

[3710-]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS,
DEPARTMENT OF THE ARMY

PART 207—NAVIGATION REGULATIONS

Anacostia River Restricted Area

AGENCY: U.S. Army Corps of Engineers,
DOD.

ACTION: Final rulemaking.

SUMMARY: The Corps of Engineers/Department of the Army is revoking the regulation that established a restricted area in the Anacostia River at Pier 1, Washington Navy Yard, Washington, D.C. The restricted area was established for the Presidential Yacht which has now been deactivated and sold.

EFFECTIVE DATE: September 29, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Ralph T. Eppard 202-693-5070 or write: Office of the Chief of Engineers, Attn.: DAEN-CWO-N, Washington, D.C. 20314.

SUPPLEMENTARY INFORMATION: We have determined that notice of proposed rulemaking and public procedures thereto are impracticable and unnecessary. The revocation of 33 CFR 207.127 will remove a restriction on a waterway and will benefit the general public. Accordingly, 33 CFR 207.127 is hereby revoked as set forth below.

§ 207.127 Anacostia River, at U.S. Naval Administrative Unit, Washington Navy Yard, Washington, D.C.; U.S. Navy restricted area. [Revoked]

NOTE.—The Department of the Army has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107. (40 Stat. 266; (33 U.S.C. 1).)

Dated: September 12, 1977.

Approved:

CHARLES R. FORD,
Acting Assistant Secretary
of the Army (Civil Works).

[FR Doc 77-26693 Filed 9-28-77; 8:45 am]

[6506-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCY

[FRL 784-3]

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Units and Abbreviations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action revises the General Provisions by reorganizing the units and abbreviations, and adding the International System of Units (SI). Until recently, EPA did not have a preferred system of measurement to be used in its regulations issued under this part.

Now the Agency is using SI units in all regulations issued under this part. This necessitates that SI units be added to the General Provisions to provide a complete listing of abbreviations used.

EFFECTIVE DATE: October 31, 1977.

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919-541-5271).

SUPPLEMENTARY INFORMATION: Section 3 of Pub. L. 94-168, the Metric Conversion Act of 1975, declares that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the United States. On December 10, 1976, a notice was published in the FEDERAL REGISTER (41 FR 54018) that set forth the interpretation and modification of the International System of Units (SI) for the United States. EPA incorporates SI units in all regulations issued under 40 CFR Part 61 and provides common equivalents in parentheses where desirable. Use of SI units requires this revision of the abbreviations section (§ 61.03) of the General Provisions of 40 CFR Part 61.

An explanation of the International System of Units was presented in the FEDERAL REGISTER notice mentioned above (41 FR 54018). EPA is using the Standard for Metric Practice (E 380-76) published by the American Society for Testing and Materials (A.S.T.M.) as its basic reference. This document may be obtained by sending \$4.00 to A.S.T.M., 1916 Race Street, Philadelphia, Pennsylvania 19103.

As this revision has no regulatory impact, but only defines units and abbreviations used in this part, opportunity for public participation was judged unnecessary.

This action is taken under the authority of sections 112 and 301(a) of the Clean Air Act, 42 U.S.C. 1857g(a).

NOTE.—The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis under Executive Orders 11821 and 11949 and OMB Circular A-107.

Dated: September 26, 1977.

DOUGLAS M. COSTLE,
Administrator.

40 CFR Part 61 is amended by revising § 61.03 to read as follows:

§ 61.03 Units and abbreviations.

Used in this part are abbreviations and symbols of units of measure. These are defined as follows:

(a) System International (SI) units of measure:

A = ampere
g = gram
Hz = hertz
J = joule
K = degree Kelvin
kg = kilogram
m = meter
m³ = cubic meter
mg = milligram = 10⁻³ gram

mm = millimeter = 10⁻³ meter
Mg = megagram = 10⁶ gram
mol = mole
N = newton
ng = nanogram = 10⁻⁹ gram
nm = nanometer = 10⁻⁹ meter
Pa = pascal
s = second
V = volt
W = watt
Ω = ohm
μg = microgram = 10⁻⁶ gram

(b) Other units of measure:

*C = degree Celsius (centigrade)
cfm = cubic feet per minute
cc = cubic centimeter
d = day
*F = degree Fahrenheit
ft² = square feet
ft³ = cubic feet
gal = gallon
in = inch
in Hg = inches of mercury
in H₂O = inches of water
l = liter
lb = pound
lpm = liter per minute
min = minute
ml = milliliter = 10⁻³ liter
oz = ounces
psig = pounds per square inch gage
*R = degree Rankine
μl = microliter = 10⁻⁶ liter
v/v = volume per volume
yd² = square yards
yr = year

(c) Chemical nomenclature:

Be = beryllium
Hg = mercury
H₂O = water

(d) Miscellaneous:

act = actual
avg = average
I.D. = inside diameter
M = molar
N = normal
O.D. = outside diameter
% = percent
std = standard

(Sections 112 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 1857c-7, 1857g(a)].)

