mandate. At this time, the Agency is still investigating this issue and cannot be certain that practicable alternatives for detecting ground-water contamination will exist for MSWLF units that would qualify for the exemption under § 258.1(f). Therefore, today's final rule does not tie the effective date of ground-water monitoring for landfills that qualify for the small/arid and remote exemption to promulgation of alternative ground-water monitoring requirements.

D. Modification of Closure Provisions for Owners/Operators Ceasing Receipt of Waste by Their Respective Effective Date

The proposed rule modified the closure requirements for MSWLFs ceasing receipt of waste before the effective date by requiring these owners and operators to complete cover installation by October 9, 1994 rather than six months after last receipt of waste. Commentors agreed with the assessment of the problems associated with completion of closure activities within six months of last receipt of waste. Some commentors restated their view that the requirement to finish closure during the late fall/winter months of October through March would be most difficult and subject their facilities to delays, if not rendering it impossible to complete within the six month time frame.

A few commentors suggested that the Agency extend the completion date for closure activities beyond the proposed October 9, 1994 to accommodate their specific situation. EPA believes that the October 9, 1994 deadline provides sufficient time for owners and operators of closing landfills to complete cover installation. This would mean that owners/operators that are subject to the October 9, 1993 effective date would have at least one year to install a cover, while owners and operators of landfills subject to the April 9, 1994 effective date would have at least six months to install a cover. Both time frames should provide at least six months of moderate weather during which to plan and install a landfill cover.

Therefore, the final rule retains the requirement that owners and operators ceasing receipt of waste before their effective date (either October 9, 1993 or April 9, 1994) complete cover installation by October 9, 1994. Owners/operators of very small landfills that qualify for the extension in 258.1(f) who cease receipt of waste prior to the new effective date of October 9, 1995 must complete cover installation by October 9, 1996. As in the October 9, 1991 final rule, owners and operators failing to install a cover by these new dates will subject the MSWLF unit to all of the requirements of part 258.

E. MSWLFs Receiving Flood Debris

A tremendous volume of debris from the Great Flood of 1993 in the Midwest is expected to strain the capacity of certain MSWLFs in that region as well as interfere with their efforts to comply with the criteria. On July 28, 1993, EPA asked for comments in the proposal on how to accommodate landfills that will be affected by this flood-related debris, given the original October 9, 1993 effective date for the MSWLF criteria and the extensions proposed at that time. The comments received generally acknowledge the need to provide some relief to such landfills. While some commentors requested a special two-year or open-ended extension, others indicated that six months would generally suffice, based on past experience in dealing with floods and on existing landfill capacity. Several commentors requested that states be delegated the authority to grant targeted relief to MSWLFs within their state that were in need.

After reviewing and considering comments, the Agency developed a regulatory scenario that meets the Agency's dual goals of granting relief to those MSWLF units affected by the flood of '93 while maintaining simplicity for the purpose of implementation. The final rule contains a two-stage approach for extending the effective date for such landfills, which is independent of the extensions discussed earlier in this preamble (e.g., for MSWLFs receiving less than 100 TPD).

First, existing MSWLF units and lateral expansions of existing MSWLF units may continue to receive waste up to April 9, 1994, without being subject to part 258 (except the final cover requirement), if the state determines that they are needed to receive flood-related waste from a Federally-designated disaster area resulting from the Great Flood of 1993. This provision responds to EPA's belief that in most cases, six months will be adequate to handle flood-related waste especially for historically smaller landfills that ordinarily would have qualified for the six-month extension for landfills receiving less than 100 TPD, but now exceed the tonnage limit due to acceptance of flood debris. As with today's six-month extension for MSWLF units accepting 100 TPD or less, the extension for MSWLF units accepting flood-related waste is limited only to existing units and lateral expansions of existing units; it is not intended for new units.

Second, existing MSWLF units and lateral expansions of existing MSWLF units that have received a six (6) month extension, may continue to receive waste without being subject to part 258 (except the final cover requirements), for an additional period of time up to six (6) months beyond April 9, 1994, if the state determines that the MSWLF unit is needed to receive flood-related waste from a Federally-designated disaster area resulting from the Great Flood of 1993. This second provision will allow those states that believe that their owners and operators may need to operate for an additional period of time after April 9, 1994, to continue to operate up to another six months without being subject to part 258, only on an as-needed basis determined by the state. EPA encourages states to limit the use of this additional six month extension only to situations where local hardships will occur if the site is not available for continued flood cleanup activities. EPA does not intend this flood-related extension to delay compliance any longer than is necessary to meet clean-up needs, especially for larger facilities that are not subject to the general six-month extension discussed earlier. In no case, however, may a state extend the effective date for these landfills beyond October 9, 1994.

Owners and operators of MSWLF units who receive an extension to receive flood waste and cease receipt of waste at the end of that extension, must complete cover installation within one year of the date on which the extension ended, but in no case shall the cover installation extend beyond October 9, 1995. Owners and operators of MSWLF units that continue to accept waste after their extension expires must comply with all of the part 258 requirements, including: (1) The ground-water monitoring requirements in accordance with the schedule in 258.50(c) or in accordance with an approved state/tribe schedule and (2) the financial assurance requirements by April 9, 1995.

F. Other Issues Pertaining to the July 28, 1993 Proposal

1. Sewage Sludge Disposal

Commentors agreed that EPA should not grant removal credits authority to a POTW unless the POTW sends its sewage sludge to a MSWLF unit that complies with the full panoply of the part 258 rule requirements. Hence, EPA will not grant removal credits authority to POTWs if they send their sludge to landfills using one of today's extensions (e.g., small landfills that choose to take advantage of the six-month extension, or very small landfills that qualify for the two-year extension), since such landfills will not be in full compliance with part 258.

2. Effects of the Extension on Source Reduction and Recycling

One commentor felt that an extension to the MSWLF criteria effective date would undercut recycling and source reduction due to continuation of "cheap" landfill tipping fees. EPA promotes an integrated waste management approach favoring source reduction and recycling as the preferred options. EPA does not believe that this rule will create significant negative effects on the Agency's goal of increasing cost-effective source reduction and recycling. This is a limited extension, in most cases lasting only for a six month time frame and as discussed earlier, affecting only 15 percent of all waste. In addition, many states have already closed or are in the process of closing their inadequate landfills that would fail to meet the MSWLF criteria requirements. The overall effect of the criteria continues to be supportive of both safer disposal and more incentives for alternatives to disposal.

IV. Summary of This Rule

Table I provides a summary of the changes to the effective dates of the MSWLF criteria as outlined in today's final rule.