[FR Doc 77-28718 Filed 9-28-77; 8:45 am]

[6560-01]

SUBCHAPTER D—WATER PROGRAMS

[FRL 788-5]

PART 149—REVIEW OF PROJECTS AFFECTING THE EDWARDS UNDERGROUND RESERVOIR, A DESIGNATED SOLE SOURCE AQUIFER IN THE SAN ANTONIO, TEXAS AREA

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: These final project review regulations implement aquifer requirements of the Safe Drinking Water Act. The regulations establish procedures for reviewing commitments of Federal financial assistance to projects in the San Antonio, Texas area.

EFFECTIVE DATE: November 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Ms. Zoraida Carballeira, Program Analyst, State Programs Division,

Office of Water Supply (WH-550), Environmental Protection Agency. (202-426-2934).

SUPPLEMENTARY INFORMATION: On December 16, 1975, the Environmental Protection Agency (EPA) published under 40 CFR Part 149 (Review of Projects Affecting Sole Source Aquifers) Interim Project Review Guidelines for the Edwards Underground Reservoir, Texas Area (40 FR 58292). These guidelines went into effect immediately and authorized EPA review as of the date of their publication. A notice of a public hearing and a request for comments on the interim guidelines were published in the FEDERAL REGISTER on March 22, 1976. Comments were received from both the public and private sectors in response to our request. On April 26, 1976, EPA held a public hearing in San Antonio, Texas, to hear the views of interested persons on the interim guidelines.

After reviewing all public comments received and evaluating the Agency's experience in the application of these interim guidelines to the Edwards Underground Reservoir, the EPA has prepared regulations for the review of Federal financially assisted projects under Section 1424(e) in the San Antonio area.

These regulations describe the project review process that is applicable to Federal financially assisted projects which may affect the Edwards Underground Reservoir through its recharge zone as described in the December 16, 1975, Notice of Determination, and therefore, supersede the interim guidelines. National proposed regulations for the implementation of Section 1424(e) are being published elsewhere in this issue of the FEDERAL REGISTER (43 FR 51620). The project review process contained in Subpart C of those proposed national regulations is identical to the process contained in these San Antonio regulations. EPA anticipates that the San Antonio regulations will be consolidated with the national regulations once the national regulations are promulgated.

PROJECT REVIEW

Section 1424(e) provides that no commitment of Federal financial assistance shall be made to a project which the Administrator determines may contaminate an aquifer in a designated area through its recharge zone so as to create "a significant hazard to public health." Subpart B of these regulations establishes procedures for review of projects for which an application for Federal financial assistance has been made. The project review process will be implemented by the Regional Administrator with the exception of the final determination which will be made by the Administrator. The Regional Administrator is encouraged to explore all available alternatives with the Federal agencies involved, before a recommendation is submitted to the Administrator to determine that a project may contaminate the aquifer so as to create a significant hazard to public health.

Programs and actions will be subject to EPA's project review authority only if an application for Federal financial assistance has been submitted. Federal actions such as dredging performed by the Army Corps of Engineers, which do not involve a grant of financial assistance to a project, are not affected by the project review authority granted by Section 1424(e). Similarly, Federal actions or programs performed by contractors for the Federal government, such as construction of roads on Federal lands by a contractor under the supervision of the Bureau of Land Management are not subject to project review. Although this type of Federal action does not fall within the scope of Section 1424(e), an obligation to evaluate groundwater impact may exist based on other authority. Some actions may be subject to the provisions of the National Environmental Policy Act (NEPA), and the preparation of an environmental impact statement (EIS) may be required. Furthermore, in accordance with Executive Order 11752, all Federal facilities have a responsibility to take the initiative in the protection of the environment.

If a commitment of Federal financial assistance is sought which is within the meaning of Section 1424(e), the Administrator then has the authority to review the project for which financial assistance is sought, in order to determine whether the project may contaminate the aquifer so as to create a significant hazard to public health. EPA will not be concerned with reviewing small, isolated commitments of financial assistance such as individual home mortgage loans (e.g., Farmers Home Administration loans and Veterans' Administration loans) which presumptively have an insignificant impact on aquifer quality. However, EPA may conduct review if the cumulative impact of a large number of such projects is of concern.

Because groundwater impact evaluations are not only required under Section 1424(e), but are also an integral part of the responsibilities imposed under the National Environmental Policy Act (NEPA), the process of project review pursuant to Section 1424(e) will be integrated as fully as possible with the review of Federal actions subject to NEPA. All Federal agencies have published guidelines for the implementation of NEPA which provide the basis for determining whether a project will have a "significant impact on the environment." Review under Section 1424(e) requires the closely related determination of whether a project may contaminate an aquifer through its recharge zone so as to pose a "significant hazard to public health." Integration of the two types of review will allow EPA and other Federal agencies to avoid needless duplication of efforts under the two statutes and will prevent inefficient use of resources in carrying out groundwater impact evaluations. It will also permit EPA to take advantage of the Federal agencies' and the public's familiarity with the NEPA

process. The heads of all Federal agencies have been advised by the Council on Environmental Quality (CEQ) in a memorandum dated November 19, 1976, that NEPA guidelines should be amended to place specific emphasis on the evaluation of the groundwater impact of projects which might affect the quality of an aquifer through its recharge zone and that projects should be submitted to a thorough groundwater impact evaluation in accordance with NEPA procedures.

Assessment of environmental impact under NEPA results in the preparation of an Environmental Impact Statement (EIS) if an initial environmental assessment shows that a project will have a significant impact on the environment. EPA will ordinarily review the potential impact of projects on the aquifer pursuant to Section 1424(e) at the time that draft or final EIS's are submitted to EPA. An EIS prepared for a project which is subject to Section 1424(e) as well as NEPA should contain all the information which is necessary for EPA to properly evaluate a project's impact on groundwater quality under Section 1424(e). EPA will routinely review under Section 1424(e) all EIS's prepared for projects which are to be located in the recharge zone or streamflow source zones which may have an impact on groundwater quality and for which an application for Federal financial assistance has been made.

Although it is anticipated that established NEPA procedures will ordinarily be sufficient to ensure adequate review of groundwater impact pursuant to Section 1424(e), the Regional Administrator shall also have the authority in implementing Section 1424(e) to specifically request that a groundwater impact evaluation which will satisfy the requirements of Section 1424(e) be prepared by the Federal agency from which a commitment of financial assistance is sought. This request may be made on the Regional Administrator's own motion based on information available to him, or upon receipt of a public petition meeting certain specified criteria. A well-researched groundwater impact chapter extracted from an environmental assessment prepared in accordance with NEPA may be sufficient to satisfy such a request for a groundwater impact evaluation under Section 1424(e).

To ensure that EPA and the public are informed of projects which may affect the quality of the aquifer, EPA will request from each funding Federal agency that a list of projects for which EIS's will be prepared and which are located in the recharge zone or streamflow source zones for the Edwards Underground Reservoir be periodically submitted to the Regional Administrator and made available to the public upon request. The Regional Administrator shall also have discretionary authority to work out with regional Federal agencies any agreements or memoranda of understanding which he feels are necessary to supplement these guidelines and to

keep them informed of projects in the area. The Regional Administrator may assume the initiative in obtaining information on commitments of Federal financial assistance which are under consideration and in taking other steps to ensure that they are kept up-to-date on Federal funding of projects in the area. The Regional Administrator may, for example, request lists of applications for Federal financial assistance from the local A-95 Clearinghouse.

EPA will rely as much as possible upon existing State capabilities in protecting the groundwater quality of the aquifer. This reliance will in no way constitute a delegation of project review authority, since this is clearly an EPA responsibility which may not be delegated. However, State assistance can be very valuable in providing the agency with information and comments based on knowledge of local groundwater problems. The State's role will, of course, depend upon the State's capabilities and interests. The Regional Administrator may work out memoranda of understanding with the State in order to determine its participation in the protection of groundwater quality in the area.

The content of these regulations is primarily procedural. EPA plans to initiate a study to provide technical guidance to EPA regional reviewers for the assessment of groundwater impact evaluations prepared by Federal agencies in three major project categories: (1) Multi-unit housing developments, (2) highways, and (3) sewage collection, treatment and disposal facilities. Forthcoming technical guidance will also contain a detailed outline of the information which should be provided by Federal agencies for those project categories. In the meantime, Section 1424(e) review will be carried out in conjunction with NEPA review as currently implemented.