TABLE I.—SUMMARY OF CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA

	MSWLF units accepting greater than 100 TPD	MSWLF units accepting less than 100 TPD; are not on the NPL; and are located in a state that has submitted an application for approval by 10/9/93	MSWLF units that meet the small landfill exemption in 40 CFR §258.1(f)	MSWLF units receiving flood-related waste
General effective date[1]	October 9, 1993	April 9, 1994	October 9, 1995	Up to October 9, 1994 as determined by State in six month intervals.

TABLE I.—SUMMARY OF CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA—Continued

	MSWLF units accepting greater than 100 TPD	MSWLF units accepting less than 100 TPD; are not on the NPL; and are located in a state that has submitted an application for approval by 10/9/93	MSWLF units that meet the small landfill exemption in 40 CFR § 258.1(f)	MSWLF units receiving flood-related waste
This is the effective date for location, operation, design, and closure/post-closure.				
Date by which to close if cease receipt of waste by the general effective date.	October 9, 1994	October 9, 1994	October 9, 1996	Within one year of date determined by State; no later than October 9, 1995.
Effective date of groundwater monitoring and corrective action.	Prior to receipt of waste for new units; October 9, 1994 through October 9, 1996 for existing units and lateral expansions.	October 9, 1994 for new units; October 9, 1994 through October 9, 1996 for existing and lateral expansions.	October 9, 1995 for new units; October 9, 1996 for existing and lateral expansions.	October 9, 1994 for new units; October 9, 1994 through October 9, 1996 for existing and lateral expansions.
Effective date of financial assurance requirements.	April 9, 1995	April 9, 1995	October 9, 1995	April 9, 1995.

[1] If a MSWLF receives waste after this date the unit must comply with all of Part 258.

V. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a new regulation is a "major" rule and prepare a Regulatory Impact Analysis (RIA) in connection with a major rule. A "major" rule is defined as one that is likely to result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state/Tribal, and local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The amendments to the regulations outlined in this rule will, except for the provision requiring dry/remote very small landfills to perform ground-water monitoring, have the effect of reducing requirements imposed by the 40 CFR part 258 criteria. While the Agency estimates that increased costs to households for the ground-water monitoring requirements added as a result of the Court's decision may be significant for some of the very smallest communities, the Agency does not believe that this is a major rule for the purposes of determining whether to conduct an RIA. Moreover, under today's final rule, owners and operators of MSWLF units that meet the small landfill exemption of § 258.1 (f) are provided regulatory relief by a delayed effective date.

EPA has updated and revised the cost estimates reported in the preamble for the proposal for today's rule. A detailed explanation of unit costs and methodology can be found in a technical memorandum to the docket.

In estimating the national annualized costs attributable to the removal of the ground-water monitoring exemption for dry/small landfills, the Agency defined small landfills as those accepting less than 20 tons per day (TPD), and dry landfills as those located in areas receiving less than 25 inches of precipitation per year. (The Agency does not have complete data on the number of very small landfills that qualify for the exemption because they are remote; that is, because they experience three consecutive months with no surface transportation. However, the Agency believes that most of these landfills are captured in the assumptions used to develop the estimated number of small arid landfills.) EPA assumed a universe of 750 dry/small landfills will be operating in 1995 (approximately 517 1 TPD landfills and 232 10 TPD landfills). This estimate is derived from the municipal landfill survey of 1986, and is based upon the closure dates reported by landfills at that time. EPA assumed landfills which reported closure dates prior to 1995 will have closed and those communities have turned to larger landfills which would not be affected by today's rule. For landfills which reported closure dates after 1995, EPA estimated ground-water monitoring costs.

EPA developed national costs estimates using most of the assumptions used in the Regulatory Impact Analysis (RIA) developed for the revised Criteria. For the purposes of this analysis, EPA assumed that landfills would monitor ground water during the operating life and for a thirty year post-closure care period (the post-closure care period requirement may vary in an approved state). EPA estimated costs for two representative sizes under 20 TPD: A 10 TPD landfill and a 1 TPD landfill. The Agency assumed that for a 10 TPD landfill, five well clusters, with three wells each would be used. For a one TPD landfill, EPA assumed three well clusters with three wells each would be used. EPA used average unit capital costs for ground-water monitoring, assuming a well depth of 140 feet. The Agency recognizes that these average costs may underestimate costs to some individual landfills which, due to remoteness or site-specific characteristics (e.g., high depth to ground water), may have higher well construction costs than estimated. For example, the depth to ground water in some dry areas can be several hundred feet. Digging the wells deeper will likely result in additional costs of approximately $35 to $50 for each additional foot. This means that the difference in cost of a well cluster extending to 140 feet versus a well cluster extending to 300 feet would be approximately 25% more for the well construction costs, which would increase the initial hydrogeologic study and construction costs incurred in one year by approximately 8 percent for a 1 TPD landfill and 11 percent for a 10 TPD landfill. Additional well depths would likewise continue to increase costs. One commentor from Nevada indicated that the depth to ground water can be over 1,000 feet. Clearly the costs of digging a well in this situation will be higher than estimated here.

Additionally, the costs of well construction in remote areas could be higher if an expense to transport equipment to the site is incurred. This may be a significant cost to communities which are very remote and have limited access.

EPA assumed it will cost less to comply with the ground-water monitoring requirements in today's rule for landfills located in states already requiring ground-water monitoring (39 states required ground-water monitoring in 1991).

EPA assumed that landfills with short remaining lives would distribute the costs of the ground-water monitoring over the life of the new replacement landfill.[1] This is a reasonable assumption for municipalities which control tipping fees for residents and have the ability to spread the costs of ground-water monitoring over a longer time period. It will not always be possible for private landfill owners to annualized these costs over post-closure years.

EPA estimates that the national annualized costs of requiring ground-water monitoring for all dry/small landfills is approximately $13 million per year (in 1992 dollars). This estimate represents potential costs resulting from the court decision to require ground-water monitoring for all dry/small landfills. EPA expects, however, that some dry/small landfills would have joined a regionalized waste management system prior to the implementation date, and thus will not incur these ground-water monitoring costs.

Costs to individual landfills will vary greatly. Landfills located in states which already require ground-water monitoring may not experience any additional costs. Landfills located in states with no ground-water requirements may incur the full cost of ground-water monitoring.

Size will affect landfill cost. EPA estimates that the annualized cost (for thirty years) for ground-water monitoring at a 10 TPD landfill, with a ten year operating life, would be approximately $32,000 or $32 per household per year. The annualized cost for ground-water monitoring at a 1 TPD landfill, with a ten year operating life, would be approximately $22,000 or $222 per household per year. Clearly, costs to the very small landfills (e.g., 1 TPD) may be high per household.