Issues raised by the comments received regarding the interim guidelines and the disposition of these issues in these regulations are as follows.

DISCUSSION OF MAJOR COMMENTS

NON-DEGRADATION

Several comments were received concerning the meaning of "significant hazard to public health," suggesting that to allow any level of potential contaminant to enter the aquifer would be undesirable. These persons requested that a non-degradation requirement be included in the regulations (irrespective of any National Primary Drinking Water Regulations) to assure that no significant hazard to public health could occur. Other comments expressed concern for the quality of the reservoir water but requested that the regulations not be so restrictive as to prevent all development on the recharge zone or to interfere with the rights of the individual property owner.

The definition, "Significant hazard to public health," has been expanded in these regulations § 149.1 to better reflect the EPA position that any project receiving Federal financial assistance should be designed and constructed in

such a manner that the level of contaminants from the project will not contribute to the degradation of the water quality in a sole or principal source aquifer to the point "which may require a public water system to install additional treatment to prevent such adverse effect."

EPA NOTIFICATION AND REVIEW OF PROJECTS

Several comments were received requesting that EPA be notified of all Federal financially assisted projects in both the streamflow source zone and recharge zone. With regard to the review of projects in these zones, three persons requested that all projects be reviewed. One of these persons indicated a particular concern regarding an interim guidelines preamble statement noting that projects located in the streamflow source zone would be reviewed upon petition or an exceptional basis only. Other persons were concerned with the interim guidelines preamble statement that EPA would not review minor actions having an insignificant impact on the quality of the reservoir, such as individual home mortgage loans. One comment suggested that all projects reviewed under the guidelines provide an environmental impact statement (EIS) while another person requested that EPA urge other Federal agencies to prepare EIS's. These regulations specifically provide for EPA notification of projects, specify the ways in which review may be initiated, and clarify the relationship between review under Section 1424(e) and environmental review under the National Environmental Policy Act. (See the discussion of the definition of "project" below).

As discussed below under "Project Review," once an area is designated, the Regional Administrator has the discretionary authority to work out with regional Federal agencies any agreements or memoranda of understanding which are needed to supplement these regulations and to keep them informed of projects in the area.

DIRECT FEDERAL ACTION

Three persons requested that direct Federal actions be reviewed under Section 1424(e). One person asked that the executive order be cited that requires Federal agencies to comply with environmental legislation, and another person asked how the aggregate impact of direct Federal actions would be evaluated. Direct Federal actions are not subject to EPA review under Section 1424(e) and, therefore, are not subject to these regulations. The EPA Office of General Counsel has determined that only projects or actions receiving Federal financial assistance are subject to such review under the terms of the Act. However, direct Federal actions are covered under Executive Order 11752, the purpose of which is to assure that the Federal Government (in the design, construction, management operation and maintenance of its facilities) will provide leadership in the effort to protect and enhance the quality of the nation's air, water, and land resources through compliance with applicable standards in full cooperation with

State and local governments. The effect of this order will be to protect the reservoir by assuring that Federal actions comply with the National Pollutant Discharge Elimination System, state water quality standards, and regulations to be promulgated under the Safe Drinking Water Act.

DEFINITIONS

A definition has been included in the general regulations for "Federal financial assistance" in order to clearly state the nature of the programs and actions that will be affected.

The definition for "Project" in these regulations differs from that in the Edwards Underground Reservoir interim project review guidelines in that the word "major" is not used. The deletion of the word "major" is consistent with EPA's intention to review any Federal financially assisted program or action which EPA determines could affect the quality of water in a sole or principal source aquifer whether or not the project has already been found to be a "major Federal project" under the National Environmental Policy Act (NEPA). This deletion of "major" with respect to these regulations clearly indicates that EPA is assuming full responsibility to review any project that might contaminate a principal or sole source aquifer, and is not delegating to other Federal agencies the responsibility to decide which projects should be subject to EPA review. Federal agencies that have granted or might grant Federal financial assistance to projects in the Edwards reservoir recharge zone or the streamflow source zone have been advised of the Edwards Underground Reservoir Determination. EPA is working with these Federal agencies to develop interagency procedures whereby EPA will be notified of all projects that could contaminate the reservoir water so as to create a significant hazard to public health. In addition, these regulations allow the EPA Regional Administrator to request lists of applications for Federal financial assistance from the local A-95 Clearinghouse.

The expansion in the regulations of the "Significant hazard to public health" definition reflects the EPA position as discussed under Non-degradation.

The definition "Commitment of Federal financial assistance" in these regulations notes that a "commitment" is a "written" agreement while the interim guidelines for the Edwards did not specify "written." Also, these regulations note that the renewal of a lapsed commitment could constitute a new commitment if the project's impact on the designated aquifer has not been previously reviewed "under section 1424(e)"; while the interim Edwards guidelines did not specify "under section 1424(e)."

COMMITMENT OF FEDERAL FINANCIAL ASSISTANCE

Commenters asked if a project begun with State funds (such as a highway) and reimbursed with Federal funds, or a structure built with local funds but operated fully or in part with Federal funds is subject to section 1424(e) review.

Prior to a request for Federal financial assistance, a project will not be subject to review by EPA under section 1424(e). Each project for which financial assistance is requested will need to be evaluated on an individual basis. State and local agencies would be well-advised to anticipate the need to assess groundwater impact in order to obtain Federal reimbursement at a later date, by applying NEPA requirements and evaluating groundwater impact during the initial stages of a project.

PROJECT REVIEW AUTHORITY

Two commenters suggested that too much authority and discretionary power is delegated to the Regional Administrator and that the Administrator should have primary enforcement authority. Any responsibility delegated to the Regional Administrator is in line with EPA's policy of decentralization of authority. However, with regard to primary enforcement authority, these regulations, as did the Edwards interim guidelines, specify that only the Administrator may determine that a project may contaminate a designated aquifer through its recharge zone so as to create a significant hazard to public health.

SUBMISSION OF PETITIONS

EPA received several comments requesting that the petition information requirements in the interim guidelines be simplified. In these regulations the number of requirements have been reduced in order to facilitate petition preparation and to minimize the burden on the public.

DECISION TO REVIEW

Two comments inquired about the appeal procedure available in the event that the Regional Administrator decides not to review a project. One of these comments requested that a specific appeal procedure be included in the guidelines. No appeal procedure has been included in these regulations. The Regional Administrator's decision not to review or veto a project is the final administrative decision. If a person feels that the Agency has failed to fulfill the requirements of the Act, he may file a citizen's suit under section 1449 of the Act.

PUBLIC NOTICE OF REVIEW

Two persons commented that the interim guidelines provision for public notice (by such means as the Regional Administrator deems appropriate) is inadequate, and one requested further that a mailing list of concerned citizens be compiled to receive notifications. Another person requested that a similar mailing list be used to notify persons of all projects in the recharge and streamflow source zones.

The Regional Administrator, under these regulations as under the interim guidelines, will provide public notice of

project review by such means as he deems appropriate. To require specific means of notification could, with regard to certain geographical areas, preclude use of the most effective means of adequate public notification. However, as discussed below, the Regional Administrator will also request a list of projects for which EIS's will be prepared and which are located in the recharge zone or streamflow source zones of the aquifer and will make this information available to the public upon request. He may also request lists of applications for Federal financial assistance from the local A-95 Clearinghouses.

CONSIDERATION OF STATE AND LOCAL CONTROLS

Several comments requested that EPA (as stated in the interim guidelines) rely to the maximum extent possible upon existing State control mechanisms in protecting the aquifer, and several noted that the extent and effectiveness of State and local controls over possible contaminant releases should be a factor in the review of projects. However, many persons objected to such consideration of State and local control mechanisms.

It is EPA's policy to encourage State and local agencies to develop and implement environmental control programs. To be consistent with this policy, State and local controls will be considered when a project is reviewed, since the extent of local control is relevant to considering the extent of contamination. However, these regulations also state any reliance on the states "will in no way constitute a delegation of project review authority, since this is clearly an EPA responsibility which may not be delegated."

CONSIDERATION OF PROJECT BENEFITS

The majority of the comments received concerning project benefits requested that expected benefits not be a factor for consideration in the review of a project. Section 149.17 specifies that "environmental" benefits of the proposed project are to be considered. The interim guidelines for the Edwards aquifer did not specify the nature of the benefits to be considered.

RESUBMITTAL OF REDESIGNED PROJECTS

Three comments were received concerning the resubmittal of projects. One stated that a public hearing was appropriate and two that a public hearing should be mandatory in the event a redesigned project is resubmitted for review.

As in the case of the interim guidelines, these regulations, § 149.18, provide that the Regional Administrator is authorized to request public comments or hold an informal hearing when appropriate. However, under these regulations only the Administrator (not the Regional Administrator as in the interim guide-

lines) can actually vacate an initial determination that a project may contaminate the aquifer.