The Agency does not believe a significant number of MSWLFs will experience corrective action costs due to the Court's decision for several reasons. First, it is unlikely that continued operation of these small landfills will result in ground-water contamination that requires corrective action. Because these landfills generally are located in dry areas receiving less than 25 inches of precipitation per year, very little leachate will be available for release to the ground water. Additionally, many of these dry/small landfills are situated above aquifers that typically are located several hundred feet below the ground surface, thereby creating a significant natural barrier to threat of contamination. Second, even if these landfill owners and operators detected contamination that would trigger corrective action, the MSWLF criteria currently allow the Director of a state with an EPA-approved permit program to waive corrective action under the circumstances outlined in 40 CFR 258.57(e). Third, of the small landfills that would have qualified for the small landfill exemption, it is difficult to estimate the number of these landfills that will continue to operate now that they are required to perform ground-water monitoring. Many will choose to close because of these new requirements.

Thus, given these factors, it is difficult to estimate the national cost impact of corrective action on these small landfills. The Agency believes that few would contaminate ground water and be required to perform these clean-up activities. However, if a landfill did trigger corrective action in a state that required clean-up, the Agency estimates that the average total annualized cost (over 20 years) of corrective action for that landfill would range from approximately $160,000 to $350,000 per year. These costs assume pump and treat clean-up technology and a 40-year post-closure care period.

Again, most of the cost assumptions in this estimate are based on unit cost assumptions from the Regulatory Impact Analysis for the Revised Subtitle D Criteria found in docket number F–91–CMLF–FFFFF.

The Agency believes that the final rule does not meet the definition of a major regulation. Thus, the Agency is not conducting a Regulatory Impact Analysis at this time. Today's final rule has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

The estimates of potential total annualized costs for specific landfills are discussed above in Section V–A. However, not all landfills will experience these costs. Many landfills are located in states that already require ground-water monitoring and/or corrective action and thus there would be little incremental cost to these landfills due to the court decision. In addition, EPA believes there will be a reduction in small landfills over time as these landfills close and communities regionalize.

The amendments to 40 CFR part 258, except for the provision requiring dry/remote small landfills accepting less than 20 TPD to perform ground-water monitoring, have the general effect of reducing the requirements of the part 258 criteria, thereby imposing no additional economic impact to small entities.

The provision requiring dry/remote landfills accepting less than 20 TPD to perform ground-water monitoring could have a significant economic impact on some of these small entities. Agency data indicate that economic impact will vary with size, with larger landfills experiencing a relatively moderate cost increase per household when compared to smaller landfills where economies of scale are not available. Agency data indicate that the average annualized costs of ground-water monitoring for a MSWLF unit accepting approximately 10 TPD operating for 10 years would cost about $30 per household when annualized over 30 years ($65 per household when annualized over only the 10 year operating life). For landfills accepting less than one TPD (the Agency estimates that over one-half of all MSWLF units that qualify for the

[1] For example, a landfill which is expected to close in five years would distribute the costs across the five years plus the twenty years a new replacement landfill would operate. This ability to average costs of existing landfills and new replacement landfills was assumed in the RIA. Because the cost analysis in the RIA indicates that, except in the most remote or unaccessible areas, costs per ton for using a larger regional landfill is less expensive than for small landfills, EPA assumed communities would use regional waste facilities upon closure of small landfills. Since requirements for large landfills are not being affected by today's very small landfill ground-water monitoring requirements, no costs of the replacement landfill are included in cost estimates presented today.

exemption are in this size category), the average annualized cost would be about $220 per household when annualized over 30 years ($450 per household if annualized over only the 10 year operating life).

The Agency believes that estimated costs of $220 per household for the very smallest communities are significant. In the RIA for the revised criteria, the Agency used a threshold of $100 per household to identify moderate impacts. For the RIA, the Agency also looked at a second threshold; the Agency considered incremental costs that were greater than one percent of median household income as being "significant." 1990 Census data indicates that median household income across the United States is $30,000. However, EPA recognizes that several communities have median household incomes below the national median. 1989 Census data indicate that 13.1 percent of all persons live below poverty level. Poverty level for a three person household is defined as $9,900 income per year. In communities where household incomes are below the national median, a $100 or higher cost per household could be close to one percent of household income and thus have a significant impact. Again, cost figures presented here are rough estimates using national unit costs; labor and equipment costs will vary per site and may be more expensive in rural, remote areas of the country. Also, the Agency assumed a specific ground-water monitoring system of 3 or 5 wells clusters depending on the size of the landfill. To the extent that landfills use different systems, costs will vary.

The Agency does not have a precise count of small landfills that will be affected by this rule. According to the 1986 landfill survey, many of the small landfills had plans to close by 1995. Others have closed as communities participate in regionalized waste management. Therefore, while EPA estimates, according to information from the 1986 survey, that there may be approximately 750 landfills that could be affected by today's rule, it is unclear how many actually are in this universe today.

While the Agency believes that the costs described above may have substantial impacts on some of the very smallest communities, the court decision leaves the Agency no choice but to promulgate these changes to ground-water monitoring requirements for dry/small landfills. However, as mentioned earlier, the Agency continues to solicit information on alternative ground-water monitoring procedures that could accommodate the practicable capability of small landfills through consideration of size, location, and climate, while ensuring that the program is adequate to detect contamination. It is the Agency's goal to identify alternative monitoring methods that would reduce the cost impacts described above.

C. Paperwork Reduction Act

The Agency has determined that there are no new reporting, notification, or recordkeeping provisions associated with today's final rule.

List of Subjects in 40 CFR Part 258

Corrective action, Ground-water monitoring, Household hazardous waste, Liner requirements, Liquids in landfills, State/Tribal permit program approval and adequacy, Security measures, Small quantity generators, Waste disposal, Water pollution control.

Dated: September 27, 1993.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a), 6944(a) and 6949(c); 33 U.S.C. 1345 (d) and (e).

2. Section 258.1 is amended by revising paragraphs (d), (e), (f)(1) introductory text, (f)(3), and (j) to read as follows:

§ 258.1 Purpose, scope, and applicability.

* * * * *

(d)(1) MSWLF units that meet the conditions of 258.1(e)(2) and receive waste after October 9, 1991 but stop receiving waste before April 9, 1994, are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1994 will be subject to all the requirements of this part 258, unless otherwise specified.

(2) MSWLF units that meet the conditions of § 258.1(e)(3) and receive waste after October 9, 1991 but stop receiving waste before the date designated by the state pursuant to 258.1(e)(3), are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed within one year after the date designated by the state pursuant to 258.1(e)(3). Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation within one year after the date designated by the state pursuant to 258.1(e)(3) will be subject to all the requirements of this part 258, unless otherwise specified.

(3) MSWLF units that meet the conditions of 258.1(f)(1) and receive waste after October 9, 1991 but stop receiving waste before October 9, 1995, are exempt from all the requirements of this part 258, except the final cover requirement specified in 258.60(a). The final cover must be installed by October 9, 1996. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1996 will be subject to all the requirements of this part 258, unless otherwise specified.

(4) MSWLF units that do not meet the conditions of 258.1 (e)(2), (e)(3), or (f) and receive waste after October 9, 1991 but stop receiving waste before October 9, 1993, are exempt from all the requirements this part 258, except the final cover requirement specified in 258.60(a). The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1994 will be subject to all the requirements of this part 258, unless otherwise specified.

(e)(1) The compliance date for all requirements of this part 258, unless otherwise specified, is October 9, 1993 for all MSWLF units that receive waste on or after October 9, 1993, except those units that qualify for an extension under (e)(2), (3), or (4) of this section.

(2) The compliance date for all requirements of this part 258, unless otherwise specified, is April 9, 1994 for an existing MSWLF unit or a lateral expansion of an existing MSWLF unit that meets the following conditions:

(i) The MSWLF unit disposed of 100 tons per day or less of solid waste during a representative period prior to October 9, 1993;

(ii) The unit does not dispose of more than an average of 100 TPD of solid waste each month between October 9, 1993 and April 9, 1994;

(iii) The MSWLF unit is located in a state that has submitted an application for permit program approval to EPA by October 9, 1993, is located in the state of Iowa, or is located on Indian Lands or Indian Country; and

(iv) The MSWLF unit is not on the National Priorities List (NPL) as found in Appendix B to 40 CFR part 300.

(3) The compliance date for all requirements of this part 258, unless otherwise specified, for an existing MSWLF unit or lateral expansion of an existing MSWLF unit receiving flood-related waste from federally-designated areas within the major disasters declared for the states of Iowa, Illinois, Minnesota, Wisconsin, Missouri, Nebraska, Kansas, North Dakota, and South Dakota by the President during the summer of 1993 pursuant to 42 U.S.C. 5121 *et seq.*, shall be designated by the state in which the MSWLF unit is located in accordance with the following:

(i) The MSWLF unit may continue to accept waste up to April 9, 1994 without being subject to part 258, if the state in which the MSWLF unit is located determines that the MSWLF unit is needed to receive flood-related waste from a federally-designated disaster area as specified in (e)(3) of this section.

(ii) The MSWLF unit that receives an extension under paragraph (e)(3)(i) of this section may continue to accept waste up to an additional six months beyond April 9, 1994 without being subject to part 258, if the state in which the MSWLF unit is located determines that the MSWLF unit is needed to receive flood-related waste from a federally-designated disaster area specified in (e)(3) of this section.

(iii) In no case shall a MSWLF unit receiving an extension under paragraph (e)(3) (i) or (ii) of this section accept waste beyond October 9, 1994 without being subject to part 258.

(4) The compliance date for all requirements of this part 258, unless otherwise specified, is October 9, 1995 for a MSWLF unit that meets the conditions for the exemption in paragraph (f)(1) of this section.

(f)(1) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that dispose of less than twenty (20) tons of municipal solid waste daily, based on an annual average, are exempt from subpart D of this part, so long as there is no evidence of ground-water contamination from the MSWLF unit, and the MSWLF unit serves:

* * * * *

(3) If the owner or operator of a new MSWLF unit, existing MSWLF unit, or lateral expansion has knowledge of ground-water contamination resulting from the unit that has asserted the exemption in paragraph (f)(1)(i) or (f)(1)(ii) of this section, the owner or operator must notify the state Director of such contamination and, thereafter, comply with subpart D of this part.

* * * * *

(j) Subpart G of this part is effective April 9, 1995, except for MSWLF units meeting the requirements of paragraph (f)(1) of this section, in which case the effective date of subpart G is October 9, 1995.

* * * * *

3. Section 258.2 is amended by revising the definitions of "Existing MSWLF unit" and "New MSWLF unit" and by adding definitions for "Indian lands" and "Indian tribe" to read as follows:

258.2 Definitions.

* * * * *

Existing MSWLF unit means any municipal solid waste landfill unit that is receiving solid waste as of the appropriate dates specified in § 258.1(e). Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

* * * * *

Indian lands or *Indian country* means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

Indian Tribe or *Tribe* means any Indian tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers on Indian lands.

* * * * *

New MSWLF unit means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or prior to October 9, 1995 if the MSWLF unit meets the conditions of § 258.1(f)(1).

* * * * *

4. Section 258.50 is amended by revising paragraph (c) introductory text, by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g), and (h); and by adding paragraph (e) to read as follows:

258.50 Applicability.

* * * * *

(c) Owners and operators of MSWLF units, except those meeting the conditions of 258.1(f), must comply with the ground-water monitoring requirements of this part according to the following schedule unless an alternative schedule is specified under paragraph (d) of this section:

* * * * *

(e) Owners and operators of all MSWLF units that meet the conditions of 258.1(f)(1) must comply with the ground-water monitoring requirements of this part according to the following schedule:

(1) All MSWLF units less than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in 258.51 through 258.55 by October 9, 1995;

(2) All MSWLF units greater than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in 258.51 through 258.55 by October 9, 1996.

* * * * *

5. Section 258.70 is amended by revising paragraph (b) to read as follows:

§ 258.70 Applicability and effective date.

* * * * *

(b) The requirements of this section are effective April 9, 1995 except for MSWLF units meeting the conditions of 258.1(f)(1), in which case the effective date is October 9, 1995.

6. Section 258.74 is amended by revising paragraph (a)(5) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(a) * * *

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date the requirements of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 258.58.

* * * * *

7. Section 258.74 is amended by revising the third sentence of paragraph (b)(1); by revising the second sentence of paragraph (c)(1); and by revising the second sentence of paragraph (d)(1) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(b) * * *

(1) * * * The bond must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

* * * * *

(c) * * *

(1) * * * The letter of credit must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

* * * * *

(d) * * *

(1) * * * The insurance must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

* * * * *

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federal register

Friday
October 1, 1993

Part VIII

Department of the Interior

Office of the Secretary

43 CFR Part 37
Cave Management; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 37

[WO-340-4333-02-24 1A; Circular No. 2651]

RIN 1004-AB59

Cave Management

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule implements the Federal Cave Resources Protection Act of 1988, which requires identification, protection, and maintenance, to the extent practical, of significant caves on lands administered by the Department of the Interior. The final rule establishes criteria to be considered in the identification of significant caves. It also integrates cave management into existing planning and management processes and protects cave resource information to prevent vandalism and disturbance of significant caves.