WAIVER OF REQUIREMENTS

Comments were received regarding the provision for the waiver of requirements, § 149.10 in the interim guidelines. These comments stated that it would not be contrary to the public interest for the public to know about and participate in decisions regarding Federal financially assisted projects. It is EPA's policy to encourage public participation in matters of public interest, and no waiver of requirements provision is contained in these regulations.

DISCUSSION OF MISCELLANEOUS COMMENTS

Several comments were received that either do not directly relate to the interim guidelines and/or are not reflected in a change in these regulations. Included were the following questions: What steps should be taken to review the impact of existing features (such as railroads, highways, etc.) as a basis for evaluating new projects and considering the potential of spills? What State and Federal monitoring programs are proposed? What further research is being done on the bacteriological quality of storm water runoff? What control exists for contaminants (such as viruses) not covered by permits and stream standards? How will recreational use of the watershed be handled? One comment recommended that a control plan be required for the collection of storm water runoff from projects and that septic tanks, landfills, animal feeding operations, effluent discharges (including storm water runoff, and waste treatment plants) be excluded from the recharge zone. Another comment suggested that the interim guidelines were too procedural in nature and requested that they be more technical.

With respect to the monitoring and research concerns, a monitoring network is being established for the purpose for reviewing the impact of existing developments on the reservoir. Results of this monitoring will be used to evaluate the impact of existing projects on the reservoir as well as to predict the potential impact of future projects. EPA concurs that additional research on storm water runoff and other discharges is needed. Much of this research is underway. Under section 1442(a) of the Act, the Administrator is required to conduct studies on disposal of wastes that may affect groundwater, and on means of controlling contaminants, including viruses. Information from this research will be an important source of data to be used in considering the proper disposition of discharges from projects located both in and outside of the recharge zone.

In response to those comments requesting that EPA require certain controls or prohibit specific actions in the recharge zone, such restrictions relate to

land use planning. Land use planning is under local jurisdiction, and outside the scope of these regulations.

Dated: September 22, 1977.

DOUGLAS M. COSTLE,
Administrator.

40 CFR Part 149 is revised to read as follows:

Subpart A—General Provisions

- Sec.
149.1 Applicability.
149.2 Definitions.
- Subpart B—Project Review**
- 149.10 Project review authority.
149.11 Public information.
149.12 Submission of petitions.
149.13 Decision to review.
149.14 Notice of review.
149.15 Request for information.
149.16 Public hearing.
149.17 Decision under section 1424(e).
149.18 Resubmittal of redesigned projects.
149.19 Funding to redesigned projects.

AUTHORITY: Sec. 1424(e), Safe Drinking Water Act (42 U.S.C. 300f, 300h, -3(e)); 80 Stat. 1680 et seq.; Pub. L. 93-523).

Subpart A—General Provisions

§ 149.1 Applicability.

This part sets forth, pursuant to section 1424(e) and 1450 of the Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93-523, regulations relating to the Edwards Underground Reservoir which is the sole or principal drinking water source for the San Antonio area and which, if contaminated, would create a significant hazard to public health.

§ 149.2 Definitions.

As used in these regulations and except as otherwise specifically provided, the term(s):

(a) "Act" means the Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93-523.

(b) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(c) "Recharge zone" means the area through which water enters the Edwards Underground Reservoir as defined in the December 16, 1975, Notice of Determination.

(d) "Administrator" (Regional Administrator) means the Administrator (Regional Administrator) of the United States Environmental Protection Agency.

(e) "Person" means an individual, corporation, company, association, partnership, state, or municipality.

(f) "Project" means a program or action for which an application for Federal financial assistance has been made.

(g) "Federal financial assistance" means any financial benefits provided directly as aid to a project by a department, agency, or instrumentality of the Federal government in any form including contracts, grants, and loan guarantees. Actions or programs carried out by the Federal government itself such as dredging performed by the Army Corps of Engineers do not involve Federal financial assistance. Actions performed

for the Federal government by contractors, such as construction of roads on Federal lands by a contractor under the supervision of the Bureau of Land Management, should be distinguished from contracts entered into specifically for the purpose of providing financial assistance, and will not be considered programs or actions receiving Federal financial assistance. Federal financial assistance is limited to benefits earmarked for a specific program or action and directly awarded to the program or action. Indirect assistance, e.g., in the form of a loan to a developer by a lending institution which in turn receives Federal assistance not specifically related to the project in question is not Federal financial assistance under section 1424(e).