EFFECTIVE DATE: November 1, 1993.

ADDRESSES: Inquiries or suggestions should be sent to Director (270), Bureau of Land Management, room 302 L Street Bldg., 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Delmar Price, (303) 239-3739.

SUPPLEMENTARY INFORMATION: A proposed rule adding 43 CFR Part 37—Cave Management was published in the **Federal Register** on January 13, 1992 (57 FR 1344), for public review and comment. The proposed rule was designed to implement provisions in the Federal Cave Resources Protection Act of 1988 (the Act). There were 45 comments received on the proposed rule. All of the comments were from members of the caving community, except one from a trade association. All comments were carefully reviewed. Many of the respondents commented on issues and materials that are beyond the scope of the proposed rule. These comments will not be addressed in detail in this rule. Responses to the comments that are relevant to the subject matter covered in the proposed rule are summarized below. Many of the comments addressed issues in a similar way and are consolidated into comment categories for discussion purposes. Other comments are responded to individually. Following is a summary of comments and responses:

I. Significance

Most of the comments expressed concern that the regulations were too narrow and unnecessarily restricted the type and amount of caves that could be listed as significant. Several respondents pointed out that the term "significant caves" was included in the Act only to prevent Federal agencies from having to manage "every little hole in the ground" or to screen out caves containing "* * * no resources of any interest to anyone or any recognizable natural resource value." They expressed concern that the proposed rule instead focused the designation process on selecting only the "best of the best." This, they say, was not the intent of the Act.

After careful review of the comments, the Act, and the legislative history of the Act, it was concluded that there were several sections in the proposed rule that were overly restrictive, as pointed out in the comments. Appropriate changes were made as shown in the following paragraph by paragraph summary. It is clearly the intent of the Act that significant caves include all caves that have value for scientific, educational, and recreational purposes. There is nothing in the Act or the legislative history that indicates that a cave would have to have 'special value' to warrant designation. Although the word 'inventory' is not used in the Act, it is clear that the significant cave designation process is an inventory process for identifying caves that will require some form of management. The designation of a cave as significant does not require protection of the cave resources, according to Section 2(c) of the Act, which requires that "* * * Federal lands be managed in a manner which protects and maintains, to the extent practical, significant caves." Thus, the effect of the rule would not be analogous to the Endangered Species Act, and the presence of a significant cave would not automatically halt all other activities on the public lands involved. It is clear that Congress intended that the "extent practical" and the type and degree of protection be determined through the agency resource management planning processes (see Section 4(c)(1) of the Act), and not through the significant cave designation process. Accordingly, several changes were made in the final rule to reflect intent of the Act as discussed above and to respond to these public comments.

Paragraph 37.1—The word 'protecting' was changed to 'managing'. The word 'managing' more clearly defines the actions that will be taken to provide for the use and protection of caves and cave resources.

Paragraph 37.2—A sentence was added to clarify that the "type and amount of protection" will be determined through the agency resource management planning process and not through the significant cave designation process. This confirms that the significant cave designation process is an inventory process and does not, by virtue of the designation, imply specific protection commitments. This establishes the framework for broadening the criteria in the regulation to ensure that all caves that have value for scientific, educational, and recreational purposes will be designated as significant without arousing fear that designation of a cave as significant will preempt other land uses. Protective measures will not be taken without full public participation in the agency resource management planning processes.

Paragraph 37.4(f)—The word 'important' was removed from the definition of a 'significant cave' because it implies that a cave would have to be special to qualify for designation as a significant cave.

Paragraph 37.11(b)—The phrase "* * * and other affected resources * * *" was removed because there is no impact on other resources as a result of listing significant caves, and other resources therefore should not be a factor in the evaluation process.

Paragraph 37.11(c)—The phrase "* * * which are deemed by the authorized officer to be unusual, significant, or otherwise meriting special management" was removed because it implies that a cave would have to have special value to qualify for designation. This change was recommended by most of the comments.

Paragraph 37.11(c)(1), (3), (4), and (5)—Restrictive wording was removed or relaxed to broaden the criteria, as suggested by several comments, as follows:

(1) Biota—'cave dependent' is changed to 'seasonal or yearlong'; the phrase "* * * occur in large numbers or variety.* * *" was removed;

(2) Cultural—the definition is broadened to include traditional values;

(3) Geologic/Mineralogic/Paleontologic—

(i) In this paragraph, the word 'outstanding' is changed to 'that exhibit interesting formation processes.'

(iii) In this paragraph, the word 'important' is changed to 'useful educational and'

(4) Hydrologic—the word 'features' is amended to 'resources' because it is more descriptive;

(5) Recreational—the phrase 'by virtue of challenge' deleted because it can be interpreted too narrowly.

Paragraph 37.11(d) and (f)—Paragraph (d) was combined with paragraph (f) to form a new paragraph (f). Several of the respondents interpreted the language in proposed paragraph (f) to mean that the authorized officer would do the evaluation. The new language more clearly defines the role of the authorized officer as a decision maker. The new language also clearly states that a cave that meets one or more of the criteria will be listed as a significant cave. Many of the comments recommended this change.

New Paragraph 37.11(e)—This is a new paragraph that was added in response to several suggestions that other Department of the Interior agencies should streamline their listing process by following the lead taken by the National Park Service (see paragraph 37.11(d)). This new paragraph requires that when caves are wholly or in part the reason for designating special management areas, such as Areas of Critical Environmental Concern, all caves within the area shall be determined to be significant. In such areas, cave resources are well documented and decisions have already been made through agency resource planning processes to manage and protect cave resources.

New Paragraph 37.11(h)—This paragraph was added in response to many comments generally asking for more cave protection and less exclusivity in the rule. It makes it clear that, if a cave is designated as significant by any Federal agency but extends into lands managed by another agency or bureau of the Department of the Interior, it shall be designated as significant throughout its extent.

II. Confidentiality

Most of the comments expressed concern that the confidentiality provisions in the proposed rule were too broad. They stated that it was the intent of the Act that the confidentiality provisions apply only to cave 'location' and not to other cave information. They were concerned that the government would, under the confidentiality provisions of the proposed rule, withhold information that is vital to persons in the caving community. They also expressed concern that information submitted in nominations that did not lead to designation as significant caves would be made available to individuals who may damage the cave resources. Several of the respondents expressed concern that the confidentiality provisions in the draft regulations would inhibit exchange of information between the caving community and the Federal agencies.