(h) "Commitment of Federal financial assistance" means a written agreement entered into by a department, agency, or instrumentality of the Federal Government to provide financial assistance as defined in paragraph (g) of this section. Renewal of a commitment which the issuing agency determines has lapsed shall not constitute a new commitment unless the Regional Administrator determines that the project's impact on the aquifer has not been previously reviewed under section 1424(e). The determination of a Federal agency that a certain written agreement constitutes a commitment shall be conclusive with respect to the existence of such a commitment.

(i) "Streamflow source zone" means the upstream headwaters area which drains into the recharge zone as defined in the December 16, 1975, Notice of Determination.

(j) "Significant hazard to public health" means any level of contaminant which causes or may cause the aquifer to exceed any maximum contaminant level set forth in any promulgated National Primary Drinking Water Standard at any point where the water may be used for drinking purposes or which may otherwise adversely affect the health of persons, or which may require a public water system to install additional treatment to prevent such adverse effect.

(k) "Aquifer" means the Edwards Underground Reservoir.

Subpart B—Project Review

§ 149.10 Project review authority.

(a) Once an area is designated, no subsequent commitments of Federal financial assistance may be made to projects which the Administrator determines may contaminate the aquifer so as to create a significant hazard to public health.

(b) The Regional Administrator is hereby delegated the authority and assigned responsibility for carrying out the project review process assigned to the Administrator under section 1424(e) of the Act, except the final determination that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health.

(c) The Regional Administrator may review any project which he considers may potentially contaminate the aquifer through its recharge zone so as to create a significant hazard to public health.

§ 149.11 Public information.

After the area is designated under section 1424(e), Federal agencies, for projects, located in the recharge zone and streamflow source zones, are required to:

(a) Maintain a list of projects for which environmental impact statements will be prepared in accordance with the National Environmental Policy Act (NEPA);

(b) Revise the list at regular intervals and submit to EPA; and

(c) Make the list available to the public upon request.

§ 149.12 Submission of petitions.

Any person may submit a petition requesting the Regional Administrator to review a project to determine if such project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health. Any such petition shall identify:

(a) The name, address, and telephone number of the individual, organization, or other entity submitting the petition;

(b) A brief statement of the requesting person's interest in the Regional Administrator's determination;

(c) The name of the project and Federal agency involved;

In addition, the petitioner is requested to submit to EPA available information on:

(d) Applicable action already taken by State and local agencies including establishment of regulations to prevent contamination of the aquifer and why, in the petitioner's judgment, the action was inadequate.

(e) Any actions taken under the National Environmental Policy Act and why, in the petitioner's judgment, that action was inadequate in regard to evaluation of potential effect on the aquifer.

(f) The potential contaminants involved;

(g) The means by which the contaminant might enter the aquifer; and

(h) The potential impact of the proposed project.

§ 149.13 Decision to review.

(a) The Regional Administrator shall review under section 1424(e) all projects located in the recharge or streamflow source zone of the aquifer for which a draft or final EIS is submitted which may have an impact on ground water quality and which involve Federal financial assistance as defined in these regulations.

(b) Upon receipt of a public petition, the Regional Administrator shall decide whether the project which is the subject of the petition should be reviewed under section 1424(e).

(c) The Regional Administrator may decide to review a project upon his own motion.

(d) In determining whether to review a project upon receipt of a public petition or upon his own motion, the Re-

gional Administrator shall consider whether the project is likely to directly or indirectly cause contamination of the aquifer through its recharge zone, taking into account any factors he deems relevant, including:

- (1) The location of the project, and
- (2) The nature of the project.

(e) In determining whether to review a project upon receipt of a public petition or upon his own motion, the Regional Administrator may consult with, or request information from, the Federal agency to which the project application has been made, the applicant seeking Federal assistance, appropriate State and local agencies, and other appropriate persons or entities.

(f) In determining whether to review a project which is the subject of a public petition, the Regional Administrator may request such additional information from the petitioner as he deems necessary.

§ 149.14 Notice of review.

(a) *Notice to Federal agency.* If the Regional Administrator decides upon receipt of a public petition or upon his own motion to review a project under section 1424(e), he shall give written notification of the decision to the Federal agency from which financial assistance is sought. The notification shall include a description and identification of the project.