Response: Several changes were made to respond to the comments on confidentiality as follows:

Paragraph 37.3—The word 'nature' was removed to narrow the scope of the confidential information to 'location' as suggested by several of the respondents.

Paragraph 37.12—The word 'location' was added to the paragraph title to indicate that the focus is on protecting 'location type' information as recommended by many of the respondents.

Paragraph 37.12(a) was amended to restrict the confidential information protected under the regulation to "* * * information that could be used to determine the location of a significant cave or cave under consideration for designation * * * ". This restricts the information protected to 'cave location,' but defines location broadly enough so that other information could be withheld if, in the opinion of the authorized officer, it would reveal the location of a cave. For example, a cave name that indicates the general location of a cave could be withheld.

In reference to this paragraph, several respondents expressed concern that nomination materials submitted for caves not listed as significant would not be protected under the confidentiality provisions of the proposed rule. Under provisions in this paragraph as modified, locational information for all caves will be protected until the designation decision is made. This protection will continue for caves listed as significant. When a decision is made not to list a cave as significant, the information submitted concerning that cave will be returned to the persons or organizations that submitted the nomination. Consequently, the responsibility for maintaining the confidentiality of unlisted caves will rest with the originator of the information and not with the Federal agency.

III. Interagency Cooperation and Public Participation

Many of the respondents expressed concern that the proposed rule did not adequately address the provisions in the Act to promote cooperation and exchange of information between governmental authorities and those who utilize caves located on Federal lands for scientific, educational, and recreational purposes. Several respondents expressed concern that people in the caving community would not be given adequate opportunity to participate in the designation and planning processes. One of the major concerns was that the perceived intent of the proposed rule to limit designations and to deny the caving community access to cave information would discourage information exchange between the caving community and the Federal agencies.

Response: The proposed rule provided for full participation of the public in the nomination of caves to be considered for listing as significant caves. It also provided for "* * * consultation with individuals and organizations interested in the management and use of cave resources * * *" during the evaluation process. In addition, several changes were made in the final rule to encourage greater cooperation and exchange of information between the public and the Federal agencies. As discussed above in sections I. and II., numerous changes have been made to modify language that would unnecessarily limit the number of caves listed as significant, and the confidentiality provisions have been changed to limit the protected information to "cave location." These changes, along with the specific changes listed below, should encourage greater cooperation and exchange of information between the caving community and Federal agencies.

Paragraph 37.2 was expanded to include a provision for public participation in the planning process for significant caves.

Paragraph 37.5—A statement was included to provide for public input into the reporting burden requirements of the regulation.

Paragraph 37.11(a) was changed to make it clear that "* * * those who utilize caves for scientific, educational, and recreational purposes * * *" may nominate caves for designation as significant caves.

IV. Scope of the Rule

Several of the respondents expressed concern that the proposed rule was too narrow in scope. They suggested that the rule be expanded to include provisions on restriction of use, volunteers, and advisory committees as provided in section 4(b) (2), (3), and (4) of the Act.

Response: The reasons for limiting the scope of the proposed rule were addressed in the preamble of the rule. These reasons are still valid. In summary, the provisions listed above were omitted from the draft regulation in the interest of minimizing duplication of regulations. All of the agencies in the Department of the

Interior have regulations governing the restriction of use, volunteers, and advisory committees. Each agency must review its own regulations and decide what, if any, changes must be made to accommodate the requirements in the Act.

V. Identity of Decisionmaker

Three of the respondents expressed concern about the capability of the authorized officer to make designation decisions. They also expressed concern that the word "any" in the definition of an authorized officer meant that anyone in the agency could be making designation and confidentiality decisions. One respondent questioned the need for having an authorized officer, noting that the Act required the Secretary to make the designation decision.

Response: It is common practice to delegate decisions on actions such as listing of significant caves and release of confidential information to line officers in the Field Offices of the various agencies of Interior. It would not be practical for the Secretary, or even Regional or State Directors of the various agencies, to make these kinds of decisions. The authorized officer, usually a line official such as an Area Manager, Park Superintendent, or Refuge Manager, will rely heavily on recommendations from knowledgeable persons in the public and informed staff members in making decisions. The word 'any' was changed to 'the' in the definition of "authorized officer" (see paragraph 37.4(a)) to remove the implication that 'anyone' can be an authorized officer.

VI. Significance Criteria

One respondent stated that the criteria for selection of significant caves is too broad and neglects to consider the impacts that such a designation would have on oil and gas production. The comment continued that the criteria must include economic impacts to mineral and natural resource development.

Response: The designation of a cave as significant does not preempt other multiple uses. As discussed in Section I, above, decisions on the type and degree of protection a cave will be given will be made through the agency's resource management planning process with full public participation.

VII. Appeal

Several respondents recommended that the proposed rule be revised to include provisions for appeal of the authorized officer's decisions.

Response: A decision to place a cave on the significant cave list is an inventory type decision (see Section I, above), and consequently is not an appealable decision. Likewise, it has been determined that it is not in the public interest to allow administrative appeals of decisions to reject a request for cave location information under the confidentiality provisions of the rule. New paragraphs 37.11(g) and 37.12(c) were added to reflect these conclusions. Also, the latter was added to be consistent with the Department of Agriculture regulations. A sentence was added to paragraph 37.11(a) to provide an opportunity to resubmit a previously rejected cave nomination providing that either new information or more documentation is available.

VIII. Responses to Paragraph-Specific Comments

Paragraph 37.4(b): Several respondents felt that the exclusion of 'vugs' as set forth in the "cave" definition could result in many caves not being designated as significant. In response to this comment the definition was amended to define more clearly what a cave is rather than what it is not. The word 'vug' and other words that described 'what a cave was not' were removed.

Other changes were made to clarify the definition. The word "individual" was changed to "person" to clarify that it has reference to a human being. The word "man-made" was changed to "excavated" to clarify the intent. The phrase "* * * or which is an integral part of the cave." was added to ensure that such features as air passages or openings which are too small for human entry are considered a part of the cave.

Paragraph 37.4(c): One respondent pointed out that the word "caver" was not used anywhere in the regulation, so that there was no need to retain the definition. This observation was correct and the definition was removed.

Paragraph 37.4(d): One respondent suggested that the word "naturally" be removed from the definition of cave resources because cave resources also include cultural materials. This removal was made.

Several respondents recommended that the "such as" list be consistent with the listing of resources in the criteria section (section 37.11(c)). This change was also made.

Paragraph 37.4(g): Several respondents suggested that the definition merely refer to the criteria in section 37.11(c) rather than list the criteria in the definition. This change was made.

One respondent proposed a new definition for "significant cave." This definition would have implied that specific management actions would have to be taken for significant caves. The Act does not require specific management actions to protect significant caves. Therefore, this proposal was not accepted.

Paragraph 37.4(h): Several respondents commented on the definition of a vug. Since the only reference to a vug was in the definition of a cave and this reference was removed, it is not necessary to retain the vug definition. It was removed.

New paragraph 37.5: This is a new paragraph that was added to comply with the requirements of the Paperwork Reduction Act and implementing regulations at 5 CFR 1320. It is not substantive; it merely codifies certain information about information to be collected under this rule and informs the public how comments on information collection may be submitted.

Paragraph 37.11: The heading of this paragraph was changed to conform with the title in the companion Department of Agriculture regulation.

Paragraph 37.11(a): As suggested in one comment, this provision was amended to make it clear that governmental agencies are eligible to nominate caves. Also, the term 'potentially significant' was removed, because any cave is eligible for nomination.

Several respondents commented on the need to use other media in addition to the **Federal Register** for the call for nominations. In response to these comments, the option was added to use other publications and media for public notices.

Several respondents expressed concern that they had no recourse if their cave nomination was not listed. A sentence was added at the end of this paragraph to provide opportunities to resubmit the nomination if better documentation or new information becomes available.

The phrase "* * * that could influence significance determinations * * *" was removed because it was not relevant.

Paragraph 37.11(b): Several respondents commented on the ambiguity between 'known' and 'nominated' caves. They also pointed out that it may be impossible to complete the nominations for all known caves during the initial phase. In response to these comments the sentence "All known and nominated caves on Federal lands will be evaluated during the initial listing process." was removed. This eliminates the ambiguity referred to by the respondents and provides for flexibility in the implementation of the regulation. It is not essential that all known caves be evaluated in the initial analysis. Those that are missed in the initial evaluation will be picked up during the subsequent evaluation process.

One respondent suggested combining paragraphs 37.11(a) and (b). This would combine the nomination and evaluation process into one section. Since these are separate processes, it was decided to keep them separate.

A sentence was added at the end of paragraph (b) to specify that the nominations will be evaluated using the criteria in paragraph 37.11(c).

Paragraph 37.11(c): The words 'the Identification of' were deleted to make the title the same as the corresponding paragraph in the companion Department of Agriculture regulation.

Paragraph 37.11(c)(6): The word 'contemporary' was added to make it clear that evidence of the activities of historic or prehistoric humanity would not prevent a cave from being considered pristine.

Paragraphs 37.11(d) and (f): As mentioned previously, paragraphs (d) and (f) were combined into a new paragraph (f). The primary reason for making this change was to be consistent with the format in the companion Department of Agriculture regulation.

Several of the respondents requested documentation of the decision to list or not list a cave as significant. In response to this comment a sentence was added which requires a finding statement be signed and dated for every cave that is evaluated. A copy of this statement will be sent to the person or organization that submitted the nomination.

Paragraph 37.11(e): A title was added to this paragraph to make it consistent with the format in the other paragraphs in this part.

Paragraph 37.12(a): Most of the changes in this paragraph are discussed in Section II, above. Other changes were made to make the paragraph more understandable. A title was added to make this paragraph consistent with the format in other paragraphs in this part.

Paragraph 37.12(b): The changes in this paragraph were made to make it consistent with the language used in the Act and to make it clearer and more understandable.

Paragraph 37.12(b)(1): This paragraph was removed because a requirement equivalent to a "signed letter" (i.e., "written request") was added to the last sentence in paragraph 37.12(b) which introduces this paragraph. There is no need to repeat it in paragraph (1). Subsequent paragraphs are renumbered.

Paragraph 37.12(b)(4): The words 'A statement of' were added to clarify that a statement of purpose would be required.

Paragraph 37.12(b)(5): This paragraph was changed to make it clearer and easier to understand. The change also makes the paragraph identical to the same paragraph in the comparable Department of Agriculture regulation.

The principal author of this proposed rule is Delmar Price of the Colorado State Office, assisted by the staff of the BLM Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the rule does not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The rule by itself will not have any effect on the economy, because it only establishes a system for identification of significant caves that will then be managed along with all of the other multiple uses of the public lands. Subsequent management decisions on identified caves on multiple use lands will include opportunity for public participation and consideration of economic effects. Management decisions on caves located within parks and other protected lands will not have any negative effect on industries that rely on raw materials from the land, and may have positive effects on the tourism and recreation industries. Such effects are not quantifiable, but are not likely to approach the $100 million threshold discussed above. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. To the extent that small entities are involved in cave-related activities, the rule should be an economic benefit in that it will lead to the protection of the resources in which they are interested. However, for the reasons stated above, the rule should not have any direct effect on small entities that use Federal land for other purposes.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule does not affect any property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirement(s) contained in part 37 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0165 (cave nominations) and 1004–0166 (confidential information).

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 43 CFR Part 37

Cave resources management, Fish and Wildlife Service, Indian Affairs Bureau, Land Management Bureau, National Park Service, Public lands, Reclamation Bureau, Recreation and recreation areas.

For the reasons stated in the preamble, and under the authorities stated below, Subtitle A of Title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: July 23, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

1. Part 37 is added to read as follows:

PART 37—CAVE MANAGEMENT

Subpart A—Cave Management—General

Authority: 16 U.S.C. 4301–4309; 43 U.S.C. 1740.

Subpart A—Cave Management—General

§ 37.1 Purpose.

The purpose of this part is to provide the basis for identifying and managing significant caves on Federal lands administered by the Secretary of the Interior.

§ 37.2 Policy.

It is the policy of the Secretary that Federal lands be managed in a manner which, to the extent practical, protects and maintains significant caves and cave resources. The type and degree of protection will be determined through the agency resource management planning process with full public participation.

§ 37.3 Authority.

Section 4 of the Federal Cave Resources Protection Act of 1988 (102 Stat. 4546; 16 U.S.C. 4301) authorizes the Secretary to issue regulations providing for the identification of significant caves. Section 5 authorizes the Secretary to withhold information concerning the location of significant caves under certain circumstances.

§ 37.4 Definitions.

(a) *Authorized officer* means the agency employee delegated the authority to perform the duties described in this part.

(b) *Cave* means any naturally occurring void, cavity, recess, or system of interconnected passages beneath the surface of the earth or within a cliff or ledge, including any cave resource therein, and which is large enough to permit a person to enter, whether the entrance is excavated or naturally formed. Such term shall include any natural pit, sinkhole, or other feature that is an extension of a cave entrance or which is an integral part of the cave.