(b) *Notice to public.* When the Regional Administrator undertakes to review a project pursuant to § 149.13 above, he shall provide public notice of project review by such means as he deems appropriate. The notice shall set forth the availability for public review of all data and information available, and shall solicit comments, data and information with respect to the determination of impact under section 1424(e). The period for public comment shall be 30 days after public notice unless the Regional Administrator extends the period at his discretion or a public hearing is held under § 149.16.

§ 149.15 Request for information.

In reviewing a project under section 1424(e), the Regional Administrator may request any additional information from the funding Federal agency which is pertinent to reaching a decision. If full evaluation of the groundwater impact of a project has not been submitted in accordance with the agency's NEPA procedures, the Regional Administrator may specifically request that the Federal agency submit a groundwater impact evaluation of whether the proposed project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health.

§ 149.16 Public hearing.

If there is significant public interest, the Regional Administrator may hold a public hearing with respect to any project or projects to be reviewed if he finds that such a hearing is necessary and would be helpful in clarifying the issues. Public hearings held under this section should be coordinated, if possible, with

other Federal public hearings held pursuant to applicable laws and regulations. Any such hearing shall be conducted by the Regional Administrator or designee in an informal, orderly and expeditious manner. Where appropriate, limits may be placed upon the time allowed for oral statements, and statements may be required to be submitted in writing. The record will be held open for further public comment for seven (7) days following the close of the public hearing.

§ 149.17 Decision under section 1424(e).

(a) As soon as practicable after the submission of public comments under section 1424(e) and information requested by the Environmental Protection Agency from the originating Federal agency, on the basis of such information as is available to him, the Regional Administrator shall review the project taking all relevant factors into account including:

- (1) The extent of possible public health hazard presented by the project;
- (2) Planning, design, construction, operation, maintenance and monitoring measures included in the project which would prevent or mitigate the possible health hazard;
- (3) The extent and effectiveness of State or local control over possible contaminant releases to the aquifer;
- (4) The cumulative and secondary impacts of the proposed project; and
- (5) The expected environmental benefits of the proposed project.

(b) After reviewing the available information, the Regional Administrator shall:

- (1) Determine that the risk of contamination of the aquifer through the recharge zone so as to create a significant hazard to public health is not sufficiently great so as to prevent commitment of Federal funding to the project; or
- (2) Forward the information to the Administrator with his recommendation that the project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health.

(c) After receiving the available information forwarded by the Regional Administrator, the Administrator shall:

- (1) Determine that the risk of contamination of the aquifer through the recharge zone so as to create a significant hazard to public health is not sufficiently great so as to prevent commitment of Federal funding to the project; or
- (2) Determine that the project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health.

(d) Notice of any decisions by the Regional Administrator under paragraph (b)(1) of this section or by the Administrator under paragraphs (c)(1) and (c)(2) of this section to prevent a commitment of Federal funding shall be published in the FEDERAL REGISTER. Such notices shall include a description of the proposed project, and a statement of decision with an accompanying statement of facts and reasons.

§ 149.18 Resubmittal of redesigned projects.

If a project is redesigned in response to EPA's objections, the applicant for Federal financial assistance or the grant-or agency may file a petition with the Regional Administrator for withdrawal of the determination that the project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health. Any such petition shall demonstrate how the project has been redesigned so as to justify the withdrawal of EPA's objections. If appropriate, the Regional Administrator may request public comments or hold an informal public hearing to consider the petition. After review of pertinent information, the Regional Administrator shall either deny the petition or recommend to the Administrator that the initial determination that a project may contaminate the aquifer be vacated. Upon receipt of a recommendation from the Regional Administrator that a determination be vacated, the Administrator shall either deny the petition or order that the initial determination be vacated. The final decision regarding a petition shall be published in the FEDERAL REGISTER with an accompanying statement of reasons.

§ 149.19 Funding to redesigned projects.

After publication of a decision that a proposed project may contaminate a sole or principal source aquifer in a designated area through its recharge zone so as to create a significant hazard to public health, a commitment for Federal financial assistance may be entered into, if authorized under another provision of law, to plan or redesign such project to assure that it will not so contaminate the aquifer.

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[6506-01]

[FRL 799-7; FP 6E1792; R136]

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

Aldicarb

AGENCY: Office of Pesticide Programs, Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide aldicarb. The amendment to the regulations was proposed by Union Carbide Corp. This rule will establish a maximum permissible level for residues of aldicarb on bananas.

EFFECTIVE DATE: September 29, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Frank Sanders, Product Manager (PM) 12, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street, SW., Washington, D.C. (202-426-9425).