(c) *Cave resources* means any materials or substances occurring in caves on Federal lands, including, but not limited to, biotic, cultural, mineralogic, paleontologic, geologic, and hydrologic resources.

(d) *Federal lands,* as defined in the Federal Cave Resources Protection Act, means lands the fee title to which is owned by the United States and administered by the Secretary of the Interior.

(e) *Secretary* means the Secretary of the Interior.

(f) *Significant cave* means a cave located on Federal lands that has been determined to meet the criteria in § 37.11(c).

§ 37.5 Collection of information.

(a) The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0165 (cave nominations) and 1004–0166 (confidential information). The information provided for the cave nominations will be used to determine which caves will be listed as "significant" and the information in the requests to obtain confidential cave information will be used to decide whether to grant access to this information. Response to the call for cave nominations is voluntary. No action may be taken against a person for refusing to supply the information requested. Response to the information requirements for obtaining confidential cave information is required to obtain a benefit in accordance with Section 5 of the Federal Cave Resources Protection Act of 1988 (102 Stat. 4546; 16 U.S.C. 4301).

(b) The public reporting burden is estimated to average 3 hours per response for the cave nomination and one-half hour per response for the confidential cave information request. The estimated response time for both of the information burdens includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Bureau of Land Management Clearance Officer, WO–873, Mail Stop 401 LS, 1849 C Street NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project 1004–0165/6, Washington, D.C. 20503.

Subpart B—Cave Designation

§ 37.11 Nomination, evaluation, and designation of significant caves.

(a) *Nominations for initial and subsequent listings.* The authorized officer will give governmental agencies and the public, including those who utilize caves for scientific, educational, and recreational purposes, the opportunity to nominate potential significant caves. The authorized officer will give public notice, including a notice published in the **Federal Register**, calling for nominations for the initial listing, including procedures for preparing and submitting the nominations. Nominations for subsequent listings will be accepted from governmental agencies and the public by the agency that manages the land where the cave is located as new cave discoveries are made or as new information becomes available. Nominations not approved for designation during the listing process may be resubmitted if better documentation or new information becomes available.

(b) *Evaluation for initial and subsequent listings.* The evaluation of the nominations for significant caves will be carried out in consultation with individuals and organizations interested in the management and use of cave resources, within the limits imposed by the confidentiality provisions of § 37.12 of this part. Nominations will be evaluated using the criteria in § 37.11(c).

(c) *Criteria for significant caves.* A significant cave on Federal lands shall possess one or more of the following features, characteristics, or values.

(1) *Biota.* The cave provides seasonal or yearlong habitat for organisms or animals, or contains species or subspecies of flora or fauna that are native to caves, or are sensitive to disturbance, or are found on State or Federal sensitive, threatened, or endangered species lists.

(2) *Cultural.* The cave contains historic properties or archaeological resources (as described in 36 CFR 60.4 and 43 CFR 7.3) or other features that are included in or eligible for inclusion in the National Register of Historic Places because of their research importance for history or prehistory, historical associations, or other historical or traditional significance.

(3) *Geologic/Mineralogic/Paleontologic.* The cave possesses one or more of the following features:

(i) Geologic or mineralogic features that are fragile, or that exhibit interesting formation processes, or that are otherwise useful for study.

(ii) Deposits of sediments or features useful for evaluating past events.

(iii) Paleontologic resources with potential to contribute useful educational and scientific information.

(4) *Hydrologic.* The cave is a part of a hydrologic system or contains water

that is important to humans, biota, or development of cave resources.

(5) *Recreational.* The cave provides or could provide recreational opportunities or scenic values.

(6) *Educational or Scientific.* The cave offers opportunities for educational or scientific use; or, the cave is virtually in a pristine state, lacking evidence of contemporary human disturbance or impact; or, the length, volume, total depth, pit depth, height, or similar measurements are notable.

(d) *National Park Service policy.* The policy of the National Park Service, pursuant to its Organic Act of 1916 (16 U.S.C. 1, *et seq.*) and Management Policies (Chapter 4:20, Dec. 1988), is that all caves are afforded protection and will be managed in compliance with approved resource management plans. Accordingly, all caves on National Park Service-administered lands are deemed to fall within the definition of "significant cave."

(e) *Special management areas.* Within special management areas that are designated wholly or in part due to cave resources found therein, all caves within the so-designated special management area shall be determined to be significant.

(f) *Designation and documentation.* If the authorized officer determines that a cave nominated and evaluated under paragraphs (a) and (b) of this section meets one or more of the criteria in paragraph (c), the authorized officer will designate the cave as significant. The authorized officer will designate all caves identified in paragraphs (d) and (e) of this section to be significant. The authorized officer will notify the nominating party of the results of the evaluation and designation. Each agency Field Office will retain appropriate documentation for all significant caves located within its administrative boundaries. At a minimum, documentation shall include a statement of finding signed and dated by the authorized officer, and the information used to make the determination. This documentation will be retained as a permanent record in accordance with the confidentiality provision in § 37.12 of this part.

(g) *Decision final.* Decisions to designate or not designate a cave as significant are made at the sole discretion of the authorized officer and are not subject to further administrative review or appeal under 43 CFR part 4.

(h) If a cave is determined to be significant, its entire extent, including passages not mapped or discovered at the time of the determination, is deemed significant. This includes caves that extend from lands managed by any Federal agency into lands managed by one or more other bureaus or agencies of the Department of the Interior, as well as caves initially believed to be separate for which interconnecting passages are discovered after significance is determined.

§ 37.12 Confidentiality of cave location information.

(a) *Information disclosure.* No Department of the Interior employee shall disclose information that could be used to determine the location of any significant cave or cave under consideration for determination, unless the authorized officer determines that disclosure will further the purposes of the Act and will not create a substantial risk to cave resources of harm, theft, or destruction.

(b) *Requesting confidential information.* Notwithstanding paragraph (a) of this section, the authorized officer may make confidential cave information available to a Federal or State governmental agency, bona fide educational or research institute, or individual or organization assisting the land managing agency with cave management activities. To request confidential cave information, such entities shall make a written request to the authorized officer that includes the following:

(1) Name, address, and telephone number of the individual responsible for the security of the information received.

(2) A legal description of the area for which the information is sought.

(3) A statement of the purpose for which the information is sought, and

(4) Written assurances that the requesting party will maintain the confidentiality of the information and protect the cave and its resources.

(c) *Decision final.* Decisions to permit or deny access to confidential cave information are made at the sole discretion of the authorized officer and are not subject to further administrative review or appeal under 5 U.S.C. 552 or 43 CFR parts 2 or 4.

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